reason, you don't see the bar and I have said over and over when I talk to people and groups that as our country is become more diverse -- we've got so much making up to do. I mean, in so many states African Americans and Latinos couldn't go to law school for years and years. So, the number of -- in Georgia and Mississippi, and Alabama, it doesn't have but about 250 African American lawyers in the whole state.

So, you have a fairly small number of people to begin with and now the law school classes aren't reflecting the population and are going down even further. So, that's going to be even worse. And I think one of the arguments that has to be made, and that I hope will convince people, is that our courts are just not going to be seen as legitimate if they don't represent the community any better than that. I think the courts are out of touch, very much out of touch with a lot of things, culturally and so forth.

When Robert Breenan was appointed to the Georgia Supreme Court, the first African American, and told this story about going in a paint store and somebody saying, boy, bring me the paint, I don't

think the other members of that court had ever had -- probably ever had anybody tell them a story like that before. And here one of their colleagues had. I think that's the value of that that sort of pluralism has on a bench that has never had it before. But they're awful lot of courts where you don't have that.

And one of the things I'd just like to pick up on that I thought was a very insightful comment that Chief Monroe made, which is he talked about how demagoguery leads to the way in which people behave and the line people behave. I think one of the problems is in the D.C. Police, they may be giving good talks to the officers. Btu out in the places where I am, a little bit different, the demagoguery is coming from the politicians, from President Clinton, from the candidates for everything from sheriff on up, all talking about we're fighting a war on crime, a war on crime. We've got to get tough. That the police are the soldiers in this war on crime. And the result is that you've got this sort of war mentality that anything goes. We've got all these paramilitary units that --

And I'll tell you, it's not just the poor people. One of the people in my office at one time, now is head of another office, but Brian Stevenson, a graduate of the Harvard Law School and Kennedy School of Government, comes back from the library one night and the tactical squad surrounds him with all their guns drawn, puts him on the front of the car, searches him. Holds him there for 20 minutes. Humiliates him while all his neighbors are walking up and down the street. Hadn't done a thing wrong. Has just simply come back to the house that he lived in from the library.

And I think when you have that lack of leadership from the political leaders in this country urging people on that we're fighting this war and we're on the front lines, and all that, and not taking into account that we've got to worry about the fact that we have sacrificed fairness in our court system. We've sacrificed the 4th Amendment on the streets, the right to be free of unreasonable search and seizures. And that we're paying a terrible price for this war on crime.

And I think it's one of the things that has deterred trying to change the court system. Because I think part of the argument that's made is that the more diversity on the courts, the courts will be soft on crime. And I think that's a terrible problem.

VICE CHAIRPERSON REYNOSO: Thank you very much.

Sorry to have taken so long, Madam Chair.

CHAIRPERSON BERRY: That's all right.

Commissioner Lee.

COMMISSIONER LEE: I also have several questions but because of time I will limit myself.

The first question is to Assistant Chief Monroe. You mentioned the -- one aspect of building or establishing police community relations is to build bridges. Can you share with us some of the approaches that you have made that's successful? And also, I'd like you to comment on your views, whether -- you talked about the importance of ongoing training, officer training, culturally, sensitivity training, and what have you. How does that compare to having a

department that reflects the make up of the community that the department is supposed to serve?

ASST. CHIEF MONROE: I think it is important that the demographics of the department roughly correlate with the demographics of the community at large. But I think as important as the racial and gender balances that you need, it's the state of mind.

In policing, many of the attitudes in policing are passed down from generation to generation of police officers. Example. I came on the police department in 1979. Many of the officers, the older officers, who trained me came into that agency in 1960, 1970. So they're -- and the people who trained them came on in the '40s and '50s. So, it's easy to see how many of the attitudes that they would have and the way that the police respond to the community, and particularly minority communities, are passed on. So, some of these things become ingrained into the policing -- to the methods and philosophies of policing itself where you can have a person, either of African American descent or Latino descent, come into

this agency, or, when I say this agency, come into this industry. And they will be acting in a way, and based on some stereotypes that were formed 25 or 30 years prior to that. It's just -- it's a matter of exposure to different ways of thinking. And we tend to be kind of closed.

I think that's as important as the demographics. I always say, a good police officer is a good police officer regardless of the race. And a bad one, if you run into one, I don't particularly care that if I run into an African American police officer who is a bad police officer, he can make me have a very bad day.

I think, and I want to digress for just one moment, to what Mr. Bright was saying. And I think it's very, very important that law enforcement and the criminal justice system does not lose its legitimacy because it isn't diverse and it isn't sensitive to larger issues. Because at that point, we have anarchy because people stop respecting the rule of law because they believe it's unfair and I'm not going to get an equal shake anyway. So, I think it's

critical that we do that.

Some of the things we've done is, from just my own personal experiences, I try to talk to young people. And right now in the 4th District, which is one of the districts in my region, the commanding officer there, Melvin Scott, has implemented a program where we go out and we talk to-- we bring at risk children in from the halfway houses. In fact, they are very at risk and some of them have committed what would be felonies if they were adults.

But we try to talk to them about the wider issues of what they're going to do with their life. And we explain to them about the criminal justice system.

I want to -- Just one moment. We talked to a group of, I think, maybe 12 young men. They were from 13 to 19. And we were talking about the rights that they had and what police officers use as a standard to stop them. So, we were trying to explain a Terry Stop to teenagers. So, we began talking about the Bill of Rights. And we talked about the 4th, 5th, and 6th Amendment. And as we were talking to them, it

became kind of clear that the lights weren't going off. So, I asked them, how many people knew about the Bill of Rights and no hands went up. I asked them how many people understood the Constitution. No hands went up. I asked how many people know that there is a thing called the Constitution. No hands went up.

I think what Mr. Pierce said when there is a problem with the -- these are things that you learn in second grade. You may not know all about the Constitution but you know there was a thing called the Constitution. If we're going to have a weak education system, anything we do is not going to help.

So, what we try to do is we try to -- and in talking to these young men, after the -- I mean, you should have seen the look on their face in a police station talking to police executives. But once we were able to get through that we're not here to harm you. We're only here out of concern for you, a lot of those young men began to soften their signs.

They take on the culture of the community that we put them in. If we push them out, and that's what we tend to do, if we push them out of our

community, we're going to push them into that community that's going to wait for them with open arms in a prison. So, what we try to do is keep as many of them out of the system as possible with the understanding that some -- no net is going to catch all fish. If it catches sardines, it's not going to do much for a whale and visa versa.

So, I think we as a society just have to come up with different sets of nets and not try to -- we try to have catch alls.

MR. PIERCE: Excuse me, Madam Chairwoman, may I be excused for just a moment to call my office, please.

CHAIRPERSON BERRY: You are coming back because I have a question for you.

MR. PIERCE: Yes, Ma'am. Yes, Ma'am.

CHAIRPERSON BERRY: Don't be gone too long.

MR. PIERCE: No, Ma'am. Thank you.

CHAIRPERSON BERRY: Go ahead, Yvonne. Did you want to ask --

COMMISSIONER LEE: And the second question

is to Mr. Bright.

According to the materials that we've received, another cause for the disparity or over representation of African American males in the other end of the criminal justice system is unequal representation in defense. Since the Vice Chair has mentioned about the aftermath of affirmative action, the dismantling of affirmative action programs, what would you suggest, what kind of programs would you suggest to assure that there will be better defense representation of minorities, specifically African American male,s in the criminal justice system?

MR. BRIGHT: Well, I'm glad you asked. That was one of the things I meant to talk about because that's a tremendous problem.

When I said the lawyers, actually one of the -- in my piece here, I described a lawyer who was a -- if I can find it real quick I'll share it with you -- who was appointed to defend a capital case. And this is the federal judge, the trial attorney, he said was outspoken about his views. He said the blacks were uneducated and wouldn't make good teachers

but make good basketball players. He said blacks are less educated and less intelligent than whites because his grandaddy has slaves. He said that integration had lead to deterioration of neighborhoods and he described Chattanooga as a "black boy jungle." He says that he uses the word nigger jokingly.

This is the man who was responsible for seeing that an African American facing the death penalty received a fair trial and that the jury knew everything about the life and background of that person. And that was upheld by the court. They said that was not race discrimination. I mean, that's, again, how far McCluskey has taken us.

But in so many states, you know, there's not even an indigent defense system. One of the things our office has been very concerned about is the fact that a lot of counties, particularly in the rural areas, bid the indigent defense out to the lowest bidder. And so, the county will just simply say, anybody who's a member of the bar can bid on the contract and then they'll take the lowest bidder with no qualifications about the quality factored in at

all.

And then the -- I was not long ago in Thompson, Georgia just watching a whole day of court. And generally, the appointed lawyer, who was white, and was a lawyer who I think anybody in that community would admit was doing that job because it was the only work he could do. Nobody would hire him to do any other kind of legal work. Obviously disdainful of his clients. I mean, clearly didn't like the people that he was representing. Often made snide remarks about them in open court for everybody to hear.

But what was most striking about it is that he would most often meet his client for the first time in open court. And after a few whispered conversations, he would enter a guilty plea on their behalf and they'd be sentenced. And the most dramatic moment, I guess, of the day was when one person, the judge, after -- before -- after taking the guilty plea but before sentencing, asked him if he had anything to say and he just plead guilty to leaving the scene of an accident and driving under the influence. And he said, well, Judge, I just want you to know, I did

leave the scene, but I didn't have anything to drink until I got home. And at that point, his lawyer exclaimed, the most surprised person in the courtroom, why, my gosh, Your Honor, he's innocent. I mean, this is after he had just plead the man guilty.

And this, we see over and over. We have to have -- an answer to your question is, we have to realize that we're pouring huge amounts of money into the prosecution. Every time they pass a crime bill, huge amounts of money, setting up drug courts, setting up domestic violence courts, all these things which are wonderful. But no money on the other side for the defense function. And the result of that is that indigent defense systems that were already years ago overwhelmed and couldn't possibly keep up are even more overwhelmed today.

And what's needed is to say that we can be tough on crime but we can be fair. And we've got to have public defender systems. We've got to-- just like we have on the prosecution side, a group of people that specialize in prosecuting these cases, we've got to have a group of people on the other side

that specializes in defending these cases. And we also have to have people that are independent of the judges and independent of these monetary constraints so you actually have people representing people that have the best interest of their client at heart and aren't just simply being appointed to these cases to expedite the cases through the system.

I mean, the judges in Houston, Texas appoint repeatedly a lawyer who has slept through two capital trials that he was defending. These judges didn't just preside over these cases. They appointed the lawyer and they appointed him again. And that's all they do, is appoint him. Those are the only cases he gets.

The judges shouldn't be charge of deciding who represents a poor person. Because I remember a young man named Gregory Wilson in Kentucky who is on death row there now who, when he realized that his lawyer was an alcoholic, didn't have an office, practiced out of a home where there was a Budweiser beer sign over his desk, and after the lawyer had given him number and he called the number and they

answered Kelly's Keg, and it was a bar in COvington. And you'd call and the bartender would summon the lawyer to the phone, and the young man went before the judge. I mean, this would be funny if it weren't so tragic. The young man went before the judge and he said, Your Honor, I want a lawyer. I'm facing the death penalty. I want a lawyer. And the judge said, be my guest. If you can find a lawyer, that's fine. But this is the lawyer the court is giving you. And that young man went to trial with that sort of farcical representation. And the Kentucky Supreme Court said on appeal that it wasn't an ineffective assistance of counsel. That he didn't cooperate with the lawyer.

COMMISSIONER LEE: Well, do you think there should be some kind of an ombudsman program or oversight department to monitor these things?

MR. BRIGHT: I think what there needs to be -- I think the problem is so obvious, I don't think we need to study it any more. I think we need to do something about it. I think we need programs that will provide representation to people accused of

crimes so we don't -- another case in Georgia where the third day of trial they found out that the wrong defendant was on trial. And the lawyer knew his client so little that he said, well, the guy kept saying it's not me, it's not me, but I thought he meant he was innocent. And it was literally the wrong person on trial. I mean, that's not a system of indigent defense.

And I think what needs to be done is to say that we've got to -- Gideon v. Wainwright, the case that said that every person accused of a crime was entitled to a lawyer was decided 36 years ago. And there has bene the same resistance to that that there have been to a lot of other Supreme Court decisions and we need to enforce the Gideon decision. And we need to enforce it with a structure, an independent, funded structure that will provide legal representation for people.

CHAIRPERSON BERRY: All right. I have a couple of question. I have more but in the interest of time, since we've decided not have the break. We're just going to proceed since we had a break

earlier, and I need to ask these questions.

The first thing I want to say is that with reference to the statements made by Mr. Pierce about education and about desegregation. I'm not aware that any major school desegregation litigation, bringing new cases, has taken place in the last 20 years. Most of what's happened in school desegregation in the last 20 years is people either getting out of school desegregation orders or people abandoning desegregation orders, and the resegregation of the schools.

So that whatever is wrong with the public schools right now is not because anybody's trying to desegregate them. Because I don't know anybody who's trying to do that. And it hasn't been done, if we think about it historically. We're talking about almost 20 years. So, this is not a fight that, if I'm right about that, this is not a fight that we have to get people to stop trying to desegregate schools because they're not trying to desegregate them.

The -- And they also, it is -- it occurs to me that in the 20 years that the kind of lack of

diversity in the courts that Mr. Bright was talking about, and I happen to have written about in a book I just published. I'm not trying to sell it but it's called A Pig Farmer's Daughter and it's about state supreme courts and the lack of diversity. The lack of diversity in all of our institutions, and in particular in the justice system, and these attitudes that he's talking about, have festered. And in fact, we've become more polarized in the 20 years since we stopped trying to desegregate the schools.

And it makes you wonder if we have become more separate and we are having more diversity in terms of demography and the people who are immigrating into the country and the various populations, and we talk about diversity as our strength and all that. We make speeches about it when in fact the courts are the way Mr. Bright described them. The prosecutors are the way, everybody in the whole system looks that way. And more important, has perspectives. Because you can have black faces with perspectives that are just like other faces. So, it's not just the faces. It's the stories and the perspectives.

Could it be that you can have the pursuit of quality education and an effort to try to have more people interact racially? And could that have some impact on what happens in other sectors or societies, including the courts? I ask you that first. And then I'll ask you a question about the single sex schools. Go ahead.

MR. PIERCE: In answer to your first question, yes, I do believe that. And I hope my comments earlier weren't received as saying that the country was still caught up in desegregation. I didn't say that. That wasn't what I mean, Madam Chairwoman.

My comment was that --

CHAIRPERSON BERRY: Am I right about that, that there's no major --

MR. PIERCE: You're absolutely right. There's no -- no one is bringing desegregation cases. On my docket there are very few. The cases that are rising are resource equity or resource comparability limiting proficiency testing, the over representation of minority students in special education, under

representation in gifted and talented programs. The whole ability grouping, you know this information now. Racial harassment.

CHAIRPERSON BERRY: Right. But not desegregation.

MR. PIERCE: But not desegregation.

But if you were to ask anyone 10, 15, as recently as ten years ago, and definitely for the 40 years prior to that, 35 years prior to that, what was the plan for quality education for African Americans, it was desegregation. And my comment was that unfortunately too many of school districts, and I say unfortunately, due to the recalictrants and hostility towards desegregation, got caught up in the desegregation. And somehow the focus on sound, solid education, removing educational disparities, was lost.

I sincerely believe that.

CHAIRPERSON BERRY: My only point is that you give people an excuse for not having imposed quality education in their school system by letting them hide behind the argument that we were focused all these years on trying to desegregate.

MR. PIERCE: Yes. Yes.

CHAIRPERSON BERRY: That's why we couldn't do anything. When we know for a matter of a fact that black majority and Latino majority school districts that we call racially isolated, have existed for almost 20 years. And people who have been running them have in part been Latinos and African Americans who have been running them. And no one was trying to desegregate them. So that's not an excuse.

So, I think that when we emphasize that, we give them an excuse for not having focused until now on that. And we need to urge them to stop hiding behind that.

MR. PIERCE: I agree totally.

CHAIRPERSON BERRY: All right.

MR. PIERCE: In fact, what we often say is excellence and equity go hand in hand. Too often folk believe that you can't have equity without dummying down excellence. But, the reality is you can't say you have an excellent schools system if it is inequitable by any factors that you want to put up. In this particular sense, civil rights sense, by

gender, race, or whatever, national origin, disability. We know that.

Let me make this comment and I have to say this. When you were talking -- you made your comment about who was running our school system and who continues to run our school system. It goes back to my other comment.

The bottom line issue as far as Raymond Pierce is concerned is accountability. I asked Dr. Asa Hilliard once, and I'm sure you know who Asa Hilliard is. I said one day in a moment of despair dealing with these civil rights issues around this nation. I said, Asa, what is it? And he said, you know, Raymond, people think there's some big mystery to educating black children and it's not. He said, you set high standards. You put somebody in charge. You held them accountable. And if they don't do their job, get rid of them and get somebody who can.

And unfortunately we have not done that. And we are starting to move now towards putting people in charge, setting high standards, giving them the resources to do their job, and holding them

accountable. And if they can't do it, get rid of them and get somebody who can. That's what Ford Motor Company does. That's what Chrysler Company does. That's what any company does. If you don't produce, move on.

In this particular situation, the production is the education of our children. And we havE to begin to look at it in the business sense and begin to put together school reform packages that will do that. With, of course, all the removal of all the inequities that we know continue to exist.

