

U. S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

Friday, February 18, 2000

Washington, D.C. 20425

The Commission convened at 9:39 a.m. in Room 540, YWCA Building, 624 Ninth Street, N.W., Washington, D.C., Chairperson Mary Frances Berry, presiding

MEMBERS PRESENT

- Mary Frances Berry, Chairperson
- Cruz Reynoso, Vice Chairperson
- Carl A. Anderson, Commissioner (via telephone)
- Christopher Edley, Jr., Commissioner
- Yvonne Y. Lee, Commissioner (via telephone)
- Elsie M. Meeks, Commissioner
- Victoria Wilson, Commissioner
- Ruby G. Moy, Staff Director



## STAFF PRESENT

Kimberley Alton  
David Aronson  
Ki-Taek Chun  
Pamela A. Dunston  
Betty Edmiston  
Edward A. Hailes, Jr., Acting General Counsel  
George M. Harbison  
Carol-Lee Hurley  
Lisa M. Kelly  
Rebecca Kraus  
Carolita Little  
Marc Pentino  
Kirk Perry  
Peter Reilly, Parliamentarian  
Jessica Roff  
Kwana Royal  
Marcia Tyler  
Audrey Wright  
Mireille Zieseniss

## COMMISSIONER ASSISTANTS PRESENT

Patrick Duffy  
Charlotte Ponticelli  
Krishna Toolsie  
Effie Turnbull

## C O N T E N T S

I. Approval of Agenda	4
II. Approval of Minutes of January 14, 2000 meeting	5
III. Announcements	5
IV. Staff Director's Report	25
V. State Advisory Committee Report: Unequal Justice: African Americans in the Virginia Criminal Justice System (Virginia)	27
VI. Review GPRA Draft Report	29
VII. Future Agenda Items	36
VIII. Briefing on Zero Intolerance	
<b>Panel I: Governmental Organizations and Educational Associations: Overview</b>	<b>43</b>
William Modzeleski Norma Cantu Burnie Bond Steven Yurek Lilliam Rangel-Diaz	
<b>Panel I: Continued</b>	<b>108</b>
Dr. Julie Underwood Ernestine Heastie Rita Thompson	
<b>Panel II: Academics and Researchers on the Zero Tolerance Programs</b>	<b>149</b>
Terry Keleher Dr. Russell Skiba Professor Gil Noam	
<b>Panel III: Representatives of Advocacy Groups Concerned with the Rights of Children</b>	<b>188</b>
Joan First Ruth Zweifler Judy Browne	
Commission Discussion and Action	210
Questions for Panel III	214
Further Business	220

P R O C E E D I N G S

2

Approval of Agenda

3

4

5

CHAIRPERSON BERRY: The meeting will come to order. The first item is the approval of the agenda. Could I get a motion to approve the agenda?

6

VICE CHAIRPERSON REYNOSO: So moved.

7

COMMISSIONER EDLEY: Second.

8

CHAIRPERSON BERRY: All in favor indicate by saying aye.

9

[Chorus of ayes.]

10

CHAIRPERSON BERRY: Opposed?

11

[No response.]

12

CHAIRPERSON BERRY: Good morning, Commissioner Lee.

13

14

COMMISSIONER LEE: Good morning. Can we have a discussion

15

on whether the Commission could send a letter to Presidential candidates regarding usage of certain racially charged terms?

16

CHAIRPERSON BERRY: Okay; we will add that.

17

Does anyone want to add anything else? We will do that

18

after the GPRA.

19

COMMISSIONER LEE: Thanks.

20

CHAIRPERSON BERRY: Good morning, Commissioner Anderson, out

21

there in the world.

22

COMMISSIONER ANDERSON: Good morning.

23

CHAIRPERSON BERRY: We will add that right after the GPRA.

24

With that change, can I get agreement that the agenda--does anyone else

25

have anything to add?

1 All in favor indicate by saying aye.

2 [Chorus of ayes.]

3 CHAIRPERSON BERRY: Opposed?

4 [No response.]

5 CHAIRPERSON BERRY: So ordered.

6 Approval of Minutes of January 14, 2000 Meeting

7 CHAIRPERSON BERRY: Now, we have the approval of the January  
8 14 meeting. Could I get a motion.

9 COMMISSIONER MEEKS: I so move.

10 COMMISSIONER EDLEY: Second.

11 CHAIRPERSON BERRY: Any discussion? All those in favor  
12 indicate by saying aye.

13 [Chorus of ayes.]

14 CHAIRPERSON BERRY: Opposed?

15 [No response.]

16 CHAIRPERSON BERRY: So ordered.

17 Announcements

18 CHAIRPERSON BERRY: Announcements. The only announcement I  
19 can think of, and let's see if anybody else has any, is that the  
20 majority on the House Judiciary Committee did the same thing this year  
21 that they have been doing every other year, which is to recommend that  
22 we not get a budget increase. This is not new. It happens every year.

23 The Minority on the House Judiciary Budget Committee will  
24 file their own separate statement recommending that we receive a \$2.1  
25 million increase over our appropriation as recommended by the

1 President. This is not unusual. It is what happens every year. So it  
2 is not surprising, but I just thought I would tell you that, in fact,  
3 had happened.

4 They are forwarding these recommendations to the House  
5 Budget Committee for consideration. We will continue to work on issues  
6 related to the budget, but we don't have any hope that the majority of  
7 the Committee, as it is presently constituted, will ever give us a  
8 budget increase.

9 I just thought I would tell you that--unless we should sort  
10 of change the way we do things around here and change our approach to  
11 some of the issues.

12 Do you have an announcement to make, Madame Staff Director?

13 STAFF DIRECTOR MOY: Today, with the winter storm, there is  
14 in effect a federal unscheduled leave policy which means that federal  
15 workers do not have to come in today. So I just wanted to thank all  
16 the staff who made it, particularly those who assisted with today's  
17 briefing. So, thank you to all heros and heroines.

18 COMMISSIONER EDLEY: Here, here.

19 CHAIRPERSON BERRY: The weather isn't all that bad.

20 STAFF DIRECTOR MOY: I know. We all made it.

21 CHAIRPERSON BERRY: I know I was late, but that wasn't why I  
22 was late. I was late because I was jogging and I forgot what time it  
23 was. It had nothing to do with the weather. The streets are clear.  
24 They are supposed to freeze later. I don't know when that is going to  
25 happen.

1 I am impressed that the people from out of town are here.

2 COMMISSIONER MEEKS: It is worse here than it is in South  
3 Dakota.

4 COMMISSIONER ANDERSON: Relating to your announcement about  
5 the House Judiciary Committee's consideration of our budget request, I  
6 guess I heard one or two things subsequent to the meeting about the  
7 Chairman not receiving a letter and, perhaps, something to do with the  
8 OPM report that wasn't quite as laudatory, maybe, as we or some had  
9 considered.

10 Do you know anything about those matters?

11 CHAIRPERSON BERRY: Yes. I know everything about those  
12 matters that there is to know. Every year, the House Judiciary  
13 Committee finds a reason not to give us a budget increase. One year,  
14 it was because they had the GAO do an audit of the Commission, and the  
15 GAO--and you can read the audit report for yourself, if you are  
16 interested in it--found that the Commission had major management  
17 difficulties, which is not unusual with GAO audits of federal agencies.

18 It is all political because when the Democrats were in  
19 office, they would audit agencies and find things wrong with them. It  
20 happens in Washington. It is not personal. The Republicans are in  
21 office so they audit agencies and find things wrong with them and call  
22 you up and have you come and tell them about all the things that are  
23 wrong with you.

24 The GAO audit found several so-called management  
25 deficiencies, most of which were things that were not remedied by the

1 previous Republican administration which ran this agency, such as not  
2 rewriting the Administration Instructions since 1978--it was 1978 or  
3 something that they had not rewritten the Administration Instructions.

4 But they told us we should have rewritten the Administration  
5 Instructions. There were various other things. We should have a  
6 management information system which we now have and nobody reads--a lot  
7 of different things which you can read, yourself.

8 Commissioner Higgenbotham, who was a member at that time,  
9 was adamant that we should not permit them to get away with just doing  
10 this, that we ought to respond. My impression, since I have been  
11 around this town a long time and know that it is just politics, was  
12 that we should have just not said anything and just let them go ahead  
13 and lambaste us, which is what you are supposed to do, is put your head  
14 down and get beaten over the head and keep moving.

15 Anyway, we did respond and pointed out such matters as that  
16 these folks never did these things either. I happen to have been here  
17 so I knew they didn't do them because they didn't want to spend time on  
18 them because it took a whole lot of time away from the work of the  
19 agency and didn't make that much difference in how the agency ran,  
20 anyway.

21 I remember the discussions. I was here. So, anyway, they  
22 had a hearing, an oversight hearing, and discussed these among other  
23 matters, which you can read for yourself in the record, and then  
24 recommended that we not get a budget increase.

25 I agreed at the hearing, which is what you are supposed to



1 do, and the Staff Director, that we would remedy all these  
2 deficiencies, even though it was all political. And we, in fact, spent  
3 a lot of staff time--the staff, here did--doing their work, sitting up  
4 here writing all these Administration Instructions. All the stuff that  
5 Clarence Pendleton and Linda Chavez refused to do, we did.

6 I also took to the hearing with me a report written by the  
7 Democrats, the GAO under the Democrats, which said the same thing about  
8 them; management deficiencies, management in disarray. I was here. I  
9 knew what had happened, the same thing with some of the same things  
10 cited as not being done, which they cited was us not doing.

11 And then they added a few other bells and whistles, which is  
12 what they do. The long and short of it is that the agency responded by  
13 doing all of this list of things. The Citizens Committee on Civil  
14 Rights, which is an NGO, non-governmental organization, which has  
15 former Civil Rights officials on it who are no longer appointees and  
16 who looks at government agencies and civil rights every year to see  
17 what they are doing, they wrote in their report that we had done a good  
18 job in doing all these things.

19 We had to catch up on a lot of reports that were behind, and  
20 we did that. They put in their report that year that they didn't want  
21 to give us any money because of the management disarray. One other  
22 year, it was something else. I forget. This year's reason was, one,  
23 the GAO audit, which I have just referred to, said we had management  
24 deficiencies. That was the first item.

25 The Democrats on the Committee pointed out to them that we

1 had already remedied that and that was old, old news. But that didn't  
2 matter. Then they came to new news which was that the OPM, which did  
3 an audit of the agency, had found major deficiencies. The Democrats  
4 introduced the letter from OPM that they sent us after they did the  
5 audit into the record so that everyone can read it for himself, or  
6 herself.

7           The letter, 85 percent of it said, "Your work is excellent.  
8 We want to commend the Human Resources Department for whatever they  
9 have been doing." And then there is one line in it that says, "But you  
10 could do "X" a little better." I forget what the "X" was. And they  
11 took the line that said, "You could do "X" a little better," and put  
12 that in the report.

13           This is the reason why, this year. Then they put in there  
14 the discussion we had the last time about the question that was raised  
15 the last time about the detail, the short-term detail, of the general  
16 counsel who is working on the project in Higher Education, as she  
17 transitions to a new job. And then they stuck that in there and that,  
18 at the last meeting, at which you were present, that the Chair showed  
19 disinterest, public disinterest in the subject.

20           You were here and you know that what really happened was we  
21 were having a Planning Meeting and questions were raised. We discussed  
22 it and said we would discuss it outside the meeting and didn't want to  
23 have an Executive Commission meeting.

24           So those were this-year's reasons for not giving us a budget  
25 increase. Next year, if the Republicans still control the House and

1 Senate, there will be other reasons for not giving us-- long after the  
2 detail is over, long after anything with OPM, there may well be another  
3 something or other.

4 So don't get upset about it when you hear. You may read  
5 this material for yourself so that you can determine whether you  
6 believe my characterization of them is accurate. But that is the long  
7 and short of it.

8 COMMISSIONER ANDERSON: Madame Chair, my understanding was  
9 that the OPM report is somewhat more than just minimally critical of  
10 the agency. I haven't yet seen a copy. I don't know whether other  
11 members of the Commission have a copy of that report. Do other members  
12 have a copy of that report?

13 CHAIRPERSON BERRY: They probably don't because it is a  
14 staff matter having to do with the internal operations of the  
15 Commission. But, if anybody would like to see a report, they can.  
16 And, if anyone would like a copy of the letter that OPM sent to the  
17 Commission, they can see it. As I stated in my remarks, one does not  
18 have to accept my characterization of them. One may read the documents  
19 for himself or herself and we would be happy to provide them and they  
20 will be introduced into the record of the hearing.

21 COMMISSIONER ANDERSON: So we will be getting copies of  
22 those?

23 CHAIRPERSON BERRY: If you wish to have a copy, you may have  
24 a copy. Those who wish to do so may have them. You have expressed an  
25 interest in getting one, and you will.

1           COMMISSIONER ANDERSON: The other matter--of course, this is  
2 second-hand for me, but I was informed that Congressman Watt had a  
3 letter from the Staff Director that he read addressed to the Chair but  
4 that the Chair had not received that letter yet. Is that true, do you  
5 know?

6           CHAIRPERSON BERRY: That is not true.

7           STAFF DIRECTOR MOY: Copies were delivered.

8           COMMISSIONER ANDERSON: So, apparently, the Chair said he  
9 had not received the letter but that was not true?

10          CHAIRPERSON BERRY: Maybe his staff received it and didn't  
11 give it to him. That happens on the Hill, you know.

12          STAFF DIRECTOR MOY: The letter was addressed to Chairman  
13 Canady.

14          CHAIRPERSON BERRY: It was addressed to Chairman Canady who  
15 is the Chairman of our Subcommittee. Is that the Chairman you are  
16 referring to?

17          COMMISSIONER ANDERSON: Sure.

18          CHAIRPERSON BERRY: I didn't know whether you were talking  
19 about Chairman Hyde or Chairman Canady.

20          COMMISSIONER ANDERSON: He indicated he had not received the  
21 letter.

22          CHAIRPERSON BERRY: Perhaps it had not been actually handed  
23 to him.

24          COMMISSIONER ANDERSON: What did we do, put it in the mail,  
25 give it to a staff member?

1 CHAIRPERSON BERRY: Ruby, would you mind answering the  
2 question. I wasn't there.

3 STAFF DIRECTOR MOY: It was hand-delivered up to the Hill.

4 COMMISSIONER ANDERSON: Hand-delivered up to the Hill?

5 STAFF DIRECTOR MOY: To the staff.

6 COMMISSIONER EDLEY: To his office.

7 COMMISSIONER ANDERSON: Who did you give it to?

8 STAFF DIRECTOR MOY: To the staff.

9 COMMISSIONER ANDERSON: May I ask you whether our staff  
10 person hand delivered it, or was it a courier, or--

11 CHAIRPERSON BERRY: Would you mind answering the question,  
12 please, Ruby?

13 STAFF DIRECTOR MOY: It was hand-delivered to Chairman  
14 Canady's staff person by a staff person here.

15 COMMISSIONER ANDERSON: So we know that he received it  
16 before the markup, or the same day of the markup, or--I don't even know  
17 the date of the letter.

18 CHAIRPERSON BERRY: May I point out one other thing? Answer  
19 the question, but when did we receive the information that they were  
20 going to say this about us and that they were going to pass this  
21 information on to our Budget Committee? When did you receive this  
22 information?

23 STAFF DIRECTOR MOY: It was really, really late in the day  
24 through another source.

25 CHAIRPERSON BERRY: Which day? How close to the hearing?

1           STAFF DIRECTOR MOY: The hearing was Tuesday morning. It  
2 was really, really late in the day, through another source.

3           CHAIRPERSON BERRY: On which day? How close to the hearing?

4           STAFF DIRECTOR MOY: The hearing was Tuesday morning.  
5 Monday, late in the afternoon, when everybody was gone--

6           CHAIRPERSON BERRY: They do that every year, too. And the  
7 Democrats used to do it, too, so it is bipartisan. It is bipartisan  
8 guerrilla warfare. So they gave the information--I received this  
9 information from the Staff Director orally about 7 o'clock in the  
10 evening the night before the hearing which was, of course, too late to  
11 find any staff member--which is done by design--too late, by both  
12 parties, to call up any members from the other side, too late to do  
13 anything except lie down and take your medicine and have no response or  
14 nothing to say or nothing to correct the record or no information.

15           Did they inquire of you, Madame Staff Director, or your  
16 staff--did they query you concerning this information to see if the  
17 information was accurate or if there was anything you had to add, or  
18 were there staff-to-staff contacts discussing whether you had anything  
19 to add to any of this?

20           STAFF DIRECTOR MOY: No; this was totally unannounced. In  
21 fact, I had placed calls hoping that some people were working up on the  
22 Hill and did not get a response back. Even the person who was--  
23 Congressman Mel Watt's person wasn't even informed, had not gotten the  
24 information that I had received.

25           CHAIRPERSON BERRY: He is the Ranking Member of the

1 Subcommittee, Mr. Watt is.

2 COMMISSIONER ANDERSON: I am sorry to prolong this, but I  
3 just want to get it clear. You are saying that Monday evening, prior  
4 to the Tuesday morning markup, was the first time we understood that  
5 there would be a markup on our budget request?

6 STAFF DIRECTOR MOY: Yes; because I had been monitoring the  
7 publications that come from the Hill, like CQ and Congressional  
8 Monitor. Nothing was listed that there would be any sort of budget  
9 other than some bills for the House Judiciary.

10 COMMISSIONER ANDERSON: We used to have a Congressional  
11 liaison. Kim Cunningham used to be doing that. We don't have anybody  
12 doing that now?

13 STAFF DIRECTOR MOY: We have, in a sense. Both Kim Alton  
14 and myself, who have had Hill experience and we have our own network up  
15 there. Luckily, just in passing conversation, I just happened to find  
16 this out at the last minute.

17 But, also, knowing that we should have had some information  
18 from the other Subcommittee side, they weren't even informed of it.

19 CHAIRPERSON BERRY: I might point out that even when Kim  
20 Cunningham ran Congressional liaison, he did not know either. Any  
21 information that we had last year, we got through either me talking to  
22 somebody on the Hill or Ruby talking to somebody on the Hill, because  
23 the staff did not share this information ahead of time with Kim  
24 Cunningham and they did not share it ahead of the time last year with  
25 the staff of the Ranking Minority who, at the eleventh hour, found out

1 that it was happening.

2 This is not unusual. We can spend time on it, but I am not  
3 surprised by it or disturbed by it. I am just explaining it to the  
4 Commissioners who don't understand that this happens all the time. If  
5 the Democrats took over the Congress and the Republicans controlled a  
6 majority on this Commission, they would do the same thing if the  
7 Commission didn't do whatever they wanted to do. That is just the way  
8 the game is played in Washington.

9 COMMISSIONER EDLEY: I just would like to point out that the  
10 budget process is a long thing on the Hill. This is the first and, far  
11 and away, the least important step. The reviews letter that is sent  
12 from the Judiciary Committee to the Budget Committee has minimal impact  
13 on what the Budget Committee says, and what the Budget Committee says  
14 will have minimal impact on what the Appropriations Subcommittee  
15 actually decides.

16 So, while I don't expect the ultimate outcome to be markedly  
17 different from this simply because of who is running the House, there  
18 are many other steps and many other audiences for clarifying what this  
19 agency is up to and what its plans are for the future.

20 CHAIRPERSON BERRY: We will clarify this, but I have to tell  
21 you, Commissioner Edley, that your analysis is incorrect as it relates  
22 to this agency. Throughout the budget process, the same thing we have  
23 already heard, will be told back to us as the reason why we can't get a  
24 budget increase.

25 The Operations Committee will tell us, "Your Oversight



1 Committee said blah, blah, blah." They do it every year, so I am used  
2 to it. If it weren't an election year, they would have an oversight  
3 hearing and bring us up there and try to smear us all over the place  
4 for public consumption.

5 But, since it is an election year, I don't know if they will  
6 or not. I guess it depends on how much time they have and whether they  
7 think it is more fun and games to do that or, given the fact that we  
8 have done some things that the public finds interesting and  
9 significant, that they may think that if we do come up there, we might  
10 talk about those things, or try to talk about them and get some  
11 attention to them.

12 So we will have to see. But I am telling you that the  
13 warning shot is, again, fired. We will hear this over and over and  
14 over again, whether or not it is true, whether or not it is anything,  
15 and we will have to answer to it.

16 The only hope we have of getting any funds from that  
17 Committee, or from the Appropriations Committee, is if the  
18 Administration is able to negotiate something from the hill for us.  
19 But we should just not take all of this too seriously.

20 We have spent, probably, too much time on it.

21 COMMISSIONER ANDERSON: Madame Chair, I just have two things  
22 I want to say here. The first is this; in my opinion, the oversight  
23 review by OPM should have been shared as soon as we received it with  
24 the Commissioners so that we could have reviewed it and, if there were  
25 deficiencies found by OPM, it could have been brought to the

1 Commission's attention and the Commission, at a regular meeting, could  
2 have discussed it with the Staff Director on how to bring about any  
3 kind of change in management to comply with the OPM report.

4 So, the first thing I would like to do is say that I think  
5 that report ought to be scheduled on the agenda of the next meeting or  
6 the meeting subsequent to our next meeting so that we can discuss it.  
7 That is my first point.

8 My second point is I was in Washington for some time. I  
9 think I know how the Congress works to a certain extent. I have been  
10 on this Commission for a while. I have seen how the Democratic  
11 Chairman of our Subcommittee with Oversight dealt with your Republican  
12 predecessor as well as the Republican Chairman had dealt with us.

13 I think, at this point, I need to publicly disassociate  
14 myself from your comment the we are being smeared by the majority on  
15 that Subcommittee. If that is your opinion, fine. I must tell you  
16 though that, in my dealings with members of Congress on both sides of  
17 the aisle, I try not to use that type of rhetoric even though I have a  
18 strong policy disagreement with them.

19 So, I think that is unfortunate and I don't think that it is  
20 necessarily politics as usual. That may be your opinion of it, but I  
21 don't think the position is served by taking that kind of a response to  
22 our Oversight Committee.

23 CHAIRPERSON BERRY: I don't think we have been served by  
24 taking a congenial response to our Oversight Committee. We haven't  
25 gotten a dime out of our Oversight Committee. If you noted carefully

1 what I said, and I was very careful about what I said, it is an equal-  
2 opportunity smearing. It happens on both sides of the aisle by  
3 different parties and it was not directed at any particular person who  
4 happens to be serving in the House of Representatives at this time.

5 So you misunderstood my remarks if you thought I was  
6 characterizing particular people.

7 COMMISSIONER ANDERSON: No. I must say, Madame Chair,  
8 whether it is the Democrats or Republicans, I think that kind of  
9 language is inappropriate. I don't think that the Democrats have  
10 smeared this Commission when it was chaired by a Republican and I don't  
11 think the Republicans are doing that now that it is being chaired by  
12 you.

13 I just don't think that type of rhetoric accurately  
14 characterizes the concern of either Former Chair Edwards or the current  
15 Chair, Canady. It may be politics as usual at GAO, but I don't  
16 understand politics as usual at OPM when it is the same Administration  
17 that has appointed both the Director of OPM as well as the Chair of  
18 this Commission, how that can be characterized as politics as usual if  
19 they are submitting a report that is critical of us.

20 CHAIRPERSON BERRY: We are talking about matters that you do  
21 not have in evidence, so there is no sense in me debating with you what  
22 the OPM report says when it is not before us. I have characterized it.  
23 You have characterized it. People can read it for themselves and see  
24 what they think, but I am not inclined to schedule it for a meeting  
25 because it is a management issue which involves things like how the

1 personnel office is run and should they be X, Y or Z.

2 This Commission is constituted to consider matters of  
3 policy. It is up to the Staff Director to consider matters of  
4 management. If you want to have a meeting to discuss the work of the  
5 Staff Director, that is another whole subject, since the Staff Director  
6 is our employee who works for us to carry out our policies.

7 But if you want to go into the details of how the Office of  
8 Personnel Management assessed the office, you may have the report. You  
9 may read the letter. You may reach your own conclusions. But I am not  
10 going to schedule a meeting unless the Commissioners disagree with me  
11 by a majority to go over the details of how the Personnel Office  
12 operates because most of us don't know how it operates, anyway, and  
13 what a TNN is and a KSA and the KSI and all the rest of it and it  
14 really isn't our business to know.

15 COMMISSIONER ANDERSON: Madame Chair, let me just be clear  
16 on what I have requested which is to put the report as an element of  
17 the agenda for the next meeting so that it can be discussed.

18 As far as I can tell by my service on this Commission, a  
19 Commissioner's request to have something added to the agenda has never  
20 been turned down by the Chair. If that is your decision, so be it.  
21 However, the Commissioners can read the report if they get it. If they  
22 think it is worth talking about, I think, apparently, the impact of the  
23 budget consideration, we do, I think, have a responsibility for the  
24 budget and, therefore, I think it is a perfect request to discuss the  
25 terms of how our Congressional relations are moving forward,

1 particularly as it impacts on the budget.

2 CHAIRPERSON BERRY: The way items are added to the agenda,  
3 and you know this Commissioner Anderson, as well as I do, is for  
4 Commissioners to introduce a motion, which must be seconded and agreed  
5 to by the Commission, to add something to the agenda. That is the  
6 normal way it is done.

7 But, knowing what I know about how Washington operates, and  
8 knowing that you have the ability to get the Oversight Committee to  
9 intervene in how we even handle motions--knowing that as I do, and to  
10 raise that as another issue, I am going to say, yes, we can put it on  
11 the agenda.

12 I just don't believe that we ought to discuss internal  
13 management. If the rest of the Commissioners want to, they can. So I  
14 am going to leave that issue out so there is not something else they  
15 can add so that they can write some footnote to the appropriations  
16 language saying every time Commission Anderson suggests something, or a  
17 Commissioner, it has to be added to the agenda even if people don't  
18 vote on it.

19 Yes; I will add it. You can read it. If people want to  
20 discuss it, they can.

21 STAFF DIRECTOR MOY: Madame Chair, I agree; this is a  
22 management issue. But when the OPM sent their report, they sent it in  
23 a favorable, positive image of the Human Resources Department plus they  
24 allowed us sixty days in which to respond, which we did. And we are  
25 waiting for them to respond back to our comments.

1           COMMISSIONER EDLEY:  Madame Chair, I am sorry but I object  
2 to putting the report on the agenda.

3           CHAIRPERSON BERRY:  You want them to have another item to  
4 add when I got up there to the Committee that they can smear me with.

5           COMMISSIONER EDLEY:  Commissioner Anderson has not even read  
6 the report and he wants to take our time discussing it in the agenda.  
7 I object to that.

8           CHAIRPERSON BERRY:  It was discussed today.

9           COMMISSIONER EDLEY:  I object to that.  I might feel  
10 differently about it if he had actually read it and had a strong view  
11 that there was something in there worth our time to discuss, but he  
12 hasn't even read it.  We have wasted, what, twenty minutes, half an  
13 hour, on this subject already?  I would like to get on with our  
14 important work.

15           CHAIRPERSON BERRY:  One of the special assistants to the  
16 Staff Director just pointed out that, in a Commission meeting--I don't  
17 remember this, but she says it is in the transcript of the meeting,  
18 that the Staff Director announced to the Commissioners that the report  
19 from OPM had been received in the Staff Director's report and that she  
20 had gotten a very favorable view by OPM, right here in this room, to  
21 the Commissioners and that, at that time, no one said, "We want to read  
22 it.  Give it to us."

23           So this is not a surprise that came to the Commission.  The  
24 special assistant tells us that, if you want to verify that, you can  
25 read the transcript and you will see that it was announced right here

1 in this room.

2 What is your pleasure, because I would like to move on if  
3 people have some view about what they want to do. Commissioner  
4 Anderson wants this on the agenda even though he has never read it.

5 COMMISSIONER ANDERSON: You could send me a copy of the  
6 report, if you would. At the next meeting, after reading it, I will  
7 move to have it put on the agenda. Other Commissioners can second it  
8 or they can object to having it on.

9 CHAIRPERSON BERRY: Or you might be willing to write a note  
10 to your fellow Commissioners after you have read it, before the  
11 meeting, saying, "I have read this thing and I think it really ought to  
12 be on the agenda," so that they would know that, if that is your view,  
13 or to me. I would be happy if you read it. If you think that there  
14 are substantive matters of policy that we really need to discuss, I  
15 would be eager to put it on the agenda.

16 But, in my reading of it, and of the letter, I didn't see  
17 anything, at the time that it was announced, that rose to that level.

18 But, if you find something, let us know before the meeting  
19 and I would be happy to put it on on that basis. I don't want to fight  
20 with you about policy matters. I just don't want to put things on that  
21 are not policy matters.

22 COMMISSIONER ANDERSON: I want to tell you, that is my view  
23 as well. I would also indicate to you, just for the record, I have had  
24 no contact with the Subcommittee. I had no idea that this markup was  
25 being scheduled. In fact, I wasn't in the country when it was

1 scheduled. This is all news to me.

2 But, in my opinion, rather than just chalking this up to  
3 politics as usual, I think the more appropriate proceeding would be to  
4 consider this and make a more orderly response. But that is a  
5 difference that you and I have in terms of how to proceed with the  
6 Committee. That's all.

7 CHAIRPERSON BERRY: We have already responded. The letter  
8 the Staff Director sent up hurriedly on Tuesday morning, which she had  
9 to be hand carried it to the staff of the Subcommittee and to members  
10 who were there, the letter did respond. It included a copy of the OPM  
11 letter so that people could see what OPM had actually said as opposed  
12 to what they read in the report.

13 It included a copy of the earlier letter that the Staff  
14 Director had sent to Chairman Canady explaining how we had complied  
15 with all of the GAO audit and also referred to the detail and explained  
16 that.

17 That was given to them that morning, so we did respond. My  
18 comments here about politics as usual were done for purposes of  
19 briefing our new Commissioners whose eyebrows were somewhat raised when  
20 they heard that our Oversight Committee, of all people, would be  
21 recommending that we do not get any money.

22 Maybe if you had been able to be here and had seen the body  
23 language, you would have understood that that is why I was doing what I  
24 did, not because we are not going to respond. We always respond as  
25 quickly as we can.



1 I think your letter said that if they needed any additional  
2 information, you would be happy to give it to them. Is that what you  
3 said?

4 STAFF DIRECTOR MOY: Yes.

5 COMMISSIONER ANDERSON: Just one more question. I don't  
6 seem to find that. Was that faxed to the other Commissioners?

7 CHAIRPERSON BERRY: Find what?

8 COMMISSIONER ANDERSON: I haven't seen any of our response.  
9 I haven't seen the letter. Maybe that might have avoided some of this.  
10 Was that faxed to the Commissioners?

11 CHAIRPERSON BERRY: I am asking the Staff Director.

12 STAFF DIRECTOR MOY: I believe so, Commissioner Anderson.  
13 It was dated January 29, 1999.

14 CHAIRPERSON BERRY: If you don't have a copy, we would be  
15 happy to send one to you.

16 Will you send Commissioner Anderson a copy of the whole  
17 thing so he can see what you said?

18 STAFF DIRECTOR MOY: Yes.

19 CHAIRPERSON BERRY: Let's go on to the Staff Director's  
20 Report, if that is okay.

21 Staff Director's Report

22 CHAIRPERSON BERRY: Has anyone got anything on the Staff  
23 Director's Report beyond what we have been doing here? Having nothing,  
24 we will move on to the next item.

25 Oh; I would say, under the Staff Director's Report, the

1 South Dakota SAC has drafted the--haven't they, Staff Director--

2 STAFF DIRECTOR MOY: Yes.

3 CHAIRPERSON BERRY: Tell us the status of that. They  
4 drafted that.

5 STAFF DIRECTOR MOY: They have done the initial draft of the  
6 report for South Dakota and they are meeting with the Chair of the SAC  
7 before they send out the information to the members of the Advisory  
8 Committee. So we are on an early schedule.