And I personally believe that can be done in Detroit, Washington, D.C., Cleveland, Baltimore, Atlanta, Jackson, Mississippi, so forth, so on. And I personally believe if you do that and you build a quality education system, the integration will follow. Because white folk and anybody else will want to go where the best education is. And that's -- anybody, black folks, want the best education for their child.

I have two children. My wife and I had our son in a private school. I work for the United States Department of Education. I'm thinking, hey,

wait a minute, I ought to consider a public school. But I want the best for my son. We shopped around. My son is not going to the school that by district he should go to. He's going to the school that we picked because I interviewed the principal and that's where I want him, because that's my son.

We have to begin to do the same thing for parents who can't navigate the system like I -- like many of us can.

CHAIRPERSON BERRY: So, you mean the Department of Education is in favor of choice in public education and in favor of private school choice? Is that the position of the Department?

MR. PIERCE: No, Chairwoman, I did not say that.

CHAIRPERSON BERRY: Oh, I just --

MR. PIERCE: You know I didn't say that, Madam Chairwoman and you know our position.

CHAIRPERSON BERRY: I didn't know that so I just thought I'd ask while you were here.

MR. PIERCE: You know I didn't say that, Madam Chairwoman.

CHAIRPERSON BERRY: Let me ask you another one. Let me move along and let me ask you another one real quick.

The Vice Chair referred to a complaint filed in California about the absence of Latinos and African Americans in the law school. And I think that complaint was probably filed with the Department of Education since you have Title VI responsibility. Are you aware of that complaint and what -- did it get lost, or what happened to it?

MR. PIERCE: No ma'am, it's my complaint. It's on my desk.

VICE CHAIRPERSON REYNOSO: Oh, I'm talking to the right person here.

CHAIRPERSON BERRY: Yes, the check is in the mail.

MR. PIERCE: No, Madam Chairwoman, the complaint, more specifically, the complaint alleged that the -- it's not a complaint that alleges that Proposition 209 discriminates or that the racial disparity is a discrimination on the basis of race or national origin.

The complaint is a Title VI complaint that says that the current admission formula and the University of California system of higher education discriminates on the basis of race. And we're talking particularly the law schools now. That their admissions formula has a discriminatory impact.

VICE CHAIRPERSON REYNOSO: There may be two complaints. I read the complaint filed against UCLA some time ago and I don't recall that it quite read that way.

MR. PIERCE: Well, that's the complaint we're investigating, sir. And --

CHAIRPERSON BERRY: You're investigating?

MR. PIERCE: Yes.

CHAIRPERSON BERRY: I just wanted to make sure I heard you.

MR. PIERCE: We're investigating, ma'am.

CHAIRPERSON BERRY: Okay. Because this --

MR. PIERCE: Poured a lot of money and resources into it.

CHAIRPERSON BERRY: So, this has to do in terms of the pipeline with the opportunities for young

African American males and others to go on to graduate professional education, higher education. That's why I'm asking you the question in the context of this hearing.

MR. PIERCE: Yes. Yes. Yes.

CHAIRPERSON BERRY: The other thing I wanted to ask, about single sex schools real fast. You discussed that. Is there research insofar as the Department of Education knows that shows that male and female children have greater educational attainment if they are in single sex schools than if they are in co-educational schools as a matter of the research conclusions that are reached?

MR. PIERCE: Madam Chairwoman, the department commented on a report a few years ago by the GAO, the Government Accounting Office, on that very subject.

CHAIRPERSON BERRY: Yes?

MR. PIERCE: And we could make sure you get copies of that.

CHAIRPERSON BERRY: I'd like to have a copy. I could get one. But I just -- Are you aware

--

MR. PIERCE: Oh, yes.

CHAIRPERSON BERRY: Is it your position that male and female children will learn and have greater educational attainment if they are educated in single sex schools as opposed to co-educationally?

MR. PIERCE: Let me give you the Department's position, Madam Chairwoman. Let me give you mine as a parent. And a black man parent.

The Department's position is that the research is mixed. It is. Works some places. It may not work in other places.

But then let me go to the point where you asked before, where you pushed me on the part of choice. I believe a school district ought to have the opportunity to provide that choice to parents. Because in some school districts, they will argue quite frankly, and strongly, that there is a benefit, particularly for minority males and particularly for white girls. That's what I meant by the gender equity issues not being the same across lines.

If you look at the models of single sex

education across this country, a single sex education in a white community is being pushed for girls because girls seem to fall out when the boys are raising their hands in the science class and the teacher is more likely to call upon the males. But if you look in the black community and where single sex education is pushed most, it's for black males. Because African American males seem to be falling out the most, particularly around the fourth grade when instruction becomes more of a lecture as opposed to interaction.

All I'm saying is that on the issue of choice, if there is a demand for that, if there is a feeling that somehow that might produce some improvement, and the Detroit experience is beginning to show huge academic achievement levels, improvement levels, for African American males who have gone through that academy over the years, then why not. That is -- choice.

When I talk about choice, providing options, a smorgasbord, a cafeteria, for parents for their particular choosing for their child. So--

CHAIRPERSON BERRY: Well, if it could be

shown that children will have greater educational attainment if they are in single sex schools as a matter of research conclusions, then it would be inimical to their success and discriminatory against them for the Department not to tell school districts that they ought to educate them optimally to the extent that they get any federal money in schools that would educate them well. Why choose a pattern of education for a child that you know won't work for them.

So, that's why I asked you whether the research showed that. The other thing I wanted to say very quickly is my understanding is that as far as the law is concerned, is that if you could show that in fact children learned better in single sex settings, and if you could show that there was no racial bias involved, so it's not a race issue, and if you could show that all you're doing is teaching them so they learn better, then it's not a gender issue. All you're doing is teaching them so that they learn better based on what the research is. And if you could show that the education was not imposing

stereotypes and that you were trying to remove them in the education, even in the single setting, that you were not reinforcing stereotypes that end up with gender inequity, that in fact since the standard for scrutiny decisions concerning sex is lower than the threshold for race, that that might be a way that you could look at.

So, I think the key to it is probably the research. So, I look forward to you sending me the--

MR. PIERCE: The GAO report.

CHAIRPERSON BERRY: -- copy of the report cited to us and we will get.

The last question I have is to ask Mr. Bright -- well, to ask the Chief, and Mr. Wilson, whether they -- what do you think about asking young black boys to learn to walk around with their palms open so that the police will know that they don't have a weapon and to just routinely do that as a mode and manner which I understand from the media some police officers in New York who go out to schools and so on are telling kids that they ought to do that in order to keep themselves from being abused by the police.

What do you think of that?

ASST. CHIEF MONROE: I don't think that's acceptable. I think sometimes in a society and if we go back through history, people often asked to give up their rights because of fear and what have you.

Now, what I try and what I think our agency tries to do when we talk to young black men, anyone, about how to handle an encounter with the police officer is to understand that when a police officer pops those lights on, you are going to become a little anxious. And what we try to do is point out what the police officer's concerns are so young people will understand that the officers are as concerned for their own safety, so they don't do some of the things that would cause an officer to become very anxious. You don't stick your hands over into your coat or whatever.

But as far as walking around, I can't imagine a police officer telling anybody to walk around having to show your hands all the time so an officer will feel comfortable with you.

CHAIRPERSON BERRY: But you do think it's

appropriate to teach young boys, or anyone, to when they see a police officer, they should not put their hands in their pockets?

ASST. CHIEF MONROE: Yes. And when I say that, it's only -- it's not so much that you teach them not to, it's that you give them the police officer's perspective. And when you talk to young guys who are in the street and you give them the police officer's perspective, I've never had one of them who didn't say, I understand. It's just that I explain to them that a police officer is normally approaching a situation that they don't know anything about and they are concerned. They are -- we are concerned about our own safety.

So, when you are interacting with a person who is concerned with their safety, I always reverse the roles. I reverse the roles and ask them to take on the role of police officer and ask them what they think is reasonable. And I have yet to have one who tells me that they don't think it's reasonable to be careful in making very fast movements. That's all.

But again, I don't think we serve policing

well, or society well, when we tell young people that when -- I forget the street slang they use, but the drill. I don't think it's appropriate for us to tell young people you know what the drill is.

CHAIRPERSON BERRY: What do you think, Mr. Jackson, about all this?

MR. JACKSON: I agree with the Chief. It just seems to me that that --

CHAIRPERSON BERRY: How about the palms open? What do you think about that? Hands in the pockets, what do you think about that?

MR. JACKSON: That type of advice is indeed an acknowledgment that there is a presumption of criminality. And it places the young black male on the defensive.

CHAIRPERSON BERRY: But he distinguished between hand -- palms open and hands in pockets. Do you distinguish between those and that it's okay to tell people not to put their hands in their pockets?

MR. JACKSON: Yes, I do see a distinction there. Because, as the Chief said, I think there has to be some understanding on both sides, frankly. I

think that one of the things that many traditional law enforcement groups are now doing is reaching out to the law enforcement agencies, law enforcement organizations such as PERF, International Association of Police Chiefs, ENOBLE, and others, that are working very hard with traditional civil rights agencies to sort of bridge that gulf of misunderstanding often. And coming up with some ways to, again, build the level of understanding and trust among those two communities. But again, it troubles me greatly that we again sort of shift that burden to the young black males to demonstrate that you are not dangerous when I come on to a scene.

CHAIRPERSON BERRY: Well, we'll have to ask one of our other panels what impact it has on the psyche and the attitudes of young black men to be told to do these things.

But, Mr. Bright, what do you think about the hands in your pockets and your palms -- this is my last question. What do you think about telling young black men to either keep their palms open or when they see a police officer, make sure they don't put their

hands in their pocket or make any quick moves, whatever that is.

MR. BRIGHT: Well, I've also had black men tell me, dressed in suits, that they won't use their cell phones for fear that reaching in their pocket will result -- this is not when they're being approached by the police or whatever, but just when they're in a place where they think that might happen. And I think the fact that any group has to be singled out to be told those things is tragic.

And I just want to add this. In a lot of communities -- I mean, I think what happens in DETroit, and Washington, and some other communities where you have a large African American constituency, and where you have a more enlightened leadership, I would just urge the commission to look beyond the borders, even though they're obviously many problems, as New York and other places show.

But I will tell you that in a lot of communities in the south, the police are viewed as an army of occupation. And that if you go to Montgomery, Alabama and see -- I'm scared to death when I see the

police in Montgomery, Alabama. And I can just imagine what a young African American man, or Cobb County, Georgia. We had a young man who is now a lawyer, but he was an investigator with our office who for reasons unknown to me decided to live in Cobb County. And he was stopped once or twice a week on his way to work by the police. He would always be let go but he was being stopped all the time.

CHAIRPERSON BERRY: Are young white boys, to your knowledge, taught to not make any quick moves and to not put their hand in their pocket when they see a police officer?

MR. BRIGHT: No ma'am. And I think many--

CHAIRPERSON BERRY: And do you think they should be?

MR. BRIGHT: And I think many of them, it doesn't even cross their mind.

CHAIRPERSON BERRY: Oh, okay.

MR. BRIGHT: That they're going to be stopped like that.

CHAIRPERSON BERRY: All right.

Yes. Yes.

ASST. CHIEF MONROE: May I just comment on it?

CHAIRPERSON BERRY: Yes, Chief.

ASST. CHIEF MONROE: That was not race or gender specific. I've had people --

CHAIRPERSON BERRY: I understand.

ASST. CHIEF MONROE: I've had people -- I've had women try to pull pistols on me. It's just a matter of a police officer should be trained to be safe and so, it's not directed at young African American men. It's just the way a police officer is trained to be safe.

CHAIRPERSON BERRY: Oh, I understand that. I just wanted to see whether in the white community, to the extent that Mr. Bright represents anything in the white community, there was any sense that boys had to be taught as one of the major items on their agenda to walk around not put your hands in your pocket if you see a police officer. Keep your palms, you know. And watch it. And I just didn't -- it wasn't my sense from the friends I have and it's not a research kind of analysis. Or, it's just a random answers,

that that was not a major item on the agenda of the white folk I know in terms of teaching their kids. So, that's why I asked the question.

And I guess we have to, then.

All right. I want to thank the panel very much. Thank you very much for coming. This has been very useful to use.

We will call the next panel without a break because I took up the time asking questions. And we let them talk too long.

(Whereupon, the foregoing matter went off the record at 11:36 a.m. and back on the record at 11:42 a.m.)

PANEL ONE - CRIMINAL JUSTICE

CHAIRPERSON BERRY: We will start again.

This -- Could the sign interpreter please ask whether anyone needs signing.

Thank you very much.

We'll now have Panel One discussing the topic criminal justice. This panel will look at criminal justice issues, particularly substance abuse and mental health needs, the growth and impact of

prisons in rural American, juvenile justice reform legislation, and solutions to these and other criminal justice problems.

We have already been -- had you called up so I don't need Mr. Hailes to ask you to come up.

First of all, we have Professor Richard Dembo who is a professor of criminology at the University of South Florida. He has had a combination of practical work, teaching, and extensive research. And we're so grateful that he is here with us. He's been a consultant with such organizations as the Office of Juvenile Justice and Delinquency Programs, the Center for Substance Abuse Treatment, and the National Institute of Justice.

He is a graduate of New York University, Columbia University, and his Ph.D. is from New York University.

Could you introduce your colleague, please?

PROFESSOR DEMBO: Yes, my colleague is Mr. William Seeberger who works with me on a project called the Youths Work Project evaluating an in-home

service for youngsters entering the juvenile justice system in Hillsboro County, Florida.

CHAIRPERSON BERRY: All right. Thank you very much.

We also have with us Ms. Tracy Huling, is a national recognized researcher and policy -- public policy analyst in the area of criminal justice. She's also an award winning independent film and video producer who frequently works on projects which address critical social problems and the need of unserved and under served audiences.

She has been active on these issues for over 20 years. She's been working on a -- as a criminal justice research consultant for the Sentencing Project, Human Rights Watch, and the National Criminal Justice Commission. She is a graduate of Grinell College and the State University of New York at Buffalo.

We have with us, also, Professor Janice Joseph who is a professor of criminal justice at Richard Stockton State College in New Jersey. She has published a book, Black Youths, Delinquency, and

Juvenile Justice, and other publications. She is a member of a number of professional associations including the American Society of Criminology and the Academy of Criminal Justice. She is a graduate of the University of West Indies and from New York University.

We have with us also Mark. Mark Mauer is the assistant director of the Sentencing Project which promotes the development of alternatives to incarceration and conducts research on criminal justice issues and reform. He's been doing this sort of work for over 20 years on criminal justice reform. He has received awards for his work. He's widely known at the Sentencing Project for working on these subjects. He is a graduate of Stony Brook and from the University of Michigan, which means I will say what, Vice Chair? Hail to the Victors.

VICE CHAIRPERSON REYNOSO: Yes.

CHAIRPERSON BERRY: Let us begin with Professor Dembo.

PROFESSOR DEMBO: Thank you very much.

CHAIRPERSON BERRY: And what you will do

is summarize for about five minutes what is in your paper. We've read your papers. And then we will have questions for each one of you.

PROFESSOR DEMBO: Thank you. Right.

My colleague and I, William Seeberger, have divided our presentation summary and William is going to read that aspect of this.

MR. SEEBERGER: Thank you, Madam Chairwoman.

To begin with, as we all know, there are formidable challenges facing African American male youths' healthy development in the inner city. This, coupled with the differential implementation of various laws, they have an increased likelihood of involvement in the juvenile justice system.

Once in the system, organizational and institutional practices and procedures, as well as limited after care resources, foster these youths' over representation. This leads to a tragic cycle of recidivism, with profound personal, family, community, and societal costs.

African American youth are over

represented in the group living below the poverty level. And poverty is particularly acute in the inner city. Poverty is associated with low rates of academic achievement, high rates of school drop out, teen pregnancy, poor health, hunger, substance abuse, and delinquency.

Many youths entering the juvenile justice system also have experienced physical or sexual abuse problems and are functioning at a poor or low emotional and psychological level. Many of these difficulties can be traced directly to their family history of alcohol, drug, mental health problems, and their parents' or caregivers' own experience with the criminal justice system.

These conditions make large numbers of youngsters witness to, participate in, and be victimized by the negative aspects of their environment. In particular, violent crime victimization rates are highest among African American youth. These pictures of life in the inner city leads to reduced sense of investment in and a high sense of alienation from mainstream society. For example,

there's a higher prevalence and acceptance of drug taking and delinquent and criminal behavior in the inner city. A number of elicit economies develop in these areas and serve as a source of income. Though some of these activities do provide a sense of self esteem and a feeling of achievement involvement in elicit activities brings considerable risks.

In the case of drug dealing, exposure to violence, particularly gun violence, personal involvement in drug use, and economic addiction to the high income in relation to legal employment, all reduce the options for a socially productive role in mainstream society.

Particularly troubling are the African American males youth involvement in drugs coupled with their limited involvement in treatment and intervention services. The project Dr. Dembo and I work on we have showed that African American males test positive for cocaine about three times as often as white males. Yet, they report receiving intervention services about one-sixth of the time as their white counterparts.

Further, inner city youth are at risk of being infected by or transmitting HIV through their involvement in injecting drugs and in unsafe sexual activity with multiple partners.

The small number of resources for inner city youth are declining, not enough positive inner city role models exist, and too many African American male youth are gravitating to deviant behaviors.

African Americans over represented at ever decision point in the juvenile justice system. Further, the over representation increases from decision point to decision point. Overall, juvenile crime continues to grow and has resulted in increasingly clogged and backlogged juvenile court system resulting in less involvement in case deliberation.

There is legislative momentum in many states to merge the juvenile and the adult criminal courts. However, these efforts will not respond effectively to the challenges presented by a younger and more troubled offender population. We believe that centralized intake and assessment facilities for

arrested youths are critical for proper identification of the youth's problem behavior and the implications of these problems for law enforcement, the courts, juvenile justice, and service delivery programs.

In looking at the Tampa Juvenile Assessment Center, younger aged youths report less severe alcohol and drug problems, less delinquency referral history for violence, property, and public disorder offenses, and less arrest charges for property felonies or misdemeanors than older age youths.

Clearly, and obviously, younger age youths have had less time to develop and establish delinquent behaviors. Therefore, it's crucial that we do identify troubled African American male youth at an early point and that we provide them with adequate substance abuse and mental health services.

Again, my colleague, Dr. Dembo, now will speak to ways we can ameliorate the situation and some innovative approaches to meeting these needs.

PROFESSOR DEMBO: Thank you very much. Really good job, Billy.

The -- Billy has pointed out from our understanding and knowledge of the literature, own experience, that the rates of service utilization are very high among African Americans and among other ethnic minorities in this country, which is a tragic thing. And part of the reasons for that are multiple. One is that there are inadequate resources for these services. That the services that are exist, many groups have to depend on limited funded public services that are of low quality and over burdened case loads.

.In addition, many of these services don't have sufficient cultural sensitivity on the parts of their staff to the needs of these target groups in the community. There's a lot of cynicism among people, particular African American families, about these services because of the inability of them to access quality services to help their children. It is tragic that many of these children receive services only after they enter the justice system, which should never happen in this country.

If we can -- We need much more early

intervention, high quality screening and assessment programs to divert as many children as possible from involvement in the justice system. As Mr. Seeberger indicates, when a youngster becomes involved in the system, and Mr. Mauer's associates have indicated in their work, there are other issues that surround their experiences that aggravate and increase the likelihood they will stay in that system and move into the adult system.

Many years ago we did a study in Tampa following a group of youngsters who entered our juvenile detention center. And within 36 months following their initial interviews, 52 percent had entered the Florida Department of Corrections. A tragic statement for the lack of services that was responsible in large measure for that humongous movement.

We need holistic services because many youngsters who are experiencing substance abuse problems and mental health problems, these are symptomatic of a variety of other issues they're experiencing in their lives. One problem at a time

focus for interventions have not been successful and will not be successful without dealing in a more comprehensive way with the needs of these children and their families.

These services should be community-based. In the previous panel, significant discussion was devoted to large institutional facilities primarily in the focus of that discussion, for adults. In juvenile justice system, there has been also a moment for this. And these large sized facilities, housing youngsters for protracted periods of time which are primarily security oriented, do not have the resources devoted to treatment and intervention that is needed.

We need to have more community-based, community and neighborhood, located facilities drawing on the strengths of the community, empowering the community, involving the community to grapple with the challenges that their children present and that they can provide more meaningful solutions to than institutionalized responses involving people who may not be sensitive to the needs of the community and their particular cultural needs. Particularly

programs located in rural locations where staff are hired from those places who have no knowledge or contact with the groups of individuals who are housed in those facilities.

We need to look at a whole continuum of service provision, from both initial screening -- and this is where a centralized intake facilities and communities can be very valuable in this effort. To identify at an early point who are the youngsters who are presenting problems that need intervention with a focus to doing as much early intervention as possible. Perhaps establishing specialized units within public defender's offices with really empowered resources to make a constructive difference in this regard.

And for those youngsters who seem to be presenting problems, to do an in depth, quality evaluation of their comprehensive needs and problems, that need an intervention, and to deal with pre-treatment issues because many families, as we noted earlier, are cynical about the justice systems and its claims that they want to help. To go out and reach out to these families, to bring them in and make them

treatment alliances to treatment process for their children. That is a very enriching experience and also has been shown to be highly effective in treatment outcome.

We also need to provide more effective quality treatment with an assurance that the treatment people are getting maintain their quality over time. And one of the concerns we've had in Florida is we had a lot of contracting to private agencies by the juvenile justice system to provide treatment has led to a lot of misuses of those resources limiting their providing treatment as against providing security.

Empowered after care programs. For youngsters released from programs, there needs to be a quality after care service that is long term if necessary, providing treatment that should not end 60 days after they're released from a program. And the interest of the justice system and our concern is communities for these children should not cease at the end of the period of sanction. They should continue, if necessary, into young adulthood. And we also need oversight of these public agencies, tying their

responsibilities, providing quality services to children and their families in the community to their receiving block grant monies from the federal government. Those are taxpayers' money that these people contributed to and I think they have a right to expect that they'll be used to the benefit of the community and their children.

Thank you.

CHAIRPERSON BERRY: Thank you very much. There will be questions.

But next, what we want to do is we're going to come -- Ms. Huling, you're next, and then we'll get to Ms. Joseph. And that's the order. And finally, Mr. Mauer.

Go right ahead, please.

MS. HULING: Last year I completed a documentary film entitled, Yes, In My Backyard, which profiles a farming community turned prison town.

VICE CHAIRPERSON REYNOSO: Was it Not In My --

MS. HULING: It's called, Yes, In My Backyard.

VICE CHAIRPERSON REYNOSO: Ah, Yes, In My --

CHAIRPERSON BERRY: And if you're watching the tape, five minutes. The clock is wrong. Five minutes, if you can do it.

Can you do it in five minutes?

MS. HULING: I'm going to try and rip through this.

CHAIRPERSON BERRY: Try, if you can. Don't rip too fast because we won't hear what you're saying.

MS. HULING: I also brought a five minute clip but if we don't have time, we don't have time.

CHAIRPERSON BERRY: You have a clip?

MS. HULING: Yes. Of the film.

CHAIRPERSON BERRY: Do you want to show the clip afterwards?

MS. HULING: Yes.

CHAIRPERSON BERRY: Well, that's another five minutes. But five minutes to talk.

MS. HULING: I'm going to try.

Making the film provided me with an in

depth and unusually personal introduction to a widespread and under examined phenomenon with potentially far reaching consequences for young inner city African American men, the use of prisons as a conscious economic development strategy for depressed rural communities.

Since 1980, the majority of new prisons built to accommodate the exploding growth of prisons have been placed in rural areas with the result that the majority of federal and state inmates are now housed in rural America. Between 1990 and 1997, 203 correctional facilities were built in rural communities and small towns.

Communities suffering from declines in farming, mining, timber work, and manufacturing are now begging for prisons to be built in their backyards. Many rural communities now actively lobby for prisons and offer financial assistance and concessions to get them such a donated land, upgraded water and sewer systems, and housing subsidies. With the rapid privatization of prisons, some communities are getting into the private prison business

themselves, seeking and getting private financing to build spec prisons in their backyards.

Prisons as a growth industry are dependent upon ever increasing numbers of prisons and the U.S. provides ideal market conditions. Our nation spends more on prisons and incarcerates than any other industrialized country in the world.

Since African American, Latino, and native peoples are incarcerated in numbers vastly disproportionate to their numbers in the overall population, the impact of incarceration falls most heavily on communities of color. Evidence suggests that a majority of state prisons come from a relatively small number of communities in the inner cities. For example, data published in the early 1990s showed that 75 percent of all New York State's prisoners come from seven predominately African American and Latino communities in New York City.

What happens when large numbers of people from a relative few inner city communities are transplanted to a relatively few rural communities via incarceration? My research on Cooksakie, New York,

the town profiled in my film, and my reading of the existing literature suggests two potentially significant consequences. The first is a transfer of wealth in various forms, out of inner cities and into rural communities. The second is a major disruption and/or prevention of strong family ties between prisoners and their families which research shows is the single most important factor in reducing recidivism.

First, the transfer of wealth. Existing research suggests that prior to incarceration most prisoners area economic resource to their neighborhoods and immediate families. Once arrested and incarcerated, this economic value is transformed and transferred. It's transformed into penal capital, that is, the demand for salaried correctional employees to provide security. It's also transferred to the locality of the prison where the penal systems employees reside and live.

In addition to the transformation of a young black man's economic value into the demand for salaried prison employees through his incarceration,

it's also important to consider the benefits that accrue to rural communities as a result of the exploitation of his labor once he's imprisoned.

In an article assessing the impacts of prisons on host communities, Katherine Carlson says, "Overall, the findings on prisons -- prison impact show that prisons provide considerable economic benefits to their host communities and surrounding areas through direct employment, local purchasing, and inmate labor." She states, "Prisons as industries have the added plus of a captive work force available for community projects."

Community work projects performed by prisoners are very common in prisons located in rural communities and prison officials see them as good community relations. There can be a lot of competition within the community for the services of inmates working both inside and outside the prison.

In addition, concern over the exploitation of prison labor by public and private prisons is growing. Since 1990, 30 states have made it legal to contract out prison labor to private companies where

the workers have no rights and get paid a fraction of outside wages, much of which they don't often get to keep. Private companies using inmate labor pay no overtime, no vacation, no sick pay, no unemployment insurance, and no workers compensation. Prison workers don't have the right to organize, strike, file a grievance, or talk to the press. They can be hired, fired, and replaced at will.

Another item of potential wealth that is transferred out of inner cities along with inmate labor is that prisoners residential status as recorded in the census. Inmates of prison facilities are counted for census purposes in the communities where the institutions are located. This policy has many implications.

Calvin Beal reports in at least 60 rural U.S. counties the shift from population loss in the 1980s to population gain in the 1990s can be fully or partly explained by increases in prisoner populations. Because a variety of federal and state funding allocations are based in some fashion on the census, it may be that rural communities hosting prisons are

gaining government funding as a result of high incarceration rates while inner city communities are losing funding.

In states where a significant percentage of the prisoner population is drawn from a relatively small number of communities or where prisons are particularly large as in California, or clustered in one region, one can posit that these census driven impacts are profound.

Another potential consequence for communities of prison related population shifts are shifts in political representation and power. Political districts are based on population size and determine the number of congressional, state, and local representatives.

As prison development in rural communities has surged over the last few decades, social programs benefiting the inner city poor have receded dramatically. A stark illustration of the trade offs for young minorities in government policies which prioritize funding for incarceration is the stealing of higher education dollars for the building of

prisons. Public concern over this has recently surfaced in many states.

Since fiscal year 1988, New York's public universities have seen their state support for their operating budgets plummet by 29 percent while funding for prisons has increased by 76 percent. In actual dollars, there's been a nearly equal trade off with the New York State Department of Correctional Services receiving a $761 million increasing during that time while state funding for New York City's -- for New York's city and state university systems has declined by $615 million.

Young people of color have been the hardest hit by these shifts. There are now more blacks and Hispanics locked up in prison than are attending state universities and since 1989, there have been more blacks entering the state prison system for drug offenses each year than there were graduating from the state university system with undergraduate, master's, and doctoral degrees combined.

Prisoners, their families, and society at large benefit when prisoners are able to maintain or

establish positive relationships with their families. Studies examining the impact of the family on recidivism have consistently found that prisoners who were able to maintain strong family ties while in prison have significantly greater success on parole. The most extensive and often quoted study on family impacts points to the significance of visitation as the crucial mechanism where families maintain or develop strong ties.

As prisoner populations are increasingly made up of inner city men places in rural prisons, opportunities for visitation important to maintaining family ties are dramatically diminished. Moreover, the practice by states of shipping prisoners out of state, a practice that is fueled and likely to be increased by prison privatization, may significantly increase the incidence and speed of prisoner family breakdown.

I am -- I believe, really, that over the last two decades we have created a prison industrial complex. I believe it's dependent on the economic decline both in rural areas and in the inner cities.

I'm pessimistic about the potential for change over the next decade. I think there's too much money in it.

I think if change is going to happen, it's going to happen on the grassroots level. I think it's going to come as a matter of ordinary citizens becoming concerned about this issue. I do have some suggestions. Since this is a vastly under researched area, no one essentially knows about it. No one is talking about it. There have been some journal reports. There have been some newspaper articles about it. But those don't cover the relationships between inner cities and rural communities.

My suggestions are to fund applied research to determine the actual economic effects on inner city and rural community of prisoner driven population shifts and census policies. The exploitation of prisoner labor and increased state spending for corrections.

I think research should be funded to determine the extent to which prisoner family ties and recidivism have been effected by prison siting

practices over the last two decades. There's been absolutely no research on this for the last 20 years. Provide opportunities of citizen leaders in inner city and rural communities to come together to discuss the relationship that's now been forged between these two communities.

It's been my experience that there are enlightened leadership. There is enlightened leadership on both sides, both in rural communities and in inner city communities that are at this point now willing to discuss this fateful bond that has bene forged.

I also believe that opportunities for experts in a variety of fields including criminal justice, rural policy, economic development, and so on, need to have the opportunity to come together to discuss the prison industrial complex.

And finally, my suggestion is to fund outside organizations to research and mount legal challenges to some of these practices.

VICE CHAIRPERSON REYNOSO: Thank you very much. The Chair suggested that maybe if you're

prepared, we can -- you can show the clip now. And then we'll go to Dr. Joseph.

(Whereupon, the video presentation was run.)

VICE CHAIRPERSON REYNOSO: Thank you very much.

Dr. Joseph.

DR. JOSEPH: In 1974, the Juvenile Delinquency Act was passed. And basically, what this did was to establish a separate juvenile justice system for juveniles. That is, youth under the age of 18. However, with the increase in violent crime, the Federal Government has passed several federal legislation to deal with juveniles.

One of the -- I'll just name the three of them. Violent and hard core Juvenile Offender Reform Act which was passed in 1996, the Violent and Repeat Juvenile Offender Act, and the Juvenile Prime Control and Prevention Act. And these were passed in 1997.

Now, basically, what these legislation did was to allow the federal government to transfer juveniles from the age of 14 and above to adult court

to be prosecuted as criminals if they were arrested for violent crimes such as murder, rape, robbery, aggravated assault, and any other serious offense.

Now, these legislation do have an impact on the African American community because the crimes for which I just names African Americans are disproportionately arrested for these crimes, murder, rape, assault. For example, in 1996, 40 percent, 47 percent, of all juvenile arrests for violent crimes were African Americans.

So, one effect would be that they are arrested disporportionately for these crimes. In addition to that, history has demonstrated that minority youth, especially African American males, are transferred disporportionately to adult court.

Now, these legislation not only would transfer juveniles to adult court, but once they are transferred to adult court, they will be sent to adult institutions if they are sent to an institution. And this would increase the number of young African American males in the adult system. In addition, once these juveniles are transferred to adult court, they

can also be subjected to death penalty. So, there is also the probability that the number of young African males who would be sentenced to die would in fact increase.

What is also interesting is that once the juvenile is waived to adult court, the juvenile remains in that court system even if that juvenile was not convicted. He is not then transferred down if he's arrested a second time.

Transferring juveniles to adult court traditionally, from all the research presented, has not been successful in deterring juveniles from engaging in violent crimes. What this means is that more African American young males would be in the criminal justice system with the possibility that there would be very little impact on the decline -- on the juvenile delinquency rate.

So, waiving juveniles to adult court therefore is not the answer to the crime situation among African American males. At best, the waivers are short term solution to a complex condition that will not be simplified by transferring juveniles to

the jurisdiction of the criminal court. They merely serve to appease the public's desire for retribution, after which the majority of these African American juveniles waived to criminal court will enter society stigmatized by their criminal label and in all likelihood more dangerous than they were before they were sentenced as adults.

In order to deal with the problem of violent crimes among young African American males, one has to look at the factors that actually predispose them to these criminal activities and some of them were mentioned before. The environment, the family, racism, and so forth.

Now, in terms of reform, the practice of transferring juvenile to criminal court should be abolished because of its ineffectiveness. As I said before, if the end result is that we have a large number of young black males being stigmatized and the effect and the impact would be very negative for them.

The criminal justice system should in fact design programs to rehabilitate offenders rather than punish offenders. In addition, in terms of

prevention, prevention programs should be established that focus on poverty, the lack of economic opportunities for African American males which were mentioned before, given the role of poverty and economic inequities in fostering delinquency among African American,s it is plausible that reducing poverty and economic disparity among African Americans and the rest of society would help reduce delinquency rates.

Also, there should be focus on the educational system. Many of you are aware of the schools in the inner city, the present status of those systems. So, there should be improvement in the educational system. More recreational programs should be provided for these individuals.

In other words, government should focus on preventive measures, measures that would give African Americans hope.

And I want to close with one article that I read where a juvenile was transferred to adult court for murder and at the end of the court, someone said to him, do you know you can get the death penalty? He

said "Yes, I've have been dead for a very long time. I just needed someone to push me in the grave."

CHAIRPERSON BERRY: Hmm, oh, my goodness.

DR. JOSEPH: Thank you.

CHAIRPERSON BERRY: That's very -- thank you very much.

Mr. Mauer, please.

MR. MAUER: Thank you very much for inviting me.

What I'd like to do very briefly is try to review some of what we see in the criminal justice system, the over representation, and describe what I think is some of the factors that have caused this and then what some of the responses might look like. And I think in trying to do this, we're faced with a real dilemma if you will.