9 CHAIRPERSON BERRY: We have had a number of problems in that  
10 comments were made to the press by staff members 'about our  
11 relationships with the FBI out there that lead the FBI to be upset.  
12 They are upset, generally, because we criticize them.

13 So, Director Freeh has asked that I talk to him about,  
14 generally, what the FBI is doing out there before we respond to this  
15 report. I plan to do that. I have already talked to the Attorney  
16 General about our criticisms of the Civil Rights Division, which they  
17 are very eager to try to figure out what to do about that.

18 Both of these overtures are in connection with trying to  
19 make sure that we don't, I guess, lambaste these folks too much and  
20 have some understanding of what they are doing when we respond to the  
21 report.

22 We are still hoping that, sometime in March, Commissioner  
23 Meeks, that we will be able to release something, as we had planned.  
24 So we will see how the timing goes on it, but the SAC is working on  
25 their recommendations to us.

1 Anything else in the Staff Director's Report?

2 State Advisory Committee Report: Unequal Justice

3 African Americans in the Virginia

4 Criminal Justice System (Virginia)

5 CHAIRPERSON BERRY: State Advisory Commission Report,  
6 Unequal Justice, African Americans in the Virginia Criminal Justice  
7 System (Virginia) is Item No. V on the agenda. Could I get a motion to  
8 approve this?

9 VICE CHAIRPERSON REYNOSO: So moved.

10 COMMISSIONER WILSON: Second.

11 CHAIRPERSON BERRY: Any discussion?

12 VICE CHAIRPERSON REYNOSO: Madame Chair, maybe because of my  
13 background, I was particularly struck by the maximum permitted by law  
14 to defense attorneys who are providing criminal defense for the  
15 litigants, for the accused. That is found on Pages 11 and 12.

16 I consider that so serious, and it is a recurring issue in  
17 many states, I don't know whether we should do something more about it  
18 because we keep hearing reports that many states have maximums, as  
19 apparently Virginia does. For example, the maximum that a lawyer can  
20 receive in representing a defendant in a felony case where the accused  
21 could be sent to prison for twenty years is \$882.

22 Assume the lawyer charges \$100, \$150 an hour, it is only a  
23 few hours. How a lawyer can do a half decent job, I don't understand.

24 CHAIRPERSON BERRY: As you say, Vice Chair, that is a  
25 problem in many states. I know that the United Nations is having a

1 conference on race, an international conference on race, in South  
2 Africa in about two years and there are preconferences leading up to  
3 it.

4 It is one of those huge international meetings like the  
5 Beijing Conference on Women, and so on. Its focus will be on race this  
6 time. One of the major issues that I think NGOs are taking there from  
7 the United States is the lack of due process in the American criminal-  
8 justice system, up and down the line.

9 One of the sub-issues there is the system of the fees that  
10 we pay for representation and whether people really can get proper  
11 representation in cases of this kind. There is going to be increasing  
12 discussion of what people allege are racial disparities in the  
13 criminal-justice system including this kind of unfairness.

14 So it may be that we would like to have a discussion  
15 sometime of some kind, a forum, a briefing, or something about this  
16 whole matter or even get a little report from the staff about what are  
17 the fee requirements in all the different states. Maybe the regional  
18 directors can tell us in their own states what they are and then we  
19 could put them together.

20 Maybe they could tell us that by the next time when they  
21 come to the meeting. Then we could get some kind of view of whether  
22 there is some kind of statement we ought to make about this or  
23 something else we might do.

24 VICE CHAIRPERSON REYNOSO: I just think it is such a serious  
25 issue that maybe we should consider issuing a statement bringing that

1 to the attention of the American people.

2 CHAIRPERSON BERRY: Why don't we get the information--when  
3 the regional directors come next week, maybe they can bring us that.  
4 What do you think about that idea--in their specific states. And then  
5 we can consider what we would like to say.

6 If they get that information before the meeting, it could be  
7 given to us in memo form for us to read before we come.

8 With that, does anyone have any other questions or comments  
9 about this report? If not, I would call for the question. All in  
10 favor indicate by saying aye.

11 [Chorus of ayes.]

12 CHAIRPERSON BERRY: Opposed?

13 [No response.]

14 CHAIRPERSON BERRY: So ordered.

15 **Review of the GPRA Draft Report**

16 CHAIRPERSON BERRY: The review of the GPRA Draft Report is  
17 Item No. VII on the agenda. Madame Staff Director, do you have  
18 anything to say by way of introduction?

19 STAFF DIRECTOR MOY: Yes. Thank you, Madame Chair. Both  
20 OMB and Congress want to know if we have accomplished what we have said  
21 we would do in our annual GPRA Plan with the monies given. Under the  
22 GPRA Plan, every major federal agency must include the agency's  
23 mission, goals and how we will achieve them, measuring performance and  
24 how we use that information to make improvements.

25 The bottom line is results. Each of you has read and

1 passed, from our budget submissions--the back of the publication that  
2 indicates the Strategic Plans, our previous budgets. This March, the  
3 first GPRA Plan will be the Fiscal Year 1999 OMB budget estimate which  
4 will be mandatory for all agencies.

5 It is precedent setting. There is no style yet and there  
6 will be, probably, a lot of revisions. The people I have spoken to  
7 have indicated that it may be three years down the road before there  
8 will be some sort of pattern in which every agency is to do the GPRA.

9 So it is mandatory each year starting this March. Each  
10 manager here was tasked to review their own annual program operations  
11 and compare their performance to the goals and objectives as set forth  
12 in the GPRA Plan.

13 So, in the Commissioners' mail-out, there is this draft  
14 which I wanted to share with you. Also, if you take note, on Page 5,  
15 there was a change since this was a draft. There was an error in the  
16 fifth paragraph starting with, "a summary of the proceedings combined  
17 with the transcript," should be, "a summary of the proceedings combined  
18 with the transcript will be made available to anyone requesting a  
19 copy."

20 And then the rest of the paragraph remains the same.

21 CHAIRPERSON BERRY: In other words, we don't publish  
22 briefings. I wondered about that because we don't publish those. We  
23 just make them available. So this was a mistake.

24 STAFF DIRECTOR MOY: Right. It is a draft.

25 CHAIRPERSON BERRY: It is good you caught it in the draft.

1 Does anyone have any comments or any discussion of the GPRA?

2 VICE CHAIRPERSON REYNOSO: Madame Chair, I thought it was a  
3 very nice summary of what the agency had done, very readable. I  
4 thought, in general, it is a good job. If all the other agencies have  
5 as clear and as succinct a summary, this might, in fact, be a good  
6 proceeding.

7 STAFF DIRECTOR MOY: Thank you.

8 CHAIRPERSON BERRY: I was wondering, do we need to explain--  
9 maybe the process doesn't require that--but do we need to explain what  
10 all these various work products of the Commission are or is it clear to  
11 somebody who looks at it what it is, whoever is looking at this.

12 In other words, we do reports. We have gone over this  
13 before. We do briefings. We do all these things. Do we need to say  
14 what they are somewhere or do we just assume everybody knows what they  
15 are? Or is that not part of the process? Or did it strike anyone that  
16 we needed to do that or was it sort of clear from the descriptions?

17 If we say we did a briefing, does everybody know what that  
18 is? I guess they know what reports are. I guess whoever is reviewing  
19 them will ask us if they don't understand, since they do it every year.

20 COMMISSIONER WILSON: I think it would be useful.

21 COMMISSIONER MEEKS: I thought it was very interesting, for  
22 one thing, and it gave me some updates about what has happened prior to  
23 my coming. It was very interesting and some good work.

24 The only other comment I have is where we didn't meet the  
25 goals--it said because of resources we were not able to meet this goal.

1 I just wonder was that a motion by Commission to say we are not going  
2 to do this?

3 CHAIRPERSON BERRY: What page are you on?

4 COMMISSIONER MEEKS: Well, Page 4, for instance, at the  
5 bottom of the page. There were a few places like that.

6 CHAIRPERSON BERRY: No; we never discussed this. It was in  
7 our budget. When we got the budget, there were sections in there that  
8 tell us what we are going to be using money for and the money was cut  
9 down for that. But we didn't actually discuss it and say, "Oh; the  
10 money was cut down for that. Is that a good idea?"

11 So, if that is the question, no; we didn't. Do you think we  
12 should because that could be a matter of policy. It was budget policy,  
13 do we want to, like, shift resources from one thing to another thing or  
14 do we think it is important that we do these things on Page 4. Are  
15 they more important than something else or is that a judgment we can  
16 make?

17 COMMISSIONER MEEKS: I am not quite sure. I was kind of  
18 reading this as an outsider in some ways because a lot of this work was  
19 done prior to my coming. So, when I saw that, because of lack of  
20 resources we were not able to meet this goal, if this is for other  
21 people's viewing, which I am sure it is, it looks like maybe we just  
22 didn't do it so lack of resources was a good reason to say we didn't do  
23 it.

24 CHAIRPERSON BERRY: Maybe it should be better explained,  
25 like the Commission's budget was not increased from X, and with the



1 cost-of-living increase for staff--

2 COMMISSIONER MEEKS: But if we know what our budget is going  
3 to be for that year, then we reshuffle what our goals are, and be  
4 really clear about that. Maybe this is a big deal I am making.

5 CHAIRPERSON BERRY: Wait a minute, Elsie. It is not. Don't  
6 back off. What we usually do when we have the budget and we find out  
7 what we will have as opposed to what we requested is we look at the  
8 projects that we are doing and try to figure out if we can still do  
9 them.

10 COMMISSIONER MEEKS: I would rather, I guess, have seen,  
11 "The Commissioners made a decision not to because of priorities."

12 CHAIRPERSON BERRY: So what we could do is, instead of just  
13 making a decision about the projects, which is what we do all the time,  
14 saying, "Oh, we didn't get the money, so, therefore, we can't do this  
15 project; we have got to do this, and what do you want to do about  
16 them?" we can also, at that time, go over all the other items that we  
17 have been doing and make a decision about--say, for example, if we want  
18 to not do a project and have more resources put into going to national  
19 meetings and that, rather than just having the projects.

20 Historically, and traditionally, the Commission has simply  
21 looked at the projects. What you are suggesting and maybe what we  
22 should do is look at the other things, too. That sounds to me like a  
23 sound idea, just as we decided that we would keep some play in the  
24 budget for discretionary matters, like a contingency that arises, which  
25 was new this year.

1           Maybe what we want to do is talk about different functions  
2 and does it make more sense to do this function as opposed to that  
3 function.

4           COMMISSIONER MEEKS: Especially in the purposes of this  
5 report which I do think is a good report. I think it would really  
6 clarify.

7           CHAIRPERSON BERRY: Okay. So, what we will do is, as a  
8 Commission--do we want to do that this time or do we want to do it next  
9 time?

10           You have to turn this in; right?

11           STAFF DIRECTOR MOY: Right.

12           CHAIRPERSON BERRY: So we can't do it right now.

13           STAFF DIRECTOR MOY: Since it is precedent setting and there  
14 is really no set pattern, maybe they will have other comments for us to  
15 revise, GAO and the Congress and so forth, the people who look at these  
16 things.

17           CHAIRPERSON BERRY: But the next time we go through this  
18 process, the budget process, somebody who will be here will take note  
19 of this.

20           Where is George? George, the next time we go through the  
21 budget process, because you will still be here and, if I live, I will  
22 still be here, and the rest of us, God willing, we want to look at--  
23 and, remind us if we don't, and remind the Staff Director, that we want  
24 to look at all of these functions and not just the projects when we  
25 review actual budget as opposed to proposed budget.

1 Does that make any sense, George?

2 MR. HARBISON: I think what I am hearing you saying is that  
3 you really want to plan the entire budget as opposed to looking at  
4 segments?

5 CHAIRPERSON BERRY: What I am saying is when we find out  
6 what the actual appropriation is going to be and we start trying to  
7 figure out what we need to drop--projects is usually what we are  
8 talking about--that, instead of just doing that at that point, what we  
9 would do is look at all the different functions and we would also, in  
10 the planning process--that is a good idea--again, not just look at the  
11 projects, which is what we do now, but that we might look at all of the  
12 functions.

13 MR. HARBINSON: We can do that.

14 CHAIRPERSON BERRY: It has just never been done but it is a  
15 good idea. I know you were talking about this, specifically, but we  
16 might as well look at all the functions while we are doing it because  
17 budget is policy and that is one time when you really should look at  
18 everything.

19 So, next time, we will be prepared to look not just at  
20 projects but everything related to the dollars.

21 Anything else on GPRA? Do you need a motion to approve  
22 this?

23 STAFF DIRECTOR MOY: No; I don't. It was informational, but  
24 if the Commission--

25 CHAIRPERSON BERRY: That's all right. This is a staff

1 activity and this was given to us for our information and discussion.  
2 Do we have to review the final--do we have to vote on that?

3 STAFF DIRECTOR MOY: This would be it. I just made the  
4 corrections.

5 CHAIRPERSON BERRY: So there is consensus, or no objection,  
6 to your going forward with it. You are asking us--and having us read  
7 it was a very good idea.

8 **Future Agenda Items**

9 Are there any future agenda items?

10 VICE CHAIRPERSON REYNOSO: I think you had added something.

11 CHAIRPERSON BERRY: Oh, yes; Presidential statements by  
12 Presidential candidates that Commissioner Lee raised. Yvonne, could  
13 you explain to us more what it is you wish to discuss so we can discuss  
14 it?

15 COMMISSIONER LEE: Sure. I think the Commission has issued  
16 fact-finding--we conducted briefings whereby experts testified before  
17 us on the role that comments, racially insensitive or stereotypical  
18 comments, can play in actual perception or misperception of certain  
19 groups and communities and how it impacts relations.

20 I think that this being an election year, we have a lot of  
21 public attention on candidates, what they say, what they do, policies  
22 and their impact on these relations. Recently, the National Agency for  
23 the American Asian Consortium issued their annual hate-crimes report  
24 and cited several victims of hate violence.

25 They were called terms that were used by one of the

1 Presidential candidates before they were attacked. I just feel that  
2 because the public officials have such a high visibility, whatever they  
3 say, their comments really negatively or positively impact race  
4 relations in this country.

5 I would like to see whether it is appropriate for this  
6 Commission to issue a statement urging all candidates, sending a letter  
7 to all candidates, to cease using terms and statements that communities  
8 may find offensive. This statement should be phrased in a positive  
9 light, in a very bipartisan manner, so that, as a duty of the  
10 Commission, this would inform them what we learned from our experts who  
11 have testified before us on why people should refrain from using terms  
12 that we may not find offensive but other communities do.

13 CHAIRPERSON BERRY: For informational purposes, for those  
14 who are new, the Commission has issued such a statement in the past  
15 concerning campaigns. I don't remember whether it was in response to  
16 somebody making a comment and then a general sort of admonition to the  
17 people who were campaigning to be careful about it or whether it was  
18 some statement that we made.

19 But we have in the past made statements about politicians  
20 and their use of language. Do we have any examples? I must confess I  
21 have not followed as closely as the rest of you the various speeches  
22 and comments made by all these people who are out campaigning.

23 Do we have any examples that anyone can call their attention  
24 to at present, or is it just that what we are trying to do is  
25 prevention and reminders?

1           COMMISSIONER LEE: I think earlier yesterday, or today,  
2 perhaps, Senator McCain was using a term that Vietnamese Americans and  
3 Asian-Americans find extremely offensive. Apparently, he felt that he  
4 was only using it to describe his Vietnamese capture, not Vietnamese-  
5 Americans. However, in this country, we actually learned from the  
6 Campaign Finance briefing, people do not make a distinction between  
7 Asians and Asian-Americans.

8           So when he used that offensive term, people take it very,  
9 very personally. The community takes it very personally. The fact  
10 that the Senator refused to acknowledge that this has any impact on the  
11 Asian-American community, I just feel that we may want to issue a  
12 statement--we could talk about how these terms really impact the entire  
13 community.

14           Again, I am not saying that we should do this just to the  
15 Senator, but I just feel, when that all Presidential candidates are  
16 making statements in the future, I do want to share with them what the  
17 Commissioners have learned, the importance of using terms that  
18 communities may find offensive.

19           We may not, but communities do. So it has happened.

20           VICE CHAIRPERSON REYNOSO: I am just looking at an article  
21 dated today, February 18, in the Washington Post, Page A6, dealing with  
22 the--it is entitled, "Racial issues Dog GOP Foes; McCain Won't Fire  
23 Aide. Bush Pressed on Bob Jones, Flag." And then part of it has to do  
24 with McCain's use of the term "gook" to describe the North Vietnamese.

25           He is quoted as saying, "I will continue to refer to them

1 probably in language that might offend some people here. I hated the  
2 gooks and will continue to hate them as long as I live," all of which  
3 is understandable but, as indicated by Commissioner Lee, that  
4 terminology is then translated by some, perhaps not by the Senator, but  
5 by some, to Southeast Asians who live in this country.

6 CHAIRPERSON BERRY: Given the anti-Asian-American biases  
7 expressed during the Campaign Finance--or anti-Asian biases--that we  
8 heard about and the hate-crimes reports and the other kinds of  
9 incidents that have been occurring recently, it seems to make sense  
10 that we would issue a statement.

11 Should we cite this or do you just want us to make a general  
12 statement about the need to--

13 COMMISSIONER LEE: I think we should cite this as an  
14 example, just not a blanket, generic statement.

15 CHAIRPERSON BERRY: Will we name Senator McCain or will we  
16 pretend like we don't know who said it in order to not be using direct  
17 strong language. Since you raised it, Yvonne, I am asking you. Shall  
18 we just draft up something, ask David and Marcia to draft up something  
19 for us to see?

20 COMMISSIONER LEE: I hesitate to specifically mention the  
21 Senator so people will think that it is just the Senator. I want to  
22 make sure that all of the major candidates adhere by our  
23 recommendation. So I would recommend that we cite the terms used. I  
24 think people know who said that.

25 CHAIRPERSON BERRY: So that is an example of how things may

1 be taken, however, the speaker intends them, just like the Committee  
2 might think I am saying they smear us even though I said everybody did.

3 David, have you heard enough to be able to draft up  
4 something?

5 MR. ARONSON: Yes; I have.

6 CHAIRPERSON BERRY: We will draft up something for us to  
7 look at on this.

8 COMMISSIONER ANDERSON: Madame Chair, may I ask, are we  
9 going to have a vote on the text? How do you plan to proceed?

10 CHAIRPERSON BERRY: What I am going to do is if he will go  
11 draft up something now and bring it back to us in a little while, at  
12 some point in the briefing or when we take a break, we will circulate  
13 it and read it to each other. If we like it, we will pass it. If we  
14 don't like it, we will tell him to go away and write something else.

15 And then we will circulate it after this meeting and poll  
16 people and ask people to send in their comments or whether they think  
17 it is okay.

18 COMMISSIONER ANDERSON: Okay; I voted the last time we sent  
19 this letter, or a similar letter, in favor. But I have to say, given  
20 the history of this--and I have not seen the press accounts on it--of  
21 Senator McCain's unique experience in this regard, I understand where  
22 Commissioner Lee is coming from on this, but I have to say I hesitate  
23 to write the letter (inaudible).

24 CHAIRPERSON BERRY: So you remember the last time we sent a  
25 letter, too. So that is not a faulty recollection on my part.



1 COMMISSIONER ANDERSON: No; I believe it was--

2 CHAIRPERSON BERRY: Sometime or other.

3 COMMISSIONER ANDERSON: Yes.

4 COMMISSIONER WILSON: I was simply going to say that if the  
5 only word we are going to refer to is "gook," it seems to me you have  
6 to mention Senator McCain or you have to get a couple of other examples  
7 if you are not going to mention Senator McCain, which I would probably  
8 do the latter.

9 CHAIRPERSON BERRY: You would do which?

10 COMMISSIONER WILSON: I would try to get a couple of other  
11 examples so that Senator McCain is not--and then it will possibly  
12 neutralize the situation because of McCain's experience.

13 CHAIRPERSON BERRY: Commissioner Edley?

14 COMMISSIONER EDLEY: That is what I was going to say.

15 CHAIRPERSON BERRY: So we should get a couple of other  
16 examples. If we can't find another couple of examples easily--

17 COMMISSIONER EDLEY: In this cycle, but maybe the letter  
18 should take more of a longer-term perspective with respect to the  
19 political process than previous cycles.

20 CHAIRPERSON BERRY: David, maybe you could find the letter  
21 from the last time that we did and refer to our past admonitions on  
22 this subjection. Then you can do a quick Lexus and see if you can find  
23 some other people having said something. If not, then just make the  
24 general--although, I must say, for myself, I am not willing to give a  
25 pass to Senator McCain because of his experiences.

1 COMMISSIONER EDLEY: That does not give him license.

2 CHAIRPERSON BERRY: If you do that, you would say that  
3 everybody, who has an experience which is horrendous, has the right to  
4 use language forever more calling people names. I am personally not  
5 willing to give him a pass on it. I just thought I would tell you  
6 that. I am not willing to give anybody a pass because of their  
7 experiences over time, although I think his experiences--of course,  
8 everybody praises him being a war hero and he had a horrendous time.

9 But I think that you have got enough guidance now. I want  
10 you to go back and bring back a statement in about an hour. Thank you.

11 The other thing is that I am reminded now by a voice at my  
12 elbow that maybe we should vote on the GPRA. Our trusty special  
13 assistant finds out from the record that we did the last time. So  
14 let's do it this time.

15 All those in favor of sending the GPRA forward as discussed  
16 and changed indicate by saying aye.

17 [Chorus of ayes.]

18 CHAIRPERSON BERRY: Opposed?

19 [No response.]

20 CHAIRPERSON BERRY: Okay. So ordered.

21 COMMISSIONER ANDERSON: Madame Chair, because of the  
22 reference there to the OPM report which I haven't seen yet, I am going  
23 to abstain.

24 CHAIRPERSON BERRY: Commissioner Anderson abstains.

25 STAFF DIRECTOR MOY: So noted.

1 CHAIRPERSON BERRY: Now, we go to the briefing. We didn't  
2 run too far over here, for the people who have kindly come and are here  
3 already.

4 BRIEFING ON CIVIL RIGHTS IMPLICATIONS

5 OF ZERO TOLERANCE PROGRAMS

6 Panel I: Governmental Organizations

7 and Educational Associations

8 CHAIRPERSON BERRY: The first panel consists of the  
9 Assistant Secretary for Civil Rights from the Department of Education,  
10 Norma Cantu, Bill Modzeleski, then Burnie Bond--I am going to introduce  
11 you more than this--Steven Yurek and Lilliam Rangel-Diaz.

12 Let me introduce this topic first and thank you. Welcome to  
13 you. We are focussing here on the civil-rights implications of zero  
14 tolerance policies. This is one in a series of forums and briefings  
15 that the Commission is holding on issues affecting students in Grades K  
16 through 12.

17 Zero tolerance, as we know, is an umbrella term for a  
18 variety of policies that mandate severe and automatic penalties for  
19 school infractions. These policies first gained attention in the late  
20 1980s because of growing concerns about violence and drug use on school  
21 property.

22 In 1994, Congress enacted, and the President signed, the Gun  
23 Free Schools Act establishing a national policy mandating the expulsion  
24 of a student for one calendar year for weapons possessions. Many  
25 school boards have expanded the scope of zero-tolerance policies

1 instituting mandatory suspensions and expulsions for a much broader  
2 array of infractions.

3           Several civil-rights concerns stem from these policies, we  
4 believe. That is what we want to consider, the civil-rights concerns.

5           As practiced, zero-tolerance programs may have a  
6 disproportionate impact on certain people of color, minority groups,  
7 already at risk academically or, even if they are not at risk  
8 academically. Due process concerns arise from the automatic nature of  
9 the punishment, the sort of automatic nature, and the severity of the  
10 repercussions, particularly given evidence that suspension or expulsion  
11 may exacerbate a student's likelihood of a life of poverty and crime.  
12 There are studies that show some linkages there.

13           Another set of concerns that we have grows out of issues  
14 relating to children with disabilities. The Individual with  
15 Disabilities Education Act, called IDEA, amended in 1997 to respond to  
16 the Gun Free Schools Act, has some legal hurdles for the imposition of  
17 severe penalties against kids who are disabled.

18           Some people believe that this is wrong because it leads to a  
19 creation of a dual system of discipline and punishment based on whether  
20 the parents have the legal knowledge or will to seek regress through  
21 the legal judicial system, and other people believe that kids with  
22 disabilities are being harmed by the schools through this process of  
23 getting rid of them through a zero-tolerance program.

24           So we have got people on both sides of this issue, and there  
25 may be other sides that I didn't mention. We came to this discussion

1 initially because there was this incident in Decatur, Illinois  
2 involving some people who got in a fight in a football stadium that was  
3 in the media, so I am sure everybody has heard about it.

4 Reverend Jackson asked me whether the Commission would  
5 consider doing something in Decatur. We left it to our State Advisory  
6 Committee. They decided subsequently not to do anything. The federal  
7 court out there has made a ruling which is criticized by people who  
8 believe that the zero tolerance was unfairly used there.

9 But the ruling, I understand, is consistent, that most  
10 courts side with the school boards when they decide zero-tolerance  
11 issues. But we want to consider the broader issues. We are not here  
12 to talk about what happened in Decatur because we discovered, as we got  
13 into this issue, there are broad concerns in the public and then we  
14 also came to understand that there is this issue, not only about people  
15 of color, but about the disabled, some of whom may be people of color  
16 at the same time.

17 So we want to consider the civil-rights implications of all  
18 of this. In the last few days, we have had a shooting here in D.C. of  
19 a couple of high-school kids. I was talking last night to one of the  
20 administrators at the high school which these kids attended.

21 He is familiar both with them and with the person who did  
22 the shooting because that person had been kicked out of school before  
23 under one of these tolerance programs. I asked him whether zero  
24 tolerance would have prevented the shooting. He said no, it had  
25 nothing to do with it. The kid had been kicked out before, that there

1 are major thing having to do with prevention.

2 I am interested in whether zero-tolerance programs are  
3 effective, whether they are fair, whether there are fair alternatives  
4 set up for kids who are suspended or expelled. Also, I am interested  
5 in whether there is prevention when kids have problems in school that  
6 is applied sufficiently and whether there really is due process, and  
7 are there civil-rights implications in all of this.

8 With that, we will proceed. The way we will do it here is  
9 we will have a brief presentation from each person and then we will  
10 have questions from the Commission. Normally, we would have started  
11 with Norma Cantu because she is the Assistant Secretary for Civil  
12 Rights, but she has asked us not to. So we won't.

13 So we are going to start with Bill Modzeleski who is the  
14 Director of the Department of Education Safety and Drug Free Schools  
15 Program which provides funds and assistance to governors, state  
16 education agencies and local school districts to develop strategies and  
17 programs for the national education goal that, by the Year 2000--that  
18 is right now while we are sitting here and it hasn't happened--all  
19 schools will safe, disciplined and drug free.

20 You have failed, Bill, before you even got here this  
21 morning. Maybe you mean by the end of the year. I don't know. He was  
22 detailed to Ed from the Department of Justice to serve on the National  
23 Commission of Drug Free Schools as Executive Director. He has a lot of  
24 experience in criminal and juvenile justice. He is a political  
25 scientist and a person with a degree in public administration from C.W.

1 Post College.

2 Would you please proceed.

3 MR. MODZELESKI: Thank you, Madame Chairman. By the way,  
4 that is part of one of our GPRA performance indicators that we are  
5 struggling with. So I empathize with you as you are going through your  
6 GPRA indicators.

7 Madame Chairman and members of the Commission, thank you for  
8 the opportunity to participate in this--

9 CHAIRPERSON BERRY: Bill, before you start, I have been told  
10 by general counsel I should say that the youth who allegedly shot the  
11 Wilson High School students since he pled not guilty and he has not  
12 been convicted and I don't want to be like Hilary Clinton saying  
13 somebody murdered somebody. I don't want to defame or degrade anyone.

14 So, now that I have taken care of that, please proceed.

15 MR. MODZELESKI: Thank you, very much. I have about ten  
16 minutes. If I go over, just give me a sign and I will stop.  
17 You have a copy of my briefing there.

18 I look forward, from my perspective as Director of the Safe  
19 and Drug Free Schools Program, to presenting you with a brief overview  
20 of what we know regarding zero-tolerance policies and what we are doing  
21 in this area.

22 As Norma indicated, my presentation is going to cover a  
23 portion of those issues that the Department of Education is involved  
24 in. Norma Cantu, the Assistant Secretary for the Office of Civil  
25 Rights, will follow with additional information on issues their office

1 is involved in.

2 I want to say that, while our presentations will provide a  
3 comprehensive perspective of the Department of Education's activities,  
4 specifically targeting these issues that are engaged in and discussing  
5 today, it should be noted that much of what we do at the Department of  
6 Education regarding the improving of teaching and learning has an  
7 impact on student behavior.

8 Before presenting an overview of what we know, I would like  
9 to take a couple of minutes to make some introductory comments  
10 regarding school safety and school discipline policies. First, I want  
11 to reiterate that schools remain one of the safest places for children  
12 and youth.

13 Over the past several years, we have become uniquely aware  
14 of the violence that can take place in schools. At the same time, we  
15 have lost sight of the fact that an overwhelming majority of schools,  
16 90 percent of schools, do not experience any serious violent crime and  
17 nearly half, 43 percent, of all public schools experience no crime at  
18 all.

19 I would also like to further mention that data collected  
20 annually by the Department of Education and Justice and published in  
21 our annual report on school safety indicate that crime and violence in  
22 schools, much like crime and violence in many communities across the  
23 country, is continuing to decrease.

24 Second, I would like to point out that schools are safer  
25 today not because of any one program, not because of any one zero-



1 tolerance policy or practice, but because more schools are adopting a  
2 comprehensive approach to school safety, an approach that emphasizes  
3 the utilization of sound prevention and early intervention strategies  
4 that involve parents, students, clergy, youth-serving organizations,  
5 law enforcement, health and mental-health organizations that begin  
6 early and extend throughout the school life of the student, that  
7 emphasize the utilization of sound data and design and implementation  
8 of programs and policies and link their educational-reform activities,  
9 programs such as smaller class size, smaller schools, better-prepared  
10 teachers, with school-safety activities.

11           Generally, we have found that good schools are safe schools.

12           Another key element in creating and maintaining safe  
13 schools, aside from these elements I just mentioned, is holding  
14 students accountable for their actions. While this doesn't necessarily  
15 mean that students must be suspended or expelled for every minor  
16 infraction, it does mean that they need to be held accountable for  
17 complying with their school's discipline policies.

18           Third, it is important to note that the development and  
19 implementation of school-discipline policies is primarily the  
20 responsibility of state and local educational agencies. The only  
21 policy related to school safety that is mandated by the Elementary and  
22 Secondary Schools Act is the Gun Free Schools Act which requires school  
23 districts to have policies mandating a one-year expulsion students who  
24 bring fire arms to school, a fire arm and not a weapon.

25           Fourth, it is also important to note that school-discipline

1 policies cannot function in isolation. Parents have a key role to play  
2 in developing, supporting, reviewing and providing feedback on school-  
3 discipline policies.

4 Fifth, while it is critical that you examine the substance  
5 of zero-tolerance policies, it is also essential that you examine the  
6 process by which these policies are developed and implemented.

7 Sixth, as you examine this issue, I urge you to review past  
8 and current research. Research shows that, in order for discipline  
9 policies to be effective, they need to contain certain elements such as  
10 linking policies to prevention and early intervention programs, making  
11 sure that the policies are consistently and equitably enforced, making  
12 sure that the policies are reviewed regularly for efficacy,  
13 effectiveness, fairness and consistency with other state, local and  
14 federal laws, making sure that policies are clear and understandable,  
15 making sure that policies are available and communicate with parents,  
16 faculty and students on a regular basis, that they cover a broad range  
17 of behaviors and include a broad range of sanctions, that they insure  
18 that due process has been provided and that they are developed with the  
19 goal of setting standards of behavior not as a mechanism to punish.