If we look back about 50 years to 1954, the time of Brown v. Board of Education, at that point, African Americans constituted about 30 percent of the people admitted to our state prisons nationally. Today, after 45 years of the gains of the civil rights movement, changes in very

constructive ways in the criminal justice system, that figure has now increased to 50 percent of the people admitted to state and federal prisons. So, how have we seen such changes in such a short period of time despite all these constructive changes in society?

We're also on the verge of a course at a time when unless we can reverse some of these trends and policies, I think we see a real disaster ahead for the next generation. We know that for black males born today, they stand a one in four chance of spending time in prison in their lifetime. The unintended consequences are equally severe if we look at impacts on family and community stability, recent research we've done on the implication on the loss of voting rights as a result of felony convictions shows that we're disenfranchising, disempowering people through criminal justice policy.

Now, how do we understand where these statistics have come from? I think there's several places to look. The first question that comes up is generally crime rates. Do African Americans commit more crime and therefore does that explain why these

numbers are so enormous? Well, if we look at those figures, we find that African Americans for some offenses do have higher rates of committing certain crimes, particularly assaultive crimes. But we also find that those rates, those proportions, have not changed in the last 20 years. So, the African American arrest rate for violent crime is about 45 percent of all the rest but it's stayed in that range for the last 20 years.

We also find, particularly in the late 1980s, a lot of concern about rising black juvenile homicides. What we see now in analyzing that, that was not, contrary to some popular misconceptions, the result of a new generation of super predators as they've been called, but rather the availability of guns in many inner city areas. And similarly, the decline in juvenile homicides the last several years has been because police and community groups have made focused attempts to get guns out of those areas and the crime rates and the violent rates have dropped.

If we look at the criminal justice system, I think we can see some very profound changes in the

last quarter century coming under the general rubric of the get tough movement and the system has gotten much tougher if that was the goal. We now have six times as many people in our prison system as we did 25 years ago, a record that we're smashing every day. And if we look at the particular impact on African Americans, I think we see several sort of key points to look at.

First, in terms of how actors in the system deal with these issues, we've had some discussion about what's been called driving while black police stops, use of racial profiling where some groups are much more likely to enter the system than others.

Once they come in, although much of the overt bias in the system has been eliminated in many areas, the more unconscious bias still persist in many ways. There's research showing that prosecutorial discretion has an adverse impact, both on African Americans, other minorities, not only offenders but victims as well. And so, the black victim, the Hispanic victim, may be under valued by the prosecutor

and so we get some very odd dynamics in some ways. And we've seen this certainly play out in the death penalty as well.

Probably the most significant change in the last 15 years or so, of course, has been the impact of the war on drugs where we've seen just massive changes in the composition of the prison population as a result of national policy. We've heard, and it has been quite a bit of attention on the crack cocaine issue and I don't want to underplay that for a moment. That's a sentencing issue. People would not be sentence were they not arrested in the first place. And I think what we've seen is that law enforcement resources, for some good reasons and bad, have been targeted at inner city low income communities, therefore making it much more likely that low income minorities who use drugs will enter the system much more so than middle class people who use drugs in more suburban areas.

Once they come in the system, the whole advent of mandatory sentencing, the crack cocaine disparity, exacerbates the impact on African Americans

in particular and it's been driving up these figures in the system.

I think overall what we've seen essentially in the last quarter century is that as a national policy, whether intended or not, we've come to use the criminal justice system as a means of dealing with social problems. That's certainly not the way I would deal with social problems with my children, but when it comes to low income children, that's what we've been doing.

Let me just say a couple of quick things about how we could respond to these problems.

Certainly there have been some constructive programs and changes started in the criminal justice system in recent years. Police in some communities, Boston and other areas, have been working with community groups to try to deal with the epidemic of youth violence, to try to get guns out of the hands of kids, and we're seeing some encouraging results in some places.

The attention about police profiling has led to legislation proposals, that we have more

statistical analysis of who police are stopping, why they're stopping people, better kind of training for police in how they could perform their duties without this type of racial bias.

I think in the area of sentencing there is virtual unanimity across the board among practitioners and researchers that mandatory sentencing is one of the worse ideas that's come down in a long time. It leads to unfairness, injustice, and racial disparity. The only people who haven't quite appreciated that are the people on Capitol Hill, I think, and that's unfortunate.

We've seen some encouraging developments in terms of diverting substance abusing offenders into treatment. The potential that is still limited by the sentencing policies that we've had by the use of criminal justice system but there's a lot of opportunity to use treatment as a diversionary option instead.

And I think we should also encourage the legislators, when passing new sentencing legislation or when funding new prisons, to adopt racial and

ethnic impact statements. In other words, to try to project in advance what would be the likely racial and ethnic impact of these policies once they're implemented. As it is now, we rarely have any discussion whatsoever in advance about this. I think this could be done without having any negative impact on public safety. The idea is how can you meet public safety concerns without having some adverse racial bias concerns.

Certainly, if we had had a discussion such as this around the crack cocaine sentencing policies ten years ago, before Congress enacted these policies, it's possible that we would have seen some different types of legislation to deal with that particular drug problems.

Finally, I think we need a national commitment and change -- a different way of doing things that basically suggests what all parents know and that is that if we want our kids to grow up happy and healthy, and law abiding, we need strong families and strong communities. That's what most middle class people do as a means of having their kids stay away

from trouble. They provide resources. They have good schools and good jobs available to them. They don't rely on the police and death penalty to keep their kids going in a straight direction. They do it in a much more positive way and I think we need to spread those resources and that way of doing things to other communities as well.

Thank you.

CHAIRPERSON BERRY: Commissioners have questions.

VICE CHAIRPERSON REYNOSO: Yes, I have a question that in some ways applies to each of the panelists. But I'll ask it more directly of Dr. Dembo and Dr., Professor, Seeberger, I'm not sure.

Pardon?

MR. SEEBERGER: Just Mr. Seeberger, sir.

VICE CHAIRPERSON REYNOSO: You mentioned early intervention and in some ways I think each of you has in different ways focused upon the importance of that. But the focus of my question is, what can be done to bring to the attention of legislators or community leaders the realities that you folks have

brought to our attention? By way of example, some years ago I was on the California Supreme Court and I was visiting the courts in Fresno, California.

The judge in charge of the juvenile courts, and there were several judges, the presiding judge took me around and showed me the facilities, and told me that they had had for the last several years a very effective federally funded program for dealing with youngsters who first came in contact with the criminal justice system.

And that they had divided the children, because it was a research project, arbitrarily. Half of the youngsters would report in the way they normally did, i.e., once a month, normally by phone, and half of the youngsters would receive very intensive supervision. I forget the numbers but it was just relatively few youngsters per probation officer. And those who received intensive supervision had the professional visit their homes, visit the schools, work closely with them, find mentors for them, all that sort of thing.

At the end of the process, he told me, the

recidivism rate was ten percent for those who had close supervision, 90 percent for those who did not. And this had gone on several years, he told me, so it was not a fluke. And he was asking my help in trying to persuade the board of supervisors or others to continue the funding of that program because he had said that the local officials had said what a great program but we don't have the money. We're fortunate that the feds have the money for a while but it's going to come to an end.

So far as I know, it came to an end. To me, that bespeaks of somehow not -- well, they clearly understood, because they got the reports, but those elected officials did not feel that the constituents would approve of their putting money into precisely the types of programs that you folks have been talking about, but instead wanted to continue with a program of punishment rather than rehabilitation. Or indeed, a program of punishment after crimes have taken place instead of preventing crimes.

So, my question to really all of you, and Ms. Huling's comments were a little bit different but

I think they still relate to my same concern, how do we get those realities to the policy makers? And in some ways, how do we get those realities to the public so that then the policy makers feel they're doing the right thing politically to worry about preventing crime, not just punishing after the crime takes place? And by preventing crime, doing good things for those youngsters.

So, that's my general question, really, starting with you folks, perhaps Mr. Seeberger, and then any responses that you have because it seems to me that that's one of the crucial issues from what I've read, and what I know, and the overview panel that just came before us, and really what you folks have to say.

MR. SEEBERGER: That's certainly a challenge, sir. I believe we really need a change in thinking, a new paradigm, in look at the cost benefits of prevention versus the system costs and the cost of incarceration.

VICE CHAIRPERSON REYNOSO: Excuse me. I couldn't help but think, when I was talking to that

judge, about the number of burglaries, afternoon burglaries, that probably had not taken place because they had the recidivism rate of only 10 percent among those who had close supervision. I mean, it seemed to me that it would be -- it was practically, among other things, a public safety program and yet apparently not recognized as such by the supervisors who didn't feel that they would be rewarded politically. That they would be accused of being soft on crime, coddling criminals, if a 14 year old does something back, shoot him. You know that sort of reaction.

MR. SEEBERGER: Right. Right. Again, it is a very challenging issue and I think we just need a change in thinking. We need to look at prevention. We need to look at educating them before they get into trouble. And I think we really need to look at early, first time offenders, and target that group.

How to convey that to policy makers is difficult. The research is out there. The statistic you shared with us is very impressive to me.

VICE CHAIRPERSON REYNOSO: Excuse me. I went to one of my colleagues at the law school, I

teach at UCLA, and I said, hey, this is this great program I heard about. How do we make that national? Oh, Cruz, he says, there's been dozens of programs like that. They've all come out the same way. They all show the same thing that early intervention really helps with percentages. Maybe not that dramatic but they're very good. The research has been done, he says.

MR. SEEBERGER: The research has been done. And it makes sense. It makes sense if we have early intervention. If we put role models in families that don't have role models, that makes sense logically. How to convey that is difficult. Maybe I will pass that back to you, ladies and gentlemen, and the commission. I think having commission on these types of topics, gathering research that has been done in an aggregate fashion that can be presented to policy makers I think will help.

I think doing more cost benefit analysis, as you said, sir, the number of burglaries that did not occur, that's staggering. And that saved money. That saved people's own personal grief and stress. I

think we need to look at those issues and try to convey that. The research has been done. It's time now to fund the programs.

VICE CHAIRPERSON REYNOSO: Yes sir?

PROFESSOR DEMBO: There have been a number of interesting gatherings on a national level that try to develop a sense of what the best practices are. And just for example, touching on a point you made, sir. The Robert Wood Johnson Foundation set up a national meeting in Annapolis, Maryland in October and they invited different people to have focus groups on, among others, barriers to effective treatment and impact of services. And there were practitioners, and researchers, and policy makers, not at the legislative level, from all over the country. And there was a theme in that group that there was an ignorance of what effectively works out there.

And we know. We're involved in the research. We see the results. We know there are promising studies. We know that in specific areas people are aware of those findings. But there are many --

VICE CHAIRPERSON REYNOSO: Sir, policy makers, you're saying, were ignorant?

PROFESSOR DEMBO: They are not. And when they are faced -- and I was at a conference in Los Angeles last October funded by the Justice Department, that there were treatment issues among adults in the system. And questions were raised about let's -- each state had representatives from different levels. The corrections chairperson, the legislators, and there was woman who came, a legislator from Minnesota. And she asked, how do I evaluate the stuff that I get on my desk. I'm in the legislative process. I have 15 minutes between this and that committee to make big decisions. I get this from a managed care program telling me this is the answer. Everything else doesn't work. How do I evaluate that? How do I go to a committee ten minutes later and make a decision about --

So, I think what needs to be done, I would recommend to your commission to consider that there be provided to each state's legislature kind of a task force to educate them about what is the available

stock of knowledge, what are effective programs, what are the cost effectiveness of these programs against these tragic alternatives and momentum that's been going on in this country for the last decade to build more prisons and long term institution facilities for juveniles. All the tragedies associated that all of us have pointed out, to let them know what's at stake.

And true, as it is in the community, there are enlightened, caring leaders and there are in the legislature are enlightened caring leaders there who just don't know what to do. And there are many others who are in politics because it's a profession for them. We want to be able to reach those who are the visionaries, to galvanize the political process, to provide the leadership, to have this education that they will then acquire passed on and inform their decisions about public policy. We need much more of that.

MR. MAUER: If I could just a couple of things. First, I think there is good evidence to show that when viable options are presented, the public will often embrace them very well. If we look at the

history of drug courts in just the last eight or nine years. You know, 1990 there are two or three drug courts starting in the country. Today there's something like 300. And we don't have all the research in yet but the initial results are encouraging.

And to me, what's most significant about it is that when we offer a reasonable option that says if somebody's got a substance abuse problem, that person needs to be in treatment. The courts understand that. The communities understand that. There's been no backlash. So, I think it tells the politicians that there are options.

Secondly, I think we need to bring a broader group of people into the discussion as well to influence policy makers. I think our crime control policies are having some very negative impacts on many communities. We need to be talking with business leaders about what those impacts look like and how their desire to have a trained work force are going to be hurt by some of these policies. We need to talk to higher education leaders about the trade offs in

funding and resources. And parents who are thinking about paying for their kids' college tuition should be concerned as well.

DR. JOSEPH: There should be more dialogue between the public and politicians. This attitude of get tough on crime, I think the policy makers believe that's what the public wants.

VICE CHAIRPERSON REYNOSO: Yes.

DR. JOSEPH: And as was suggested by Marc, if in fact they are told and explained the benefit of certain programs in terms of preventive measures, they would actually accept these measures.

I think I was surprised when I went to Korea, Seoul, Korea, in last summer. And I was surprised with the kind of innovative rehabilitative programs they had in their juvenile system. Something that -- I mean, I'm sure the public here would be very much appalled at if we were to institute those programs here. But they were working. They were effective and they were working.

MS. HULING: I'm the sort of cynic in the group.

CHAIRPERSON BERRY: Talk right into the mike, turn it towards you, Ms. Huling, so we can hear your cynicism.

MS. HULING: I think one of the best ways to bring public attention to this issue, and to the fact that this a disaster. This isn't even a disaster in the making, this is a disaster. Is that we should look at what's going on in New York City right now. The civil disobeyance, the coming together of people from all classes and all races, and all religious faiths, around the issue of police brutality and misconduct in New York City is astonishing, inspiring, and it is going to lead to some change.

I would suggest that we think about that.

VICE CHAIRPERSON REYNOSO: Thank you.

CHAIRPERSON BERRY: Yes, Commissioner Lee.

COMMISSIONER LEE: I just have one questions.

In this atmosphere of getting tough on crime, I'm from California and I thought the three strike law was very harsh and then I found out from Mr. Bright that we had the two strikes law in other

parts of the country. And in Oakland, California, the chief of police who by all counts has done a tremendous job in reducing crime in that area, he was forced to resign because the elected leadership felt that he was not doing enough to really get tough on crime.

I'd just like to ask the panelists, especially Mr. Mauer, whether you have any statistics or any thoughts on the actual impact on the three strike law? Does it really so-called reduce crime as the proponents have said? And what are the specific impacts on black males?

MR. MAUER: The short answer is no, it's not responsible for reducing crime. And there's some good research to demonstrate it.

Some of the best research that I've seen, certainly, shows that the reduction in crime in California since three strikes was adopted basically continues a trend that started two or three years before the law was implemented. And it's a trend that we see nationally as well. So, the proponents of the law like to talk about the declining crime since it

was adopted. You can't look at these issues in isolation.

One of the issues the proponents talk about is the decline in murder rates in California. And they say, well, you see, there's a deterrent effect. People are thinking about the three strikes and they don't want to commit a murder now. Well, this seems sort of odd to me. California, as you well know, has the death penalty and I think something like 500 people on death row. If the death penalty isn't enough to deter murder, why would three strikes, 25 years to life, be more of a deterrent than the death penalty? So, it's not at all clear that this is what's going on there.

As you also know, I'm sure, it's leading to enormous costs in the -- not only in the correction system but the local level in jail, court crowding. If you want to have a civil suit heard in Los Angeles, you have to get in line for a long time now because diversion of resources and things like that. And in many ways, I think that it's not the least bit surprising.

Criminologists have known for 100 years that if you want to have any type of deterrent effect, it's the certainty of punishment, not the severity of punishment. If you can somehow increase the odds that a given person will be apprehended, then they may think twice about it. But merely upping the ante from five years to 10, or 20, or 25 to life for somebody who doesn't expect to get caught in the first place is not going to have an impact.

And as we know, far too many people who commit crimes are doing it under the influence of drugs or alcohol. They're not planning it ahead. They're certainly not planning getting caught. And so, that deterrent effect that the politicians think about doesn't mean very much in practice.

COMMISSIONER LEE: And how do you get the message to the public that the getting tough on crime really has not meant real reduction in crimes in the community? Which is a message that has not been related to the communities at all.

MR. MAUER: Well, I'm encouraged in part by, I think, some of the developments in law

enforcement. We've heard about some of the terrible things happening but some of the positive things or the whole community policing movement of the last ten or 15 years. And this looks very different in different communities but the main underlying theme is that as many police chiefs say, we shouldn't be measured by how many arrests we can make but rather by how many problems we can solve.

And I think this has sort of liberated the police, if you will, because they've been arresting people forever and ever and that's an after the fact response to a serious problem. If the police can develop better relations with communities, if they can get information from communities, and work to solve problems proactively, we can see a much better response.

Certainly, San Diego is one of the better examples of what's been going on there where they've had some very substantial crime reductions. And unlike New York, that we haven't seen the same kinds of police community tensions because they've taken, I think, a very different model. So, I think there is

some promise there.