20 Finally, to build upon this last statement, I want to  
21 reiterate a statement that Secretary Reilly has made on numerous  
22 occasions and that is it ought to be a basic American principle that no  
23 student should be punished by being denied an education.

24 I think it is a very important and key point to be made.

25 What do we know about zero-tolerance policies? What I want

1 to start by saying is that we need to continue to learn more about  
2 zero-tolerance policies. We don't have all the information that we  
3 would like to have on this particular issue.

4 But what we do know comes from the administration of the Gun  
5 Free Schools Act, from frequent dialogue with school officials,  
6 parents, students, school security officials on this issue.

7 We know several things. One is that, first of all, we know  
8 that every district--almost every district, I should say--almost every  
9 district in the country has adopted some sort of zero-tolerance policy.

10 Approximately 94 percent to anywhere up to 100 percent of  
11 school districts have adopted zero-tolerance policy for firearms; 91  
12 percent, zero tolerance for weapons other than firearms; 88 percent  
13 zero tolerance for drug offenses; and 87 percent for alcohol-related  
14 offenses. So, almost every school district in this country has adopted  
15 some sort of zero-tolerance policy.

16 Number two, zero-tolerance policies are implemented  
17 differently across states and school districts and schools. Aside from  
18 the requirement that students caught bringing a firearm to school be  
19 expelled for a period of one year, sanctions for violating zero-  
20 tolerance provisions can mean anything from short-term suspension to  
21 long-term expulsion.

22 There is no standard, aside from the Gun Free Schools Act as  
23 to how long a person is put out of school or what punishment is  
24 rendered for violation of a zero-tolerance policy.

25 Three, requiring schools to adopt specific discipline,

1 violence and drug-prevention policies as a condition for receipt of  
2 federal dollars really goes back to 1990, and the Amendments to the  
3 Drug Free Schools and Communities Act.

4 In my presentation, I provide a little bit more detail, but  
5 there is some confusion because many people trace this back to 1994 and  
6 the Gun Free Schools Act when, in fact, the 1990 required schools, as a  
7 receipt of all federal funds, to develop policies that talk about  
8 having codes of conducts for students as well as faculty that violate  
9 alcohol- and drug-prevention rules that are established in the school.

10 It was not a requirement that this be a zero-tolerance  
11 policy but there was a requirement that the policies be established.

12 Four, while zero tolerance has been part of some school  
13 discipline codes for decades, the types of offenses covered by so-  
14 called zero-tolerance policies have expanded since 1994 when the Gun  
15 Free Schools Act was passed.

16 Five, in the area of firearms and zero-tolerance policies, I  
17 want to emphasize, in combination with other prevention and early-  
18 intervention strategies--I think it is a very key point here, in  
19 combination--not in and of themselves, but in combination with other  
20 prevention and early-intervention strategies has proven, in some  
21 places, to be successful.

22 It has reduced the number of firearms that have been brought  
23 to school. For example, data that we collect show that the number of  
24 students that have been expelled for bringing a firearm to school  
25 decreased from 5,724 to 3,930 from the 1996-1997 school year to the

1 1998-1999 school year. So it was about a 31 percent reduction in  
2 weapons over that one period of time.

3 Point six, what we are finding is that students of all ages  
4 are impacted by zero-tolerance policies. For example, in our report  
5 for 1997-1998, 10 percent of the 3900 students who were expelled for  
6 carrying a firearm to school were elementary-school students. So this  
7 is not something that just impacts those who are in middle school or  
8 high school. It does have an impact on elementary-school students.

9 Number seven, expulsion for violating zero-tolerance  
10 policies does not automatically mean that educational services are  
11 denied. Some school districts require, other school districts permit,  
12 students to take courses in alternative settings or on alternative  
13 dates.

14 The Gun Free Schools Act Report indicates that 43 percent of  
15 all students who were expelled for bring a firearm to school were  
16 referred to an alternative educational placement.

17 Point number 8 is that I do think we have to be cautious  
18 about merely stating that children who are suspended or expelled should  
19 be placed in an alterative setting because we have information from the  
20 Centers for Disease Control that indicates that when students are  
21 placed in alternative schools, they are often groups with other  
22 students who are significantly more likely than students attending  
23 regular high schools to drink alcohol, use drugs, engage in physical  
24 fights, attempt suicide and carry a weapon.

25 So we have to be very careful about merely saying let's put

1 all these youth in an alternative school.

2 Point number nine, certain provisions of zero-tolerance  
3 policies such as providing the person responsible for administering the  
4 sanctions with flexibility based upon extenuating and mitigating  
5 circumstances. Here, in the Gun Free Schools Act, there is a  
6 requirement that states have what is called a case-by-case basis. It  
7 is a requirement. It is built into the law that every state must have  
8 a case-by-case basis when they implement their zero tolerance for guns.

9 We feel that this is a key provision for insuring that  
10 injustices and inappropriate penalties do not take place, provided,  
11 again, it is combined with those other elements that I mentioned  
12 earlier, the development of a sound discipline policy including due  
13 process.

14 We realize that denying students educational services is not  
15 in the best interest of students or of the community. However, we also  
16 understand and support the need to maintain order, discipline and  
17 safety in the classroom.

18 We developed a handout, which you have in the back, which  
19 lists various Department of Education, including Office of Civil  
20 Rights, activities to provide you with an idea of the activities we are  
21 engaging in to help address this particular problem.

22 I would like to note that the list is, in some ways,  
23 incomplete as it doesn't really include any of the school reform  
24 programs really designed to improve learning. As stated earlier in the  
25 briefing, programs such as the 21st Century Learning Centers, the Class

1 Size Reduction Program, the GEAR-UP Program, which is a mentoring  
2 program, and the many program that we have that are part of the design  
3 to improve teach quality, all play a role in our reference to improved  
4 teaching, learning and discipline.

5 So we have really got to take a look at this thing in a very  
6 comprehensive broad-based perspective.

7 I would like to focus special attention on three of  
8 activities listed on the handout because we feel that these activities  
9 have special promise of changing the way schools deal with disciplinary  
10 problems. This includes the reauthorization of the Elementary and  
11 Secondary Schools Act, Title XI which, essentially, will require school  
12 districts, if passed--I should say, if the legislation passes, will  
13 require school districts to develop sound, effective, equitable, fair  
14 school discipline policies but would also require educational services,  
15 a plan for educational services for all students who are suspended or  
16 expelled.

17 A joint Department of Education and National School Boards  
18 Association discipline policy manual; we are working closely with the  
19 National School Boards Association to look at what are the key elements  
20 for the design and development of effective school discipline policy.

21 What we want to do is identify models out there. We want to  
22 identify school districts that have good policies and try to get them  
23 emulated throughout the country.

24 And, third, safe and discretionary grant program focusing on  
25 identifying alternatives to expulsion. We want to take this a step

1 back. We want to really find out how can we prevent expulsions and  
2 suspensions in the first place.

3 Then, the second part of that is if a student is suspended  
4 or expelled, what are the strategies that we could use to continue to  
5 provide educational services and, I must say, high-standard, very  
6 effective educational services, to those students.

7 I would also like to briefly mention another effort we are  
8 engaged in that, while not designed to specifically address the issue  
9 of suspension or expulsions or zero tolerance, I think will have  
10 considerable impact on these issues.

11 That effort is the Safe Schools/Health Students Initiative.  
12 This is an interagency initiative that provides school districts with  
13 funding from three different federal agencies so students and families  
14 can be provided with a wide variety and a wide range of services,  
15 activities and programs that promote healthy childhood development and  
16 school safety.

17 In order to receive funding, that we provide up to  
18 \$3Emillion a year for three years, school districts must design and  
19 implement a safe-school strategy that addressed seven areas; safe-  
20 school environments, school-discipline policies; drug and violence-  
21 prevention programming; early-childhood programs; family-strengthening  
22 programs; education reform; and mental-health assessment and referral.

23 This comprehensive approach, and an approach that requires  
24 school districts to address issues related to school safety in a very  
25 broad comprehensive fashion, holds a considerable amount of hope as it



1 recognizes that the best approach to creating safe schools and health  
2 students is through a comprehensive strategy that involves the entire  
3 community.

4 Closing, let me say that we are interested in working with  
5 you and other interested groups and organizations in finding ways to  
6 maintain safe, disciplined and drug-free learning environments without  
7 denying students the high-quality educational services that they need  
8 to succeed in life.

9 CHAIRPERSON BERRY: Thank you very much. There will be  
10 questions when we finish going through the panel.

11 Norma Cantu has been Assistant Secretary for Civil Rights in  
12 the Education Department since May, 1993. She is in charge of making  
13 sure that the Federal Civil Rights statues that promote equal  
14 educational opportunity and protect those rights are enforced.

15 She used to be a regional counsel with the MALDEF, the  
16 Mexican-American Legal Defense and Education Fund, and various other  
17 positions. She is a graduate of Pan American University and Harvard  
18 Law School.

19 Ms. Cantu, please proceed.

20 MS. CANTU: Thank you. What is missing I used to be a  
21 classroom teacher and I would always tell everyone I would rather deal  
22 with one judge or twelve Commissioners than forty kids. I had eighth-  
23 graders.

24 Madame Chairperson and members of the Commission, I am  
25 pleased to participate in this briefing on civil-rights issues and

1 efforts related to student-discipline policies including zero-tolerance  
2 policies. As you know, our office is charged with enforcing four  
3 federal civil-rights laws that deal with education and prohibit  
4 discrimination on the basis of race, color, disability or age.

5 I want to do three things in the ten minutes that I think it  
6 will take to do this; describe some of the civil-rights issues we are  
7 seeing regarding student-discipline policies, describe the things that  
8 our office is doing to address the issues, and then I want to close  
9 with some recommendations that are pretty closely aligned to what you  
10 heard Joe Modzeleski saying.

11 With regards to student-discipline policies, I have to  
12 completely concur with Bill Modzeleski that the Department and OCR  
13 strongly support efforts to promote school safety and student  
14 responsibility. Students, parents and teachers expect safe and orderly  
15 school environments where children can learn effectively.

16 While schools are already among the safest places in America  
17 for our children, we support the flexibility of state and local school  
18 districts to establish appropriate discipline policies to make schools  
19 even safer consistent with the needs and the values of local  
20 communities.

21 It is also clear, though, that school-discipline policies  
22 must be both educationally sound and operate consistently with federal  
23 civil-rights laws. These goals are complementary to each other. No  
24 sound discipline policy would permit students to be treated differently  
25 on the basis of race or gender or disability.

1           In terms of the civil-rights issues we have been seeing in  
2 the context of school-discipline policies, we are going to rely on some  
3 of the cases we have seen as well as some of the law, part of the legal  
4 landscape.

5           Let me give you some data. We brought some color charts.  
6 This is always fun to do without overheads and I hope you will bear  
7 with me. I want to start with the chart that has got a lot of columns.  
8 It fills the full page with columns. You have gone one that is only a  
9 half page.

10           Let's turn to the one that is a full page of columns. These  
11 charts are helpful because they come from our elementary and secondary  
12 civil-rights survey that our office conducts every two years. We do a  
13 sample of a third of the school districts but then we extrapolate  
14 nationally.

15           These are weighted data and our statisticians tell us that  
16 these are pretty good predictors of what we see nationally. If you  
17 look at the column on the far right of the page, you will see, starting  
18 from the bottom and working your way out, that suspensions have  
19 increased steadily for all students in America.

20           There were 1.7 million students or 3.73 percent. That is  
21 the percent on the very bottom. That is what was going on in 1974. If  
22 you read that far-right column going up to the top, you will see that  
23 it jumped up to 3.1 million students, 6.84 percent.

24           So if you are hearing that there are more suspensions out  
25 there, or in your community somebody says, anecdotally, "I think I am

1 seeing more discipline actions taken in terms of suspension," that is  
2 reflected in our data for everybody, all students, from 3.7 to 6.84.

3 The second point is that, yes, there is a disparity in  
4 student-suspension rates by race, specifically with regards to black  
5 male students. For that one, look at the column that is entitled,  
6 Black, the second from the right.

7 What that will show you is that, in 1997, black students  
8 represented 17 percent of all students enrolled but 32 percent of  
9 students suspended. If you keep going down that column, from the  
10 bottom up, you are going to notice the disparity has been pretty  
11 consistent over time. That disparity existed in '74 and it is existing  
12 in the most recent data we have.

13 It is not a new phenomenon. It didn't start in '90. It  
14 didn't start in '94. It is something that we, as a country, have seen  
15 for a number of years.

16 It is important to note that numerical disparity, by itself,  
17 does not prove discrimination. There are also some limitations to the  
18 data. For example, the data I am sharing with you does not tell you  
19 the cause of the disparity by race. It doesn't tell you how long the  
20 students were suspended.

21 So a student suspended three days, a student suspended 30  
22 days each is going to count as one suspension. So you can't read that  
23 from the data in terms of how many times a student was suspended  
24 either. You can't tell that from that data.

25 Nor does it tell you what happened to the student after the

1 suspension and what kinds of educational services they received. So  
2 this data does not give us that kind of detail. For the first time,  
3 our office is going to start collecting information on expulsions  
4 because our questions, up until now, have been directed to the school  
5 district and asking them, "Tell us about suspensions happening in your  
6 school districts."

7 For the first time, we are going to ask about expulsions and we expect  
8 that data to be available April of 2000.

9           Legal landscape; I am going to try to cover that really  
10 quickly. Our experience has been mostly in the areas of race and  
11 disability. What we have been seeing under Title VI, which involves  
12 race, focuses on some pretty frequently asked issues.           The  
13 most frequent Title VI issues we hear are significant differences in  
14 the discipline rate by race for similar offenses. We also hear about  
15 significant differences in referral to the office by race for similar  
16 offenses. We also hear of different sanctions by race for similar  
17 offenses.

18           Another one that is real interesting to us is what happens  
19 after the suspension, that some of the students are suspended in school  
20 and they still have access to the regular teacher force and the regular  
21 courses and the regular curriculum while, by race, we are seeing other  
22 students being sent out of school, being sent to a different kind of  
23 curriculum, usually an inferior curriculum. So those are the kinds of  
24 most frequently noticed issues that are coming up by race.

25           Cases of discipline also have come to our attention dealing

1 with disability and we are responsible for the civil-rights laws that  
2 affect students with disabilities. A district may suspend a student  
3 with a disability for up to ten days under the same procedures it would  
4 do with a nondisabled student.

5 If a school suspends a student with a disability for more  
6 than ten days or expels the student, then the district must make a  
7 determination of whether the student's conduct is related to or is a  
8 manifestation of the disability.

9 So what is different for the student with the disability  
10 then the other kinds of kids, if it is for ten days or more, they need  
11 to find out if the behavior or the conduct was related to a disability.  
12 So that inquiry needs to be made.

13 If the conduct is related to the disability, then the  
14 district may be required to provide more assessment and an appropriate  
15 placement, and educational response, because now they are aware that  
16 this is a disability and they need to address that.

17 If it is not related to the disability, then they proceed as  
18 though that were a nondisabled student and treat that disabled student  
19 the same. Whatever the appropriate response is for a nondisabled, it  
20 is exactly the same for the disabled student.

21 We also have a federal law called the Individuals with  
22 Disabilities Education Act, the IDEA. That is a funding bill that is  
23 managed by the Office of Special Education and Rehabilitation Services  
24 in the Department of Ed.

25 While I will do my best to answer questions about the IDEA

1 and how it relates to disabled students, really, the expert is Judy  
2 Human, the Assistant Secretary for that office. We have talked with  
3 her and, while she is not a witness today, she would be happy to  
4 provide supplemental information and to provide any other information  
5 the Commissioners may want about IDEA.

6 With regards to zero tolerance, our office has not had very  
7 much experience at all about people complaining about zero-tolerance  
8 policies or complaining about how they have been implement. The trends  
9 or the issues we have been seeing are about discipline at large, in  
10 general, and very, very little attention is being brought to us, that  
11 someone says, "I want to focus on zero tolerance." They are  
12 complaining about discipline in general.

13 Our efforts to deal with the area of discipline are pretty  
14 substantial. From 1994 to 1999, which is the period I have been here,  
15 we have received a steady volume of approximately 600 to 700 complaints  
16 every year about discipline. So 600 to 700 every year reach our  
17 office.

18 Roughly half of those have to do with race and half of those  
19 have to do with disability. So half are Title VI and half of them fall  
20 within Section 504 and the ADA. These complaints come to our office  
21 and we are required to respond to them.

22 What our office has done is we have tracked very carefully  
23 what kinds of responses are most effective. When we resolve the  
24 discipline cases, we share the remedies across our office lines. We  
25 also write them up in our annual report and put them on our website,

1 but part of what we are trying to do is share what works.

2           In the written testimony, and I will just summarize it, we  
3 have given some examples of what we have seen are pretty effective  
4 remedies; getting an accurate data-collection system so the school  
5 districts know what they are doing, so they can at least see if a  
6 particular teacher is contributing to the racial disparity at their  
7 school; setting up committees to involve parents and community leaders  
8 from diverse backgrounds to get to the facts, to work together and to  
9 publicize what is expected and what kind of conduct codes and what kind  
10 of discipline policies exist in the school district.

11           Training teachers on how to deal with children from diverse  
12 backgrounds is another remedy that we have shared quite frequently.  
13 And substitute teachers do contribute to the problem of disproportional  
14 referrals. Having been one before, you are launched into a strange  
15 classroom. You are not familiar with what the disciplinary codes are.

16           Substitute teachers are a problem in urban districts, in  
17 particular. There is a challenge to continue keeping up with the work  
18 load. So we target training to substitute teachers to be sure they are  
19 prepared to deal with discipline.

20           Creating mentoring programs for at-risk students, bringing  
21 in the community and having them be partners as far as standing  
22 advisory groups to work with the schools, to be sure that the schools  
23 are both safe and have fair policies in place; getting minority  
24 representation on discipline committees in the schools; having peer-  
25 intervention teams.



1           Let me tell you, when you get students involved to be sure  
2 that the discipline policies are enforced, the students can be just as  
3 tough, and sometimes tougher, than the principal or the deputy  
4 principal. I have seen this.

5           I have talked with kids who serve on these peer committees.  
6 They issue very fair but very serious punishment to be sure that the  
7 kids adhere to the policies. And then sharing information with  
8 parents, letting the parents understand and communicating with parents  
9 about what is expected of the schools.

10           The one example of how these things work, we went into a  
11 southern school district where the issue was more severe penalties for  
12 similar conduct problems. We found two other related issues. Yes;  
13 there were more severe penalties being issued to African-American  
14 students. They weren't tracking so they didn't know where this was  
15 coming from.

16           But we also saw that after the students were disciplined,  
17 they were being sent to alternative settings where the curriculum had  
18 been watered down and the kids just couldn't keep up with the regular  
19 kids.

20           We found, in that school district, kids being involved in  
21 the same fight with the same level of violations of the conduct and a  
22 more severe penalty issues to the African-American child versus the  
23 white child. The response to the punishment would be the white child  
24 got counseled, stayed in the regular curriculum, stayed in the regular  
25 classroom. The black child, they called the cops and asked the cops to

1 pick him up and arrest the kid. So the response to the incident was  
2 different treatment on the basis of race.

3 We were able to get the district to be much more clear about  
4 what the penalties would be for violations of their discipline code.  
5 We brought in staff training so that they would be aware of equity  
6 issues. We went back, a year later, to evaluate it and we found that  
7 the gap, the disparity, the racial disparity, between numbers of kids  
8 being disciplined and disparity in the severity of punishments had  
9 closed.

10 So these interventions, these remedies, do, in fact, work.  
11 We are going to continue monitoring districts to be sure that our  
12 remedies are effective.

13 We also don't wait for the complaints. Where we receive  
14 leads, and where we have information that there is a need for us to be  
15 present, we initiate our own technical assistance or our own  
16 investigations in the area of discipline, and that number has been  
17 increasing. Every year, we do a few more and a few more of our own  
18 initiated activities in this area.

19 Finally, we do go back and we monitor to be sure that we are  
20 having a positive effect on students. What does this mean overall? I  
21 think we want to recommend that we find these kinds of instances of  
22 discipline to be very individualized. You need to know the facts of  
23 each incidence. You need to go case-by-case.

24 We are fighting stereotypes here, so we shouldn't be  
25 applying stereotypes as we try to address the issue. Having a case-by-

1 case approach is very labor-intensive. At this point, I want to  
2 express my deep gratitude for this Commission in the past, that you  
3 have supported our budget in a bipartisan way because it is with that  
4 budget that we have been able to have trained staff to identify where  
5 the problems are and to suggest remedies and to work in partnership  
6 with districts to achieve remedies.

7 We need adequate funding to continue to be able to move  
8 forward in that direction. But we also agree with the recommendations  
9 of Bill Modzeleski that there is still a need for further study, a need  
10 to continue to collect further information and for us to continue  
11 collecting our data as we collect our civil-rights data and our civil-  
12 rights survey.

13 And, finally, we support the programs that are attached to  
14 Bill Modzeleski's testimony as to ours as well because it will take  
15 that kind of a comprehensive approach to achieve high-quality education  
16 but also to have mentors and also to have more adults present in the  
17 schools. All those programs together, with the training of teachers, I  
18 think, are part of the answer.

19 We agree there is still much more work to be done. We are  
20 pleased to be able to be here today to participate in this  
21 conversation.

22 CHAIRPERSON BERRY: Thank you very much. There will be  
23 questions when we finish the panel.

24 Burnie Bond is an Assistant Director of the American  
25 Federation of Teachers Educational Issues Department where she monitors

1 research on programs and teaching strategies that can help raise  
2 student achievement especially for at-risk students. She works on  
3 related issues and she worked before that in the Office of the AFT  
4 President, and before that, she was Director of Research and  
5 Publications for the International Affairs Department of the AFL-CIO.

6 Welcome and please proceed.

7 MS. BOND: Thank you and thank you for the invitation to  
8 address the Commission. I think that you will find that there is  
9 actually a lot of similarity between our recommendations generally in  
10 the areas of discipline and zero tolerance to what the Administration  
11 is trying to implement.

12 I will try to keep my remarks as brief as possible and would  
13 to refer you to a xerox of an AFT publication that has been distributed  
14 or is out here called, Setting the Stage for High Standards, which lays  
15 out what we feel are the essential elements of an effective discipline  
16 policy and that includes issues in regard to zero tolerance.

17 I guess one of the most important points to make in terms of  
18 the controversy around zero tolerance is to say that, to some extent,  
19 the phrase has become a catch phrase in the same way that tough-on-  
20 crime policies might refer to anything from better community policing  
21 to mandatory prison sentences for relatively minor drug offenses.

22 The policies that schools and school districts have  
23 developed under the guise of zero tolerance may be very good, pretty  
24 bad or a simple repackaging of the status quo.

25 The original intent of zero tolerance, which the AFT

1 strongly supports and was adopted into law in the Gun Free Schools Act,  
2 was to insure that schools could provide all students with a safe and  
3 secure learning environment, in this case by requiring states to craft  
4 rules requiring automatic expulsion for any student smuggling guns onto  
5 school property; in other words, insuring that appropriate disciplinary  
6 action would be taken against those who were caught committing a  
7 felony.

8           Since then, the phrase has come to be defined as any school-  
9 discipline policy that mandates a predetermined consequence or  
10 punishment for a specific offense. What I would like to do is outline  
11 the elements of what we feel are a good discipline policy which may or  
12 may not be contained in policies that are defined as zero tolerance and  
13 their relationship to civil rights.

14           First, we believe that to be effective, discipline policies  
15 should be designed with full input from parents and the community.  
16 They should be widely disseminated and understood by students and  
17 parents as well as interested community groups.

18           We would also support districtwide adoption of policies to  
19 insure that schools have similar policies to one another and that  
20 schools that have high concentrations of minority students do not, for  
21 example, have more draconian policies than those in more affluent  
22 areas.

23           We also would like to see that all teachers have access to  
24 effective classroom management training. We would actually like to see  
25 classroom management be a required course in teacher preparation which

1 it is not in most teacher-preparation programs. Incidence of violence  
2 and severe discipline problems are much less in schools that are safe  
3 and orderly. When chaos reigns, it is a lot easier for things to get  
4 out of hand.

5 We also believe that codes should be fair as well as clear.  
6 Not only should students in the community know and understand the  
7 policy and the consequences, but the punishments should be, on the face  
8 of it, designed to fit the crime.

9 This means that policies should distinguish between minor  
10 and severe offenses and stipulate the kinds of punishments that would  
11 follow from each of the kinds of offenses. They would take students'  
12 past behavior into account; in other words, the discipline should be  
13 progressive. A first offense and a fifth offense should not be treated  
14 in the same manner.

15 We also think that it is very important that there be  
16 mechanisms to insure that the policies are consistently enforced. As  
17 Ms. Cantu referred to, one of the biggest problems in terms of civil-  
18 rights applications and discipline is the problem with disparate  
19 treatment of similar offenses.

20 To the extent that punishment is defined and the punishment  
21 is the same and consistently enforced in the same way for students of  
22 different races, much of the problem will be taken care of.

23 We believe that the policy should contain an appeals  
24 process, that due-process rights should be afforded to every student,  
25 not just those who are in special education. If the behavior is severe

1 enough to require that student be removed from the classroom or the  
2 school, we believe that a continuum of quality alternative placement  
3 should be available.

4           This should run the gamut from a short-term alternative  
5 placement such as in-school suspension rooms where a child could be  
6 taken to calm down and they should be run by trained staff people who  
7 are both able to carry on the academic instruction with the student but  
8 also should be trained specifically in behavior management or other  
9 types of counseling.

10           If it is necessary for a very severe type of discipline to  
11 take the child out of the school for a long-term suspension or  
12 expulsion, alternative placements, we feel, should also be prepared to  
13 provide intensive academic assessment to students. We found that one  
14 of the problems with kids who have behavior problems is that they often  
15 also have academic problems that have remained unaddressed. They are  
16 bored and they are acting out.

17           Rather than have a watered-down curriculum, a much more  
18 intensive curriculum, much more intensive academic assistance, should  
19 be provided in any effective alternative placement.

20           In some regard, what we are talking about, really, is  
21 practical common-sense steps. The rights of special-education students  
22 should extend--and the rights of special-education students are not  
23 just through due process but they also are, according to the law,  
24 special-education students have the right and must be provided with  
25 alternative academic instruction, whatever the placement is. We

1 believe that that right should be accorded to all students.

2           We would hope that this does not involve the same kinds of  
3 impossible bureaucratic hurdles that are sometimes put into place in  
4 terms of the ability to discipline special-education students but,  
5 certainly, the regard for their rights as individuals should be  
6 extended to all students.

7           Last, and perhaps most important, we believe that, to be  
8 effective, a discipline policy should include public-reporting  
9 provisions and, hopefully, mechanisms for community oversight.  
10 Problems with design or implementation of these policies, including  
11 disparate impact, are nearly impossible to catch and to correct without  
12 full access and periodic review of such information.

13           I would be happy to answer any questions.

14           CHAIRPERSON BERRY: Thank you very much, and there will be  
15 some.

16           Our next panelist is Steven Yurek who is the general counsel  
17 and Chief Operating Office for the National Association of Secondary  
18 School Principals. He is legal counsel for the Association. He is  
19 also responsible for their federal relations program. Prior to joining  
20 the Association, he was a partner in a Minneapolis consulting firm and  
21 manager of the firm's Washington office. He is, of course, a lawyer,  
22 educated at William Mitchell College of Law and St. John's University.

23           Please proceed, Mr. Yurek.

24           MR. YUREK: Thank you, Madame Chairman. Hopefully, you  
25 won't hold it against me that I am attorney as I present these



1 comments.

2 CHAIRPERSON BERRY: I am a lawyer, too, so--

3 MR. YUREK: Thank you very much for inviting me to present  
4 these comments. Just before I get into my formal comments, I would  
5 like to just explain who the National Association of Secondary School  
6 Principals is. It is an association that has been around for 85 years.  
7 It consists of middle-level and high-school principals around the  
8 country, both public and private, approximately 42,000.

9 We are also the founders and administrators of the National  
10 Honor Society, the National Association of Student Councils. So,  
11 besides being advocates for school leaders and principals, we are also  
12 advocates for students and student leadership. So this issue and  
13 subject has a lot of consequences and a lot of interest for our  
14 association and the members that we serve.

15 VICE CHAIRPERSON REYNOSO: Your members must be very modest  
16 to refer to themselves as middle managers. I thought principals were  
17 pretty high up.

18 MR. YUREK: School climate is an important catalyst for  
19 learning. It is not always visible in the outcomes of a school, but it  
20 very much affects, as Bill mentioned, the process of teaching and  
21 learning that leads to those outcomes. Youngsters who are intimidated,  
22 fearful, cannot be at ease. They cannot give education the single-  
23 minded attention that they need for success, nor can teachers teach  
24 with the required attention and purpose if they are anxious, worried  
25 about their own safety or that of their students.

1           These statements come in a report that we issued with the  
2 Carnegie Foundation called Breaking Ranks and How to Restructure the  
3 American High School.

4           One of the key messages throughout this document is that  
5 schools must be safe and effective environments conducive to learning  
6 and teaching if our students are to prosper. Therefore, safety and  
7 order must prevail at all times. Only in such an environment may  
8 teaching and learning thrive.

9           To do this, our recommendation is to make zero-tolerance  
10 laws fair, or that they need to clearly state that weapons, illegal  
11 drugs, alcohol, violent acts, discrimination, harassment, will not be  
12 tolerated in our schools.

13           They also need to be implemented consistently, fairly and  
14 responsibly. They need to allow principals and local school boards the  
15 discretion to insure that the punishment fits the act. They also need  
16 to insure that continuing educational services with appropriate funding  
17 for all school-age children exist.

18           I am going to address each one of these just briefly. Every  
19 day, we need to be very clear that it is important for our educators or  
20 students in our communities to know that specific acts are not going to  
21 be tolerated in our schools. I think it is not the acts that are not  
22 tolerated. I think the discretion needs to come with what discipline  
23 is the consequence of those acts.

24           For many students, the only place they feel safe is in their  
25 school, as Bill said. They are the safest places in our communities

1 and we need to make sure that they stay that way.

2           At this time in our nation's history, we are reacting to  
3 violence in our communities, in our homes and in our schools, by  
4 building more prisons, mandating specific sentences for criminal  
5 convictions and, finally, mandating specific discipline, expulsion, for  
6 certain acts committed in our nation's schools.

7           One of our arguments is that one of the reasons we have  
8 these policies in place was the issue of disparate treatment or  
9 discrimination in how people are disciplined across the country. So we  
10 have sentencing guidelines, zero-tolerance policies created.

11           What this has done is this has removed any discretion from  
12 the traditional finders of fact. It has removed that discretion from  
13 judges, hearing officers, school boards and principals when they deal  
14 with specific situations. Their hands are tied. When a person commits  
15 an act covered by a zero-tolerance policy, that is the end of the  
16 inquiry and the stated mandatory discipline is applied.

17           There is no discussion of the age or maturity of the  
18 individual, the severity of the act or any other factor such as  
19 ethnicity, race or gender. I know Norma mentioned, and Bill,  
20 statistics related to race, the overproportionate number of minorities  
21 that are affected by these policies.

22           What we like to raise is, when you look at those, you can't  
23 look at that in isolation. Another issue that you need to look at is  
24 also the socioeconomic, and how this applies across socioeconomic  
25 grounds not just race or ethnicity or gender.

1           The reason we raise this is, as we are starting to get more  
2 and more into standards and assessments in our schools and  
3 accountability, at first, we were looking at everything again on race,  
4 ethnicity and gender and seeing what the results are in those  
5 assessments. We are starting to see that there is, also, now, as we  
6 start disaggregating the data into socioeconomic, that there are  
7 predictors that show socioeconomic as a major indicator of how a  
8 student will do on those assessments and standards.

9           Right now, we don't have that information--again, we don't  
10 have much information--on the whole issue of suspension and expulsion,  
11 but if we are going to do a study, I think that is something we also  
12 need to look at before coming to the conclusion that it is  
13 discriminatory or disparate treatment of students.

14           Again, by doing that, I think we are going to also start,  
15 really, instead of dealing with the surface of the issue and the quick-  
16 and-easy solution of zero tolerance mandatory and other sentencing  
17 guidelines, is that we need to look at other solutions that really get  
18 to the core of the issue.

19           The solution to overcome a lot of the socioeconomic is not  
20 more restrictive laws but a concerted effort by principals, community  
21 leaders and parents to provide all our members of society the sense of  
22 self worth and hope for the future.

23           Students need to be invested with the sense that their  
24 actions and lives do make a difference. I think that will have the  
25 biggest impact of safety in our schools and the other issues of

1 discipline and treatment.

2 We also make the argument that discretion is needed to  
3 insure equal treatment. Currently policies, both on a federal and a  
4 state level, state unequivocally that weapons, drugs, alcohol, violent  
5 acts and discrimination are not tolerated, but they also mandate the  
6 specific discipline that will be applied.

7 Are these policies equal? It really depends upon your  
8 definition of equal. If your definition of equal is that everyone is  
9 treated the same, then, yes; they are fair. However, if you define  
10 equal as the punishment fits the act, then, no; they are not fair  
11 because they don't take into account the severity of the act.

12 This causes the student who brings a butter knife to school  
13 in their lunch box to be treated the same as another student who brings  
14 a weapon into that school. There is no looking at the facts in the  
15 specific situation.

16 In addition, for some, equality means that all zero-  
17 tolerance policies must be the same for every school in the nation. To  
18 require all zero-tolerance policies to be equal means that the federal  
19 government would be creating the discipline code for every school in  
20 America.

21 The instances over the last year provide evidence against  
22 this prescription. It, instead, supports a system of policies that  
23 clearly define the acts that will be not tolerated in our schools but  
24 leaves the discretion of school principals and local school boards the  
25 discipline that it warranted in each case.

1           We need to trust the people, the principals in our  
2 buildings, and school boards, that the process will be fairly,  
3 consistently and responsibly implemented and enforced at that local  
4 level. To do otherwise would continue to create the situations we see  
5 in headlines today claiming the punishment does not fit the act and  
6 zero tolerance is bad and discriminatory and unfair to those that they  
7 are applied against.

8           On the issue of IDEA, which is the greatest issue that our  
9 members have today, because federal zero-tolerance laws specifically  
10 exempt students with disability and the IDEA preempts the application  
11 of any state or local law to discipline these students, other than that  
12 prescribed by the federal law, these policies do not affect disabled  
13 students other than creating a greater division between the general and  
14 special-education students in our schools.

15           The difficulty principals face because of this division is  
16 intensified every time one student is disciplined differently for the  
17 same act because of the protections contained in IDEA. The biggest one  
18 is that even if it is not a manifestation of that person's disability,  
19 yes, they can be treated the same under IDEA; however, as was stated by  
20 Burnie, those individuals have the right for continuing educational  
21 services to be provided whereas the general education student does not.

22           To try to explain to a parent whose student was involved in  
23 an altercation, and one was in IDEA, why the IDEA student continues to  
24 receive educational services and the other student does not becomes  
25 very a difficult and also very hotly contested issue on the local

1 level. Our members see that every day as they deal with some of these  
2 issues.

3 Finally, all school children need to receive educational  
4 services. To deny educational services to a child increases that  
5 child's chance, if any, in the criminal justice system and ultimately  
6 being a burden on society their entire life rather than a productive  
7 member of the community.

8 It is not in our country's economic or social interest to  
9 deny educational services to any child. While we respect the positions  
10 of those who protest zero-tolerance policies, we ask for unified  
11 support for principals, superintendents and school boards who, at the  
12 school level and on a daily basis, bear the major responsibility--and,  
13 also, I should put in the teachers--for the safety and well-being of  
14 students and staff.

15 As a nation, we must take a strong and unified position that  
16 weapons, illegal drugs, violent acts, discrimination and harassment  
17 cannot and will not be tolerated in our schools. Students who commit  
18 such acts must be prepared to face the consequences of their actions.

19 To back away from a zero-tolerance policy places students  
20 and staff in harm's way and enhances the probability of future acts of  
21 violence. Students have a right to expect that their lives will not be  
22 in danger in a school building and that the climate is free of threats  
23 and violence.

24 Zero-tolerance policies clearly stated and fairly  
25 administered meet parental and societal expectations and protect the

1 physical well-being of students and staff. It is our hope that  
2 parents, communities and governments will support school leaders as  
3 they make difficult decisions and exert leadership in maintaining a  
4 school climate that is safe, orderly, drug free and conducive to  
5 teaching and learning.

6 CHAIRPERSON BERRY: Thank you very much, Mr. Yurek. Again,  
7 there will be questions.

8 Our last panelist for this section is Lilliam Rangel-Diaz  
9 who is a board member of the National Council on Disability since 1995.  
10 NCD is the independent federal agency that provides advice to the  
11 President and Congress on issues related to children, youth and adults  
12 with disabilities.

13 She is the Director of the Center for Education Advocacy in  
14 Miami and a member of the advisory board of the University of Miami  
15 Mailman Center for Child Development Preschool Inclusion Project. She  
16 has five children, the oldest of whom has developmental delays and a  
17 stepmother to a child with disabilities.

18 Could you please proceed.

19 MS. RANGEL-DIAZ: Thank you, Madame Chair and Commission  
20 members. Good morning. I want to thank the Commission for holding  
21 this briefing on this very important issue of zero-tolerance programs  
22 in schools and how it is adversely affecting and violating the civil  
23 rights of our students.

24 While these programs were created following the enactment of  
25 the Gun Free Schools Act of 1994, schools are using suspensions and



1 expulsions at alarmingly increasing rates and for incidents not related  
2 to possession of a weapon.

3           In many instances, as many others have pointed out, the  
4 punishment does not fit the crime. Students are being suspended and  
5 expelled without even affording them and their parents the minimum  
6 rights available to them under the school's own policies and  
7 procedures, not to mention the due-process rights available to them  
8 from our U.S. Constitution.

9 :           Furthermore, schools are using adverse techniques such as  
10 involuntary commitment of students as young as elementary-school-age  
11 children to mental institutions under the Baker Act. Parents are not  
12 even contacted by the schools and learn of their children's whereabouts  
13 by a telephone call from the mental institution or the jail, whatever  
14 the case may be.

15 - 4 -           Some large school districts, such as the Miami-Dade County  
16 School Districts, where I reside, have availed themselves of their own  
17 police force and police officers are routinely called to handle  
18 discipline issues in schools that do not necessarily warrant police  
19 involvement.

20           Because I was the last panelist, I had the opportunity to  
21 take notes. Please bear with me. It seems that school districts have  
22 become very good at bypassing the bureaucratic hurdles that, as Ms.  
23 Bond referred to, of disciplining students with disabilities, as  
24 students with disabilities are the most affected, especially those from  
25 poor and diverse cultural backgrounds.

1           The expulsion rates of students with disabilities is double  
2 that of their nondisabled peers. For example, in the State of Florida,  
3 in the 1998-1999 school year, 13.2 percent of disabled students  
4 received in-school suspensions while only 7.5 percent of non-disabled  
5 students received in-school suspensions; 14.9 percent of disabled  
6 students received out-of-school suspensions while only 6.6 percent of  
7 non-disabled students received out-of-school suspensions. These  
8 figures were reported to the Office of Special Education Programs.

9           In its 1998 position statement on the discipline of students  
10 with disabilities, NCD, the National Council on Disabilities, noted  
11 that, historically, the need for discipline and order has been a  
12 pretext for the full-scale exclusion from education of hundreds of  
13 thousands of children.

14           Children with disabilities continue to be at greater risk of  
15 being subjected to disciplinary action precisely because they have  
16 disabilities. In 1997, NCD held a hearing in Louisiana focussing on  
17 the needs of children with disabilities from rural and minority  
18 communities.

19           Advocates told NCD that discipline is disproportionately  
20 applied to students with disabilities who are members of minority  
21 groups. A Louisiana advocate who spoke about the problem of schools  
22 removing students for extended periods of time, said, particularly in  
23 large urban districts, many such students are ignored and are never  
24 referred for services they need in order to learn.

25           Not surprisingly, this contributes to behavior problems

1 which are then solved by expelling the student. NCD has continued to  
2 hear this from advocates and consumers around the country. These  
3 findings have been reported in many of our publications, specifically  
4 in three of our recently release reports.

5 I am going to leave them here for your perusal. They are:  
6 Back to School on Civil Rights; Advancing the Federal Commitment to  
7 Leave No Child Behind; in our report, From Privileges to Right: People  
8 Labeled with Psychiatric Disabilities Speak for Themselves; as well as  
9 in Lift Every Voice; Modernizing Disability Policies and Programs to  
10 Serve a Diverse Nation.

11 I want to call special attention to the NCD independent  
12 analysis of the federal monitoring and compliance enforcement with IDA.  
13 Its findings and recommendations can be found in the report entitled,  
14 Back to School on Civil Rights; Advancing the Federal Commitment to  
15 Leave No Child Behind.

16 NCD finds that federal efforts to enforce the law over  
17 several administrations have been inconsistent, ineffective and lacking  
18 any real teeth. The findings in this NCD report show that every state  
19 is out of compliance with the IDA requirements to some degree.  
20 Noncompliance persists in some states over many years.

21 So when we speak about holding students accountable for  
22 their actions, how about holding schools accountable for the  
23 appropriate education of all students. Research has shown that there  
24 is direct link between inappropriate education and discipline  
25 procedures.

1 I think that most of us would agree that schools should  
2 protect students and provide them with a safe learning environment.  
3 Recent events such as those that occurred in Columbine High School have  
4 served to heighten the level of security in our schools. However, in  
5 our zealous pursuit of safety in schools, we must exercise caution and  
6 vigilance that, under the guise of zero-tolerance programs, our  
7 students' constitutional rights do not continue to be violated.

8 Regardless of how high the crime rate may be in our  
9 communities, the concept of innocent until proven guilty has been, and  
10 continues to be, the cornerstone of our judicial system and great care  
11 is exercised to protect suspected criminals' due-process rights.

12 On the other hand, it seems that our schools have taken the  
13 attitude that students are not entitled to due-process rights and are  
14 arbitrarily found guilty, denying them access to an education, in  
15 effect, condemning them to a life sentence.

16 Thank you very much.

17 CHAIRPERSON BERRY: Thank you very much, Ms. Rangel-Diaz.

18 Does any Commissioner have any questions for any of that  
19 panelists?

20 VICE CHAIRPERSON REYNOSO: We always have questions. My  
21 first question is for Ms. Cantu. Ms. Rangel-Diaz indicated in her  
22 remarks a concern not just for the policies that the school districts  
23 have but for their implementation. Her suggestion was that all too  
24 often, one might have a policy that includes due process and all that  
25 but it is easier to get around it.

1 I wonder whether the reports that you all get could get to  
2 that or does that come to your attention only through individual  
3 complaints?

4 MS. CANTU: It would be very hard to construct a survey--and  
5 I welcome ideas on how to do it--where we would be able to compare  
6 policy to policy. The problems with the policy occur where the  
7 language is not clear and students really don't understand what is  
8 expected of them and administrators don't understand how to tie to  
9 conduct that is prohibited to the consequences that should be applied  
10 so that there is so much ambiguity that you will start to see some  
11 inconsistent applications of the policy.

12 It would be hard to construct a survey question that would  
13 get to that issue of vagueness in the policies. All we collect in the  
14 survey is enough information to then launch further questions, to then  
15 gather more information, to find out what is causing the gap to occur.

16 We don't collect information about the policies, themselves.  
17 I welcome ideas if it is possible to do but, at this point, I am not  
18 really sure of how we could.

19 VICE CHAIRPERSON REYNOSO: I have a related question for Mr.  
20 Yurek because all of you actually seem to have a pretty uniform notion  
21 of what it takes to have good policy, the dangers with the issue of  
22 zero tolerance, if they haven't been well communicated, aren't clear  
23 and so on, and then, if it doesn't have some discretion within it.

24 But, again, Ms. Rangel-Diaz has raised the more difficult  
25 issue, it seems to me, although there are some difficult issues I am

1 sure we will get back to just on the policies, of the application. Mr.  
2 Yurek, you have emphasized, quite logically, that the discretion that  
3 the principals and school teachers must have but what do you suggest in  
4 terms of the folk that believe that, even the policies that have been  
5 implemented by a school district, for example, are not being abided by  
6 the principal of that one school, for example.

7 MR. YUREK: There will be situations--I see it every day  
8 when I deal with members--where they will do something that is not  
9 appropriate or not part of the policy. But I think, in general, 99.9  
10 percent of our members will be out there advocating for students and  
11 doing the best that they can to make sure that those schools are  
12 effective, that the students are safe, in implementing the policies  
13 that are put forward by them by the school board.

14 At the same time, I guess there are several different checks  
15 in that principal's implementation of those policies, the first, of  
16 course, being their boss and superintendent making sure that they  
17 apply, and that is part of the process as well as the local school  
18 boards that have the authority to make sure that those things are  
19 applied consistently and fairly.

20 In those situations where that is not being done by both the  
21 principal, the superintendent and the school board, then we do have in  
22 place the procedures, both on a local level as with the Office of Civil  
23 Rights to make sure that they come in--and there are those situations  
24 which Norma has mentioned where they have come in and basically laid  
25 out a correction plan to say, "You need to look at these."

1 VICE CHAIRPERSON REYNOSO: Specifically, in California, I  
2 have heard that with all of this new emphasis on standardized tests,  
3 and we are going to grade every school in the whole state on how they  
4 do on the standardized tests, that there is an awfully strong urge, on  
5 the part of teachers and principals, to--I want to say it nicely but I  
6 can't--to get rid of the students who do less well.

7 Very often, those are disabled students. They are minority  
8 students, et cetera.

9 CHAIRPERSON BERRY: Students who need more help?

10 VICE CHAIRPERSON REYNOSO: Oh; that's very good. I knew  
11 there was a better way of expressing it. Because those students do  
12 less well in the standardized tests--and I have heard that from many  
13 different sources in California. I don't know whether it is true and I  
14 don't know whether that is also true in other states that have placed  
15 this emphasis on standardized tests for grading those individual  
16 schools.

17 Have your members complained to you that they are under  
18 pressure from folk to exercise their discretion in a way that places  
19 those youngsters that need greater help in schools other than their  
20 own, particularly alternative schools?

21 MR. YUREK: It is a very big issue. In particular, it is a  
22 very large issue as related to the reauthorization of IDEA because one  
23 portion of that reauthorization also requires that all students  
24 participate in the general assessments that are applied in that school.

25 What has occurred is you have the whole line of standards

1 and accountability and assessments. Our purpose, and the educators,  
2 when they look at those assessments, are supposed to be for improving  
3 student learning. However, they are now being taken out of the  
4 improvement of student learning into the political process of trying to  
5 show our schools are failing, our schools are successful.

6 They are really being used for an inappropriate purpose.  
7 That is putting the pressure upon principals, teachers, superintendents  
8 and school boards to go, "If our district is going to be graded on  
9 this, we need to do something to make sure that we are showing that our  
10 schools are good, that they are improving."

11 So there are those types of incentives that are going out  
12 there. I think the problem is that you have tied that assessment to  
13 the political process rather than to education and learning where it  
14 really belongs.

15 VICE CHAIRPERSON REYNOSO: I agree.

16 MS. CANTU: Some states have anticipated that consequence  
17 and have multiple ways of measuring a school's effectiveness including  
18 how many students have been dropping out. So there are two ways that a  
19 school can be taken over by the state; either their scores are low or  
20 they have a disproportionately high number of drop outs, in which case,  
21 that school will also find themselves with new management.

22 VICE CHAIRPERSON REYNOSO: I guess that it is just so  
23 difficult to keep those statistics. Again, in California, there has  
24 been a comparison of the total number of, say, juniors in high school  
25 in the whole state as compared to the number reported of drop outs by



1 all of the high schools in the whole state.

2 All of the high schools will report a drop-out rate of  
3 5 percent. But, magically, there are 20 percent fewer students as  
4 juniors as compared to sophomores. The suggestion is that maybe our  
5 reporting system isn't quite the best.

6 Again, because there is an emphasis in the school,  
7 obviously, to try to show a fewer number of drop outs. But then, when  
8 you get away from that self-reporting and you look just at total  
9 figures, you see they don't quite match. So it is hard to sort of grab  
10 hold of these very difficult issues, it seems to me.

11 MR. YUREK: In response to that, one of the problems is what  
12 do you define as a student. There are high turnover rates, especially  
13 in urban areas where some schools are seeing 50, 60 percent turnover in  
14 a year. Is that the drop out? How are those students tracked? Are  
15 they moving to another state?

16 Right now, the statistics don't take care of that or they  
17 are moving into a new district or they are moving into a new state. So  
18 there are all these different things that need to go into account when  
19 you are looking at those statistics. It really is hard. It depends on  
20 which numbers you are looking at and what they really mean to do that  
21 determination.

22 VICE CHAIRPERSON REYNOSO: I agree. I have more questions,  
23 but I will defer for a while.

24 CHAIRPERSON BERRY: We will get more information from other  
25 panels and some of the matters, so we will give other Commissioners a

1 crack here.

2 COMMISSIONER MEEKS: Having been in the school system, a  
3 little bit, a lot of this boils down to dynamics in the class room. It  
4 was just my observation how unprepared teachers are. I have to give  
5 teachers credit for even taking that job because it wasn't for me, I  
6 can tell you.

7 But they were so unprepared at behavior management or class  
8 management. I think that is still true from what I can see. I think I  
9 heard it mentioned, could you give a sense of the depth of this kind of  
10 training that is available or required--preferably required--for  
11 teachers.

12 MS. BOND: Unfortunately, there are very few teacher-  
13 preparation programs in colleges and universities that require class-  
14 room management or behavior management as part of the core curriculum  
15 for certification.

16 I am not sure why not. We would definitely support that as  
17 being a core requirement. The AFT, as a matter of fact, has developed  
18 a teacher professional development program that includes a component  
19 that is just on class-room management and behavior management. We  
20 actually make it available not only to teachers but to other school  
21 personnel that we represent.

22 We believe that that kind of training is very effective for  
23 class-room paraprofessionals, bus drivers, cafeteria workers, because  
24 they all are really part of the adult monitoring of student behavior in  
25 the schools and should have a repertoire of practices that they are

1 able to use to stop behavior from getting out of hand.

2 In some cases, the professional development is done in  
3 coordination with school districts where teachers will get college  
4 credit or recertification credits for taking the program. In other  
5 cases, it is provided just by the local union. There are other  
6 programs that are available.

7 We had a modified version of that that we actually also put  
8 out in conjunction with the NEA just recently, but access to that is  
9 not guaranteed in very many districts.

10 MS. RANGEL-DIAZ: Could I address your question, please. In  
11 some states, for instance in the State of Florida, we have a positive  
12 behavior-support team which is a resource to the state and to all the  
13 school districts out of the University of South Florida. I happen to  
14 be a part of that team.

15 Schools are responsible for providing teachers with  
16 professional development. This is a resource that will not cost any  
17 money other than providing the teacher with the time needed to  
18 participate in the training. It yields wonderful results for all  
19 students, not only for students with disabilities. It is a positive  
20 approach to behavior management.

21 COMMISSIONER EDLEY: If I can ask Mr. Modzeleski, do you  
22 have authority in your program to deny funding to school districts that  
23 don't meet your policy guidelines? Is it a formula grant? Is it a  
24 competitive grant?

25 MR. MODZELESKI: Funding can be denied if they do not comply

1 with the Gun Free Schools Act. It is not only Safe and Drug Free  
2 Schools money. It is all funding under the Elementary and Secondary  
3 Schools Act. So they are required to basically comply with that  
4 provision of the law.

5 COMMISSIONER EDLEY: But any of the policy principles that  
6 you and the Assistant Secretary mentioned concerning sound discipline  
7 practices, are any of those codified as policy guideline?

8 MR. MODZELESKI: Hopefully. They are part of Title XI of  
9 the appropriation.

10 COMMISSIONER EDLEY: But under current law.

11 MR. MODZELESKI: Under current law? No, sir.

12 COMMISSIONER EDLEY: So all the policy statements that you  
13 made, at this point it is precatory.

14 MR. MODZELESKI: At this point it is, and they are proposed  
15 in the ESEA reauthorization proposal.

16 COMMISSIONER EDLEY: What is the political prognosis for  
17 your Title XI proposals? My sense is that they are dead.

18 MR. MODZELESKI: I won't even take a guess on that.  
19 Actually, I should say that the Safe and Drug Free Schools--I will tell  
20 you what I know rather than taking a guess. On the Senate side, there  
21 is considerable movement on ESEA and on the provisions related to  
22 discipline, school safety and violence. That is ongoing and has been  
23 ongoing for the last month.

24 We have considerable dialogue with both parties and both  
25 sides up on the Senate side.

1           COMMISSIONER EDLEY: May I ask, Ms. Bond and then Mr. Yurek-  
2 -let me just be candid. I was trying to listen carefully to what each  
3 of you were saying. It sounded as though, from your perspective,  
4 speaking on behalf of teachers and on behalf of principals, you don't  
5 see that there is any signature civil-rights issue.

6           MS. BOND: No; I wouldn't agree with that at all. I think  
7 that what I tried to indicate is that we are talking about very  
8 different things all under the rubric of zero tolerance. Some of the  
9 programs are very good and are similar to what we recommend. Some of  
10 them are really pretty much exactly what was happening for the past  
11 forty years. They just are repackaged and called zero tolerance, but  
12 the practices and the policies have not changed.

13           So, to some extent, even though I think--to the extent that  
14 zero tolerance means that there is clarity about what the policy is and  
15 what the punishment will be for various types of infractions, that that  
16 may be progress if there is public reporting connected to that.

17           But it is not the same thing that is being discussed from  
18 district to district. Lots of thing are being called zero tolerance.  
19 Some of them are good and some of them are terrible.

20           COMMISSIONER EDLEY: If I can press you for a bit because I  
21 am a little concerned that they are somewhat distinguishable issues  
22 here. I think that there is a question of clarity in policies in the  
23 statement of policies, and so forth. But there is also a question of  
24 whether or not, either in the formulation of the policies or in their  
25 application, there is unfairness perhaps amounting to illegal

1 unfairness against groups that are protected by our civil-rights  
2 statutes.

3 I take it, Mr. Yurek, that, in your view, while there may be  
4 a few bad apples, the principals of America are out there doing just a  
5 great job and there is no significant problem, as far as you are  
6 concerned, no significant risks of cultural, racial, ethnic biases that  
7 may come out either in the way in which discipline policies are adopted  
8 or the way in which they are enforced; right?

9 MR. YUREK: The position that we have is I don't think there  
10 is an overall civil-rights problem. I think there might be individual  
11 cases on a case-by-case where there are inappropriate civil-rights  
12 violations potentially occurring. But, overall, I think if you take  
13 what is going on and if these policies are implemented as they are  
14 intended and as they are stated in a fair and consistent way, there  
15 would not be that discrimination or this disparate treatment.

16 I think you also need to look before you make that  
17 determination--

18 COMMISSIONER EDLEY: That is a pretty big "if," though, sir.

19 MR. YUREK: But there are no facts right now to show that  
20 that is occurring.

21 COMMISSIONER EDLEY: There are very substantial disparities  
22 which you said you attribute to socioeconomic differences. But do you  
23 have data that suggests--what fraction of the disparity that we  
24 observed, do you think, is attributable to socioeconomic status?

25 MR. YUREK: There is no data right now, but I am saying that

1 you can't just rely upon the numbers as it relates to what the  
2 Department is collecting right now related to race and ethnicity to  
3 make the determination that there is discrimination or disparate  
4 treatment because you have to look at the socioeconomic.

5 If you look at that, I think you will see clearly that there  
6 is probably more equal treatment across races. The problem is that the  
7 people that are tending to get into problems or in trouble are the ones  
8 that are--

9 COMMISSIONER EDLEY: Let's put to one side the question of  
10 whether or not we should be concerned about discrimination against poor  
11 kids. Let's just pretend that we don't care about that because that is  
12 not in our statutory mandate. But just focussing on the race question,  
13 since you confessed to being a lawyer, what do you think it would take  
14 for us to be concerned that at least there is a prima facie case of a  
15 civil-rights problem that warrants serious investigation.

16 You are willing, it seems to me, to just dismiss because you  
17 think class may be a factor. I am not saying that the disparities we  
18 see in the data are proof that there is a problem but it certainly  
19 seems to be a prima facie case, speaking loosely, not speaking in terms  
20 of the element of the Title VI offense. But there is at least smoke  
21 here.

22 MR. YUREK: I think the civil-rights abuses probably are not  
23 so much related to the education policy. I think it is a broader issue  
24 because of the disparate levels of minorities and people with  
25 disabilities in those classes. I think we have to deal with the bigger

1 problem which is the socioeconomic problems. I think that will solve a  
2 lot of the other issues that are going on in society.

3           There are people out there that have biases in different  
4 places in the country and discrimination occurs. But I think zero-  
5 tolerance policies, minimum-sentences guidelines, all these other  
6 things really deal just with the surface issue, a quick fix in trying  
7 to deal with equality.

8           I think until we deal with the true issue, which I think is  
9 more of a socioeconomic, we are going to have those issues occurring  
10 and that discrimination based on race and ethnicity.

11           COMMISSIONER EDLEY: Lastly, and then I promise to subside,  
12 if I can go back to the Secretary. I guess I am looking for something  
13 from you, from the Department, that, in the meeting that I attended  
14 with the Secretary a couple of months ago, I think you will recall that  
15 Jesse Jackson and Jim Comer and I and others spent about two hours  
16 trying to get the Secretary to say whether he did or didn't believe  
17 there is a serious civil-rights issue out there, and we never really  
18 get an answer from him.

19           What do you think?

20           MS. CANTU: I was at the same meeting. I heard the  
21 Secretary repeat what he has been saying for a number of years, and  
22 that is the statement you heard Bill Modzeleski say, that students  
23 should not be punished for some conduct problem by having their entire  
24 education opportunity removed from them.

25           He has been successful--it has been a struggle, but he has



1 been successful in winning that point for children with disabilities.  
2 Through the IDEA we have right now, children with disabilities can't  
3 have their education removed from them. Yes; they can be removed from  
4 the class room if that is appropriate, but, wherever they move, their  
5 education opportunities follow them.

6 Now he is committed, and he made this commitment before the  
7 meeting with Reverend Jackson--now he is committed to make that true  
8 for all children, regardless of race, regardless of ethnicity,  
9 regardless of socioeconomic background.

10 If you are being punished, it is inconsistent to say, "Okay;  
11 you are being punished. And, by the way, you don't have to do any more  
12 homework. Isn't that a lovely punishment we are giving you?" So the  
13 message he is trying to deliver is a message of the students deserve a  
14 punishment, but the education responsibility that we have as a society  
15 does not evaporate because the student is going through a punishment.

16 They still have to do homework. They still have to keep up  
17 with their studies. So he is trying to do that. That is why I was so  
18 glad you asked about Chapter 11, the part of the Title I  
19 reauthorization, and you we asked what our chances are of passing it.  
20 I can't predict our chances, but I think this hearing is very valuable  
21 because it is drawing attention to something that some states have done  
22 already.

23 They have said if a child is suspended, there will be an  
24 educational program--maybe in a different setting, but there is going  
25 to be an education program to follow that child. Some states have said

1 that, but not all states. So we have an opportunity, if we can get  
2 this passed, to make that true for all states, for all children,  
3 disabled and nondisabled alike.

4 I think that is real important. What Reverend Jackson was  
5 doing was drawing attention to that issue. This is something the  
6 Secretary has been trying to do and I am glad the Commission is doing  
7 that as well.

8 So if you were waiting for him to say something new, I'm  
9 sorry, but he had already been saying it. It is a serious issue and he  
10 been working on this.

11 COMMISSIONER EDLEY: But even what you have said, though, is  
12 a focus on the question of what happens once the punishment is meted  
13 out so that education continues, so that some sort of alternative is  
14 available that makes sense.

15 But I think, certainly, what we are going to hear from other  
16 people in the other panels is that punishments are often not designed  
17 in a way that makes sense in terms of education policy and what child  
18 psychologists talk about in terms of effective interventions.

19 But they are also going to say, I am quite confident, that  
20 there is at least a perception that the punishments are not applied in  
21 an equitable manner, that there is, no matter how clear the rules are  
22 written, that there is inevitable discretion at the point of the  
23 sanctions and that racial, ethnic, cultural disability considerations  
24 enter into it and unfairness results.

25 MS. CANTU: I don't think he needed to be persuaded because

1 it was already in his Title I package that there should be fair and  
2 equitable discipline policies, all school districts should have them,  
3 and that we should use our federal authority in Title I to make sure  
4 that happens.

5 I hear that you wanted to have him come out with a new  
6 statement, but I thought the statements he had already made about  
7 having fair and equitable discipline policies in all schools through  
8 the Title I Program and in being sure that there is not a disruption of  
9 education where a punishment is administered; I think those are  
10 statements that he is going to continue saying because he believes in  
11 them.

12 MS. BOND: May I comment very briefly?

13 CHAIRPERSON BERRY: Yes; just very briefly because we need  
14 to get back on schedule.

15 MS. BOND: I'm sorry. I just wanted to say that,  
16 historically, there has been a problem. Statistics would suggest that  
17 it is getting slightly better, but it still exists. To the extent that  
18 zero tolerance means that policies are becoming articulated, then there  
19 is a possibility to determine whether or not they are any good and  
20 there also is the possibility to determine whether or not they are  
21 being implemented fairly.

22 I see that as progress.

23 COMMISSIONER EDLEY: That is a good point.

24 CHAIRPERSON BERRY: I had just three very fast questions  
25 because I want to move on to the next panel. Otherwise, we will never

1 get to all the panels and people are waiting and have been here so it  
2 is not fair to not bring them on.

3 Mr. Modzeleski, you said in your testimony, if I recall it  
4 correctly, that something like 40 percent of the schools have  
5 alternative educational programs for kids who are suspended for some  
6 reason. In other words, not all do. Not all report them and not all  
7 report what they actually do in terms of educational services and  
8 alternative schools.

9 Whether they are good or bad or not I will get to, but it  
10 was something like that, not a 100 percent figure, in terms of what you  
11 know about it.

12 Is there anything you can do with the program that you have?  
13 Barring that the legislation is passed, is there anything else you can  
14 do to make sure that they do and, also, do you have any idea whether  
15 the alternative schools are any good?

16 MR. MODZELESKI: There are a couple of questions there.  
17 First of all, that figure had to do with just those students who were  
18 expelled for bringing a firearm to school. So those were provided  
19 alternative education.

20 Historically, alternative education programs have not been  
21 viewed too highly by the community, by the educational system. I  
22 think, consistent with Secretary Reilly's policy on education, we are  
23 not only talking about educational services for children who have been  
24 suspended or expelled, we are talking about high quality.

25 We want those individuals and those students who have been

1 suspended and expelled--

2 CHAIRPERSON BERRY: What are you doing besides wanting it?

3 MR. MODZELESKI: First of all, we are working with the  
4 House. There is a provision that is being discussed right now, a  
5 separate alternative-education bill.

6 CHAIRPERSON BERRY: But isn't there something you can do  
7 without a bill? The Education Department has Title I. You have got a  
8 lot of discretionary--

9 MR. MODZELESKI: We do. We have Title I. You have the 21st  
10 Century Learning Program, \$453 million in Fiscal Year 2000 that is  
11 being linked to this. We are working with the Department of Justice to  
12 look at using boys and girls clubs and other community groups and  
13 organizations to provide alternative settings.

14 CHAIRPERSON BERRY: But you don't have an answer yet to how  
15 everybody is going to be able to do this by the year 2001 or something.