CHAIRPERSON BERRY: Let me ask several questions. The first is if we subjected the analyses that have been done here this morning to criticism by those who would disagree with you, some folks would say that have you not heard that no one is interested in discussing things like the root causes of crime. That no one wants to discuss that any more. The public isn't interested in why crime is caused or why young black men might be in a position that they might commit crime. That's first.

And the second is that all of this -- these treatment mechanisms of various types that you keep talking about and more resources should be put into them, that most people would focus on the responsibility young black men have for not committing crime. And the responsibility that the community has and their families for seeing to it that they're in a position not to commit crime. And so that, therefore, you are looking at the wrong side of the problem. That would be one thing.

And then the last thing is that the public

would -- whatever you think about it or whatever speculation you may engage in, the public thinks one thing which is that if you put people in jail, at least they won't commit any more crimes.

Now. So, you may say that the crime rate went up, down, we think it did it because of whatever, whatever. But in point of fact, if you put Joe in jail, Joe can't commit another crime except for what he does in jail while he's in jail, out on the street. So that incarceration must have some relationship to at least the Joes of the world not committing crime.

So, I would ask how you would answer those concerns that might be expressed to folks who are not on this panel. And I'm the person, I'm this person that's not on the panel. Do any of you have any responses to any of this? Yes, please, Professor Dembo.

PROFESSOR DEMBO: I would ask you to consider what the aggravating effect would be on locking a young person up and keeping this person in jail. For example, first it's enormously costly and the consequences of that on a large scale for other

kinds of services and resources in the community like education.

The second would be to consider what the effects -- these youngsters are going to come back, with few exceptions, to the community. What are the consequences, the aggravating consequences, of being located in such a facility for a long period of time on increasing both the frequency and the severity of what happens in their behavior when they come back home.

What the aggregate costs would be to society for youngster, who may spend as they grow into adulthood, 25 to 30 percent of their life in prison? In terms of economic costs, effect on family life, lost income, lost productivity in the community, and increasing social public mentality about the quality of life that is being impacted on them.

If you look at it from that side of the perspective, the human economic and social costs of putting Johnny in jail over the lifetime of Johnny's and Johnny's -- and the effect on Johnny's community and family, is not only socially and ethically

staggering, it is something that our society , no society, can tolerate. It presents to the next generation a debt that they will never be able to eliminate.

CHAIRPERSON BERRY: How about the argument that we -- and I'll let others of you comment, that we spent 20 or 30 years going around worrying about prisoners rights, one; two, root causes of crime, that when liberalism was in ascendancy in American politics, we spent years, '60s, '70s, talking about root causes of crime and trying to do some of these things. And it didn't seem to get rid of the crime. In fact, the crime rates increased.

So, why do we think that now if we were divert resources from prisons which are a sure thing, if you lock folks up, they're locked up. That's a sure thing. To all of these things that you're talking about when it's not a sure thing? And when whatever else we know and however you might decry the connection, crime rates are down. Maybe somebody else wants to -- Yes.

MR. MAUER: The public thinks, well, Joe

is locked up. He's not committing any crimes out on the street. Well, I think it depends who Joe is. If Joe is a serial rapist, thank goodness he's in prison and the community is much safer. If Joe is a kid who's on the street corner selling crack and we picked him up and locked him up for five years on a mandatory sentence, I think two things have happened. One is it takes about 20 minutes for Joe to be replaced on that street corner by somebody else selling crack in many neighborhoods. So, we haven't done anything about the safety in that community.

And, secondly, we're spending $100,000.00 of the taxpayers money keeping Joe locked up and it's money that we're not spending on community policing, probation officers, Head Start programs, or whatever else we might think would have an impact on crime. And whether liberals or conservatives, I'm sure we could come up with some good use of that $100,000.00.

The other part of the issue of consequences and root causes, people who run treatment programs, people who advocate for alternatives to incarceration, everybody believes there should be

consequences just as parents believe there should be consequences for their kids misbehavior. So, the question I think is people need to take responsibility for their behaviors. How do we do that in a constructive what that's more likely to result in less crime being committed? And I think the research is quite clear. Drug treatment doesn't work for everybody every time but it's far more cost effective than building a new prison cell and I think there's very little question about that.

CHAIRPERSON BERRY: All right.

DR. JOSEPH: Focusing on root causes is long term and I think we have to convince the public that it takes time. I think we are looking for quick fixes which just does not work. We have to convince the public to be patient and the results will show up in -- over a long period of time. So, I think -- I really think it can work.

And my slogan is that instead of getting tough on crime, the government should get smart on prevention.

CHAIRPERSON BERRY: And this is a reason

why deterrence doesn't work. You know, you lock people up and you tell them it's two strikes out, three strikes, or whatever, and they still commit crimes. Or, if you tell them you're going to treat a juvenile as an adult and they see that happening around them, you say in your paper that it doesn't have a deterrent effect, if I read your paper right. Is it because these folks are just, what, "super predators" who are going to engage in crime no matter what so it doesn't matter what you do. And therefore, they are irrational and they should be dealt with in that way. Is that what's happening?

DR. JOSEPH: Well, one is that most of these young people, as they are young and very impulsive, they don't think they're going to get caught.

CHAIRPERSON BERRY: I see.

DR. JOSEPH: And basically the other thing is that they don't think about the consequences. Well, if I do this, I'm going to be transferred to adult court. They don't rationalize it. Most of their behavior is impulsive. And those kinds of

punishment do not have very much deterrent effect on impulsive behavior.

You're talking about rational, reasonable behavior. And for juveniles, that's not what usually occurs. It's very impulsive. And they always think they can get away with it.

CHAIRPERSON BERRY: I have a question for you, Ms. Huling, a specific question. I was very interested in the wealth effect and the poverty effect, disproportionately, of having people in prison. Money taken from the cities, political power and representation, all of those points that you made. And I was wondering what impact do the provisions that persons who are either incarcerated or may be put on parole or probation can't vote ever? Does that have any -- does that factor in further into the kind of analysis you do? All these provisions about felons not being able to votes.

MS. HULING: Well, it's interesting. This is the whole sort of discussion, and my paper is very exploratory because this has really not been discussed before.

It would be very interesting if people were allowed to vote, they got the vote back, what would happen with their votes when they were in prison. I mean, those votes would then be transferred as well. They would be voting as members of rural communities. One of the things that happen when you transfer a lot of people out of inner city communities to low density population rural communities is that it completely changes the demographic make up of the community. You will now have half your community who's of color in an area that is almost all white. Particularly in the north that's true.

CHAIRPERSON BERRY: You mean the people in prison?

MS. HULING: Right. Right now they can't vote. But in terms of -- I mean, Marc has done a lot of work with different state legislatures and dealing with these issues on developing recommendations around the voting questions.

It seems to me that the disenfranchisement issue atop of the political transfer of power, you've got to put this stuff together. It doesn't exist in

little pieces. And that's where I say it's a disaster now. If you put all these pieces together, if you put the voting stuff together, and you put the fact that their residential status and the power that brings are now being transferred out of inner city communities, and the funding that goes along with the bodies, if you will, if you look at that and you look at it together, what it looks like -- what it looks like is a huge transfer of power and wealth from one part of our society to another.

CHAIRPERSON BERRY: And if you add to that that most of the people that are in jail, or many of them, from drug offenses. And that the drugs come from outside their community into the community.

MS. HULING: Absolutely.

CHAIRPERSON BERRY: So that they can become addicted and sell them, and go to jail for that. Then you've got additional profits being made from outside the community.

Indeed, I had never put all these pieces together or even things like if you have a community radio station, you can get money from the CPD for --

if you're a minority station, you get more money. So, if you're in a rural area and you have a prison --

MS. HULING: Right. Right.

CHAIRPERSON BERRY: -- and you count all the prisoners, then on your application you have enough minorities --

MS. HULING: Exactly.

CHAIRPERSON BERRY: -- to get more money.

MS. HULING: Exactly.

CHAIRPERSON BERRY: From the CPB for being a minority station.

MS. HULING: Absolutely.

CHAIRPERSON BERRY: Whereas the people you're talking about are in jail. A very interesting --

MS. HULING: Absolutely. And it goes for Head Start. That goes for any of these other programs based on those kind of demographic characteristics.

CHAIRPERSON BERRY: That's really worth exploring.

Mr. Mauer, have you thought about these issues that she's talking about?

MR. MAUER: Yes, as you may know, we did a report just a few months ago looking at the issue of the loss of voting rights as a result of a felony conviction. And we estimated that currently about 13 percent of the African American male adult population cannot vote as a result of a felony conviction. There are 14 states where a person can lose their right to vote for life as a result of a felony conviction.

So, for example, in Virginia, nearby, an 18 year old convicted of drug possession might be sentenced to go to a treatment program, complete that successfully, never spend a day in jail potentially, and yet he has lost the right to vote for life unless somehow the governor should decide to restore those voting rights.

Now, if we look back historically, some of these laws go back 200 years, some of them came into effect in the post-reconstruction period in the south and were specifically tailored to reduce black voting power. It came at the same time as the poll tax literacy requirements. Well, now 200 years later we've done away with the poll tax, literacy

requirement, women can vote, all these restrictions that we view as very archaic now have been done away with, and this is the last remaining restriction.

And I think the growth of the system and the enormous numbers that we see now means that the voting restrictions are effecting not just individuals with a felony conviction but the political power and influence of the black community as a whole right now.

CHAIRPERSON BERRY: The last question I have is whether what you describe, what all of you have described, as happening to African American, young African American males, should be of concern to anyone except African Americans? I mean, if you tell me that young African American males are committing crime, they're going to jail. And they're in the prison. And rural communities are getting rich off of having them be there. I mean, what is -- so, what is to be said except that if you don't want them to get rich off of you, you shouldn't commit crime, one. And, two, to the persons who are not that concerned about the African American community, so what? That just means so what.

So, why should it be of interest to the community at large, or the nation, or anybody, except African Americans as to what is happening to African American males and their being incarcerated or not receiving these services, or all of the things that you have described? Is there any reason at all for anybody to be concerned?

DR. JOSEPH: Yes. African American males do not exist in a vacuum. They're part of a larger society and whatever happens to them would impact on the larger white society. Not just in their immediate neighborhood, but in the larger society in general. So people should be concerned. As was mentioned before, they go to prison, yes, they get out. They're coming to live next door to you. I mean, whatever happens to them will in the long run in fact impact on the larger community.

And I think we are seeing this as time goes along in terms of jobs, drugs, gangs, and violence in school have actually spread to the larger community. And now there's great concern about these issues because now they're extending into the white

community. So, people should be concerned, not just the black community.

CHAIRPERSON BERRY: Yes, Professor Dembo.

PROFESSOR DEMBO: Not only that aspect which is really important, but also that a society is measured, in an ideal sense, not by how it's most affluent resource people and successful live but how the most -- among the most stressed in a society have available to them opportunities to improve their condition. And what we see here is a degradation of that over time. We do not see any indication at the moment that there is that hope. And we are at risk of creating a nation of enemies. The next generation may have to face that tragic aspect. I hope it never happens.

CHAIRPERSON BERRY: Yes, Ms. Huling?

MS. HULING: I have two thoughts on that. One is, I think we need to start talking about the way in which the criminal justice system as it's now designed breeds crime. I think that people need to understand that when you have -- and there are certain kinds of symbols that can be used, I think, quite

productively. Private prisons. The prisons for profit. It doesn't take a rocket scientist to realize that in order to keep that industry going, you need more people coming to prison. You need more crimes being committed so that people can come to prison.

So, in essence, that is -- we have bred sort of this force. We are allowing this force which is facilitated by increased crime, not decreased crime, to exist and flourish. It's becoming a very powerful force. The average person needs to understand that that force is anthetical to his or her own interests in reducing crime in their own community. So, I would spend some time doing those equations.

I forgot the second one.

CHAIRPERSON BERRY: That's all right. You might think of it, so I guess the really last question is, what impact does it have on black women, the increased numbers of black women in prison? Is that related to the incarceration of young African American males? Are they related phenomenons? Because you know, the number of black women in prison is

increasing. So, do the numbers sort of go together? Are there some relationships here? Or what? Does anybody have any idea?

MR. MAUER: I would just say briefly, I think a lot of the same factors are contributing if we look at the sort of confluence of drugs, poverty, loss of legitimate economic opportunities in inner city areas. Just the whole economic and social transformation that's hit inner city areas so hard in the last 20 years I think has impacted on black women in particular.

And once they've come into the criminal justice system, in some ways they've sort of gotten a worse deal than even black men in terms of negotiating through the system and access to resources, and things like that. And the numbers are going up very rapidly.

CHAIRPERSON BERRY: I just wondered if it was their relationships with black men who get involved in crime?

MR. MAUER: I mean, there's a number of celebrated cases, unfortunately, where we get a typical situation. You have a boyfriend drug dealer

and the girlfriend who's sort of along for the ride. And she's committed a crime as he has, and she gets punished for his crime and more, very often, too. So, it's the mandatory sentencing has made it worse.

CHAIRPERSON BERRY: Yes, yes. Commissioner Lee thought of a question, another one.

Real quickly.

COMMISSIONER LEE: Mr. Mauer, you mentioned some statistics regarding African American males who murder whites, who had a higher rate of receiving the death penalty. Do you have any data regarding incarceration rates on black versus black compared to -- and I'm not talking about murders, just any way, and black whose victims were white? And also, whites whose victims were black? Three different sets of statistics or data, do you have that?

MR. MAUER: It's a good question. There's much less research on that than there is on the death penalty. I think what we do know is several things. One is that race can play a role in a different ways. Sometimes racial bias means that a black offender may

get a longer sentence than a white offender would. Sometimes, I mentioned previously, a black victim may be regarded less seriously and so ironically, if it's a black on black crime, the black offender may get a better deal because the black victim is getting a worse deal in that case.

I think we do know, too, that a number of studies have tended to look at sort of sentencing practices and looking in court on the day of sentencing and trying to decide if a black burglar and a white burglar are getting similar sentences. And some studies suggest that they are and some studies suggest that they're not. I think that's an overly limited way of looking at it because I think what we know about the criminal justice system is that it's a system based on discretion. And various actors, starting with the police, the prosecutor, the defense attorney, the judge, are making decisions all the way along. So, the odds that the black burglar and the white burglar will even end up in court on the day of sentencing are determined well before that happens.

And so, I think we need to look at a

number of different areas and we've seen some bias that's emerged in all of those.

CHAIRPERSON BERRY: I want to thank the panel very much. You've been very helpful to us. This has been very informative. And we very much appreciate it.

We will recess until 2:00. Is that right?

VICE CHAIRPERSON REYNOSO: Yes.

CHAIRPERSON BERRY: 2:00 and we will begin the panel on education.

Thank you very much.

(Whereupon, the hearing was recessed at 1:05 p.m. to reconvene at 2:00 p.m. this same day.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(2:12 p.m.)

CHAIRPERSON BERRY: We will now reconvene.

Could the sign interpreter ask if anyone is in need of interpretation.

PANEL TWO - EDUCATION

CHAIRPERSON BERRY: We'll now have a panel discussion the topic of education. This panel will look at the educational status and progress of young African American men, testing and special education issues, and possible improvements to educational achievement.

And I see that you've already called them forward. And let me begin by introducing them.

We have Dr. Antoine Garibaldi who is the provost -- It says you';re the first provost. I guess we didn't call it provost before. And chief academic officer and professor of education at Howard University.

He is a primary author of "Educating Black Male Youth: A Moral and Civil Imperative" which is a report of a New Orleans Public School Commission he

chaired. He is a graduate of Howard University and the University of Minnesota.

Our second panelist is Professor Carolyn Talbert-Johnson who is an associate professor at the University of Dayton. And she is also a consultant for the Ohio Department of Youth Services. And she has co-authored several publications, currently awaiting publication of her new book -- we all know how that is -- Preparing Teachers for Diverse Student Populations and for Equity.

She is a graduate of Ohio Dominican College and advanced work and a Ph.D. from Ohio State University.

Our third panelist is Professor Sylvia Johnson who is the editor in chief of the Journal of Negro Education. She is also the principal investigator for the Center for Research on the Education of Students Placed at Risk, which is called CRSPAR. She's been a professor. She's gone through the ranks at Howard University.

She is well versed on the subject of testing and had numerous publications on this issue.

And she has been involved in various professional organization on the subject of testing, including National Academy of Sciences panels and the like.

She is a graduate of Howard University and University of Southern Illinois with a Ph.D. from the University of Iowa.

Let me welcome all three of you and thank you so very much for being willing to help us with this topic.

We will begin with you, Provost Garibaldi, and if you could please summarize -- We have your paper. So, if you could summarize your paper for us, to the extent you can in the time available, and then there will be questions later.

Please proceed.

PROVOST GARIBALDI: Thank you, Dr. Berry, and good afternoon Chairperson Berry and other distinguished members of the United States Commission on Civil Rights, also my fellow panelists and other invited guests.

I'd like to thank the Commission on Civil Rights for providing me with the opportunity to

participate in this very important and timely discussion on African American male educational issues. Throughout my own 25 year career as an elementary school teacher, a director of an urban league street academy, an research administrator with the U.S. Department Health, Education, and Welfare when, coincidentally, Dr. Berry was Assistant Secretary for Education, at that time I was doing work on suspensions and expulsions from my previous years of experience as an urban league street academy director. But also as a university faculty member and higher education administrator, I have become intimately involved in the many issues associated with the educational achievement and attainment of African American males.