16 MR. MODZELESKI: I don't think there is an answer for how  
17 everybody is going to do this. I would also say--

18 CHAIRPERSON BERRY: Everybody was trying to have a drug-free  
19 school by 2000 or something.

20 MR. MODZELESKI: Those are goals which the President and the  
21 fifty Governors set several years ago. Let me just say it is not  
22 alternative schools, Madame Chairman. We have 15,000-plus school  
23 districts in this country, over 100,000 schools. This is not one size  
24 fits all.

25 I think alternative schools may be part of the answer, a

1 part. But we also need to be thinking out of the box. We need to be  
2 thinking creatively as to what are some of those other mechanisms and  
3 strategies that would could employ to continue to provide educational  
4 services.

5 The are some good things going on, whether they are in-  
6 school programs, Saturday programs, working with clergy and other  
7 religious groups and organizations. What we are attempting to do is  
8 try to find out what some of those good practices are and try to  
9 package them, get them out so other schools follow.

10 We are putting a little bit of money into this in this  
11 fiscal year, but it is not a whole lot. It is \$10 million. That is  
12 not a lot in the broad scheme of things, but we do believe that that  
13 \$10 million will give us more information about the direction that we  
14 should go in and more models about what is working in this particular  
15 area.

16 CHAIRPERSON BERRY: Why didn't your program, your drug-free  
17 program, affect things like those people bringing guns into school and  
18 killing those people out at Columbine and these other things? What is  
19 the relationship between the Safe and Drug Free School Program and the  
20 fact that people bring guns into schools and do things like that?

21 MR. MODZELESKI: First of all, let me say that there has  
22 been a decline over three years in the number of firearms that have  
23 gone into school and that it is not only a policy that is going to  
24 prevent youth from bringing firearms.

25 The President has made repeated statements as late as early

1 this week about the need for better gun-control laws, especially as it  
2 applies to youth. The Secretary has said repeatedly that what we need  
3 is strong gun control as it applies to youth.

4 Guns in the hands of kids really is a volatile mixture. We  
5 have over 200 million guns, firearms in this country. This needs a  
6 community response. The policy helps, but without the support of the  
7 community, without some stronger laws and implementation of those laws,  
8 we are not going to be successful.

9 CHAIRPERSON BERRY: I have one quick one for you, Ms. Cantu-  
10 -well, two quick, fast ones. Do you collect the same data that is  
11 collected by the Special Education folks on suspension related to  
12 disability?

13 MS. CANTU: No; we coordinate to be sure we are not  
14 collecting the same data. We share what we collect with the Office for  
15 Special Ed and we have access--

16 CHAIRPERSON BERRY: But you enforce ADA, and so you could  
17 give a chart to us just like the one you did for people of color  
18 concerning students who were suspended for disabilities. Could you do  
19 that?

20 MS. CANTU: I will find out if we can; yes.

21 CHAIRPERSON BERRY: If you are required to enforce that  
22 statute, too, wouldn't you know--

23 MS. CANTU: I don't know off the top of my head, if I ask  
24 that same question by disability that I asked by race.

25 CHAIRPERSON BERRY: Could you ask it?

1 MS. CANTU: We will find out.

2 CHAIRPERSON BERRY: Do you think, given the severity of the  
3 problem as described by Ms. Rangel-Diaz that it would make sense for  
4 the Department of Education to collect data and present it on  
5 suspensions and expulsions related to disability?

6 MS. CANTU: I will find out. We may already have it. I  
7 will find out for you.

8 CHAIRPERSON BERRY: And then we could also determine the  
9 overlap between people of color who are also identified as disabled,  
10 and vice versa, which would give us some answers.

11 MS. CANTU: I will ask that, as well.

12 CHAIRPERSON BERRY: But you do coordinate with the Special  
13 Education--

14 MS. CANTU: Yes. The Office for Special Education and  
15 Rehabilitation Services deals with states because the state grants go  
16 through the state education agencies. We deal with states, but we also  
17 deal with local schools and with individual districts. So when we  
18 collect data, we collect it straight from the schools.

19 When the Office of Special Education collects data, they go  
20 to the state education agencies and they ask them. They go directly to  
21 the school.

22 CHAIRPERSON BERRY: But you could collect the same data on  
23 disability that you get from schools--

24 MS. CANTU: Yes. If it is a question that isn't currently  
25 being asked, we would have to get permission from the Office of



1 Management and Budget to expand the survey. You are familiar with the  
2 whole process on how to expand a survey.

3 CHAIRPERSON BERRY: Right.

4 MS. CANTU: But it may be a question we are already asking.  
5 I will find out for you.

6 CHAIRPERSON BERRY: If so, you could give us some charts  
7 like this on disability. The other question is how do you get examples  
8 like that one you gave us about the black kids who were getting  
9 disparate treatment in the school system and you settled it. How do we  
10 stop people from continuing to do this?

11 We have data that indicates that there is disparate  
12 treatment. I will get to Mr. Yurek's point in a minute, but how do we  
13 publicize the fact that OCR has this enforcement responsibility so that  
14 people know it and they can complain to you.

15 Also, how do we get more compliance reviews so that you can  
16 ask these questions. Is it simply a matter, as you said earlier--you  
17 need more money so you can do more compliance reviews. But how do you  
18 publicize? A lot of people don't even know that you went down and you  
19 did this in this specific case that you have put here.

20 So when they have complaints, they know that they are  
21 supposed to flood you and your office. You say you don't get that many  
22 complaints about zero tolerance. It is in the media all the time.  
23 There are reports and so on. But if you are not getting complaints and  
24 people are going to court and filing law suits, which is what they seem  
25 to be doing, then maybe there ought to be some way to generate more

1 attention to your office.

2 What do you think?

3 MS. CANTU: Our emphasis has been to try to prevent it from  
4 happening in the first place so no one needs to complain about it  
5 because it never happened. Ways to do that are we try to share  
6 information. We present at teacher organizations. We have been  
7 invited by AFT and NEA to go directly to teachers and to make  
8 presentations at their conferences.

9 We put information on our web site but we would welcome  
10 ideas on how to get more attention, not because I want to see more  
11 complaints but because I want to prevent it from happening in the first  
12 place.

13 The compliance reviews have been increasing every year. We  
14 are adding more and more of agency-initiated investigations. So that  
15 is a trend that we are already exploring. I find it hard to predict  
16 what the media wants to cover. If you give them a successful story  
17 that you have resolved something effectively and it is no longer a  
18 problem, it may not get covered because it is no longer a problem.

19 Too many of the media folk want to cover controversy. They  
20 want to cover a problem that has not been solved versus one where a  
21 solution has been found. So I would welcome ideas on how to effect a  
22 culture shift. But that has been part of the challenge that we faced  
23 is that we have more than 600 resolutions in the area of discipline  
24 every year, and they don't get covered because they are resolutions,  
25 because they are non-stories in the sense that they are not conflicts.

1           CHAIRPERSON BERRY: Mr. Yurek, the only question for you is  
2 you pointed out that you think looking at suspensions based on  
3 socioeconomic background of the students would be a good idea, if I  
4 heard you correctly, and looking at what may appear to be racial  
5 disparities, you said, would not, in a legal sense, indicate that there  
6 had been disparate treatment, which I would agree with although it  
7 would raise questions.

8           Is it your suggestion that your principals believe that, if  
9 we were to look at it in terms of socioeconomic data, we would not find  
10 a disproportionate suspension rate for people of color? Is that what  
11 you are asserting, that you would find that people of color are no more  
12 likely to be suspended than anybody else if we did it on socioeconomic  
13 data?

14           MR. YUREK: That is our hope. That will be coming out on an  
15 individual basis. I can't assure that. I think really what we are  
16 trying to do is remove this from the issue of race and really dealing  
17 with the core issue of giving these kids that are getting into trouble  
18 a sense of self worth in dealing with that issue rather than looking at  
19 these zero-tolerance laws and other things, to raise the level of  
20 discussion away from the race issue to socioeconomic and giving these  
21 kids a chance and an ability to have a feeling that they have a future,  
22 they have hope.

23           I think if we start addressing those issues of school  
24 climate and community--our schools are a reflection of our society. We  
25 need to start changing that. I think that is really what we are

1 getting at. Hopefully, if we look at socioeconomic, the disparity  
2 isn't there or definitely will not be as great as it shows just looking  
3 at the issue of race.

4 CHAIRPERSON BERRY: Isn't that awfully facile because, after  
5 all, we do know that people of color, especially blacks and Latinos,  
6 and certain groups of Latinos, are disproportionately poor. So the  
7 likelihood, give the school systems and the data, that you would find  
8 that suddenly there was no apparent disparity in the figures if you did  
9 it socioeconomically and the whole race issue would disappear.

10 It is sort of wishful thinking, isn't it?

11 MR. YUREK: But I think it is also trying to say we need to  
12 deal with the core issue. I think that is really what we are getting  
13 at. You can't do the surface anymore. I think we really need to start  
14 dealing with the core.

15 CHAIRPERSON BERRY: We would all agree with that.

16 We need to move on to the other panel. We thank you very  
17 much for coming. Sorry we are running overtime. In part, we did so  
18 because people talked longer than they were supposed to. From now on,  
19 we are going to keep track.

20 By the way, I forgot to thank the staff for the briefing  
21 paper that they prepared for the Commission.

22 Panel I (Continued)

23 CHAIRPERSON BERRY: If we could have Ms. Heastie, Dr.  
24 Underwood and Ms. Thompson come forward, I would very much appreciate  
25 it. Dr. Underwood has appeared before us before at our hearings on

1 schools and religion. At that time, she was not, I think, general  
2 counsel for the National School Boards Association, if I am correct.  
3 She is now the general counsel

4 She has been at dean at Miami University in Oxford, Ohio, a  
5 faculty member at various institutions, written a number of books and  
6 articles. She is a lawyer and a scholar. She is with us today.

7 I am going to introduce everybody at once and then go back.  
8 Ms. Ernestine Heastie is a elected member of the Fairfax County  
9 Virginia School Board. She is a retired teacher in early childhood  
10 education. She has a degree from Trinity College and a B.A. in  
11 sociology from Howard University. She has children who are graduates  
12 of the Fairfax County Schools.

13 Ms. Rita Thompson is also a member of the Fairfax County  
14 Virginia Board of Education. She has been, for twenty years, a  
15 community volunteer, educational leader and political activist. She  
16 was appointed by Former Governor George Allen as Virginia's  
17 representative to the Education Commission of the State. She was also  
18 Chair of the Virginia Department of Social Services Subcommittee on  
19 Child Care Development.

20 She is currently the national spokesperson for Concerned  
21 Women for America. She is a lawyer and also a person trained in  
22 diplomacy at the Fletcher School and at joint program at Harvard and  
23 Tufts.

24 I want to welcome all three of you and ask you to please, if  
25 you can, summarize what you have to say--I know that is always

1 difficult--so that we have time for questions about this matter.

2 We are going to begin with you, Dr. Underwood.

3 DR. UNDERWOOD: Thank you. And thank you for inviting me,  
4 again, to provide information to you in your deliberations. My name is  
5 Julie Underwood. I am now general counsel of the National School  
6 Boards Association. I have also brought with me one of our staff  
7 attorneys, Julie Lewis, who is staff attorney for the National School  
8 Boards Association.

9 At the National School Boards Association, we focus  
10 primarily on issues of increasing student achievement and focusing on  
11 school-board leadership. So, trying to bring those issues into light  
12 of zero-tolerance policies, where do we come in this mix, really is the  
13 intersection of our concern for student safety and really looking at  
14 good climates for schools so that students can achieve.

15 I think there are lots of valid reasons to have a zero-  
16 tolerance policy. My concern mainly is that we think about zero-  
17 tolerance policies and have a common definition. As you spoke earlier  
18 with the previous panel, the question of what are you talking about  
19 here; are you talking about zero-tolerance policies or are you talking  
20 generally about student discipline.

21 When we talk about zero-tolerance policies, I am generally  
22 thinking of those policies which are more of a mandated sentencing, if  
23 you would, kind of policy so that there is a predetermined sentence,  
24 using the term generically. It sounds awful when you are talking about  
25 children and sentencing, but a predetermined disciplinary response is

1 what the academic literature uses, a predetermined disciplinary  
2 response for a particular infraction.

3 That is what I think about in terms of zero-tolerance  
4 policies. There are other things that we could talk about, but I would  
5 like to focus on that. There are very valid reasons to implement  
6 those. One is to actually put students and the community more on  
7 notice and heighten awareness of particular grievances or particular  
8 horrendous acts that the school doesn't want to have happen.

9 So we see zero-tolerance policies for drugs. We see zero-  
10 tolerance policies for weapons. And we may, in fact, see zero-  
11 tolerance policies for threats of some particular nature. So, once you  
12 put the community on notice, you heighten awareness and, hopefully, you  
13 improve the school climate because those are things we are not going to  
14 tolerate in terms of respect or the nature of our schools.

15 Another reason that you might want to enforce a zero-  
16 tolerance policy would be because of issues of discriminatory  
17 implementation that may have occurred in the past. Once you have set a  
18 predetermined disciplinary response, it is applied to everybody and it  
19 doesn't matter if you are a poor child or a Latino child or a white  
20 child or the daughter of the superintendent, which was always my  
21 problem. I always got more of a disciplinary response rather than less  
22 of a disciplinary response as a child of an administrator.

23 That is, in fact, one reason that you would enact a zero-  
24 tolerance policy, to insure that you had common treatment across all  
25 children.

1           Certainly, another reason that you enact zero-tolerance  
2 policies is as an issue of compliance. We have seen more and more  
3 states enact state statutes which require school districts to policies  
4 on expulsion or predetermined suspensions for drugs, weapons, threats,  
5 those kinds of issues.

6           We also have compliance with the ESEA conditional funding  
7 and, obviously, previously, the Gun Free Schools Act. What I am  
8 concerned about is, as we look at these zero-tolerance policies, that  
9 school districts actually do a good job of developing them because,  
10 once you put an automatic sentence there, you have to live or die by  
11 your policy.

12           So your policy had got to be adapted well with  
13 considerations of students' constitutional rights, substantively,  
14 students' constitutional rights procedurally, state statutes and the  
15 procedures for expulsion, suspension of students, the procedures for  
16 the discipline of handicapped students.

17           Those all have to be thought out before the policy takes  
18 place so that you don't have problems at the back end when a punishment  
19 has already been implemented. So I am mostly interested in making sure  
20 that, at school districts look at zero-tolerance policies, that they do  
21 so in a well-informed manner and that they craft them well.

22           That's it.

23           CHAIRPERSON BERRY: Thank you very much.

24           Ms. Heastie?

25           MS. HEASTIE: I would like to say a little bit about--as



1 Chairman Berry has said, I am from Fairfax County. We are the largest  
2 school system in Virginia and among the twelfth largest in the nation.  
3 We are ethnically diverse. We are 11.4 percent black students, 10.4  
4 Hispanic, 14 percent Asian, and we have students coming from 150  
5 different countries and speaking 100 different languages.

6 Are elected school board is also diverse. There are three  
7 black members and one Hispanic member out of a twelve-member board.

8 I would like to say I see zero tolerance as a need that  
9 means that there are certain acts in a school which would never occur  
10 and, if they do occur, should bring on the perpetrators' immediate  
11 sanctions. I think the most important reasons for that are because  
12 there is the physical and psychological welfare of all the students in  
13 that school.

14 Students can't learn if they don't feel safe in school so  
15 that has got to be the first priority. After saying that, in addition  
16 to those students having a right to feel safe in school, there is also  
17 a need to deal with that individual student who has perpetrated the  
18 act. We have a responsibility to him as well.

19 What has happened in Fairfax County; we do see zero  
20 tolerance as referring to guns, as referring to drugs and also  
21 participation in amabizole(?). What we do have, and what we offer as  
22 options, and so what I do like about the Gun Free Schools Act is that  
23 it did provide for modification for special circumstances.

24 What we have done with that is offer alternative placement.  
25 In very few cases, when a student is recommended for expulsion, is that

1 student allowed to go back to his regular school. But, after the  
2 school board meets on him, we may decide to place that student in an  
3 alternative setting. Whether it is in our Intervention Support Program  
4 Center, whether it is in alternative learning center, whether, in some  
5 cases, it is private school, we do provide options.

6 Last year, there were 619 students, which is less than 1  
7 percent of our students, that were recommended for expulsion. Only 54  
8 were expelled outright without any services and all but 17 of them made  
9 it into the court or agency program of some kind.

10 While minority students are still more heavily represented  
11 among students recommended for expulsion than they are in the general  
12 student population, the percentage of minority students recommended for  
13 expulsion has gone down.

14 In 1994-1995, it was 65 percent. In 1998-1999, it is 52  
15 percent. So, since the Gun Free Schools Act went into place, the  
16 numbers of minority students in Fairfax County has gone down, of the  
17 numbers being expelled.

18 I would also like to mention that, in addition to the  
19 students that unfortunately get recommended for expulsion, in terms of  
20 discipline, we do try to provide other alternatives within schools such  
21 as we do have a Saturday school. We have after-school detention. We  
22 have in-school suspension as well as short-term suspension.

23 We now have 62 of our schools that have a time-out room in  
24 the school which has an instructional assistant or some person that  
25 modifies that school. We have all of these to try to give options,

1 number one, to keep the kids from having out-of-school suspension. We  
2 try to do a lot of things within school, and also to try to prevent  
3 situations where the student reaches the level of being recommended for  
4 expulsion.

5 I think zero tolerance of certain acts, clearly, we must  
6 have that. We need that. But there also must be flexibility so that  
7 we look at the situation because when I look at cases that come before  
8 me, every case is different. In some cases, the student may be the  
9 only functional person coming from a family and that student needs to  
10 be treated differently than the student that kind of comes in there and  
11 does not show any remorse, does not show that he realizes how very  
12 serious the act he took was.

13 Therefore, that student must be treated differently. The  
14 other factors are the age of the student. One of the things that most  
15 surprised me, as a member of the school board, was seeing middle-school  
16 students--you don't expect to have twelve-year-olds come before you.  
17 That is extremely upsetting.

18 Sometimes, when those twelve-year-olds come before you, they  
19 don't know the word "marijuana." They may know the word "weed." To  
20 just expel that student for a full year is not what is best for that  
21 student or what is best for the population.

22 But we do want to take that student out of the school  
23 because we think the other students need to see this was very serious  
24 and he didn't come back. But, at the same time, we will put that  
25 student maybe in an alternative learning center where there are, like,

1 eight students to one teacher, a teacher who chose to work with those  
2 students, with the goal that, after a year or so, if the kid doesn't  
3 get in trouble anymore, that kid can work himself back to a regular  
4 school.

5 In our case, we are a large school system. We will send  
6 that child to another school. It will be a regular school but it still  
7 will not be that neighborhood school.

8 So I have not found that zero tolerance fairly affects  
9 minority students. I have to say that I believe in the Act.

10 CHAIRPERSON BERRY: Thank you.

11 Ms. Thompson?

12 MS. THOMPSON: Good morning. I am Rita Thompson and I am  
13 also a member of the Fairfax County School Board. I will try not to be  
14 redundant. Ms. Heastie and I share like philosophies about the Act and  
15 the zero-tolerance program.

16 But I would like to make a few other brief remarks about the  
17 program. One, I am, and have been for several years, and advocate for  
18 parents, as are most members of the Board, but I have done that  
19 professionally.

20 The concerns that resonate in the community are something  
21 that I have always thought was very important not only for school board  
22 members but teachers, principals and other members of the community, to  
23 be well aware of.

24 In my many conversations discussing with parents, students  
25 and administrators, the question always comes up, are our schools safe.

1 I think that we hear that throughout the United States and, really,  
2 throughout the world.

3           The answer is complex in Fairfax County, on the one hand,  
4 because I live in one of the safest counties in the United States. On  
5 the other hand, much of the shocking violence in schools across the  
6 nation has been more random than predictable. It hits safe  
7 communities. It hits affluent communities. And it hits very poverty-  
8 stricken communities.

9           This makes it critical that we not sit on our hands or our  
10 laurels of low crime rate or high standard of living, but continue to  
11 be proactive in anticipating and monitoring the potential for violence  
12 in our schools.

13           Our on-sight teachers are, obviously, the most important  
14 element of a proactive approach. We do see successfully in Fairfax  
15 County that empowered teachers and principals and administrators  
16 maintain an orderly learning environment in dealing with disruption,  
17 even to the extent when necessary, removing the child from the  
18 classroom to a time-out room.

19           The effect of disciplinary actions such as suspensions and  
20 expulsions on students' academic life is a concern to all of us and  
21 should never be arbitrarily acted upon. However, before we can address  
22 the academic impact, we need to discuss the underlying behavior in  
23 schools.

24           Rarely talked about is what is happening within young people  
25 that causes them to react with such negative emotions and antisocial

1 behavior. According to a study conducted by the Education Commission  
2 of States, many of the students who commit the most serious violent  
3 acts have felt alienated from their schoolmates.

4 The report finds that even more rarely discussed is how  
5 schools, parents, organizations and communities can nurture young  
6 people with strategies that focus on preventing violence.

7 At the very least, the study points out, young people need  
8 to experience structure in their lives, receive emotional support and  
9 have clear behavior expectations and experience meaningful consequences  
10 to unacceptable behavior. Above all, adults need to model values that  
11 help young people become healthy, balanced and productive individuals.

12 The concern over academics is a real one. Many of the  
13 students who are expelled have less than stellar academic records. It  
14 has been established in some school systems that, with the proper  
15 prevention, a student's ability for success can increase. For  
16 instance, a study conducted by the Center for the Study of Prevention  
17 of Violence in Boulder, Colorado, reported that restructuring schools  
18 to improve teaching and learning could pay a dividend in students'  
19 behavior and reduce incidences of discipline referrals.

20 I think that that is an important point because, as I said  
21 earlier, most of the students that we are seeing with these strong  
22 disciplinary problems, clearly not all of them, also are suffering  
23 academically.

24 It is my belief and the belief of many other educators that  
25 students who are having trouble with the basics in the school system

1 will find themselves in situations that will create serious behavior  
2 problems and, thus, result in a negative consequence but a necessary  
3 consequence.

4 Also, the study shows that expelling students from their  
5 regular school to an alternative education program where they  
6 participate in behavior counseling and have strong academic services  
7 seems to be a successful intervention.

8 Of course, our first method is to try to prevent this by  
9 strengthening academic standards, but in the cases where we do have  
10 behavior problems, intervention has proven to be very important and the  
11 academic component very necessary.

12 Fairfax County and our school board officers, when they  
13 expel, most often, they send students to alternative programs. They  
14 emphasize academic remediation. It is our goal to educate every child.  
15 However, a student has the responsibility to maintain a satisfactory  
16 academic record, strong attendance, abide by all the rules and  
17 regulations of the school division and the laws of community.

18 We think that we have to share the responsibility in  
19 changing this life and the student must be a participant in doing so.  
20 Although we firmly believe that these strategies will help reduce  
21 violent crimes, at the same time, we know that parent involvement will  
22 insure greater success of these strategies.

23 In closing, I would like to talk about a story that I read  
24 in a publication; School Violence; Let's Get it Out of Our System. It  
25 is about the North Carolina school system. I could have easily given

1 you another example of Fairfax County, but I didn't want to appear to  
2 be bragging too much on Fairfax County.

3           However, in North Carolina, the report showed that the  
4 school system reported that, in the 1993-1994 school year, there were  
5 448 firearm cases. In 1994-1995, there were 305. In 1995-1996, there  
6 were 206. In 1996-1997, there were 163 firearm cases.

7           Although they quickly admit that it is still too high, they  
8 are proud that they have found a policy that works. What happened? An  
9 attitude of zero tolerance with reference to firearms took hold and the  
10 results were legislation passed stiff legal consequences for possessing  
11 firearms on school grounds.

12           The lesson is passing proactive legislation, communicating  
13 that there will be consequences for inappropriate action, prioritizing  
14 safe schools, drawing attention to the program of school violence and  
15 providing programs and support that can be pointed to the key factors  
16 why there was a reduction in reported firearms.

17           CHAIRPERSON BERRY: Ms. Thompson, could you sum up? Your  
18 whole statement will be included. We just want to make sure we have  
19 time for questions.

20           MS. THOMPSON: In fact, I am about to summarize right now.  
21 I believe the message is clear. We need clear behavior expectations,  
22 meaningful consequences to unacceptable behavior, and we need to have  
23 continuing support from the parents and school staff.

24           We need school boards and legislators to provide clear  
25 policies that violence will not be tolerated in our schools.



1 Thank you very much.

2 CHAIRPERSON BERRY: I will uncharacteristically ask a  
3 question or two first, myself. Dr. Underwood, does the School Boards  
4 Association have a report or a study of the ways zero tolerance is  
5 carried out or the school boards' involvement in the implementation of  
6 the policy or something on how many systems have alternative schools  
7 and what success they have with those, or anything on this particular  
8 subject?

9 DR. UNDERWOOD: No; we have no studies particular of zero-  
10 tolerance policies or actually current disciplinary effects. In my  
11 statement, I have given you some information about zero-tolerance  
12 policies. In fact, we have a statement on school safety that includes  
13 some research that has been done across the United States.

14 But we have no original research of our own on those issues.

15 CHAIRPERSON BERRY: Ms. Heastie and Ms. Thompson, in  
16 Montgomery County, which is also a rather affluent county, I  
17 understand, the school superintendent has done a study of alternative  
18 schools and diversion in his county. He has concluded that there is  
19 disparate treatment of students of color, particularly black students,  
20 in terms of being diverted into alternative programs that are watered-  
21 down warehousing, if I may use that expression, more often than are  
22 students who are not black students.

23 He has a major effort--he is a new school superintendent--to  
24 try to deal with making sure that quality programs are provided to  
25 these students.

1           Have you done any studies in Fairfax County, which is a  
2 multiracial county, although high income--very multiracial schools;  
3 isn't that right?

4           MS. HEASTIE: Yes.

5           CHAIRPERSON BERRY: Have you done any studies of diversion  
6 to alternative schools of what happens to kids after they are  
7 disciplined which would give us any information like that? Has your  
8 board taken any interest in that subject?

9           MS. HEASTIE: I cannot say our board has taken an interest  
10 in that. We get reports about our alternative schools but I don't  
11 think we have asked that question. The question that we were aware of  
12 earlier was a disproportionate number, number one, of minority  
13 students, particularly black students, suspended.

14           In our case, at the elementary level, out of 100 percent, 45  
15 percent of those suspended were black boys. They were only, like, 11  
16 percent of the population. That was a number which I found extremely  
17 of concern.

18           What we have done is make that a target. We had ten  
19 targets. One of those targets was to come up with programs to lower  
20 that ratio, that gap, or the overrepresentation, by at least 10  
21 percent.

22           We started that last year, and so that has been a focus.  
23 That kind of stood out. Now, with the expulsions, I don't see that.  
24 But the suspensions, we did see it. So my concern was it didn't seem  
25 to pop up so much at middle and high school, but at the elementary

1 level, that was an area that we were concerned about and we are working  
2 to deal with that. That became a target last year, one of our ten.

3 I can't say it has gone down by ten, but I am told it is at  
4 least down by two. So it is moving down.

5 CHAIRPERSON BERRY: Your experience is much like that in  
6 other school districts. It is not different from other school  
7 districts--those numbers, as we heard earlier, and from the briefing  
8 papers.

9 Were you able to ascertain why this number of students were  
10 suspended, the basis?

11 MS. HEASTIE: No; I can't say. Our focus was, it is a  
12 problem. We are not sure what causes the problem so we worked on what  
13 can we do. And we talked about parent involvement. It is a case  
14 sometimes that minority parents may not be as involved in the school,  
15 may not always respond when the teacher calls.

16 Perhaps it is the case that the schools need to make sure  
17 that everybody fully understands the rules and the rules go home so  
18 that parents know what the rules are. In some cases, we talked about  
19 classroom management. Perhaps, sometimes, teachers need other  
20 strategies as to how to deal with students.

21 So we didn't come up with a reason. We looked at  
22 strategies, other things that could be done besides just suspending  
23 that kid because, obviously, if they are suspended and out of school,  
24 it affects student achievement.

25 We also talk about how are students doing and they aren't

1 doing as well as we want them to do, particularly black boys. So the  
2 worst thing that can happen is you suspend them and have them out of  
3 school. So we have looked into that and we are working on that as an  
4 issue.

5 Right now, I have to say, we have not looked at--once they  
6 are in an alternative program--how students are treated in those  
7 programs. I am not aware that it has been a problem. I think we are  
8 just pleased that there are alternatives besides just putting them out  
9 without services.

10 CHAIRPERSON BERRY: The information we have gotten from the  
11 earlier panel and in our briefings would indicate that there are  
12 serious questions that need to be looked at by school boards to make  
13 sure that alternative schools are really providing educational services  
14 and that, in many communities, they don't provide good education  
15 services.

16 We heard that from the earlier panel. Also, I was asking a  
17 simpler question about the black kids. I just wondered what were the  
18 violations, what sorts of things had they done, that was the reason for  
19 them being suspended from school, if there was some general category.

20 Was it because they assaulted somebody or they said  
21 something or they did something?

22 MS. HEASTIE: Unfortunately, I think, sometimes, at the  
23 elementary level, it was fights. It was also talking back. It was  
24 being disobedient, things like that, with the teacher, and also  
25 disruptive to other students.

1 DR. UNDERWOOD: You aren't stating that you are suspending  
2 students for talking back.

3 MS. HEASTIE: No.

4 DR. UNDERWOOD: I just wanted you to clarify that.

5 MS. HEASTIE: Okay; let me clarify that. I am saying, in  
6 terms of being disruptive. I guess I am saying, perhaps, sometimes,  
7 using language that is not appropriate. It is a pattern. I am not  
8 saying the first time the kid does that. It is ongoing with teachers  
9 feeling they are disrupting their classroom. At least those are the  
10 things we heard.

11 I wanted to add something, though, about alternative  
12 schools. One of the things we discovered was that many of them were  
13 not offering services for our ESL students. So if we put them in the  
14 school and there was no ESL teacher working with that alternative  
15 center, clearly, that kid wasn't going to be learning what he should be  
16 learning.

17 So that was one thing that we, as a board, discovered when  
18 we were trying--we see parents who can't speak the language and we were  
19 beginning to see more and more students who needed a translator.

20 We ask, when we send them to that center, do they have an  
21 ESL teacher. We were very surprised to find out the answer was no,  
22 that sometimes there was a contact--the center might be able to contact  
23 an ESL teacher to work for a certain number, but it wasn't a regular  
24 part of the program.

25 That was one of the things the board changed.

1 MS. THOMPSON: If I may add something in terms of the  
2 alternative programs, we, too, have a new superintendent. This is his  
3 second year. I have talked to him about the alternative programs from  
4 two points of view, from the community standpoint and also being a  
5 member of the board.

6 Yes; we do have some problems of perception. They are  
7 perceived as second-class educational learning centers. However, there  
8 are many things that we are learning that we need to do for students in  
9 alternative learning that they were not getting in the regular school  
10 system.

11 One, we are trying to put back into those programs explicit  
12 phonics. The classrooms are smaller. The educational component--they  
13 can have rapport. And another is to increase the academic standards.

14 Our superintendent has also felt--we have what we call the  
15 Project Excel Program which targets challenged students in certain  
16 neighborhoods to help bring up their academic standards so they can  
17 pass standardized tests but also so they can learn to read on grade  
18 level which is a problem in Fairfax County as it is around the nation.

19 In these alternative schools, we are doing the same thing  
20 that we are doing in schools that we have identified that have poor  
21 academic standards, whatever the reason may be, whether it is a  
22 parental problem, whether it is a learning disability, or whatever is  
23 causing this child to be able to not function in school.

24 We do have quite a bit of work to do in our alternative  
25 schools, but those issues are being addressed aggressively because we

1 recognize that the instructional program is an equal program to helping  
2 the student become a good citizen, not only looking at the behavior  
3 problem but looking at his academic qualifications.

4 CHAIRPERSON BERRY: Don't you think it would be well, and I  
5 will recognize you in just a minute, Commissioner Wilson, given the  
6 data that has been collected on suspensions and on disparities, not  
7 only for racial-minority kids but for disabled kids, that it would be  
8 well for any school board to be interested in whether students who are  
9 suspended, who have been engaged in the same fight, and it may be  
10 across racial lines, are given the same kind of treatment, questions  
11 like that, to make sure that if it there is a Latino kid and a white  
12 kid or a black kid or whatever, that, if they get in the fight, if that  
13 is what the issue is, that they are all treated the same way.

14 If they have some kind of apparent disparity, a statistical  
15 disparity, as it were, and also that they would be interested, given  
16 all the data about alternative schools, in whether or not kids of color  
17 are given fairly the educational services and alternative schools, that  
18 these are the kinds of questions that school boards ought to interested  
19 in?

20 DR. UNDERWOOD: Those definitely are the kinds of questions  
21 that school boards are interested in across the United States. Those  
22 data do exist. The National Center for Educational Statistics has some  
23 of those data.

24 The GAO is doing a study on special ed discipline. Those  
25 data are around. The National School Boards Association is not doing

1 any independent kind of data collection because those data exist other  
2 places, but those are exactly the kinds of questions that people do  
3 ask.

4 We annually, and on a school-district basis, collect those  
5 kinds of data to report them back to the Department of Education and  
6 places like OCR to look at disparities in discipline and disparities in  
7 disciplinary results, disparities in testing, those kinds of things.

8 CHAIRPERSON BERRY: Could you, for Fairfax County, provide  
9 for us, if your school has it, your system has it, more data about the  
10 rate of suspensions and the kinds of offenses people have been not  
11 charged with, but that they have reportedly engaged in, or suspended,  
12 and also data about what happens; do they go to alternative schools,  
13 what the rates are for in-school discipline, alternative discipline, if  
14 you have such information.

15 MS. THOMPSON: We do have such information and we would be  
16 happy to provide it to you, Chairman Berry. Just to give you an  
17 illustration of that, in terms of outright expulsion, in gun cases--  
18 let's just use firearms for an example--we had 21 cases.

19 The students that were outright expelled, which means--

20 VICE CHAIRPERSON REYNOSO: Excuse me; that means no  
21 alternative?

22 MS. THOMPSON: Yes; outright expelled. We had 27 cases.  
23 The students who were not in an alternative program was three. Of  
24 those three, I asked what was the ethnic breakdown. One was white.  
25 One is black. And one was Asian.



1           One of the things that we also see in Fairfax County is that  
2 the type of misbehaving will change from different ethnic groups. For  
3 example, black males, in fact, 88 percent of males seem to get into  
4 disciplinary problems--which is not unusual nationally, but in Fairfax  
5 County--88 percent of our recommended suspension and expulsion are  
6 males.

7           In that percentage, I asked, who is doing what. It tends to  
8 be that minority students, and particularly black students, are getting  
9 suspended for bringing some kind of weapon, not necessarily a gun, but  
10 as defined in our classification that you have there.

11           It could be a knife. It could be some other weapon, but it  
12 was because of that type of behavior. White students are getting  
13 suspended because of the drug problem, and more of them are getting  
14 suspended in Fairfax County because of drugs than, let's say, a black  
15 student.

16           We are also seeing that Hispanic and the Asian students are  
17 acting out in different ways, gang-related activity. So we are  
18 beginning to try to collect statistics to find--I don't think there is  
19 a common thread, but to see the behavior patterns of each ethnic group  
20 to determine what kind of prevention and intervention is needed to  
21 reverse this behavior pattern.

22           CHAIRPERSON BERRY: We will look forward to getting whatever  
23 statistics we can.

24           COMMISSIONER WILSON: I was curious to know--I have heard a  
25 lot about a lot of information and data about suspensions and the

1 attendance in alternative classes. But what happens when the  
2 suspensions are over and the children go back into the schools or leave  
3 the alternative classes and go back into schools, if they do.

4 Is there any data on what happens--

5 MS. THOMPSON: Are you looking for recidivism data?

6 COMMISSIONER WILSON: Well, yes. Does the problem go away  
7 or is it solved or--

8 CHAIRPERSON BERRY: Counseling or something?

9 COMMISSIONER WILSON: Right; has something happened,  
10 basically.

11 MS. HEASTIE: When we talk about the alternative schools, we  
12 are primarily talking about those kids that were recommended for  
13 expulsion and then ended up being sent to an alternative school.

14 COMMISSIONER WILSON: Or those children who were suspended  
15 for a brief period and then went back into the classroom.

16 MS. HEASTIE: The ones that were suspended for a brief  
17 period of time, we can try to get that data. Suspension is done by the  
18 principal. A principal at a school can suspend a student for up to ten  
19 days. The parent can appeal it to the area office, but the principal  
20 has the authority to do that, whereas the other case is the more  
21 extreme case where they go to alternative centers.

22 That one is a little easier, I think, for us to get the  
23 records on because we do get the records. In some cases, when we send  
24 the child to an alternative center, the price of educating that kid  
25 goes up to something like \$11,000.

1 DR. UNDERWOOD: The average would be 2.4 times the cost--

2 MS. HEASTIE: So when we have them in alternative centers  
3 and they are in a classroom, like, with one teacher and eight kids,  
4 there is an urgency in trying to help them do better so they can go  
5 back to a regular school. So that does happen and we all want it to  
6 happen because we can't afford to keep having in that classroom with  
7 that ratio.

8 COMMISSIONER WILSON: But is that data on what happens once  
9 they get back into classroom?

10 DR. UNDERWOOD: Can I speak to data collection, generally.  
11 School districts across the United States generally have not been able  
12 to collect those kind of data on a student-by-student basis.

13 We collect data, really aggregated data. As computer  
14 systems have become more available to school districts for  
15 administrative purposes, tracking student-by-student so that you can  
16 disaggregate the data and look at a child over a long-term period of  
17 time and see what happened to child, and then reaggregate them in  
18 different ways, has become more prevalent.

19 But that is something, if you were to ask Fairfax County to  
20 provide that, I wouldn't be surprised if Fairfax County, at this point,  
21 could not provide those data to you just because of the way we collect  
22 data in schools.

23 It is unfortunate, but we have become better as we have been  
24 tracking student achievement to track a child and the events that occur  
25 in a child's academic life and so be able to track that child as one

1 piece of data.

2 MS. HEASTIE: Also, the average cost to educate would be  
3 \$7,700 per student. We put them in an alternative, it goes up to  
4 \$11,000. That is when we are educating them ourselves. That does not  
5 cover the cost if we send them to a private school.

6 So we are all working to help that kid get successful  
7 because we cannot afford to keep him there. I have had cases where the  
8 students tell me that they like it at that center, where it is one of  
9 them--eight kids and one teacher.

10 But, again, one of my concerns, sometimes, has been that we  
11 rush to put them back in a regular school and, a year later, they are  
12 back looking at us. You start asking, why was it that you only kept  
13 him there four months or five months.

14 Part of it is to get into limited space. So I do know that,  
15 from the centers, they go back to regular schools because I see them.  
16 Sometimes, clearly, it is successful and sometimes it is not.

17 COMMISSIONER WILSON: I am just curious to know what is the  
18 relation of students in the regular classes?

19 DR. UNDERWOOD: The ratio?

20 COMMISSIONER WILSON: Yes.

21 MS. THOMPSON: Pupil to teacher?

22 DR. UNDERWOOD: Give us a breakdown; like, high school,  
23 middle school?

24 COMMISSIONER WILSON: Pick a number; say, middle school  
25 where there are, for instance, eight to a class in an alternative

1 school. How many would there be--

2 MS. HEASTIE: Twenty-eight to one, something like that.

3 MS. THOMPSON: We try to cap them at that.

4 CHAIRPERSON BERRY: In a regular school classroom, how many  
5 students per teacher?

6 MS. THOMPSON: Twenty-eight to one.

7 DR. UNDERWOOD: A twenty-eight to one ratio is what they are  
8 talking about. That would be at a middle-school level.

9 CHAIRPERSON BERRY: What about high school?

10 MS. THOMPSON: That would be in elementary. In our middle  
11 schools, it could go higher.

12 CHAIRPERSON BERRY: Higher, did you say?

13 MR. YUREK: Higher; yes, in our high schools.

14 MS. HEASTIE: Not that we are happy about that. Please  
15 believe me.

16 MS. THOMPSON: For example, there are certain courses like  
17 the SOL courses. We have now a proposal in, especially for students  
18 who are having problems, to cap them at twenty-five. But it is a space  
19 problem as well as a cost problem in hiring teachers.

20 But we are looking to do something in that area.

21 COMMISSIONER WILSON: I have just two more quick questions.  
22 I was curious to know, in the North Carolina school system, in that  
23 study that you referred to, was that data on the reduction of crime in  
24 the schools?

25 MS. THOMPSON: It was just on firearm cases.

1           COMMISSIONER WILSON: Is that data totally connected to zero  
2 tolerance?

3           MS. THOMPSON: They connect to zero tolerance.

4           COMMISSIONER WILSON: How did they make that--

5           MS. THOMPSON: What happened was is that the legislators  
6 gave them the authority, which the Act gave everybody the authority, to  
7 put in a very compelling zero-tolerance program. They got buy-in from  
8 the teacher, the principals and the superintendents and worked with the  
9 community.

10           I did a quick telephone call. It seemed as though everybody  
11 was clear on what the policy was, they were educated in policy, and  
12 they enforced it to the best of their ability. It was not perfect, I'm  
13 sure.

14           One of the criticisms that I heard about was the fact that  
15 fact-finding, training is more needed, especially when you have lay  
16 people collecting this information. We find similar types of problems  
17 in Fairfax County.

18           But, by and large, the due process as well as procedurally  
19 seems to be working well in North Carolina as it appears to be working  
20 most often in Fairfax County, although, occasionally, we do get  
21 complaints.

22           I think the important thing is to have the cases where they  
23 can appeal it to the school board, when they are appealed to the school  
24 board, we start over again and we look at all the facts and give them  
25 the opportunity, a final opportunity.

1 DR. UNDERWOOD: To give you another example that might be  
2 closer to home, Education Week reported that in Baltimore, Maryland,  
3 they attribute a significant decrease in crime and arrests, school  
4 crime and arrests, to zero-tolerance policies.

5 It is actually in my prepared statement that they credited a  
6 decline of 67 percent in arrest and 31 percent in general crime. That  
7 is one year. They are crediting that with a zero-tolerance policy.

8 COMMISSIONER WILSON: They are crediting it, but what I am  
9 saying it is possible that, in these past three years, given everything  
10 that has happened in the schools, maybe parents, even if they are not  
11 that necessarily involved in the way that you would like them to be,  
12 have become more aware.

13 I am just trying to figure out how they have isolated--

14 DR. UNDERWOOD: There may be lots of intercorrelations, as  
15 well. It is social-science research and so it is really hard to pull  
16 out one cause and attribute it to everything.

17 MS. THOMPSON: In North Carolina, they do give credit for  
18 community participation and parent involvement in helping the policy be  
19 successful. So I think you are right. It is just not the policy, it  
20 is community and all the members of the community working together to  
21 helping the outcome.

22 COMMISSIONER WILSON: I just have one more question and then  
23 I will be quiet. For instance, in Fairfax County, is there an effort  
24 to set up parent programs in relation to the schools, the same sort of  
25 zeal that you have set in motion, of zero tolerance programs.

1 MS. HEASTIE: I am not sure what you mean by parent  
2 programs.

3 COMMISSIONER WILSON: Programs where parents are involved  
4 with the school, where the schools try to get the parents involved.

5 MS. THOMPSON: Absolutely. I don't mean to jump in on you,  
6 Ernestine, but you know how that is my bandwagon. One of the things we  
7 have asked the school staff, in particular--and, to me, I think, being  
8 a newer member, that it is a paradigm shift to always go to the parents  
9 and say, "We need your help. We need your help," because a lot of  
10 school systems have gotten pretty autonomous because they have had to  
11 operate that way.

12 But we are making concerted effort, and at least I think  
13 that this board is making a concerted effort, to make sure that we  
14 always have a parental component to it, asking the staff, "Have you  
15 involved the parents in it?"

16 They made a tremendous presentation last night that dealt  
17 with working with schools that are having a high population of academic  
18 problems, students with academic problems. One of the things that I  
19 think went around the table was that we want to make sure that parents  
20 are well informed and involved--not just informed, but involved.

21 The Education Commission of States as well as other studies  
22 show that parent involvement is the key to many of the successes of  
23 these programs.

24 MS. HEASTIE: We are working on it. We didn't say we have  
25 solved it because one of the things we are doing is we are beginning to



1 have a position called parent liaison in our schools because of our  
2 minorities and we are particularly trying to find folks that speak more  
3 than one language because we find, when you have someone in the school  
4 that looks like a parent or can speak to a parent in their language,  
5 they are more likely to come in and get involved.

6 This has to do with our language, but some schools had  
7 coffees. The principal would invite the parents in for coffees. Well,  
8 as you know, many of our parents come from countries where they have  
9 tea.

10 So, when a principal would have a coffee, they would not  
11 quite understand what that meant. So we are doing things, but getting  
12 minority parents more involved is still something that we are working  
13 at. Some schools do it better than others.

14 COMMISSIONER EDLEY: I would, just for the sake of argument,  
15 assume that the regulation that has been adopted in Fairfax County is  
16 state-of-the-art. But I have to say that the amount of discretion that  
17 the principal has under these regulations is sort of breathtaking.

18 Again, I assume that that is not atypical of--

19 MS. HEASTIE: Would you give an example of which one you are  
20 referring to?

21 COMMISSIONER EDLEY: The description of disruptive or  
22 inappropriate behavior. I am talking about Regulation 2610.12--just in  
23 terms of the kinds of behaviors and the subjectivity that is possible  
24 in interpreting whether or not there has been an infraction, A, and  
25 then B, of course, is whether or not that infraction will or will not

1 trigger a particular sanction.

2 My question is really not whether the discretion is  
3 inappropriate but, rather, what is done to monitor whether the  
4 discretion is used in an acceptable fashion.

5 I ask the question because, number one, you do have these  
6 huge disparities in the punishments. By your own statement, you don't  
7 understand, really, what causes the disparities. You know it is a  
8 problem but you don't understand. So you have these huge disparities.

9 Number two, if you are like the rest of society, at least to  
10 me it only stands to reason that it could be that people have trouble  
11 dealing with difference and that that manifests itself in the way in  
12 which they exercise discretion.

13 MS. HEASTIE: I will say what we are doing to monitor it.  
14 For one thing, making it a target meant that we are collecting data.  
15 When you collect data and the data does say, "How many students have  
16 you suspended?" and a breakdown of those--so a school has to report.

17 The other thing Virginia is doing now with our standards of  
18 learning and our standards of accreditation, there is a report card.  
19 Principals have to report the incidence of violence, et cetera.

20 So there is more reporting and, with that reporting--and you  
21 report why, whether it was guns, drugs, whatever the reason was, so we  
22 know not just that the student is suspended but, also, specifically  
23 what they were suspended for.

24 From the principal, the principal reports to the area  
25 superintendent. The area superintendents were kind of the first people

1 to monitor, but now we are monitoring countywide. One thing about the  
2 information technology, the new world, it is easier to keep records.

3 I think it does make people more accountable when a  
4 principal knows that there is going to be a report with a time-out  
5 room. There is a report on if principals have teachers that have to  
6 say why they want that kid to go to the room as well as the principal  
7 keeping records of how many students use the room.

8 From that principal, it goes to the system. So we find out,  
9 because the principal had to request a staff for the time-out room,  
10 there was a cause to it. We find out and we ask how often is the room  
11 used, who is using it and what is the offense of the student.

12 We also ask for a breakdown by ethnic group.

13 COMMISSIONER EDLEY: That is helpful. I am reading B1.  
14 This is an example of a violation that can trigger disciplinary action  
15 at the discretion of the principal; "disruption of the educational  
16 process or disobedience, insubordination or open defiance of the  
17 authority of any teacher or staff member."

18 Maybe I should ask it this way. What is done by way of  
19 training or something to see to it that the zillions of principals that  
20 you have, the zillions of teachers that you have, in the system would  
21 interpret similar behavior in a consistent manner, given, I think, the  
22 almost inescapable vagueness of that particular formula? Do you see  
23 what I mean?

24 MS. HEASTIE: I also want to mention that some of this has  
25 to do with the states. The General Assembly of Virginia passed a law

1 allowing teachers to put out students that they thought were  
2 disruptive. It became a law that the teacher has the right to put him  
3 out of the class if he is disrupting learning.

4 So, sometimes, some of what we put in there was reflected by  
5 some of what the state kind of forced us to do with the principal being  
6 held accountable for students, but a teacher having the right--and they  
7 made it a law because teachers were complaining principals wouldn't let  
8 them put out.

9 So we are having staff development and training for class  
10 management and also training for the student rights and  
11 responsibilities so that parents, teachers and principals all  
12 understand it the same way. So that does go on in the school. There  
13 is training for student rights and responsibilities, and schools are  
14 expected to define what the rules of the school are and what disruptive  
15 means.

16 So I realize there is vagueness, but the vagueness comes  
17 from a twelve-member board writing it as relating to what the state  
18 did. When the state said teachers have the right to put a child out of  
19 their room for interfering with learning, that added something. That  
20 was a reflection of that change.

21 MS. THOMPSON: If I may just add to what Ms. Heastie has  
22 said. The teachers have the authority to send a student out of their  
23 room to the principal's office or to a time-out room if there is a  
24 time-out room available in the facility.

25 Principals, actually, oddly enough--two years ago, powers

1 were taken away in terms of suspension and they only went to the  
2 superintendent and the school board. The General Assembly, really,  
3 lobbied by the superintendent and the former school board, went down  
4 and said, "There are a lot of cases that are coming up to the school  
5 board and the superintendent that should not be there."

6 For example, a water gun, which is clearly--it looks like a  
7 water gun, but for the principal to have that go up to the  
8 superintendent's office, et cetera, et cetera, was just not efficient  
9 for the school body. It wasn't efficient for that student to be put  
10 under that kind of duress and their parents be brought in when we knew  
11 that that wasn't a case that we were going to suspend.

12 So it was at our insistence to get the principals back in.  
13 What we do, and what we do very well, we train them as to what the rule  
14 or regulation says. What we, perhaps, need to work on is to make sure  
15 that the investigatory process, and collecting data for suspensions, is  
16 done equally to the degree that they understand what the rule and  
17 regulation is.

18 COMMISSIONER EDLEY: I'm sorry; you say you train them on  
19 what the rule and regulation says. Right here, it says,  
20 "insubordination." But I don't know whether if a kid slinks away in a  
21 sullen manner that is disrespectful, whether that constitutes  
22 insubordination that permits me, as the teacher, to send them to the  
23 time-out room.

24 And I don't know--me, as the principal--whether doing that  
25 twice in a week is grounds for a nine-day suspension. I don't know

1 whether my interpretation is going to be the same as the interpretation  
2 of somebody in the next school across town.

3 MS. THOMPSON: You are absolutely right. That is why they  
4 are reviewed. The principal makes the recommendation and can suspend  
5 up to less than ten days. However, the parent, upon her or him doing  
6 that, is notified that they have a right to appeal that suspension.  
7 That suspension comes up to the superintendent's office.

8 COMMISSIONER EDLEY: I'm sorry; none of what you have  
9 described strikes me as an effective prophylactic if there is a danger  
10 of discrimination. If I am an individual parent, I can't tell whether  
11 there has been disparate treatment.

12 If the school board is simply getting aggregate statistics  
13 that say, "suspended for disruptive behavior," you don't know whether  
14 Principal A and Principal B are using the same substantive content for  
15 what disruptive behavior means.

16 It could be that Principal A is having a hard time dealing  
17 with a diverse student body that is in flux and there are tensions  
18 going on. So I guess what I am saying is that I haven't--I don't know  
19 what the answer to this is, but it doesn't strike me that we have got a  
20 handle necessary on how to detect whether there is a civil-rights  
21 problem.

22 DR. UNDERWOOD: The terms of art that are used in policies  
23 and statutes always are going to have some parameter--

24 COMMISSIONER EDLEY: Agreed; that is what the monitoring is  
25 so critical.

1 DR. UNDERWOOD: Actually, the interesting example that you  
2 provide of insubordination, in fact, that is the same terminology that  
3 we use as grounds to dismiss a teacher, or even statutory grounds to  
4 dismiss a teacher.

5 MS. THOMPSON: Or any employee, for that matter.

6 COMMISSIONER EDLEY: Frankly, I am less worried about the  
7 teachers because I think they are, in fact, big enough and powerful  
8 enough--

9 DR. UNDERWOOD: I think that you might agree that a  
10 teacher's livelihood is something of greater interest than the state  
11 may be taking away than a three-day suspension of a child. The three-  
12 day educational suspension.

13 COMMISSIONER EDLEY: It depends.

14 DR. UNDERWOOD: And dismissing a teacher.

15 MS. HEASTIE: Let me say a concern that I have is the more  
16 we try to be specific, sometimes the worse we make it.

17 COMMISSIONER EDLEY: I'm sorry; that really is not my point.  
18 I understand that the regs--

19 MS. HEASTIE: I am not disagreeing with you about  
20 disruptive--

21 COMMISSIONER EDLEY: You can't help but have it be vague.

22 MS. HEASTIE: You are still dealing with human beings and  
23 reactions--

24 COMMISSIONER EDLEY: I will subside..

25 CHAIRPERSON BERRY: Go to it; it's fine.

1 MS. HEASTIE: I don't know how you can word something so  
2 carefully--

3 COMMISSIONER EDLEY: I don't think you can.

4 MS. HEASTIE: I have found sometimes when we try to do it,  
5 we make it worse.

6 DR. UNDERWOOD: Especially when you are describing  
7 children's behavior.

8 COMMISSIONER EDLEY: Let me just be clear about what I mean.

9 MS. HEASTIE: A kid can say the same thing, and one kid can  
10 be being insubordinate and one kid can just be being friendly. It can  
11 be the exact same words.

12 COMMISSIONER EDLEY: Let me just try to be a little clear on  
13 what I am saying. I doubt that it is possible to make a lot of headway  
14 on this by adding evermore sort of verbal filigree to the regulation,  
15 trying to spell out in ever-increasing detail what is meant by  
16 insubordination, just to pick one out of fifty fuzzy words in this.

17  
18 What I was suggesting, therefore, is that, given the  
19 inescapable open-textured vagueness of the reg, the question then  
20 becomes how careful are the monitoring and training mechanisms that  
21 complement the regulation.

22 If the monitoring, the data collection, for example, simply  
23 replicates the vagueness by tallying up the number of cases of  
24 insubordination, then it is not allowing anyone to get at the question  
25 of whether or not application of the vague term is occurring in an



1 unfair, an unequal, manner.

2           The data collection would have to be somewhat more  
3 sophisticated, at least on a sample basis. The training would have to  
4 take into account and be related to how you help professionals with  
5 their classroom management strategies.

6           So, again, I don't quite know what all the answers are, but  
7 at least the discussion has helped clarify for me that there are limits  
8 as to what you can do in a reg. It is the whole system.

9           MS. HEASTIE: And I would also mention, in terms of the  
10 system, that the fact that we now have a superintendent that is Cuban-  
11 American--we, now, of the area superintendents--because, each of our,  
12 like, sixty-some schools is supervised by an area superintendent, we  
13 have three of them. Now, two of them are black.

14           So as principals explain and suspend, the person they are  
15 appealing to, right now, is more and more people who are minorities  
16 and, hopefully, would be sensitive to that.

17           The other thing I would mention is that we have diversity  
18 training. We have a Minority Student Achievement Oversight Commission  
19 that recommended that we have diversity training, that we start with  
20 the leadership. So our school board went through diversity training  
21 and then, from the school board, it went down.

22           In the past, it has just have of gone to teachers. But they  
23 made a point of saying it is important that you start with the  
24 administrators and the school board, the leadership. That is what we  
25 have done. So we have also done that.

1 MS. THOMPSON: I will try to brief, and I think you are  
2 right. We can't answer the question. The monitoring component of it  
3 is something that we probably may need to look at more aggressively. I  
4 did ask the staff about it. In fact, I asked one of our attorneys  
5 about it.

6 I do have, because I just proposed a hypothetical--I said,  
7 "There are a lot of rumors out there, and they may, in fact, be true.  
8 Do you have any data that minority students, particularly black males,  
9 I am interested in, are being expelled at a greater rate in Fairfax  
10 County than other students?"

11 At the elementary grade level, they are.

12 MS. HEASTIE: Suspended.

13 MS. THOMPSON: Suspended; I'm sorry. At the elementary  
14 level, they are being suspended at a higher percentage but it goes down  
15 in the middle school and the high school. They can't explain the high  
16 suspension in the elementary school. Neither can they explain the  
17 downward turn in the middle and the high school.

18 So that is something that I have asked them to look at.  
19 They did give me a chronic disruptive-student summary survey result  
20 which, in their eyes, explained it but, in my eyes, doesn't quite  
21 explain it. But I am happy to leave you a copy of it to see for your  
22 perusal and see if it answers some of the questions that you have  
23 addressed here today.

24 CHAIRPERSON BERRY: We will take from you.

25 I am going to discharge the panel and go on to the next one,

1 but--

2 COMMISSIONER LEE: Madame Chair, I have a question.

3 CHAIRPERSON BERRY: I'm sorry, Yvonne. Go right ahead.

4 COMMISSIONER LEE: This is for either Ms. Thompson or Ms.  
5 Heastie. Do you monitor or keep any data on whether a disproportionate  
6 number of students who are either expelled or disciplined come from  
7 certain principals or certain teachers? Are there some particular  
8 principals or any particular teachers?

9 MS. HEASTIE: I cannot say. I know we would have it from  
10 certain schools. We do have the data, the number of kids expelled from  
11 a certain school. We do have that data. I guess it would go back to  
12 principal.

13 Teachers recommend a suspension so it wouldn't be listed by  
14 a teacher. It would come from "a principal suspends this many."

15 DR. UNDERWOOD: Actually, probably, if the principal were to  
16 change within the building, your data collection would remain with the  
17 building, not necessarily the principal.

18 MS. THOMPSON: But we do have it by areas. We could tell  
19 you what was going on for--let me just use two areas in Fairfax County,  
20 in the McLean area versus what is going on in the Mount Vernon area.  
21 But it wouldn't get to the question on if there were principals who  
22 were suspending more students and are they suspended more minority  
23 students because they do, periodically, rotate to different schools.

24 MS. HEASTIE: Let me say, though, that the area  
25 superintendent should be aware of that because those records would go

1 to the area superintendents. So they would be the ones monitoring.

2 I think when it comes to the system, it may be say, "Area 1  
3 reports this many; Area 2 reports this many." Then, under Area 1, that  
4 Area-1 superintendent would have it by schools.

5 CHAIRPERSON BERRY: Are you finished, Commissioner Lee?

6 COMMISSIONER LEE: Yes; I am.

7 MS. THOMPSON: In discharging the panel, I would just say  
8 that, with reference to a statement that was made two statements ago,  
9 I, personally, would think it would just as necessary to monitor what  
10 goes on in the system when there is a person of color who is the  
11 superintendent and employed--this Commission wants more people of color  
12 employed; that is not the point.

13 The point is we have learned from experience that just  
14 having people of color appointed to something does not solve the  
15 problem and that you need to have monitoring and you need to have  
16 training and you need to find out what is going on. The important  
17 thing is what is happening there in the system.

18 So I hope the school board will, of course, keep that in  
19 mind. We wanted to have you here because we wanted to find out, on the  
20 ground, what school board people were dealing with and we wanted to find  
21 out from Dr. Underwood the rarified view up here of what they were  
22 dealing with nationally.

23 We want to thank you very much for coming and we look  
24 forward to receiving the data you have that you that you will give to  
25 us.

1           We now have a panel that has been waiting, I hope,  
2 patiently. We apologize because it always takes much longer to do  
3 these things than we think because we are not very disciplined and  
4 because we don't discipline the people who come before us. So the  
5 whole thing sort of just gets out of control. We are sorry about that.

6           We have one less panelist on the program so that will help  
7 some in terms of the timing. We are moving along here. The Staff  
8 Director says we are just five minutes off schedule. If that is  
9 correct, I am doing better than I thought.

10           **Panel II: Academics and Researchers on Zero Tolerance Programs**

11           CHAIRPERSON BERRY: We will begin this panel of persons who  
12 are academics and researchers, who have been working on these programs.  
13 So now we get their view as opposed to those who are on school boards  
14 and other kinds of things dealing with these issues.

15           Terry Keleher is Program Director and Senior Researcher at  
16 the Applied Research Center in Oakland, California, which is a national  
17 research and public-policy institute that focuses on issues of race and  
18 social change. He coordinates the ERASE Initiative, a program that  
19 documents and addresses institutional racism in public schools.

20           He, in fact, is the author of *Creating Crisis; How*  
21 *California's Teaching Policies Aggravate Racial Inequalities; Making*  
22 *the Grade, a Racial Justice Report Card; and Justice by the People.*

23           Dr. Russell Skiba is a faculty member, Associate Professor  
24 in Counseling and Educational Psychology at Indiana University in  
25 Bloomington where he has worked to develop effective intervention and

1 consultation strategies for children with emotional and behavioral  
2 problems.

3 He was a member of the expert panel and writing team that  
4 developed the President's Early Warning Timely Response Guide for  
5 School Safety and is currently writing a book about Preventing School  
6 Violence. He has a large number of papers and publications on this  
7 subject and he is currently Project Director of the Safe and Responsive  
8 Schools Project which is funded, I guess, by the Department of  
9 Education.

10 Dr. Gil Noam is Associate Profess of Education and Associate  
11 Professor of Psychology/Psychiatry, Harvard University Medical School.  
12 He has trained as a clinical and developmental psychologist in both  
13 Europe and the United States and his main interests are how cognitive  
14 and emotional development relate to the psychologic problems in  
15 children and adolescents.

16 He has focused on at-risk school-age populations. He was  
17 educated at Harvard University and the Frie Universitaet in Berlin.

18 We are going to start with Mr. Keleher.

19 MR. KELEHER: Thank you. And thanks for initiating this  
20 forum and providing this opportunity to testify.

21 As you mentioned, I am with the Applied Research Center, a  
22 non-profit independent research and policy institute focusing on race  
23 and social change. We have recently conducted a national study to be  
24 released in March that collects data on a variety of key indicators of  
25 performance inequity in a dozen school districts geographically

1 distributed throughout the country.

2 I am going to present five of our findings and five  
3 recommendations. I will try not to defy the parameters and the  
4 authority of the Commission as I do so. First, in every school  
5 district we studied, there are significant racial disparities in  
6 student suspensions and expulsions.

7 In general, African-American and Latino students are more  
8 likely to be suspended and expelled in numbers proportionately greater  
9 than those of any other group. For example, in cities like Los  
10 Angeles, in Austin, African Americans were suspended at twice the rate  
11 of their proportion of the school population.

12 San Francisco has three times the rate. In Salem, Oregon,  
13 it was four times the rate. So there is a wide variety there. But, in  
14 every case that we studied, it was significantly higher than the  
15 proportion of the population.

16 The experiences of the Latino students were less uniform.  
17 In some cities, Latino exclusion rates did not significantly exceed  
18 their percentage of the population but in other cities, they did. For  
19 example, in Durham, North Carolina, they were expelled at four times  
20 the rate of their proportion.

21 In Salem, Oregon, it was two times the rate of their proportion to the  
22 student body.

23 A second finding is that, by increasing school expulsions,  
24 zero-tolerance policies have a disproportionate adverse impact on  
25 students of color. For example, Chicago's zero-tolerance policy went

1 into effect in the middle of the 1995-1996 school year.