Of special importance, I served as the chair with a major study on the status of African American males in a New Orleans Public School System more than ten years ago. And that study's findings were replicated right nearby in the public school district of Prince Georges County, Maryland and also in Milwaukee, Wisconsin's.

Well, while there have been many local, state, and national discussion on this topic over the last ten years, my perspectives and philosophy on the reasons for the poor academic performance of many of these young men as well as their notable absence in the higher educational sector and also their minimal educational attainment at all levels of the educational continuum have not changed significantly since that report was released in 1988.

Interventions and strategies that have been designed specifically to improve the performance of African American males in America over the last ten years shows some signs of progress. Thus, it is important to improve upon, to replicate, and to promote those initiatives that have been developed to expand the pool of academically successful African American males.

To accomplish this ambitious yet realistic goal, however, our society must address the fundamental reasons for the less than satisfactory performance of African American males in elementary and secondary schools, and their low undergraduate

numbers and percentages in colleges and universities as well as their representation in graduate and professional schools.

Based upon my experiences and some of the studies in which I have been involved, these reasons for the poor academic performance of African American males include the low expectations of African American males' achievement potential, low teacher expectations of males, particularly minority students, insufficient reinforcement of academic success at the lower levels, declining levels of achievement growth beyond the elementary school grades, limited male role models and individuals who could mentor these young men in the upper elementary grades, limited attention to the financial rewards that can be gained by the pursuit of higher educational attainment, and a lack of social support systems in the community and in society in general.

During the 1987 - '88 study on the status of African American m ales in the New Orleans public schools, the results indicated clearly that the majority of students, most of whom were African

American in the school district, did want to achieve. But the standards established for them by teachers appeared to be much lower than the expectations for the students. In a survey of more than 2,250 African American males in the school district, 95 percent reported that they expected to graduate from high school. However, 40 percent responded that they believed their teachers did not set high enough goals for them. And 60 percent suggested that their teachers should push them harder.

Black males in the -- Black females in the study, I should say, responded similarly to the boys on those items. However, when a random sample of 500 teachers were surveyed, almost six out of every ten of the 318 who responded indicated that they did not believe that their black male students would go to college. This finding became even more significant and troubling when the analysis of background teachers revealed that 60 percent of those who responded taught in elementary schools, 70 percent had ten or more years of experience, and 65 percent of them were black. Thus, the opinions, perceptions, and

expectations of teachers impact strongly student's potential academic performance and influence what is taught and what standards are used to gauge students' success.

I don't have adequate time to go through all of the data which I have provided here with respect to the progress and also some of the gaps that still exist with respect to African American males and females at the high school, the collegiate, the graduate, and professional levels. But let me just highlight a couple because I think it is important.

The first on high school attainment. The high school completion rate for 18 to 24 year old African American males has increased from 62 percent in 1976 to 71 percent in 1996. When we look at the overall average, we find that African American males and females have also significantly improved their own educational attainment at high school, so that more are graduating from high school in 1996 than there were in 1976.

When we look at college participation rates, we see very, very clearly that African American

males are not going to college at the same level as African American females. African American males go to college at around 35 percent. In the case of African American females, it is more than 40 percent. But the fact of the matter is, many of these students are also finding themselves in two year colleges, universities, as opposed to four year institutions. There is also almost a 300,000 gap of more African American females than African American males, which clearly indicate that we have much work to do.

On bachelor's degrees, African American males are receiving more bachelor's degrees today than they did 10 to 15 years ago. But that gap has also widen by almost 24,000 more African American females who received those baccalaureate degrees than do African American males.

We look at graduate and professional degrees, the same has occurred. Where African American males used to receive more master's degrees, more Ph.D.'s than did African American females. Now African American females have overtaken that. And thee same is holding true for first professional

degrees.

So, there is much to be done. I think the better part of my paper is the part that really focuses in on some of the solutions and I try to highlight some of the programs around the country that have proven to be very, very successful, supported by the U.S. Department of Health and Human Services, these family life centers which I've been associated with, too. One at Xavier University where I was for 15 years and then now at Howard University.

These are very, very important programs because they do provide the kind of reinforcement and the kind of attention to success that is indeed possible in the African American community and particularly for African American males. And then there is also a discussion of the Meyerhoff Scholars Program that has proven to be successful. The first four cohorts of individuals, 92 percent of them are not graduating professional schools and this is right here nearby at the University of Maryland - Baltimore County under President Freeman Rabowski's leadership.

I think it's positive and I know that my

fellow panelists will also focus on this, in that organizations such as the National Urban League are focused on campaigns for high academic achievements. And that is extremely important as we really try to address some of these reasons why African American males are not performing as well as they should in the numbers that they should in many of our school districts as well as our colleges, universities.

Thank you.

CHAIRPERSON BERRY: Thank you very much. There will be questions later.

Professor Talbert-Johnson.

PROFESSOR TALBERT-JOHNSON: Madam Chairperson, educators in all segments of the profession are generally focusing attention on the changing profile of the United States national population, and specifically on the changing profile of students in pre-school through secondary settings. Demographers estimate that by the year 2000 a minimum of one-third of the school population will be minority, special need, and economically disadvantaged students.

In contrast, the population of prospective and practicing P through 12 educators remains primarily European American female. The continuing trends of an increasingly greater proportion of minority students in the public school population and a teaching core of largely white females set the occasion for cultural discontinuities that potentially undermine the learning of students and serve to frustrate teachers.

Gilbert and Gay, in their research, have identified four areas of potential cultural conflict. The first is learning styles. Are these learners visual, auditory, or kinesetic learners? We have to address the specific mode of learning for these individuals. We have to also be cognizant of the stage setting behaviors that these African American males percent.

Secondly, the interactional, or relationship style, misperceived messages, the non-verbal cues that these individuals bring into the environment.

Thirdly, communication style. African

Americans spoken language does not always match standard English. For instance, the student that enters the classroom and says, Yo, what it be like. A teacher may have difficulty understanding what that individual is actually saying.

And lastly, differing perceptions of involvement. American schools value cognitive involvement. But for African American males, not only are they involved cognitively, they are involved emotionally and physically as well all at the same time. Thus the term hyperactive which we tend to overuse.

This paper addresses the over representation of African American males in special education. This over representation is evident in that African American males are placed in classes for mental retardation one and one half times the rate of females, speech impairment services one in three-quarters times the rate of females, severe emotional disturbances/behavior disorder programs three and one-half times that the rate of female. And for services for learning disabilities, two and one-half times the

rate of placement for females. The more subjective the diagnosis, the higher the representation of males.

It is possible that teachers could be responding to behavioral problems rather than learning problems. Irvene, in her research, suggests that the attitudes of teachers may impact upon the referral rates for placement of minorities in special education. African American males are enrolled inappropriately in special education classes. They face more limited educational opportunities. They tend to drop out of school and they carry a life long label due to these inequitable opportunities.

Researchers cite the areas of identification, referring back to the referral system; assessment, what type of standardized measures are we assessing these individuals with; placement in the least restrictive environment. Are we placing these children in the environment that's appropriate for their functioning level? Individualized education instruction and adaptation to change and reform as adversely impacting the education needs of minorities.

Teacher preparation programs should

prepare prospective teachers to work with minority populations. If the curricula presented to prospective teachers fails to address the needs of those culturally different from themselves, this supports the cultural mismatch theory which suggests that different groups have communication and learning styles that do not fit with the mainstream styles usually found in the classroom.

The future agenda. Improved opportunities for minority students will rest in part on policies that professionalize teaching by increasing the knowledge base of teaching. A teaching core of qualified individuals must be trained to respond to how students learn.

There are no simple solutions to the problems of the disproportionate placement of African American males in special education. However, several areas should be addressed including, (1) recruitment and retention of minority teachers. Recruitment of minority educators continues to be a major crisis in teacher education. Minority faculty should be vigorously recruited to assist prospective teachers in

maximizing the fit between instruction and students learning, regardless of racial or ethnic groups, gender, or social economic background. Minority educators act as role models for all students.

Two, preparation of teachers for urban settings. Student learning can be enhanced through a teacher's awareness and knowledge of cultural differences. Curriculum development should be a dynamic process, one in which culturally sensitive curriculum and instruction are adopted. Field experiences should include rural, suburban, as well as urban settings. Teacher preparation programs must be designed to help prospective teachers critically examine their own assumptions, expectations, and perceptions of minority children.

A colleague and I just completed a study in which we surveyed prospective teachers. And one of the things we were trying to discern if the histories, the past experiences, of these individuals had a profound effect on their future employment choices and decisions. What we found is that teachers who evolve from suburban districts wanted to return to those same

districts to teach. So, suburban areas were the number one response. Second, rural areas and then a far third were those who wanted to teach in urban settings.

The reasons cited for not wanting to teach in urban environments included fear, crime, too much violence in the school, lack of structure, and one individual based on one semester's experience shared, "I do not want to teach in urban settings because there are too many injustices in that setting. Besides, my dad said I can't teach in those schools."

Recognizing and valuing all learners is the third suggestion. Schools should be important, empowering environments for all students. It is critical to remember that children are first and foremost children. Therefore, within schools, students need to feel welcomed and valued, and they should be given the opportunity to develop a sense of competence, youthfulness, and belonging. A teaching professional who is cognizant of the communication, learning, and behavioral styles of minority students can appreciate their impact upon a student acquisition

of information and can better develop curriculums and learning materials that are congruent with the individualized needs of these individuals.

Lastly, determining the best practices to improve student learning. Bowson and Villa, in their research support that statements of best practice should include, but are not limited to, teacher-student interpersonal contacts, teacher and student expectations, social integration, transition planning, curricula expectations, home school partnerships, and systematic programs evaluation.

Finally comment. A pressing national concern is to prevent the high proportions of failure and misrepresentation among students from diverse racial, ethnic, and social economic backgrounds. Inequality in learning has to be rely on policies that provide equal access to competent, well supported teachers. The educational system ought to be able to guarantee that every child who is required by law to go to school is taught by someone who is prepared, knowledgeable, competent, and caring.

Schools should embrace the diversity of

the student body, respecting and appreciating the rich ethnic and cultural differences in an environment that is safe and conducive to students' learning styles and needs.

CHAIRPERSON BERRY: Thank you very much, Professor Talbert-Johnson. And there will be questions later.

Dr. Johnson.

DR. JOHNSON: Thank you, Chairman Berry, members of the commission, staff, and guests.

I'm very pleased to have been asked to address this vital topic before the Civil Rights Commission. My paper is entitled, "Assessment and the Educational Progress of African American Males." And I'd like to introduce first my co-author, Mr. Michael Wallace.

Michael, you want to stand up.

The educational progress and development of urban African American males in the United States as measured by standardized assessments is a matter of serious national concern. Although there are substantial variability among their scores, it has

been well documented that African American men, on the average, have performed considerably less well academically than other groups of young Americans.

Any student of the educational odyssey of African Americans in this country is bound to be struck by the many obstacles to educational progress that co-existed with the many attempts to facilitate their progress. At the time that abolitionists, religious groups, and free blacks struggled in the early years of the republic to educate people of color, it was illegal in slave states to teach an African American to read and some paid for this knowledge with their lives.

Despite the light years of progress since that time, the co-existence of impediments and facilitator, though very different in expression from that earlier time, is still a feature to be considered in understanding educational progress among this group and performance on testing and assessment measures of that performance.

I'm going to comment on test performance at a variety of levels and the relationship of these

measures to one another and how they have moved over time, and also how they predict future performance. I'll begin with standardize test performance in elementary and high school.

The National Assessment of Educational Progress, or NAEP, reports the progress of American students in the fourth, eighth, and twelfth grades. Now, currently published NAEP reports don't delineate gender within ethnicity so I'll be talking about, in these NAEP results, males and females combined.

The NAEP results in mathematics show strong improvement equal to about half a standard deviation for black students at age 9, 13, and 17 from 1973 to 1990. But then, from then until '96, progress in mathematics was mixed with a slight decrease in average performance for 17 year olds. The NAEP science and mathematic scores have mixed trends. But overall, black students have shown substantial progress.

In general, the trend lines and NAEP results from black students have shown greater gains than the trends for white students with a result of

the gaps between the scores of white and black students were smaller in 1996 in most subject areas than they had been in 1971 or 1973.

The NAEP -- the most recent NAEP report notes the need to consider a number of factors when interpreting achievement differences between subgroups. They note that the research indicates that many minority students attend schools with substandard physical facilities, fewer academic resources, less challenging curricula, and thus, their opportunities to learn are limited. They also note the disproportionate placement in low ability classes and the provision of less intensive curricula that many writers have noted.

Until recently, or more recently, researchers have looked at the NAEP data from a perspective aimed at examining the factors most related to score differences. Using structural equation models on a hierarchy of variables, Rodenbush and his colleagues have found that when differences between the average stale scores of states on the NAEP trial assessment are examined, these differences are

found to be strongly related to differences in resource allocation and availability.

Minority students and students whose parents had lower levels of education were found to have less access to course taking opportunities, favorable school climates, highly educated teachers, and cognitively stimulating classrooms. The strength of this relation varied across the states which could provide an alternate index to the current NAEP report card for reporting the relative educational progress of students in subgroups within the states. Such an approach could b every useful in structuring policy to advance educational progress for all groups.

With another hierarchical model, Finn and Achilles analyzed the Tennessee school size experiment data in which students were randomly assigned to small or medium sized classes in grades 1 to 3. All students gained in the small classes but black students gained most, nearly a third of a standard deviation. And these changes carried over for testing, the most recent testing, in the seventh grade.

Academic outcomes for black students are also influenced by teachers' perceptions and teachers' responses to them. And teachers' attitudes. The complex relationship between test scores, race, and instruction is examined in a study that examined the performance -- examined the perceptions of teachers of a number of the tests, commonly used tests, used across the country during the elementary and high school grades.

This survey of over 2,000 mathematics and science teachers in high and low minority classes found the teachers of high minority classes were more likely to report negative impacts of standardize testing on teacher practice and minority student achievement in mathematics and science.

Dr. Talbert-Johnson has already commented in terms of special education and I won't go on into that area. There are some positive impacts of testing on teaching and learning. The Equity 2000 program of the College Board which aims at having students complete algebra by the ninth grade and thus be able to take more advanced work in the tenth, eleventh, and

twelfth grades, and also be encouraged to take other non -- other college preparatory work that might not have been a part of their earlier plans.

Findings indicate outstanding success in increasing the proportion of students taking algebra and these findings were for entire school systems which is very vital, not just a school. And it includes a range of safety net strategies such as Saturday school, tutoring, professional development. And a very vital factor was professional development for counselors, administrators, and teachers so that they would not only educate students towards these goals but also expect that they would be able to do well.

The expectations that students have for themselves as well as those expectations that others have for them are vital in terms of test performance.

Many students take the ACT and SAT tests for admission to college. And the progress of black students, the scores of black students, are lower. And black males are lower in terms of the SAT examination. But the more background that students

have in terms of high school preparation, the higher the test scores. For example, black male SAT test takers received average scores of 546 and 557 on the verbal, math, SAT 1 tests when they had taken -- those students that took the SAT 2 test, that is, those students that took those advanced achievement tests, received scores of 547 and 557 on the SAT 1 test, which are considerably higher than the verbal and math scores for students in general across the country.

Taking the PSAT prior to the SAT also improved scores several points and students who had 20 years or more of academic subjects in high school such as four years of English, math, lab, science, foreign language, and social studies, did much better.

So, we must improve the kinds of backgrounds that students have. I'm going to have to just jump to the end here. And essentially, we can draw from this test information in terms of the crisis of the urban African American male.

It's clear that a total reliance on tests for selection results in greatly limiting the

opportunities for this group from early opportunities to learn in elementary and high school, to the opportunities that are later contingent to these learning experiences. The multiple societal forces that effect black males, their families, and the school learning experiences need to be addressed. And the climate for learning effectively improved in all of our schools, in all of our cities. An approach is needed that is educational, economic, and political in order to make the massive changes needed.

The positive side is that nearly all of these tests scores show positive improvement over time but much, much more is needed to effectively use the important talents of African American men an to adequately open the upper levels of employment, education, and income to them.

Thank you.

CHAIRPERSON BERRY: All right. Thank you very much.

Do commissioners have questions? I bet you do.

VICE CHAIRPERSON REYNOSO: I always have

questions.

I want to explore the -- where intervention can make a difference. And I assume it can all the way along the lines but there are certain critical zones, apparently.

Dr. Garibaldi, we read materials in preparation for this hearing and heard testimony earlier today, that in grammar school, African American males do well in kindergarten apparently, in the first grade, in the second grade. And they start getting in trouble in the third and fourth grade. And I must say that certainly my view personally as an educator is that if you start getting in trouble at a certain grade, unless you get out of trouble, that will just get worse as you go along.

So, my first question is, does -- and if the rest of you have information on that, I'd be happy to hear it. But, one, do you agree with that testimony? If so, what causes it? And three, most importantly, what can be done about it so that youngsters don't start falling behind?

PROVOST GARIBALDI: Right. I would

certainly agree that the third to fourth grades are very, very critical years. A number of studies --

VICE CHAIRPERSON REYNOSO: Excuse me. These are presumably smart kids because they don't have trouble in first and second.