2 In the previous school year, 1994-1995, twenty-three  
3 students were expelled in the Chicago schools. Two years later, the  
4 number of expulsions had jumped to 571. The number continues to  
5 skyrocket. It is estimated by the school district that the district  
6 expelled 1,000 students in the 1998-1999 school year and their  
7 projections for expulsions in the current school year is 1500 students.

8 So, expulsions have jumped 65 times since the advent of zero  
9 tolerance in this one school district. Since Chicago suspends and  
10 expels African-American students at disproportionate rates, African  
11 Americans are hurt most by the zero-tolerance policies.

12 In the 1997-1998 school year, African Americans composed 54  
13 percent of the student body in Chicago. They represented, though, 63  
14 percent of the students suspended and 71 percent of those expelled.

15 So, if that same racial proportion holds for the current  
16 school year, with 1500 projected expulsions, the district will expel  
17 1,065 African Americans students. Amplified to the national level, the  
18 number of expelled African-American students must be staggering.

19 Numerous studies demonstrate that students who are suspended  
20 or expelled are more likely than their peers to drop out of school  
21 altogether. Thus, zero tolerance compounds the racial inequities of  
22 school discipline by escalating the sheer number of students of color  
23 who are excluded from public education in the United States.

24 A third finding is that zero-tolerance policies are being  
25 implemented in unfair and unreasonable ways. For example, Martin, not



1 his real name, an African-American high-school student in Providence,  
2 Rhode Island, offered to help his teacher dislodge a stuck diskette  
3 from his classroom's computer.

4           When, when he pulled out his key chain pocket knife to help  
5 release the disc, he fell afoul of Providence's zero-tolerance rules  
6 which mandate automatic exclusion for any student who brings a weapon  
7 to school.

8           Would Martin have been suspended if he were white? Maybe.  
9 On the other hand, a white student in Danville, Vermont was neither  
10 suspended or expelled when he explained that he had brought a loaded  
11 shotgun to school because it was a hunting season.

12           Similarly, a 1999 study by the Student Advocacy Center of  
13 Michigan, which you will hear from later, found that when two white  
14 students in Olivet, Michigan were caught with a gun in their car trunk,  
15 they go off with a ten-day suspension and forty hours of community  
16 service.

17           In another Michigan county, a black student was expelled for  
18 cleaning his nails with a pocket knife which he immediately handed to  
19 his teacher when asked to do so. But the police were called and the  
20 student was expelled.

21           While zero-tolerance policies appear to be racially neutral,  
22 they can be applied in very subjective ways, influenced by racial  
23 prejudice. As part of this study, we not only talked to a lot of  
24 school administrators, we also talked to parent and student groups.

25           A parent group we talked to in Missoula Montana Indian

1 People's Action reported that their students, the Native American  
2 students, were being disciplined for not looking the teacher directly  
3 in the eye. In a lot of Native American cultures, when you look at an  
4 elder in the eye, that is actually a sign of disrespect. So teachers  
5 didn't have that kind of cultural sensitivity.

6 In Chicago, we talked to a youth group there. They said  
7 that African Americans students were caught doing break-dance poses  
8 which were interpreted to be gang representation. And they got  
9 disciplined. So that kind of thing is happening.

10 Since no two incidences are exactly alike, it can be  
11 difficult to legally prove that similarly situated students of  
12 different races were treated unequally but the weight of mounting  
13 anecdotal evidence, which is well aligned with the statistical evidence  
14 of racial disparities and discipline cannot be ignored.

15 A fourth finding is that zero-tolerance policies curtail the  
16 expression of reasonable professional judgment by school educators and  
17 administrators and limit students' and parents' right to due process.

18 In the case of Martin in Providence, the African-American  
19 high-school student caught with a small utility knife, the police,  
20 rather than the school district, notified the parent. Although a  
21 hearing was allowed, neither Martin nor his mother were permitted to be  
22 present while witnesses testified against him.

23 There are countless cases of students, especially students  
24 of color, being suspended or expelled for non-violent and non-  
25 threatening offenses. Many states and school districts have

1 implemented zero-tolerance policies that exceed the scope and intent of  
2 the 1994 Gun Free Schools Act.

3 Now, in addition to weapons possession, schools are  
4 expelling students for fighting, violating dress codes, possessing  
5 drugs and alcohol, carrying anything that resembles a weapon or could  
6 be used as a weapon. Students have been punished for possessing cough  
7 medicine, mouth wash, art tools or toy guns.

8 Even after they are confronted and it becomes clear that  
9 there is no safety threat or intent to harm anyone, school  
10 administrators proceed to substitute their professional judgment for  
11 rigidly prescribed zero-tolerance penalties.

12 Often, due process is bypassed. Evidence suggests that  
13 schools are more willing to recognize mitigating circumstances when  
14 they perceive the student involved in an incident as having a real  
15 future that would be destroyed by the expulsion.

16 Overwhelmingly, it is African-American and Latino students  
17 whose futures are wrecked by zero-tolerance policies. Too often, we  
18 receive reports of cases where white students are given the benefit of  
19 doubt while students of color are presumed guilty until they can prove  
20 themselves innocent if they are even afforded the privilege of a  
21 defense.

22 A fifth finding is that there is a huge reported deficiency  
23 in discipline actions in the U.S. public schools. Some schools collect  
24 comprehensive data while others collect minimal data. For example,  
25 some districts collect discipline data that is fully broken down by

1 race, gender and age while others simply collect total discipline  
2 actions.

3           Some districts do not have data that distinguishes that  
4 suspensions from the expulsions. Some don't distinguish which  
5 suspensions are in school and which are off campus. Most have no way  
6 of tracking which offenses and penalties fall within the zero-tolerance  
7 policies.

8           This makes it difficult to tell what is really going on.  
9 Even when the data is collected, there are lots of inconsistencies.  
10 For example, in California, we looked at several different cities, and  
11 they were using different racial categories so it was hard to compare  
12 across districts.

13           In one school district, we recently learned they have  
14 changed their terminology so, whereas they had been reporting a number  
15 of in-school suspensions for many years, last year, they didn't report  
16 any because they changed the term. It is now "in-school supervision."  
17 It is not "in-school suspensions."

18           So, with heightened public awareness and scrutiny of school  
19 safety issues, zero-tolerance policies and actual and perceived  
20 inequities in school-disciplinary action that it is critical that all  
21 school districts in the U.S have sufficient information to assess the  
22 effectiveness and fairness of its disciplinary policies and practices.

23           The recommendations that we have are one, we think the  
24 Commission should initiate a full investigation of racial disparities  
25 related to zero-tolerance policies. Current anecdotal and statistical

1 evidence, although incomplete, provide ample indicators of racial  
2 inequality to warrant further study.

3           Second, we urge the Commission to support comprehensive,  
4 consistent and centralized school-discipline reporting. The current  
5 state of reporting in school discipline is atrocious. If you do  
6 nothing else but recommend more reporting, that would go a long way.

7           The Commission should urge Congress and the U.S. Department  
8 of Education to require all schools to fully report suspensions and  
9 expulsions. They should be disaggregated by race, gender,  
10 socioeconomic status and age and should specify the nature of the  
11 offense, the type and duration of the punishment, whether the  
12 suspensions were in school or off campus and whether the punishment was  
13 mandated under a zero-tolerance policy.

14           The reports should be easily accessible to policy makers and  
15 the public and penalties should be imposed for schools that fail to  
16 report the data. We also need more longitudinal studies and more  
17 independent evaluations of alternative education and other intervention  
18 programs so that these avenues don't just become another convenient  
19 form of tracking students into education that really is separate and  
20 unequal.

21           Third, school districts and states should be encouraged  
22 through federal policies and funding incentives to set and meet  
23 measurable quantitative goals to reduce the overall numbers of  
24 suspensions and expulsions and to eliminate racial disparities.

25           Where significant racial disparities exist and persist, the

1 Department of Education's Office of Civil Rights and the Department of  
2 Justice should be urged to expand their efforts to compel school  
3 districts to remedy these inequalities.

4 Fourth, the Commission should recommend the elimination of  
5 zero-tolerance policies in favor of more flexible approaches to serious  
6 discipline problems. While discipline policies must absolutely protect  
7 school communities from legitimate safety threats, reason and fairness  
8 warrant consideration of mitigating circumstances and access to due  
9 process.

10 The use of suspensions and expulsions should be reserved for  
11 the most extreme situations. Zero-tolerance policies, especially those  
12 that exceed the scope and intent of federal law, exclude too many  
13 students, especially students of color.

14 Lastly, the Commission should encourage Congress to explore  
15 more preventative practices instead of punitive policies to minimize  
16 school disciplinary problems. Mandatory minimum punishments,  
17 surveillance or curtailment of due-process rights, presence of police  
18 in schools sometimes are counterproductive when they result in the  
19 creation of a hostile school environment.

20 Instead of focusing attention and resources after problems  
21 have occurred, we must focus on how to prevent to disciplinary problems  
22 in the first place. An exploration of how school disciplinary problems  
23 are closely linked to the overall school climate and learning  
24 environment can lead to the preventative interventions that reduce the  
25 disciplinary incidents and inequalities.

1           Measures that can prevent disciplinary problems include  
2 providing a respectful learning environment with challenging and  
3 culturally appropriate curriculum, provide professional development to  
4 teachers and administrators.

5           I might add, I keep administrators and teachers on a  
6 pedestal for what they have to do every day, trying to deal with the  
7 discipline issues and the reality of them, but I think that there is a  
8 need to expand the repertoire of practices to accommodate different  
9 styles and paces of learning.

10           We need to provide adequate classroom resources and  
11 facilities with reduced class sizes and we need to provide the full  
12 expectation and opportunity for all students to excel and succeed.

13           Ultimately, mutual respect and excitement about teaching and  
14 learning are the most effective disciplinary measures available to any  
15 teacher or school. In summary, we urge you to investigate and oppose  
16 policies and conditions that aggravate existing inequalities  
17 experienced by some students and to support policies that truly promote  
18 equity, excellence and opportunity for all students.

19           Thank you.

20           CHAIRPERSON BERRY: Thank you, Mr. Keleher.

21           Professor Skiba.

22           DR. SKIBA: Thank you. Good afternoon, Madame Chairperson  
23 and Commissioners. I am very grateful for this opportunity to  
24 participate in this important briefing today.

25           We have heard a great deal in the media about the trivial

1 incidence that Dr. Keleher was speaking about in school districts  
2 throughout the nation that seem to characterize of zero-tolerance  
3 discipline.

4 I would like to suggest to you today that these events are  
5 not simply aberrations but rather are inherent in and perhaps the  
6 inevitable outcome of zero-tolerance school discipline. Since its  
7 inception as an outgrowth of drug enforcement policies in the late  
8 1980s, the strategy of zero tolerance has had, at its heart, the notion  
9 of punishing both major and minor incidents severely in order to send a  
10 message to offenders that certain offenses will not be tolerated.

11 Yet we know that from national school violence reports that  
12 the vast majority of school disruption is due to relatively minor  
13 events, things like cutting classes or tardiness, while the truly  
14 dangerous issues that we are most concerned about, weapons, drugs,  
15 assaults on teachers, occur relatively infrequently.

16 The broad net of zero tolerance that seeks to capture both  
17 serious and non-serious offenses will almost, by definition, result in  
18 the punishment of a small number of serious behaviors and a far greater  
19 of non-dangerous, even trivial, behaviors.

20 Thus, it seems likely that these nationally publicized  
21 overreactions are not simply the actions of an over-zealous few who  
22 have lost all common sense. Rather, they are central to the zero-  
23 tolerance philosophy, to send a message to troublemakers by punishing  
24 all behaviors severely.

25 The expulsion of seven African-American students in Decatur,



1 Illinois last fall brought the issue of racial equity and school  
2 punishment to national attention. But, well before Decatur, study  
3 after study had shown that African-American students are suspended well  
4 in excess of what we would expect given their proportion of the  
5 population.

6 That disproportionality also extends to expulsion and  
7 corporal punishment. This disproportionality does not appear to be due  
8 solely to economic bias although there are disparities due to  
9 socioeconomic status, studies controlling for poverty level have still  
10 found that race makes a significant contribution to suspension. I  
11 thought that Dr. Berry might be interested in that data.

12 CHAIRPERSON BERRY: I am very interested.

13 DR. SKIBA: Nor is there any evidence that disproportionate  
14 punishments are in any way accounted for by greater rates of  
15 misbehavior among black students. If anything, studies of both  
16 suspension and corporal punishment seem to show that black students  
17 receive fewer mind sanctions and are more likely to receive harsher  
18 punishments for less serious behavior.

19 In our own work, Dr. Reese Peterson of the University of  
20 Nebraska and I have attempted to gain a better understanding of the  
21 source of disproportionality in school suspension. Analyzing  
22 disciplinary referrals in two large Midwestern cities, we found that  
23 disproportionate school suspensions can be predicted largely by  
24 classroom referrals to the office.

25 There were no significant racial disparities in the use of

1 suspension at the office level. Black and white students received  
2 essentially equal treatment from administrators.

3 At the classroom level, however, African-American students  
4 were almost twice as likely to be referred to the office as white  
5 students. Moreover, there appeared to be a distinct pattern of office  
6 referrals by race.

7 White students were referred more often for smoking,  
8 endangering, obscene language, vandalism and drugs and alcohol, the  
9 kinds of things that I assume most of us would want to see kids  
10 referred to the office for.

11 Black students, in contrast, were referred more often for  
12 loitering, disrespect, excessive noise, threat and a catch-all category  
13 called conduct interference. As Secretary Cantu noted earlier, vague  
14 policies and categories do appear to be associated with minority  
15 disproportionality.

16 These data are consistent with the work of Dr. Brenda  
17 Townsend who suggests that the disproportionate discipline of African-  
18 American students may be due, in part, to staff misinterpretation of  
19 differences in the behavior of black and white students, differences  
20 that are essentially culturally based.

21 Thus, any district that relies heavily upon suspension and  
22 expulsion for managing student behavior runs a substantial risk of  
23 contributing to racial inequity. Since much of this risk appears to  
24 have its source at the classroom level, improved teacher training in  
25 culturally competent classroom management may be important in reducing

1 black-white disparities in discipline.

2           It is also incumbent upon schools and school districts using  
3 suspension and expulsion to collect data and monitor racial  
4 disparities. At the Indiana Education Policy Institute at Indiana  
5 University, we are currently collaborating with the Indiana State  
6 Department of Education, Division of Special Education, to collect and  
7 monitor data on minority overrepresentation in special education and on  
8 racial disparities in suspension and expulsion.

9           What do we know in general about the contribution of zero  
10 tolerance to the safety of schools. Outside of individual district  
11 testimonials, the answer, in short, is not much. In the last ten  
12 years, there appear to be only a half dozen published studies of school  
13 security measures that are often associated with zero tolerance such as  
14 metal detectors or video surveillance.

15           Indeed, there is some evidence that schools that rely to a  
16 greater extent on school security measures and security personnel are  
17 more likely to have higher rates of serious crime.

18           I am unaware of any studies that assess the general  
19 effectiveness of school suspension or expulsion in changing student  
20 behavior or improving school safety. But we do know that a large  
21 proportion of school suspensions are due to repeat offenders.

22           The fact that for our most at-risk students, suspension  
23 appears to be primarily a predictor of further suspension, suggests  
24 that these students are decidedly not getting the message that zero  
25 tolerance intends to send.

1 Over time, this cycle of suspension and expulsion appears to  
2 be associated with increased risk of school dropout. In fact,  
3 ethnographic field studies have found that suspension may be purposely  
4 used in some schools as a push-out tool to cleanse the school of  
5 perceived troublemakers.

6 Regarding students with disabilities, in presenting to  
7 groups around this country, we have been asked repeatedly why students  
8 with disabilities are treated differently under IDEA. But, given the  
9 lack of evidence that suspension and expulsion are in any way effective  
10 in promoting the safety of schools, a more relevant question becomes  
11 why would we seek to expose any child, disabled or nondisabled, to  
12 ineffective disciplinary practices.

13 Clearly, we must limits with disciplinary policy. Which of  
14 us would disagree with the proposition that guns, weapons, drugs and  
15 aggression are unacceptable in our schools. But let's also be clear  
16 that limits and punishment alone have not, and probably cannot,  
17 guarantee the safety of our students nor can they teach students the  
18 personal and interpersonal skills they need to solve their problems  
19 without resorting to violence.

20 As an alternative, many schools are beginning to consider  
21 more moderate policies where disciplinary responses are appropriately  
22 geared to the seriousness of the offense and to develop comprehensive  
23 and preventive plans for school safety.

24 Both the U.S. Department of Education and the American  
25 Psychological Association suggest that schools can deter violence by a

1 focused effort at three levels; first, building a positive school  
2 climate for all students with programs like peer mediation, conflict  
3 resolution, improved classroom behavior management and bullying  
4 prevention.

5           Second, early identification and intervention for at-risk  
6 studies by using early warning signs, systematic screening and  
7 procedures like mentoring and counseling and anger management for at-  
8 risk students,

9           -Third, an effective array of planned responses to disruption  
10 and crisis that go well beyond a focus simply on detention, suspension  
11 and expulsion.

12           One can, in no way, question the motives or sincerity of  
13 those who have sought to draw a battle line against violence in the  
14 schools. The tragic violence that has befallen both urban and rural  
15 schools makes it incumbent upon educators to explore all available  
16 means to protect the safety of students and teachers.

17           Yet, faced with an almost complete lack of evidence that  
18 zero tolerance is among the strategies capable of accomplishing that  
19 objective, one can only hope for the development and application of  
20 more effective, less intrusive and more equitable alternatives for  
21 preserving the safety of our nation's schools.

22           Thank you.

23           CHAIRPERSON BERRY: Thank you very much, Professor Skiba.  
24 Professor Noam, please.

25           PROFESSOR NOAM: Madame Chairperson, Commissioners. I am

1 going to speak from the perspective of someone--you mentioned before  
2 the slashes and the different institutional affiliations--from the  
3 perspective of really trying to bring health, mental health and  
4 education together in new ways.

5 I think this is where there is so much wonderful work that  
6 is happening in this country that focus on prevention that looks, from  
7 a research perspective, to longitudinal outcomes that I think we are at  
8 a place where we can address the issue of zero tolerance in a different  
9 way than it has been.

10 As you know, there is very little research on zero-tolerance  
11 strategies. We deal here more with politics than with science. But a  
12 number of lines of research can make a contribution to this debate.

13 Because of limited time, I will only touch upon three  
14 approaches. There are really many more, but I just want to give you a  
15 flavor of three approaches. I will only focus on three lines of  
16 research briefly.

17 The first one is research into family functioning,  
18 especially by Diana Baumrind and others, has shown that children  
19 develop better in homes with so-called authoritative socialization  
20 styles. Permissive parental styles seem to confuse children.  
21 Authoritarian ones create resentment and increased aggression.

22 Authoritative parents spell out rules, establish  
23 consequences for transgression and are consistent and fair in their  
24 applications. Responsible behaviors are acknowledged and conflict  
25 leads to negotiation not to punishment. These are long-term studies

1 that show that this authoritative style seems to be the style of  
2 choice.

3 Two; another line of research relevant to our discussion  
4 here is focussed on attachment patterns, the whole very exciting and  
5 interesting work on early attachment patterns in children and their  
6 long-term outcomes.

7 Research has demonstrated that chaotic environments with  
8 little predictability and consistency dramatically increase the  
9 likelihood for aggression and psychopathology the seeds of which are  
10 often laid in early childhood. Attachment research helps us understand  
11 that consistent love and positive structure represents, to be a little  
12 dramatic here, the psychological equivalence of air and food in the  
13 physical world.

14 A third line of research which is now more focused on  
15 schools was developed by Michael Rutter, a developmental pathology  
16 researcher who focusses a lot of risk and protective factors. He and  
17 many others, including our own teams, study prevention programs and the  
18 question is what is a resilient school.

19 You have mentioned that we need to focus on prevention but  
20 we need to figure out what strategies really work in schools. Again,  
21 we find, interestingly, like in families, similar variables that  
22 predict good outcomes for youth; structure, predictability,  
23 consequences, cleanliness of the environment, high expectations of  
24 children.

25 But we also find another dimension which really drops out of

1 zero tolerance. Teachers and administrators who respect children, who  
2 take time to mentor them and don't just delegate mentoring to after-  
3 school activities, and to see them as individuals, who really respond  
4 to the child's need to be seen as a unique person.

5           Zero-tolerance policies, and I don't want to focus right now  
6 here to the kind of big issue of bringing a gun to school but really  
7 more the issue of the uses, the generalized uses to children, kind of  
8 aggression, fighting, struggling, being disobedient, et cetera, build  
9 only on one dimension of these findings; namely, that rules and strict  
10 consequences can have an important positive consequence while ignoring  
11 the equally important other side, consistent support, relationship  
12 building and negotiation.

13           To bureaucratize punishments in schools has harmful effects  
14 because it makes adults and adolescents feel powerless, both, really.  
15 Even the ones who actually have to implement the policies are not  
16 really the agents in that moment.

17           They are less able to form and maintain meaningful  
18 relationships. So these policies really interfere in the day-to-day  
19 relationships which are essential because if we think about how many  
20 hours children spend in schools, which is really the reason how I got  
21 into this work because I realized that treating kids in clinical  
22 settings is not the best place because they really spend so much time  
23 in school settings and that is the place where we can do best work in  
24 prevention.

25           It reduces the likelihood that youth will feel understood nd



1 supported in the process of learning, that negative behavior, threats  
2 and aggression will have negative consequences. To teach children  
3 morality and empathy instead of impulsive behavior and aggression  
4 requires for adults to set limits and to work through the expectable  
5 reactions the same way that parents do with their children.

6           Once you set a limit, at least I see this with my children  
7 many times, that is when the work starts. That is when you have to be  
8 there. You have to be present. You have to deal with the anger, the  
9 rage, the shame, all the affects and the experiences. That is when the  
10 learning moment appears and that is when the chance is for development.

11           That is what good parenting is about, limits that strengthen  
12 relationships and commitments to the family and the school, not  
13 punishments that lead to disinterest and a further cycle of retaliation  
14 and violence.

15           Why is the question of how we deal with transgressions so  
16 fundamental to adolescent development. This is like kind of taking  
17 what you have said one step further into the realm of adolescent  
18 development.

19           My own developmental research with conduct disorder in  
20 aggressive children has shown that many of these young people have a  
21 perspective on life that is dominated by a tit-for-tat, dog-eat-dog,  
22 world philosophy that they really tell you about when you interview  
23 them in depth, defending one's honor and revenge.

24           Empathy and containing one's impulses are very low on the  
25 list of virtues of many of these youngsters. In our work with inner-

1 city schools, we found that many high-risk children in regular  
2 classrooms are as aggressive, depressed, suicidal and traumatized as  
3 are patients next door in a psychiatric setting.

4 This is very important as you think about what do teachers  
5 and administrators who use these strategies--what are they facing.  
6 When you give children and youth some of these instruments, very  
7 structured instruments, to find out what the level of acuity is, what  
8 are they bringing to the school, it is absolutely amazing.

9 This is just a small aside. Anna Freud came up with this  
10 idea in the '50's that psychotherapists should do therapy and teachers  
11 should teach and if you combine the two, it will get very messy and  
12 children bring their sibling rivalry into the school, and so you should  
13 separate it out.

14 But today we can't use that method anymore because many of  
15 the children that we are talking about that get expelled are the  
16 children who bring a great deal of trauma with them. There is really a  
17 need to understand many of these actions as trauma without using this  
18 label as an excuse.

19 So it is very important not to say, because we understand  
20 it, now the kids can actually make the school unsafe. They cannot, but  
21 we will have to understand what it is about.

22 The zero-tolerance advocates do not appreciate sufficiently  
23 the other fundamental strand of adolescent development. If you want to  
24 increase the natural developmental reservoir of pro-social behavior and  
25 empathy to reduce aggression, we need to provide incentives for change.

1           This is actually a very important point because what a lot  
2 of prevention people talk about is that we have to do something. We  
3 have to intervene. We have to do something to children. But, in fact,  
4 from a developmental perspective, if you support children productively,  
5 the natural developmental course is one where children begin to learn  
6 to understand the world from someone else's perspective.

7           That is one of the reasons why it seems that many of the  
8 longitudinal studies seem to show--not seem, but do show--that youth  
9 that are quite violent or even criminal, more than half of them outgrow  
10 these problems.

11           How do they outgrow them? In the longitudinal studies, it  
12 seems to be mostly issues around relationships, that they begin to have  
13 more productive relationships, that they fall in love, they keep  
14 relationships. It seems to have to do with education and it seems to  
15 have to do with opportunities, job opportunities.

16           So it is very important to create a school context, as my  
17 colleagues here mentioned as well, a school context where we actually  
18 end up remembering that the long-term outcome for many of these  
19 youngsters that look right now as disobedient and dangerous is going to  
20 be a positive one because we always use these longitudinal studies in a  
21 negative way.

22           Maybe you can say that the continuity rates are very high,  
23 that antisocial children, many of them become, actually, antisocial  
24 adults. But the majority do not. We have to keep that in mind.

25           Finally, and then I will stop, our own programs in Boston

1 and New York called RALLY, Responsive Advocacy for Life and Learning in  
2 Youth--no program is a real program without acronyms--introduce  
3 prevention practices into classrooms.

4 We introduce prevention practitioners and train prevention  
5 practitioners--one of them is Sophia King who is here in the audience--  
6 to work closely with teachers, have some knowledge in youth development  
7 and mental health and support children's academic learning at the same  
8 time so, rather than just bringing a mental-health professional to the  
9 school, to really make them partners in the real mission of school  
10 which is learning.

11 We believe a new school has to evolve that has good after-  
12 school time. We got very involved in the 21st Century Schools because  
13 many of the children we work with ended up being on the way of dropping  
14 out. The more they were on the way of dropping out, the more they were  
15 disruptive.

16 When you talk to the teachers, some of the teachers  
17 explicitly said, "We are only teaching to the 50 percent of the kids  
18 who get it. The other 50, if they don't get it after one or two times,  
19 we have to move on."

20 So, of course, you are going to create more acting out and  
21 more aggression of that is your teaching style. So the answer there is  
22 not punishment of teachers but really supporting teachers through other  
23 people because many of the teachers really want to support these  
24 children but do not have working conditions under which they can do  
25 this work.

1           A school we envision where adolescents get invested in and  
2 find a mentoring adult during the school day, a school also where  
3 health and mental-health problems become detected early enough so that  
4 they don't become chronic disabilities and do not lead to a cycle of  
5 violence against other or the self, actually, because many of these  
6 kids who are disruptive are also suicidal, often, really, in an  
7 undetected way.

8           Our interventions, and, really, many other people's  
9 interventions, I believe, are successful antidotes to the "feel good"  
10 quick fixes. They certainly involve strict enforcement of rules and  
11 consequences for their transgressions.

12           It is very important that this aspect of these prevention  
13 programs gets remembered, that they are not just about supporting  
14 children in a positive way. They are about supporting children but  
15 also setting very clear limits.

16           But we are there when the limits are set to support the  
17 children and we are training the teachers and administrators to better  
18 adjust their reactions to the realities of adolescent development.

19           They are productive alternatives to zero-tolerance policies  
20 that do not have the ethnic and racial bias that punishment-oriented  
21 programs inevitably have.

22           Thank you.

23           CHAIRPERSON BERRY: Thank you very much.

24           Does any Commissioner have a question for the panel. If you  
25 don't have one immediately, I have one and you can think.

1           The question I wanted to ask Mr. Keleher was whether the  
2 studies that were done disaggregated the Hispanic groups. You  
3 mentioned that in Durham, for example, something about Latinos were  
4 four times as likely to be affected, Salem, two times.

5           Is there any information on which Latino groups? Latinos,  
6 as you know, consist of different groups of people. One of the major  
7 problems we have, as with Asian-Americans, is aggregating people  
8 together who have very different lifestyles, cultural behaviors,  
9 interests, and then reaching conclusions about them.

10           Is there any way to know whether the ones in Durham were  
11 Mexicans, El Salvadorenos, Guatemalans, Cubans, and in Salem and so on?

12           MR. KELEHER: Unfortunately, there isn't. That, again, is  
13 one of the difficulties in the way the information is reported. We  
14 were trying to actually see if we could figure out if there was a  
15 phenomenon such as if they were new immigrants or if they were not  
16 English speakers or things like that might be at play.

17           But, given the way it is all aggregated for Latino and for,  
18 like you mentioned, Asian-American, Pacific-Islander, we could not find  
19 any specific information around that. It definitely needs more  
20 research.

21           CHAIRPERSON BERRY: The only other question I had right now  
22 is why is it that there is such a disconnect between the research that  
23 you have told us about and what the people in the schools--the panel  
24 before this; it is as if they don't know any of what you are saying.

25           We will hear from some advocates in a minute who, I'm sure,

1 have told them, but they act as if they have never heard of any of  
2 this. That is one thing. I think I know the answer to that.

3 My real question is what about any correlation between  
4 labeling as disabled and this whole idea of racial disparities in  
5 suspensions. I read some article in a journal that I found when I was  
6 doing a search on this about people of color, or students of color,  
7 being labeled disabled and whether that had any impact on the IDEA as  
8 it relates to this problem; also, whether it would be better for  
9 students of color to know about being labeled so that they could get  
10 labeled so that they could have an IDEA and get an individualized  
11 education plan and be in a class where there were eight students and a  
12 teacher as opposed to 28 and get their own program, and whether there  
13 are disproportionate numbers of white students in these IDEA programs  
14 labeled to get these courses as opposed to students of color.

15 I just wondered if you knew anything about any of this, any  
16 of you.

17 PROFESSOR NOAM: I can respond briefly. The special  
18 education numbers are very interesting because, again, in the  
19 behavioral-problem realm, which can get you into special education very  
20 easily and quite fast, actually, until recently, there is a very strong  
21 racial discrimination in the sense that Hispanic, especially boys, and  
22 African-American boys tend to be in these programs.

23 The problem with it is yes, the classes are smaller, but the  
24 strategies are often not working very well either. So being in a small  
25 classroom doesn't provide you necessarily with a better education. If

1 you are excluded from the regular, in a very highly aggressive kind of  
2 environment.

3 It is very different for learning disabilities and very  
4 specialized kinds of disabilities where it is clear what the tutoring  
5 and what the methods of remediation have to be. Then, of course, it  
6 makes a lot of sense.

7 But a great number of these youngsters are "behavior  
8 problems."

9 CHAIRPERSON BERRY: Would that be your same answer to the  
10 question about alternative schools when students have been expelled  
11 that, just because the classes are smaller doesn't mean that better  
12 education is going on there.

13 DR. SKIBA: What seems to determine the quality of  
14 alternative schools is essentially the amount of resources put into  
15 those alternative schools, whether that be an in-school suspension  
16 program or an alternative school outside of the school.

17 If the district is willing to put the resources in to have a  
18 trained coordinator who is well trained in behavior management, to have  
19 a curriculum in place for the students to work on the social problems  
20 that got students there in the first, place to have the parental  
21 involvement, then those programs appear to work.

22 If, on the other hand, they just become yet one more dumping  
23 ground, then there is no advantage.

24 CHAIRPERSON BERRY: We know that a small percentage of  
25 school systems have alternative schools based on what somebody said on



1 another panel. I guess an even smaller number have good alternative  
2 schools. So that is a major problem.

3 COMMISSIONER WILSON: I wanted to ask Dr. Noam, are there  
4 any schools in and around Boston, any alternative schools, that have  
5 incorporated your findings and what are the results of that, if you are  
6 aware of them.

7 PROFESSOR NOAM: That is a very good question. Yes; I think  
8 that is true, although educational reform is very slow. In other  
9 words, from the moment that you create alternative programs and  
10 programs in regular schools to the moment that they filter down into a  
11 number of other schools, it does take time.