PROVOST GARIBALDI: Absolutely.

VICE CHAIRPERSON REYNOSO: Then they start having trouble. So, it's not a brain. It's not academics. It's something else.

PROVOST GARIBALDI: Right. Something certainly begins to happen around third and fourth grades. And I think a number of studies have shown, just as Dr. Johnson has pointed out a few minutes ago, that around the age -- not the age, in third, fourth grade, you begin to see patterns of regression in terms of reading, in mathematics performance and the like.

Certainly there are some factors there such as peer influences that are becoming a part there. But I also think it's an opportunity for teachers to take a very, very active role in making sure that students are reinforced nd that the

standards that are set within the schools are placed at the highest level.

I was interested in that in the New Orleans Public School study, and I was quite -- quite surprised but pleasantly surprised, that the same thing had happened, the Prince Georges County study, and also in the Milwaukee study. So, this was not something that was really out of the ordinary.

I think that that's a critical point where intervention is needed. As well as at the middle school grades.

VICE CHAIRPERSON REYNOSO: And oft times, and I'm sure there's, certainly out of personal experience, there's a basis for criticizing the home for not providing the proper encouragement and all that. Nonetheless, the home is the same whether the youngster is in first, second, third, or fourth grade. And yet, how come they do okay in public schools one and two, but start getting in trouble in two and three?

PROVOST GARIBALDI: Right. Well, I don't want to put my fingers there and start blaming too

many individuals. But you've heard what I have to say about what teachers had to say about the potential college going for African American males. Why is it that these young people have clear signs, clear indications, that they do want to go to college but yet when we asked teachers what do they believe, then we find that they are as much influence by the perceptions, the societal perceptions, about these young men at an early age that it should cause us all to be alarmed. And we have to make sure that that does not happen.

Those self-fulfilling prophecies are internalized by these young people and I begin -- and they begin to see their lower grades. And unfortunately, unless there is somebody to really pull them from that point, they're not going to be reinforced and their active performance is going to lag even more after that point.

PROFESSOR TALBERT-JOHNSON: I would like to make a comment, too, if I could. I kind of agree with what Dr. Garibaldi is saying.

I think the teacher can have a profound

impact upon the behaviors of these individuals. I think what we see in the primary grades, from K to about 2 you see a lot of rote memorization. As students age, we start to utilize, or should be utilizing, more diverse techniques. And in that area, it goes back again to what we alluded to earlier about the learning styles. If we are not addressing those learning styles, then those individuals I think are going to start turning off, becoming more active, if you will, regarding their behavioral concerns. And because they're having difficulty with their behavioral characteristics, that can have a profound impact on the academic or the learning --

VICE CHAIRPERSON REYNOSO: They end up in the programs that -- special education programs you were describing.

Let me shift from grammar school. And I just picked up that was sort of at a critical issue. Some youngsters then get to high school and have not learned, at least at reading level and substantive level as would be expected. And yet, we have a lot of efforts at high school to help those youngsters.

Assume, Dr. Johnson, that you take the standardized test and the youngster ends up, instead of being at the ninth grade level, at the seventh grade level. What should an institution do? What intervention is there, then, at that level?

I teach at the graduate level. I teach at the law school. And so, we get the youngsters at the very end of the educational experience. And I was told a year ago, it's probably still true, that males, that African Americans, males and females, who too the law school admissions test that in the whole country, only about 44 of those test takers would be eligible on numbers alone to be admitted to a school like UCLA. I mean, that's a phenomenally small number.

So, we see the students at the end of that educational process. Any failure in between is going to make that one or two, or three percent difference in the LSAT and that's good enough or bad enough to knock them off from being eligible to go to the top law schools, which I think is a crime in the country.

So, my question is, what can, then, be -- what can be done, what should be done, at that level?

DR. JOHNSON: As a former member of the LSAT audit committee in terms of looking at the test, I can say that admission to law school ought to also include a number of non-test factors.

But in terms of --

VICE CHAIRPERSON REYNOSO: We would all agree with you and until we had a proposition in California, we not only took other factors, we took race, ethnicity, and so on, into account. And now we can't.

DR. JOHNSON: But in terms of what to do, in terms of the situation that you posed of the student who's scoring below the grade level, I'd say that one needs to bring that performance up. But at the same time, keep that student working in work that is on the grade level where he is. That is, if he's a ninth grader, he should be able to -- he should be encouraged and given algebra, a standard ninth grade curriculum with perhaps some extra support or Saturday schooling or tutoring in terms of moving on --

VICE CHAIRPERSON REYNOSO: On reading or whatever they're --

DR. JOHNSON: Yes, in terms of continuing on and building his skills.

But, if he is -- if you focus and put his whole program on that, then he's not going to be in any position to move ahead in tenth, eleventh, and twelfth grade, and be ready for the challenges when he completes high school in terms of moving on to college, moving on into work, or into whatever training program he wishes to choose. Because he's going to be penalized for if not a lifetime, certainly a long time if he doesn't get a chance to stay and move on with the -- so that he completes his high school with an appropriate background.

VICE CHAIRPERSON REYNOSO: And let me ask the final question, and maybe the answers are the same. But even after grammar school and high school, still many youngsters make it certainly to the junior college system in California, some directly to the university system. The leader of the lower house in California now, a Latino gentleman, says that he was admitted to UCLA when he had a grade point average of 1.4 or 2.4 I guess. Is 2 a C? 2.4. He says, I may

have gotten in the back door but I got out the front door, he says.

And now I think we require something over a 4.0 average. I don't understand how people get over perfect grades but apparently they do. We have a system for giving people grades over perfect.

So, once you get to college, now, we get youngsters there who, again, test out at not being yet at college level. And some colleges are now saying we shouldn't be in the business of bringing people up to college level. But the reality is, at least for now, many colleges are. Again, I guess I ask the same question. Even there, what do we do to bring those youngsters up to college level so they can then compete for graduate school?

DR. JOHNSON: Colleges -- as quiet as it is kept, the colleges and universities in this country have always had programs to bring students up to the level that they need to be in terms of carrying out college work from the earliest years of the republic.

So, it's -- I think that what is necessary is a college curriculum, but again with rigorous work,

additional work, that students are told this work needs to be done to put you in a position to move forward. It's a challenge. It's more -- you're going to have more to do than most students do. But this is what has to be done if you want to move on. And that students can then take a hold and -- or not take a hold, but hopefully take a hold and move on through with the work that needs to be done.

PROVOST GARIBALDI: I just want to say I agree wholeheartedly with what Dr. Johnson has said but I also think that colleges, universities, have to get more involved with schools as a way to make sure that --

VICE CHAIRPERSON REYNOSO: K through 12?

PROVOST GARIBALDI: K through 12, to make sure that students who do consider, or who will apply and enroll at our institutions, are indeed prepared for the kind of academic work that they will take.

VICE CHAIRPERSON REYNOSO: Thank you, Madam Chair.

PROFESSOR TALBERT-JOHNSON: I'd also like to say at the university we have mentoring services

that are available for those who are having difficulty. And I think that's quite valuable. We also have tutorial sessions for those individuals.

But I think those of us who are trainers of teacher have to take it personally and address these needs. When we see that we have students that are having difficulty, if they're not willing to come to us, which is not uncommon for many of our minority children, then we have to go to them and say, look, I notice you're having some difficulty. Let's see if we can address this.

VICE CHAIRPERSON REYNOSO: Thank you.

CHAIRPERSON BERRY: Commissioner Lee.

COMMISSIONER LEE: Previous members on the earlier panel, and you have also mentioned, that there is a lack of role models, male role models, for the kids. And you also mentioned the need for encouraging and training young African American males to go into higher education so they could be professionals and teachers. Now, given the current climate of the entire affirmative action movement, not only are they saying that they shouldn't -- we shouldn't even help

them along in college, they're saying that they shouldn't belong to the college system.

How -- I'd like your comments on the Bach study when they did a 20 year study on tracking African American students who went to college and how they had responded through post-graduate studies and stuff. Share some of your comments on that, please.

DR. JOHNSON: Yes. I'll begin with that. Yes, that was a -- was a very interesting study by the two former Ivy League presidents using that large database of students entering 28 highly selective colleges and universities in 1976 and 1989. They found that their test scores on the average were lower than those of white students, that there was quite and overlap and some white students were admitted with scores at the lower end of the distribution for black students. The graduation rates and mean grade point averages were lower but black students earned advanced degrees at rates higher or equal to that of their white classmates and then went on to become community leaders and enjoy remarkably successful careers.

They became, and I think the quote that I

have in the paper is they became "the backbone of the emerging black and Hispanic middle class."

So, related to that point, too, is some data from the Baccalaureate and Beyond Longitudinal study which notes that even though black students entering colleges, this was in degreed recipients in '92 and '93, even though they had lower SAT scores and ACT scores when they entered college, these students when they graduated, their cumulative undergraduate grade point averages, placed 11.3 percent of them in the category 3.5 and above, and 34 percent of them in the category from 3.0 to 3.5. So, even though -- and that was about half the students.

So, even though they had had somewhat lower test scores on entry, half of them were at the level of 3.0 or higher when they finished college in this particular -- and this is a -- the Baccalaureate and Beyond longitudinal study so it's a sizable sample.

PROVOST GARIBALDI: I would add to that by saying that there are a number of factors that really should be considered in admission decisions, not just

the test score but also these other facts. Particularly grade point average which tends to be a much better predictor for minority students than do test scores. Particularly the SAT or the ACT. There are other factors as well, student participation in certain types of extracurricular activities. It certainly does show a student's competence level and a student's ability to move on.

I've look at the issues on affirmative and action and how they're likely to impact African American students as well as other students in this country and it's very, very clear that with 3,600 colleges, universities, out here, that there are lots of opportunities for many individuals to attend college. And we have to make sure that that is still very much of a possibility.

An institution like Dr. Johnson's and my institution, Howard University, we're one of only 100 plus historically black colleges, universities, in this country. We enroll 15 percent of African American students. We graduate 28 percent of all African American students who receive their

baccalaureate degrees each year. And the last National Academy of Sciences report for the African American graduates between the years of 1992 and 1996, that five year span, shows that the baccalaureate origins of those students, of the top 18, 11 of those institutions were historically black colleges and universities.

So, there are lots of opportunities, there are lots of places, that might not accept some of these students. And I'm not saying that historical black colleges only selects a certain group. Not by any means. There's a wide range of ability levels. But it's what goes on at the institution that truly conveys what is indeed possible at the end of that. And that's why I say, even if a student does not go to college at the end of high school, that student should still have that option and that opportunity up to the twelfth grade.

COMMISSIONER LEE: I have one more question.

A couple of years ago in an effort to improve education of its students in the Oakland area,

the Oakland school board had -- wanted to do the ebonics instruction program. And it was shot down because of public outcry and whatever. I'd like your take on that. How do you feel about teaching young African American students ebonics?

PROVOST GARIBALDI: Well, I think there's -- I think, first of all, there was a misunderstanding about what was really being attempted. So, I have to say that having sat in the panel that was in front of Senator Spector a few years ago.

The message really was that there has to be an understanding. I think it goes back to what Dr. Talbert-Johnson said. It has to be an understanding that there are different cultures, that there are different ways to communicate. The very point that she said of a student walking into a classroom, you know, walking in, saying, yo, you know, how would it be. You've got to understand what's really going on there and to know that someone is not being profane and they're not insulting you. And you have to be able to at least understand that. That's certainly something that has to go on.

In pre-service teacher situations as well as in in-service teacher situations, many individuals in this country are bilingual. Some of them are trilingual. There are lots of different kinds of messages and understanding. But I did not -- I did not read what was being promoted as this is what we were going to teach the students and this is what was necessary in order to succeed. I think that every student has to understand what the standard language is and what the standard mode of communication is, but that student does not have to dismiss his or her cultural backgrounds or those other kinds of things that form a part of that.

VICE CHAIRPERSON REYNOSO: May I ask a question in that regard? I had understood the proposition in Oakland as you did. But I can't tell you how many talk show call in programs I heard while on the radio, how many politicians, how many other folks said, can you believe it. These folk are saying that youngsters should be taught this foreign language instead of standard English.

My question to you is, why all that

misunderstanding? It's rather peculiar to me that somehow all those folks somehow misunderstood, or understood the proposal differently than I did and that you did?

PROVOST GARIBALDI: Well, I mean, only to be humorous, I would say that was a perfect example, Commissioner, of the lack of communication and the lack of understanding that there was about what was being proposed. I heard it clearly the more I began to read what the proposal was but I think that most individuals did hear only what the talk show hosts were saying and what critics of the proposal were saying. But no one really went to the proposal to understand what the teachers were saying.

COMMISSIONER LEE: Actually, the proposal was very clear. Everyone knew what it was. It's just that within the week, the media and the public just got it completely turned around. So, the whole thing got shut down.

Thank you.

PROFESSOR TALBERT-JOHNSON: I'd like to respond also. I've had graduate students -- I vividly

remember one class that challenged me about that very issue. And she said, I feel we -- her position was that we do these children a disservice if we try to change what they're learning in the community or the home environment. And I told her one of the things as educators is that we're preparing these individuals for life. We're preparing them so that they can transition into society to become independent functioning members of society. That type of language is not going to be acceptable and we have to train children so that they can generalize the basic. But if we're going to impair them or impede their progress, then I think we do a disservice to those individuals.

DR. JOHNSON: No, we -- I think that we want students to see themselves as good learners. That is, their self-perception of themselves needs to be as a positive and successful learner. The language that they bring to the school with them is one of the devices that we may use as we encourage and build on their assets. It's not that we're going to teach them that language but we're going to recognize that that's

what they may be comfortable in doing initially. And use that strength and that -- the color and beauty, and some of the sounds as you move on and develop their extensive skills in a variety of areas.

VICE CHAIRPERSON REYNOSO: Isn't it true that we use languages differently? The words and so on that we use at home are different than the words that we use in an academic setting or in a business setting. And folk ought to feel free to, in a setting of friends or neighbors, or family, to use one language, if you will, or different terminology. But that doesn't mean they can't learn to use yet other terminology in a different setting?

CHAIRPERSON BERRY: This -- I happen to be very familiar with the ebonics discussion because the proposal was announced -- I didn't know anything about it, but by two days later when the media had taken off with it, I happened to be one of the people asked by the superintendent out there in some conference calls to try to help them figure out what to do about the media onslaught. This was after it had happened, not before. So, I have some familiarity with those

terrible times.

And I guess this whole discussion that we've had here about education has depressed me. I was -- I was kind of depressed anyway just with the crisis among young African American males. And I was depressed by the prisons and everything else I heard. Now I'm even more depressed. And I'm not only depressed, I'm confused.

I read the papers. I listened to the discussion. I listened to the questions. And now i'm just hopelessly confused. And the reason why I'm confused is because everything that has been said here is all connected to everything else that was said here. And all the things that are wrong, all connected together. It's just one wrong thing leading to another wrong thing. And it seems hopeless to try to disentangle them.

And what basically has happened is that the experience of young African American males with education, as you've described it, is like an inverted funnel. There are a whole bunch of young African American males in the beginning learning and doing all

kinds of things. And then by the time you squeeze up to the top through the hole, there's like two left, or three, or something. And something happened to the rest of them somewhere between when they entered and when they got out.

And Kenneth Clark told us years and years ago in Dark Ghetto that the American educational system was one in which young black children in our urban environments, in the ghetto, as he called it, the poor ghetto, got to learn less the longer they stayed in school. Like, they seemed to know more when they started. And the longer they stayed, the worse they got. And so, the question was, what was happening to make them worse? And I guess we're still asking the same question today.

Also,w hen I say everything is connected, in reading your paper, Dr. Johnson, you point out that there's a correlation between scores on SAT 2 I guess it is, and income, if I read that right. And you also point out that of course what one makes on test scores, standardized test scores, has a relationship to what educational opportunities are offered which

has a relationship to what employment opportunities are offered. So that everything is connected to everything else. So, if you miss out on one, then you miss out often down the line.

So that the connections between all these things, that's bothersome. I want to begin. I've got a few questions. First of all, let's start at the top of the funnel.

Dr. Garibaldi, what is it about the Meyerhoff program that you talked about, what is that works to make young African Americans who are going to college, who come from female headed households, who are poor, if it's described that way, what is it that they do to people to treat the condition that ends up with success instead of failure?

PROVOST GARIBALDI: Well, Madam Chair, I think that there are a lot of things. I think one of the most important ones is that social support that students get as a part of being a part of that cohort. They indicate also the important role that parental support plays in that, the reinforcement of students to continue to succeed in spite of the odds that might

be available to them. This is interesting because of the fact that this is really focused on science, engineering, and mathematics where only 2 percent of African Americans are represented in those disciplines, particularly at the graduate and a professional level.

So that what happens once a student gets to the institution is really developed over a longer period of time. There are a lot of special support programs that are provided these students but these students are also developed in such a way that they can succeed and that they can indeed reach their goal.

CHAIRPERSON BERRY: But what do they give them, down to nuts and bolts level? What is it they 're giving or doing to these students?

PROVOST GARIBALDI: Well, I think a lot of--

CHAIRPERSON BERRY: So that we can do it or give it to the rest of them?

PROVOST GARIBALDI: Well, I think a lot of it has to do with really developing that self concept and making sure that students are indeed very, very

strong, very, very confident that they can indeed do the work if they want to continue to pursue those particular disciplines.

What we find nationally in science, engineering, and mathematics is that students enter in the first year and by the second year very often they change their major for a lot of reasons. And this for -- this is really for all students. This is really focused on increasing a critical mass of students.

This is really focused on increasing a critical mass of students. And it's as much talking about nurturing that individual's development. Clearly, all of these students come in with different ability levels but they all can indeed succeed. I think --

CHAIRPERSON BERRY: So, they have mentors. They have advisors. They try to replicate a familial network.

PROVOST GARIBALDI: Correct.

CHAIRPERSON BERRY: For the student.

PROVOST GARIBALDI: Correct.

CHAIRPERSON BERRY: On the campus. And

have that be the support network throughout their experience there. Is that correct?

PROVOST GARIBALDI: That's correct.

CHAIRPERSON BERRY: So that if that program works, and it seems to, if we were to do that with all the other "at risk" students, or whatever the terminology is, then that might work for the rest of them?

PROVOST GARIBALDI: I certainly believe that it can be successful. I think that there are lots of programs around the country, not just with students at that particular ability level, where those programs work. Just as we talked about students enter college at very different levels, we always like to make sure that students have the kind of orientation when they get into college or a university to make sure that that student is going to succeed and have the same kinds of opportunities as other students.

So, making sure that students know where the academic support systems are. I mean, there are many young people in this country, unfortunately, who come into college with very, very high SAT and ACT

scores who do not do well during the first year, the first semester, because they cannot adjust to college life. They have not been properly trained and prepared. They don't know where all of these different support systems are.

And I believe that they truly can be successful as we've seen some of those programs work at the elementary and the secondary level. Whether they're in school programs or even after school programs, or weekend type programs.

CHAIRPERSON BERRY: Are black colleges still more successful at educating black students than are predominately white four year institutions in terms of graduation rates and all that?

PROVOST GARIBALDI: Well, I would say that we are doing an excellent job. I don't --

CHAIRPERSON BERRY: You don't know what the research shows? I just wondered whether -- there wa sa time in which the graduation rates were higher in terms of entering students who were retained and then graduated.

PROVOST GARIBALDI: Right. I don't think

that nationally that is the case. I think that certainly among a number of historical black colleges, our graduation rates are above 45 percent which is very close to the national average of 50 percent. I think the very fact that you take in students, and lots of the historical black colleges take in students, at levels that may not be comparable with, let's say, an Ivy League group of institutions clearly indicates that something happens there.

And I think that the best -- the best result is the fact that far more of those students go one to pursue graduate and professional school opportunities than do students at the other institutions where there are far more of those students.

CHAIRPERSON BERRY: Let me try going back down to the other end of the funnel, when the kids come in, and everybody here has talked about how in the third grade, I guess it is, or second grade, third grade, or something, black boys start not doing well in school and trying to figure out what -- Some of the research I saw indicated that the main thing that

happens is that they're bored. And that because of whatever stage of development they happen --

In other words, that all the things that were said here about the family may not change, if they had a female head of household, or they were poor, or whatever they were, that family situation is still the same. That they still are going to the same school. Okay? That basically they are going through developmental stages and at that point they start being -- have a certain kind of cognition and awareness. And that whatever is going on in the school is boring. I mean, boring in the sense that it does not address either their perceptions, their learning styles, or whatever it is, that whatever is going on is boring. And so, therefore, they do other stuff like play, or go to sleep, or something. Create trouble or something like that.

And that basically, if you could get their attention, I don't mean you personally anybody, but if we could get their attention in the class and keep them aware and interested, that we might do better. I've seen something on that. But I also would ask on

that, if that is the case, then teachers, and we've talked a lot about teachers and what they need to do and how they need to be accountable, and so on.

But teachers in schools where we have these youngsters that we're talking about in this proceeding, poor young African American males in the inner cities in those early grades, come in with learning styles, according to Dr. Talbert-Johnson, which are different from what many of the teachers they encounter are used to. They don't have the kind of disciplined behavior that these teachers would be comfortable with or expect.

Couldn't it be argued that it's too much to expect the teachers to be comfortable with it? That if you go to a good private school, for example, they expect students to behave. And if they don't behave, they have them leave. They call up the parents and say, your child does not belong in this school.

And that perhaps there's a responsibility on the part of the student and whatever parental situation they have to tell them that you may have a

learning style that requires that you get up and walk around, and be aggressive and tell people off, but that when you go to school, you cannot do this. And that the teacher should not be expected to put up with people who say, well, it's just my learning style. You know. And you've got to put up with it and maybe you can teach me or not.

So, couldn't it be argued that there are certain responsibilities that somebody, whether a church, the community center, the parent at home or the concerned black men, or somebody, should have told little three year old Joe, third grade Joe, that this is how you behave when you go to school? Because when Joe goes -- I don't know, whether Joe goes to the movies and tears up the seats and says he's bored with whatever the picture, and talks during the movie -- I take that back. I've seen some people talking during the movie. So that does happen.

But, could it be argued again that here we are indulging the student when in fact we ought to be requiring more things and that the teacher's job would be a lot easier if we could get them to adjust? I'd

throw that out and I have a lot of things to throw out. You can answer whatever you want. If you don't, I'll just keep talking.

PROVOST GARIBALDI: Well, I'll be quick on a couple.

It could be that students are bored around the third grade. I happen to believe that, and am concerned, that there might be some assessment problem here. I just think that it's too coincidental that so many third grade African American boys who have been in top reading groups all of a sudden find themselves at the lower end. I don't think that those kinds of things happen. I think that that's a place where teachers have to be much, much more conscious of really what is going on at that particular point.

In the same way that teachers have to be very, very much aware of all of these different learning styles. One of our late professors at Howard, Curtis Banks, talked extensively for the last 20 years about this learning style which he associated with many African American students called VERV. And VERV primarily stood for energy. And it just talked

about how many African American students tend to be much more engaged in the learning process.

Well, to be engaged in the learning process in a very active kind of way, if you've got a teacher who is not very much aware of what you are actually doing, you're likely to be suspended or you're likely to be sent to the principal's office when you're really showing your own earnestness and enthusiasm for learning. I think those kinds of things have to be talked about and communicated.

But that is a style. But I agree wholeheartedly with you that students also have to know how to behave in appropriate ways when they're in classroom settings as well as when they're in other kinds of settings. And in some instances, community organizations, churches, and the like, have taken on that role and are trying to communicate that message to young people as well.

PROFESSOR TALBERT-JOHNSON: And we would like for all students to come to school prepared and able to function within any environment but that's not always the case. And so, if they don't have those

skills, it requires that that educator assume that responsibility.

I think a key issue, as I alluded to in my paper, is the way that we train these prospective teachers. And it's not just providing or just teaching subject matter. It's also managing those individuals, all individuals that you instruct. And you're not just working with a majority group of individuals. You may also have some children who have special needs, special disabilities, in that general ed environment. So, we have to ensure that they have an arsenal of skills to address the unique needs of all of those individuals.

So, I think for me one of the key concerns has to do with this whole topic of multi-cultural education. You know, in the early '80s, that was the buzz word, multi-cultural education. If we provide these teachers with a course in multi-cultural education or diversity, they will be able to work with these individuals. Well, we're just learning now that that's not true. There is something that we've missed that we still have to address these types of issues in

1999. Something still is awry.

CHAIRPERSON BERRY: Teachers, getting more and better teachers, and getting teachers that can deal with the students, you talked about the shortage of minority teachers, African American teachers. Isn't one of the reasons why there's a shortage, one is that there are people going into other fields.

The other is that teacher education standards programs and tests to get into them have been tightened, isn't that correct, in most states? And in fact, they're being tightened further. And there's an even greater reliance on standardized tests and the like to determine whether people can even become teachers, can get into the field, get admitted.

So, let's talk a little bit about the testing, the measurement mystic, Dr. Johnson. I read your paper and you have a section in it called -- in which you said that test item content can be a source of bias, particularly for urban and low income young African Americans.

And you talk -- you cite some of the research, including your own, about exposure to and

unfamiliarity with material, and items and the way they're developed, and the way tests are given, and the setting in which they're given. And the psychological characteristics. And there's a whole section that you have here.

Why is it that we rely on standardized tests to determine whether people can have educational opportunities?

DR. JOHNSON: Well, I think we -- it's sort of like a magic bullet. We have this great faith in standardized tests. We think numbers are just great and it's terrific to be able to have these tests because it seems like they do it so cleanly and so neatly. Well, tests are very useful but the idea that if a test is useful, then a little higher score means even more of that criterion. And then the higher -- there's a point of diminishing returns and you don't-- just going higher and higher on the scale doesn't necessarily get you more.

I did a study several years ago on medical school graduates and applicants, and found that at that point, those who were applying, that the mean of

the rejected students was higher than the mean of practicing physicians because the scale had just kept going up, and up, and up, and up, and up. And so, tests are very useful. But just because you've got a useful instrument doesn't mean necessarily if you raise the cutting point higher you're doing that much better job of selection.

Teacher tests --

CHAIRPERSON BERRY: Doesn't most of the research on standardized tests done by researchers who are experts at testing indicate that standardized tests and this increase of cut off scores because people make higher test scores, that they're mainly used as sorting devices? That's mainly what they're used for.

DR. JOHNSON: That comes to -- that's what tends to evolve when other factors are not examined. Most institutions explore a variety of factors, grade point average, the recommendations of students. And there are a lot of aspects of -- you mentioned what I had said about the test, the tester, and the testing taking setting. These were all factors that do

contribute to test score.

There was a report that I just read from Educational Testing Service that indicated that -- it was actually a report on omitted items, on students leaving out questions on a test. But what they found was that -- this was with the National Assessment of Educational Progress, with NAEP, testing. That when students were tested in more crowded conditions, kind of crunched up together, there were more omissions of items and lower scores. Whereas, when they had separate desks and little more space around their tables, they did a lot better.

And this is -- it makes a certain amount of common sense, but it also -- it can make a fairly sizable difference in a test score, especially when it operates over a number of students.

CHAIRPERSON BERRY: The -- I read recently in the New York Times magazine which, of course, is not a research journal, an article about people paying money to tutors who would increase their standardized test score. And I had earlier some years ago followed the research on this subject and had concluded

already, and I used to be on one of those advisory boards in ETS, too. So I had followed all this research, and it is my impression that it is the case that if you pay that guy in the magazine $10,000.00, he can raise your test score, I think it was 400, 500 points. Are you familiar with this? Do you know what I'm talking about?

DR. JOHNSON: Well, I'm familiar with the test preparation programs, the Kaplans and the Princeton Reviews, and that sort of thing. But I'm not familiar with this particular tutor.

CHAIRPERSON BERRY: And I saw the researcher from the educational -- No, a college entrance exam board at a conference I was at a couple of weeks ago who does research on this issue for the college board. And she had seen the article and said she knew that this guy did that and he would be able to raise people's score. But her answer as to why it was okay and why it was fair was that he was teaching them something while he was helping to raise the score. So, it wasn't like they weren't learning anything while it was being raised.

DR. JOHNSON: Yes, we did a study a few years ago with the NAACP in New York, Atlanta, and San Francisco. I did it with a group of my students at Howard. And the students, these were low income students from high schools in these three urban areas. Their test scores improved significant on the SAT. They finished more questions. They answered more questions after they had the program.

But they had had 40 hours of instruction in mathematics, in English, and also some -- a couple of sessions that had to do with how they saw themselves as learners, how -- and some tips on test taking.

So, they did develop stronger skills and they also, we believe, developed more of a sense of themselves as successful people. That's essential and that's what so many of these interventions sort of hook into is how much the individual sees themselves as an effective and positive learner. Because without that piece, it becomes difficult to succeed. And if there are cues that degrade that piece, it's so much the worse.

CHAIRPERSON BERRY: Well, if there are indeed programs that can raise test scores by having people pay money to do so, and the test scores are used to determine who gets into certain institutions, and therefore who then gets a good job, and therefore then who gets more money, and more status, and more opportunity in society, wouldn't it make sense that everyone would have access to someone paying money to have them.

Every child would be able to get that and the poor young African Americans in the inner cities might have access to such opportunity. That otherwise one should not label them as incapable performing when they don't have that. I mean, that's the case. What do you think about that?

DR. JOHNSON: Well, I think that a good program such as I think was being done, the program that I described to you, students were actually learning. They knew more math. They knew more English. And therefore, they did better on the test.

CHAIRPERSON BERRY: Well, that's fine. How about making that available to everybody?

DR. JOHNSON: Well, I think that programs like that should be widely available.

CHAIRPERSON BERRY: Right. And if they're not available, then how can one exclude people from opportunity just because they don't have access to a program like that?

DR. JOHNSON: But I think that those are supplementary to an overall program of learning. That is, a student should have a solid high school program because that's what advances their test score more than a test preparation program. Students who take the PSAT do almost 50 points better than students who did. Students who have five years of -- 20 years of study of solid subjects such as four years of math, science, English, social studies, foreign language, do much better than students who haven't had that preparation.

The best preparation for these variety of college entrance tests is a very strong high school program. It's better both in terms of preparing them to take the SAT as well as preparing them for the experience of college. Because it's not just that we

want them to get in, we want them to be successful and to move on through the college experience, and to be able to get out.

And I think that probably a good many of those test prep programs essentially help to focus students more on what they're doing more than anything else.

CHAIRPERSON BERRY: Well, isn't it the case that most of the students that we're talking about in this particular proceeding, poor young African American males in the inner city, attend schools where it is less likely that they would have, one, the best teachers. Because usually in school systems, they put the best teachers in the best schools, not the worse school, right. That's what the research I've seen shows.

Secondly, isn't it also the case that they are less likely to have a full range of curricular opportunities in their school than being more likely to have a full range of curricular opportunities in their school. So that all of the things that we would say -- and that they're less likely to take PSATs

rather than more likely to take PSATs. And in fact, most of them may not know anything about a PSAT, what it is. Isn't that, I mean, all the research that I've seen indicates that that's the problem.

DR. JOHNSON: Well, more -- every more and more black students take the PSAT and the SAT. More-- not just more absolute numbers but more percentage wise. So, more -- those numbers are going up. The college board has a program that pays for the tests for students who need that support.

CHAIRPERSON BERRY: Well, in the hearings we've done, we went to Mississippi, did one. I've been out to Compton, California, to the schools out there, and I've been visiting schools all around the country.

In California schools, I have research materials that were given to me, data on the high schools in California in communities where Latinos and African Americans attend. And to be sure they didn't have the same range of curricular opportunities, advanced courses, to be sure they did not have advanced placement courses, and to be sure they did

not have high rates of people taking PSATs.

My only point is that when I said I was depressed and confused, is that it seems like everything we describe as opportunities people should have, the particular folks we're focusing on are less likely to have them, whatever sense of responsibility or irresponsibility they might have personally.

And I guess I'm just saying that one solution might be, among all the other things that we might do, is to say that if we know that something works, like if we know that it works to pay some money to have some people get together and give you some supplementary something or other, then we might offer that to them, too. That was my only point.

DR. JOHNSON: Well, it's likely to be more effective on top of a strong high school program than without it.

CHAIRPERSON BERRY: Ah. Ah. So, the -- now you've got me even more depressed.

DR. JOHNSON: Yes.

CHAIRPERSON BERRY: Because not only can I not do anything, I can't do anything because I can't

do anything.

No, I'm only -- you're not depressing me, Dr. Johnson. The material is depressing.

VICE CHAIRPERSON REYNOSO: While you're absolutely right that the most important part is basic training so wherever you get in, you do well and graduate. Nonetheless, certainly for the premiere schools one or two points make a difference.

And it's too bad to make that depend on whether or not you have that extra one or two, or three thousand dollars to pay for that prep course. Because I know that in the prestigious law schools, just one point on the LSAT will make the different to whether you get in or don't get in.

It's a shame in a way but that's the reality. And that one or two points could have happened because of that extra thousand dollars or whatever it costs nowadays to take that review course.

CHAIRPERSON BERRY: And we know, too, don't we, Cruz, that all the students that I know, the ones I know where I teach and so on, they all take these courses, pay this money, their parents do to

have them take these courses before they taek -- they wouldn't dare take a standardized test without having done one of these courses that's supposed to help to pump up your score. And I don't know -- I don't think they're doing that just because they like to waste money.

But anyway, this is a very difficult subject and you've given us some questions, and some answers, and some food for thought. And we just want to thank you for coming before us today. Thank you very much. It's been very helpful.

VICE CHAIRPERSON REYNOSO: Thank you very much.

CHAIRPERSON BERRY: Now, if I can find my piece of paper that tells me something. What does it say?

That concludes the first day of this consultation. As is customary, the record will remain open for 30 days during which any of the panelists can submit any written statements that will aid in our interpretation of their statements. In addition, any member of the public may submit any information

helpful to our proceedings.

We appreciate the participation of everyone here today. We are recessed until tomorrow and we will reconvene at 9:15 a.m. in this room, after a short commission meeting. The commission will begin at 8:00 a.m. tomorrow morning.

We stand in recess.

(Whereupon, at 3:38 p.m., the commission was adjourned, to reconvene at 9:15 a.m. the following day.)

CERTIFICATE

This is to certify that the foregoing transcript in the matter of: CONSULTATION

Before: U.S. COMMISSION ON CIVIL RIGHTS

Date: APRIL 15, 1999

Place: WASHINGTON, D.C.

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

Judy Radley