12 Yes; people have begun to pick up this particular program  
13 also in New York but, more importantly, there are now so many programs  
14 like this, similar programs-- \* \*

15 COMMISSIONER WILSON: Like the ones you have described?

16 PROFESSOR NOAM: Yes; well, they have different terms. They  
17 come under the rubric of community schools, extended schools, full-  
18 service schools, 21st Century schools. All of these are attempts to do  
19 something similar to what we are doing.

20 The only difference is--and I think there are a lot of very  
21 exciting things, so when you get depressed here around the table about  
22 the situation of education, I think the counter side to this is that  
23 there is a tremendous, as you probably all know--we are not the only  
24 ones.

25 There are a lot of principals that are trying out new things

1 that really take these perspectives, even superintendents, I would say,  
2 who really are organizing a whole school district. I would say that  
3 Tom Paysant in Boston is aware of many of the same findings and is  
4 trying, as one superintendent, to address some of these issues.

5 But the problems on the ground are just huge. The only last  
6 thing I wanted to say is our contribution to this work is that we don't  
7 believe that it is enough to have these wraparound services or to use  
8 the school just to kind of keep it open longer and to have after school  
9 things and so on.

10 That is not enough. What we have to do is really get into  
11 the core, into the boiler room, so to speak, into the core of the  
12 education mission and to support teachers, really, in the classroom so  
13 that all these support services really get into the classroom because  
14 the way many schools address these issues is that they allow all these  
15 program to happen but they don't change, really, the day-to-day  
16 activities of teachers and students.

17 COMMISSIONER WILSON: The reason why I asked the question,  
18 apart from wanting to be uplifted by your answer, was that--just  
19 hearing you speak was uplifting, so I appreciate that--was that  
20 because, I am sure, reform is so slow that if these schools were  
21 successful, these alternative schools were successful, then that might  
22 impress upon the main schools to embrace some of these philosophies.

23 That is why I was curious to know how long these schools  
24 have been in existence.

25 PROFESSOR NOAM: Actually, I would say about the last--our

1 own program, the last five years. Other programs like the Childrens  
2 Aid Society in New York that has programs, they have been in existence  
3 for a hundred years, but not with this kind of focus.

4 I would say the last five or ten years, but maybe I didn't  
5 respond well enough or didn't use this chance or this opportunity that  
6 you gave me because the opportunity I would like in terms of  
7 recommendations is that these kinds of programs are usually pieced  
8 together through little foundations here and there.

9 The funding comes from donors. It really takes half of the  
10 time, and it has probably been your experience, just to raise the  
11 funds. I think recommendations for real broad policy-based attempts to  
12 introduce best practices to school systems--that is my vote, so we  
13 don't have to do all the fund-raising but really can begin to focus on  
14 what we have learned.

15 COMMISSIONER WILSON: Let me just say, in order to help  
16 that, even though I am the newest Commissioner on board, I think it  
17 would be helpful--that is why I was asking if you had any figures or  
18 any results that we could put to the possibility of that  
19 recommendation.

20 CHAIRPERSON BERRY: If you would give us any information you  
21 have for the record about schools where they have tried to do some  
22 positive things, that would be very helpful.

23 DR. SKIBA: We have been developing a set of fact sheets,  
24 briefing sheets, in a variety of these types of strategies. I would be  
25 happy to forward those to you when I get back.

1 I want to get back to your question which I think is very  
2 similar about why isn't the message--and I want you out to help me  
3 figure it out in the schools that we are working with in the two  
4 districts.

5 We have one school that we just started working with where  
6 there were two bomb threats just two weeks ago. I would have thought  
7 that this school--we are sort of in this position where I cannot go out  
8 and make them do anything about these things yet. We have just started  
9 working with them.

10 I would have thought there would have been a major community  
11 mobilization, but nothing much has happened yet. One principal said  
12 something like, "If a bomb goes off, that will get our attention."

13 So I have been thinking about this a lot. I think it has to  
14 do with the fact that there are so many conflicting mandates for  
15 schools and particularly pressures for academic accountability are so  
16 strong.

17 I believe that many educators believe that their primary  
18 responsibility is academics and so they don't really pay attention to  
19 the these training issues that you were talking about on behavior  
20 management and behavioral issues on the last panel that Commission  
21 Edley brought up.

22 I think, also, there may be a tendency to want to stay with  
23 what you know how to do. It may be safer to stick with what you are  
24 doing, even if it doesn't work, than to go to something else that you  
25 don't know anything about that us researchers are saying could be a

1 valuable approach.

2 I sometimes think it is kind of a Clint Eastwood phenomenon  
3 among some school administrators; I will give up suspension when you  
4 pry it from my cold, dead fingers. I don't know that I blame them for  
5 that if they don't feel they have a set of alternatives.

6 If we are providing them with a set of alternatives that  
7 seem logistically feasible and can show demonstrated outcomes, once  
8 they have those alternatives, then their fingers may loosen up on the  
9 grip of suspension.

10 COMMISSIONER EDLEY: That is an interesting regrettable but  
11 benign explanation for what the problems with knowledge diffusion and  
12 implementation. Let me invite reaction to a different hypothesis which  
13 would be that, for many leaders, particularly political leaders, and in  
14 many settings, the "school discipline" is thought of as a problem of  
15 dealing with those troublemakers who are perceived incorrectly  
16 sometimes as being the dominant minority.

17 In other words, I am suggesting that there is a perception  
18 analogous to the broad public perception around the crime issue  
19 generally, that the school-discipline problem has been racialized in  
20 public perception in much the same way that violent crime has been  
21 racialized in public perception.

22 Step 2 is because it has been racialized there is less  
23 commitment to getting the policy instruments right in either their  
24 design or their implementation and, concomitantly, more of a  
25 willingness to accept the fact that there are going to be mistakes,

1 there are going to be inappropriately excluded, discarded individuals  
2 just as in the criminal-justice context if there are too many "stop and  
3 frisks," if there are people wrongfully convicted, if there are people  
4 wrongfully executed, for that matter, they are not people that we care  
5 about that much so it is just part of the overhead of having a system  
6 of social controls that we are willing to bear because it is not our  
7 kids, it is those other kids who are bearing the cost.

8           So let me turn that into a question. Does any of that  
9 strike you as plausible? Do you think that the school-discipline  
10 problem in your experience in dealing with professionals has been  
11 racialized? Do you think that the fact that it has been racialized  
12 could be a contributing factor to the difficulty of getting policy  
13 makers and politicians to adopt research-based strategies for  
14 addressing the legitimate problems of disruption and violence?

15           MR. KELEHER: I think a lot of that hits the nail on the  
16 head, is where you locate the problem. For many people, the problem is  
17 the students. Of course, everyone wants to locate it somewhere else.  
18 It is the teachers, or it is the administrators or it is the parents or  
19 it is the external society.

20           While we think that there are a lot of variations in what  
21 schools can do, that the schools that actually take it upon themselves  
22 to not just simply blame the students but to look at the overall school  
23 climate, I think, are on the road to much more success.

24           An example is a school we are looking at--we interviewed for  
25 the study we did, the James Lick Middle School in San Francisco which

1 has actually gotten their staff together to explicitly look at some of  
2 the racial disparities going in both discipline and achievement and try  
3 and take some proactive steps to address those disparities.

4 One of the things they are doing is they are doing monthly  
5 in-service professional development trainings with the whole teaching  
6 staff now where they are actually tracking and feeding the teachers the  
7 data on discipline.

8 They, first of all, found out that most of the offenses were  
9 due to subjective reasons, like defiance of authority or acting out, so  
10 they set some goals on how they were going to reduce that kind of  
11 interaction.

12 What they did was they began doing a lot of things like role  
13 plays of situations, like a kid comes into the classroom, sets a drink  
14 on the desk where there are not supposed to be drinks in the classroom.  
15 The teacher tells him to remove it and then what do you do.

16 They stop the scene and different people practice and give  
17 each other feedback on intervention strategies at that point, at the  
18 moment when you could have an escalation. Through that kind of  
19 exercise, teachers are experiencing whole new ways of thinking about  
20 situations and reflecting on their own habits.

21 So, for an example, one teacher reported that two African-  
22 American women were what she thought were acting up in the back of the  
23 class. She had given them an assignment. They were loud and dramatic  
24 in the way they were approaching it.

25 She was about to yell across the classroom to them to stop

1 what they were doing and everything. Instead, she thought, "Okay; I am  
2 going to try something different." She walks up to them and, when she  
3 gets closer, she finds, in fact, that they are very engaged in the  
4 assignment. She just had misinterpreted it. And so no intervention  
5 was necessary.

6 That is the kind of thing where, if you can engage the  
7 teaching staff and get them committed to the concept that, let's really  
8 look at the whole environment, let's look at our own practices, and see  
9 if there are some different strategies we can employ.

10 I think already that school is showing some decline in their  
11 defiance kinds of statistics. They are going to continue tracking it  
12 and continue feeding the teachers the data right away so that they have  
13 instant feedback on some of the kinds of habits and patterns that they  
14 are engaging in.

15 DR. SKIBA: I think what you are talking about is the whole  
16 idea of institutional racism, is this part of broader patterns, or  
17 institutional inequity. I don't know whether any of this could be said  
18 to be on purpose, but it certainly is part of a broader pattern.

19 There is minority overrepresentation in tracking. African-  
20 American students are by far and away overrepresented in lower tracks.  
21 There is overrepresentation in special education especially in  
22 emotionally handicapped and mild mental retardation.

23 We see lower quality of resources in poor minority schools,  
24 poor quality of instruction. So definitely there is an overall  
25 pattern. There was a very interesting article in The New York Times



1 magazine a few weeks ago that many of you probably saw called, What No  
2 School Can Do. It was an excellent article about the socioeconomic  
3 inequities that many of our poor minority children undergo before they  
4 come to school.

5 But I sort of had to disagree with the main thesis which is  
6 that, once these kids get to school, they are so far behind there is  
7 not much we can do. I think, if we are still seeing this kind of  
8 continuing pattern of institutional inequity, then not only are schools  
9 not remediating the disadvantages that these kids are coming in with.  
10 They are, in fact, making those inequities worse in school.

11 PROFESSOR NOAM: I have one other short response because I  
12 agree with you. And, in addition, I think prevention programs just  
13 take a long time to get established.

14 What I mean with that is if you look, for example,  
15 cholesterol lowering in the general population, based on the findings  
16 that it contributes to heart disease, or flossing, those are probably  
17 the two best prevention programs in this country--maybe car seats.  
18 There are a few of them.

19 But if we just track them, it really takes quite some time  
20 from the moment the research findings are out to the moment that policy  
21 gets established and then to the moment that people really follow some  
22 of those recommendations.

23 I think one of our big problems with school safety is that,  
24 unfortunately, there is no equivalent to flossing. There are so many  
25 multivariable dimensions that go in to prevention.

1           COMMISSIONER WILSON: I think we should start using flossing  
2 in the schools.

3           COMMISSIONER EDLEY: That is a great metaphor.

4           PROFESSOR NOAM: It does make it more difficult. I think  
5 that is kind of going to be our job over the next years to really try  
6 to simplify some of these prevention strategies and to figure out  
7 something similar to, let's say, mentoring. What are the ingredients  
8 of mentoring and how can one introduce those into the schools, is one  
9 example.

10           COMMISSIONER MEEKS: I was thinking back to the school board  
11 people that were here and the school administrators. They don't draw a  
12 hard line on zero tolerance, necessarily, or at least that is the way I  
13 heard it. But it was how it applied or implemented.

14           Would you say that that is your sort of stand on this? I  
15 heard a lot more hard-line, "Let's do away with zero tolerance,"  
16 instead of, "Let's look at the way it is implemented and applied." We  
17 may be throwing the baby out with the bath water.

18           MR. KELEHER: What we have seen is zero tolerance sort of  
19 takes on different forms. Sometimes it is the exact letter of the law,  
20 that which is codified in the policies. But the other is it is also a  
21 prevailing philosophy that begins to permeate the school system.

22           If that philosophy is, "We are going to bust you for  
23 anything," what happens is it begins to set up a pretty hostile  
24 climate. Just as police have to cover each other's backs in the line  
25 of duty, the same has to happen in a school.

1           When a teacher makes a referral to the principal and the  
2 principal to the school board, it gets sticky if you are going to try  
3 and question the authority of different people down the line. So what  
4 you have got to look at is what is the impact of having this catch  
5 phrase, this buzz word, this political sound bite called zero  
6 tolerance, having on real people's lives.

7           We are seeing thousands, tens of thousands, of students  
8 being suspended and expelled each year because of some of this  
9 philosophy. For some of those students, it is not just a one-year  
10 expulsion or a two-year expulsion; it is a life sentence.

11           If you are out of school for a year or two in the prime of  
12 your life, you are not going to catch up.

13           DR. SKIBA: It is interesting to note that zero tolerance  
14 really did grow out of that severe idea. It grew out of a drug program  
15 in 1986 out of San Diego by the U.S. District Attorney there. The idea  
16 was to catch both major and minor incidents and treat them equally  
17 severely.

18           So drug runners' boats were impounded but so was your boat  
19 if you were out water skiing if you had a little bit of marijuana in  
20 the back seat. So I think that zero-tolerance philosophy still does  
21 permeate things. It is kind of rhetorical sound bite that sort of  
22 symbolizes quick fixes.

23           It may that we need an alternative rhetoric, maybe something  
24 like "early response," that says, yes, we are going to take all  
25 disruptive behavior seriously. We do need to be authoritative and not

1 let minor incidents go that are going to escalate into more serious--  
2 but we don't, necessarily, need to jump on those with both feet.

3 CHAIRPERSON BERRY: I want to thank the panel very much. We  
4 will use the information you have provided to us. We appreciate your  
5 willingness to come today.

6 We now have a last panel.

7 Panel III: Representatives of Advocacy Groups

8 Concerned with the Rights of Children

9 CHAIRPERSON BERRY: I want to thank you very much for coming  
10 and being so patient. I saw you here most of the day. But I want to  
11 tell you that, always, whenever we come to the end of the day, we are  
12 in a position of likely losing some Commissioners, which we don't want  
13 to do.

14 So, I would appreciate it if you would summarize what your  
15 position is so that we can get to the questions so that then we can get  
16 all those questions out. Anything you want to say in your presentation  
17 that is occasioned by what you heard here while you were here today,  
18 you may say that too, either as you start out or when you answer the  
19 questions. It is up to you, but we very much appreciate your coming and  
20 it is very important.

21 These are representatives, one, of advocacy groups concerned  
22 with rights of children, and Ms. Browne, who is an attorney at the  
23 Advancement Project.

24 Let me introduce them more particularly. Joan First has  
25 been Executive Director since 1981 of the National Coalition of

1 Advocates for Students, a nationwide network of experienced child-  
2 advocacy organizations working for quality public education for  
3 vulnerable kids, low-income families, people of color, those whose  
4 first language is not English, recent immigrants, students whose  
5 families are engaged in agricultural farm labor, what we used to refer  
6 to as migrants, and children with special needs.

7 Ruth Zweifler is Executive Director since 1979 of the  
8 Student Advocacy Center of Michigan which is the only independent  
9 organization in Michigan providing free, non-legal advocacy to students  
10 and their parents who are eligible for general and special-education  
11 programs. She has written many publications on this issue and serves  
12 on various boards that deal with these issues.

13 Judith Browne is senior attorney at the Advancement Project  
14 and provides assistance to grassroots and civil-rights organizations in  
15 the development and implementation of legal, political public education  
16 and communication strategies to address racial-justice issues.

17 She worked before the Advancement Project at the NAACP Legal  
18 Defense Fund and she was, at point, managing attorney of the LDF's  
19 Washington office. She received her law degree from the Columbia  
20 University School of Law.

21 We will begin with you, Ms. First. Please proceed.

22 MS. FIRST: Thank you very much. It is good to be here  
23 today. I am particularly grateful that the Commission has taken on  
24 this thorny subject that we have been struggling with for a long time.

25 I am going to skip rather quickly to some of the points in

1 my written testimony and make some comments on some of what I have seen  
2 here today.

3 CHAIRPERSON BERRY: Your written testimony, by the way, will  
4 be put in the record.

5 MS. FIRST: Good. One of the things that I would like to  
6 note that has--actually, let me just talk about what I have heard here  
7 today and try to eliminate as much duplication as I can. We have heard  
8 a number of people say that expulsion is extraordinarily destructive.

9 Certainly, we agree with that, very, very strongly, that  
10 once a child is out of school for a year or for two years, and has no  
11 place to go--and we get phone calls all the time from families that are  
12 in that kind of situation--everything is at risk. Everything is at  
13 risk for the child and there is a great deal of risk for the family. It  
14 is not just a year or two that is at risk but it is a lifetime of risk.

15 I also want to really agree with some panelist--I can't  
16 recall who said this at this point of the day--who noted that he felt  
17 that there was a connection between the raised standards and  
18 standardized testing and what is going on with zero tolerance.

19 It is our view that that is, in fact, the case. We see all  
20 of the time an enormous concern on the part of school administrators  
21 with keeping test scores up. There is a school-reform news letter in  
22 Chicago that is very highly respected, an award-winning publication,  
23 called Catalyst.

24 I would like to quote to you from a recent issue of Catalyst  
25 the words of a Chicago High School administrator. This particular

1 administrator was talking about a situation where 700 students had been  
2 dropped from the roles of the Chicago public schools.

3           These were kids who were over 16 years of age and who had  
4 missed twenty or more days of school. They were just automatically  
5 being dropped. Once so dropped, they could not re-enroll at any high  
6 school in the City of Chicago.

7           The school administrator, who was an Assistant Principal at  
8 Orr High School whose name is David Meegan said, "What we have found is  
9 that those kids who are missing twenty days are the ones who drag your  
10 test scores down. We want quality more than quantity and if that means  
11 removing dead weight, then we will remove dead weight."

12           I think that is an extraordinarily succinct statement of  
13 what the dynamic is. You asked a question a little while ago about  
14 were we going to throw the baby out with the bath water here in terms  
15 of zero tolerance.

16           I thought that the response from the panelists about the  
17 permission that is being given--the issue is almost, in many places,  
18 not so much the policies themselves as the permission that is being  
19 given to adults to act in ways that are abusive of the rights of  
20 students and that result in very thoughtless and very highly racialized  
21 exclusion of kids.

22           I won't belabor the point because the folks from Norma  
23 Cantu's office said it very well this morning that she passed out with  
24 the stats from the various year. I, myself, have been dutifully  
25 reading the OCR data now since 1974 whenever that whole process began.

1           There never has been a year when white students in this  
2 country had higher suspension and expulsion rates than black students.  
3 That has been a given. It is an incredibly powerful dynamic. I think  
4 that that is what we have to take into consideration.

5           We can't forget the history of this country. We can't write  
6 it off to socioeconomics. What I am hearing happening all across the  
7 country, and I work in various states, is a conversation that is going  
8 on that basically says, "Well, this isn't really about race. This is  
9 really about poverty, now, and we want to be sure that we really deal  
10 with the poverty issue."

11           I was in a Deep Southern state recently at a school-board  
12 meeting. The subject was, will we continue to disaggregate data, We  
13 had five-and-a-half hours of conversation that went on in that setting  
14 and the word "race" was never used once. It was all cast around  
15 socioeconomic status.

16           I think that is dangerous. I get very troubled at the same  
17 time that that is going on that we have the dropping, in many states,  
18 of collection of various kinds of data by race because, of course, what  
19 that data reveals is for whom the school-reform movement is working and  
20 for whom it is not working.

21           People are anxious to have that information. If they  
22 continue to collect it, they are particularly not anxious to have it  
23 made available to communities and for it to be published.

24           I will be very grateful when the 1998 OCR data comes out  
25 because it will contain the first expulsions by race, as Norma Cantu



1 noted this morning. I know that many of you probably are aware of how  
2 hard we had to fight to keep that survey at all a couple of years ago.

3 Many of us who were here today also really worked on the  
4 redesign of the 1998 survey. Even when the expulsion data arrive, we  
5 are not going to have anything to compare them to yet. There are  
6 rumors and rumors afloat again about the viability of civil-rights  
7 survey. I think that that is something that we all have to continue to  
8 work to keep in place because, without it, we are going to be lost  
9 because state-level school reformers are not in a hurry to have a clear  
10 picture of exactly what is happening in their states.

11 I will be forever grateful, I think, to the Reverend Jesse  
12 Jackson for having gone to Decatur and accomplished what many of us  
13 have trying to do for quite a long time which was to really get this  
14 debate fully out in the open and the way in which he did accomplish  
15 that.

16 I understand that the debate--and mostly I understand these  
17 things from the press calls that I get--but I had a call just before I  
18 left the office to come here from a man who identified himself as the  
19 "Jesse Jackson beat reporter" for the Decatur News Register. I thought  
20 that was just wonderful.

21 I am sure Reverend Jackson would appreciate knowing they  
22 have a full-time person working on his--

23 COMMISSIONER EDLEY: There is a national association of such  
24 journalists.

25 MS. FIRST: This particular fellow, whose name happened to

1 be Tom Collins which also amused me because I am sure, after all this,  
2 he really does need a drink. This particular fellow described to me  
3 the debate in Illinois at this point in time as being framed between  
4 the local control folk and the people who want to see a uniform zero-  
5 tolerance law that would make certain that everyone was treated the  
6 same.

7 This was both good news and bad news because the whole  
8 notion of how we create state laws, drawing upon what we know to be the  
9 best of local school-district codes, is a really, really interesting  
10 one.

11 It interests me and it interests a lot of other people, but  
12 it also has pitfalls in it. On one hand, it bothers me a lot to think  
13 about strengthening the whole zero-tolerance movement by saying, "Now  
14 we are going to have state zero-tolerance laws." I don't think that  
15 that is a helpful thing. Maybe we need to just invent some new  
16 language to take of that piece.

17 I also want to comment about the whole notion of the kids  
18 who get expelled from school are the kids who have gone through a  
19 progressive series of actions that lead them to this dire circumstance  
20 in their life.

21 I had a phone conversation the other day with a Californian  
22 whose name is Junious Williams, who is an attorney, who is at the Urban  
23 Strategies Council in Oakland. Junious used to be at the University of  
24 Michigan in the Race Equity Center and, during a time in my life when I  
25 was doing race-equity work at a federally funded center, we worked

1 together in a lot of school districts.

2           Junious, I think, has as good a grip on this issue as anyone  
3 I know. So I called him up as I thought about preparing this testimony  
4 and said, "Okay; if we took the good school codes," the school codes  
5 that he and I would at least agree are good codes, "that require  
6 teachers to do referrals in writing to describe student behavior in  
7 behavioral terms and to link it to the school code, if we categorize  
8 offenses so that you have mild offenses, medium offenses and blatant  
9 illegalities, and you connect consequences to each of those categories  
10 that appear to be a reasonable rather limited range of consequences,  
11 and you do that at the state level, what would you have? Would you  
12 have something that would work?"

13           And he said, "Well, I don't really thing so completely." He  
14 very quickly shifted his attention to the notion of having school  
15 districts doing a much better job of having mandatory review of the  
16 cases of students who commit certain kinds of offenses, the more  
17 serious kinds of offenses.

18           Interestingly enough, where he ended up with this whole  
19 thing was that if our search is for the ultimate consistency, which is  
20 what zero tolerance presents itself as being, then what we should be  
21 worried about being consistent about is the steps to that review  
22 process as opposed to precise precision in eliminating all discretion  
23 around exactly how severe the punishment--I find that noise very  
24 distracting

25           To repeat that, the consistency should lie in the standard

1 for review with everyone who has committed those particular offenses  
2 being held accountable to the same standard and the same review process  
3 rather than there being such an emphasis on precisely the same  
4 punishment for every kid who does the same act.

5 Now, that also makes me break out in something of a rash  
6 because, for years and years, we have known that, as adults look at  
7 what happens in schools and they watch student behavior, someone  
8 defines what a kid is doing as a certain kind of behavior and therein  
9 creeps the racism, because that is the subjective part of the process.

10 I think that it is a real dilemma, but there is a dangerous  
11 trap there as well if we eliminate all discretion. I think we have to  
12 have to some discretion, but I think we need to limit discretion very  
13 seriously on the part of administrators.

14 I also have seen the research over the years that says that  
15 the racial disparity comes from teachers and that administrators tend  
16 to pass that along. Certainly, there are questions that need to be  
17 asked about what has happened to that with regard to the periods since  
18 these zero-tolerance laws have become as popular as they have.

19 I am going to wrap this up very quickly and allow the other  
20 panelists to speak. I think that the researcher from ARC who suggested  
21 that Commission should really look in great depth at this issue had it  
22 exactly right. I think that it is an extraordinarily appropriate issue  
23 and it is something that I hope that you will put lots of attention on.

24 I think that the OCR survey data, as I noted before,  
25 continued to be extraordinarily important to all of us who work on

1 these issues, and they are more important because of the fact that  
2 schools are just not wanting to disaggregate data very much anywhere.

3 So I think it is going to be really important that all of  
4 the persuasion be brought to bear upon the people who allocate money  
5 and so forth that that survey continue to happen. I think it is going  
6 to be extremely important that we have a full-universe survey. We are,  
7 right now, surveying something like 20 percent of the districts--don't  
8 quote me on that because I am not positive, but it is a relatively  
9 small number of the actual districts who report OCR data.

10 Certainly, I favor, and NCAS favors, the elimination of  
11 zero-tolerance policies. Certainly, we would favor, very strongly, the  
12 conduct of more intensive and aggressive compliance work by the Office  
13 of Civil Rights.

14 I work personally with many parent groups in many different  
15 communities including a number of different Latino communities, the  
16 African-American community, Southeast Asian parent groups, the Haitian  
17 community. All of the parents that I work with know that they can file  
18 complaints.

19 The degree to which there is a fast and aggressive response  
20 is limited. It is a much, much softer approach that we are seeing. I  
21 am all for prevention but if you try to do the prevention and it  
22 doesn't work and you don't do anything then, you are not in such a good  
23 place.

24 So those are the short form of my observations. Oh; one  
25 other thing, Madame Chairperson. There is a lot of reluctance on my

1 part to view special-education placement with the labeling and so forth  
2 that goes with it and the fact that so many African-American male kids,  
3 in particular, end up in EMR classes, to view that as the solution to  
4 getting rights for kids in the face of zero tolerance. I don't think  
5 that it is.

6 CHAIRPERSON BERRY: So don't label more of them because  
7 whatever they are getting there--as Dr. Noam or somebody had pointed  
8 out, they are not getting anything there either.

9 MS. FIRST: That's right. And they are getting a lifelong  
10 label there.

11 CHAIRPERSON BERRY: Right; a label forever.

12 Ms. Zweifler, please.

13 MS. ZWEIFLER: Thank you so much for this opportunity and  
14 for your careful attention to this complex and alarming problem. I,  
15 too, will try to skip through a lot of stuff--

16 CHAIRPERSON BERRY: You will have a chance with the  
17 questions, too.

18 MS. ZWEIFLER: What I wanted to say first is that the  
19 history of the development of Brown v. Board of Education and its  
20 insistence on equal rights and then, in the '70's on the Special  
21 Education Law, it did feel as though we had finally come to a point  
22 where all children would be educated.

23 I think the zero-tolerance laws are absolutely destroying  
24 that. We are challenging the whole concept of universal public  
25 education and have moved to into an "if they deserve it, then we will

1 give it to them." I think that is a consequence of this that has to be  
2 looked at very carefully.

3           The zero-tolerance concept has spawned, certainly, laws in  
4 my state that go far beyond the prohibitions and penalty of that act.  
5 Absent specific legal sanctions, many school districts are now invoking  
6 the language of zero tolerance and expelling children for violating  
7 school rules.

8           Once snared, regardless of the offense, the student is  
9 likely to be treated as if he or she has violated the weapons law and  
10 will receive all the harsh penalties that accompany a charge of  
11 possessing a gun including permanent expulsion and referral to the  
12 courts.

13           Accurate and comprehensive documentation, as people have  
14 said, is virtually absent. In my state, there is a requirement in the  
15 law to report. It is ignored. I often think that laws are for  
16 children and adults can do what they want.

17           In preparation for our report, Access Denied, and I have  
18 left copies of that with Ms. Tyler, we sent out 100 Freedom of  
19 Information requests to school districts in Michigan. Of the 100 sent  
20 out, we got 64 returned. There, again, is a law to respond to that.  
21 Of that, there were 17 with usable data. Of those 17 school districts  
22 reporting for the years 1997-1998, we found 582 expulsions and a  
23 disparity impact on minority children.

24           So what reports are available confirm two unsettling facts;  
25 the impact falls most heavily on ethnically identifiable children and

1 on middle-school children. I don't know that we have talked about that  
2 enough today.

3 The kids that are really receiving this are middle-school,  
4 12 to 14-year-old, kids. They are the early adolescents who are  
5 thoughtless, impulsive. I think the previous panel was talking about  
6 developmental responses. That is what we know--by definition, we know  
7 how these kids are going to act and, yet, we are responding to them by  
8 putting them out of school.

9 What isn't reflected in the data because it has not been  
10 gathered until now, and I am not sure that the survey is going to  
11 address this, is, in fact, how it impacts on children with special-  
12 education needs.

13 But, in addition to those youngsters who are already--and  
14 what we are seeing in our work with individual children--many of them  
15 are children who have been identified. Many more are children who have  
16 a long history of academic and behavioral problems that--and Joan and I  
17 have tension around this issue, in part, because we have no other  
18 alternative in Michigan.

19 There is nothing. There is no opportunity to sit down and  
20 talk with school people. The hearings are cut and dry. There is  
21 nothing. So we do look to see if there is reason to believe that there  
22 may have been a need for support services prior to this event.

23 In fact, that is as troubling as anything that we have seen,  
24 children with three, four years of documented history of therapeutic  
25 intervention done privately but well-known to the district, sad school



1 histories, and ignored until they make a misstep. So I think that is a  
2 real concern.

3 MS. FIRST: You are talking about special ed.

4 MS. ZWEIFLER: I am talking about the need to at least look  
5 at whether or not these are children who need supports. And then, of  
6 course, is the challenge to get appropriate supports that will develop  
7 their potential instead of just--

8 CHAIRPERSON BERRY: Are you talking about disabled children  
9 or are you talking about general-education children who have been  
10 disruptive and who need counseling.

11 MS. ZWEIFLER: I am talking about children who we don't know  
12 because they have not been referred. There has not been an evaluation  
13 despite the affirmative duty of a school district to evaluate when  
14 there is reason to believe.

15 I think these children, many of the children we are seeing,  
16 are children who should, at minimum, have been evaluated. In many  
17 cases, we find they are eligible and then we still have problems  
18 getting them in school.

19 The law for children with special-education needs requires  
20 services regardless of disciplinary status. That isn't being done  
21 necessarily. If it is being done, it is maybe two to five hours a  
22 week. So the children who need the most receive the least. If there  
23 is an alternative, that is basically what they are getting.

24 In Michigan, a child who is expelled under the Mandatory  
25 Weapons Law is prohibited from entering any public school in the state.

1 What is happening is that, even for these other lesser offenses where  
2 that is not a prohibition, school districts will not accept these  
3 children. The school doors are closed to them, absolutely.

4 I think we have talked a lot about what the impact is on the  
5 children. I do want to talk about criminalization of the children. We  
6 are finding that behaviors such as pushing and fighting are now called  
7 assault.

8 I have attached the new laws that Michigan has enacted and  
9 stories in my written testimony. But this is of great concern.  
10 Language is now being responded to with expulsions in Michigan.

11 The other area that I don't think was touched on  
12 particularly today is the hardship on families. We are finding, again,  
13 that many of these children are referred to the courts. Embedded in  
14 the law now is a requirement for parents to educate the children. If  
15 they are expelled, then the parents have the duty.

16 So we are finding, especially with poor, single parents,  
17 that they are being threatened with and, in several cases, have  
18 actually had the children taken away from them because they are not in  
19 school. They are expected to home school.

20 These are folks with not a lot of education themselves, with  
21 not a lot of resources. We asked for the application for home  
22 schooling from our state, and I looked at it, and I thought, god help  
23 me if I had to fill this thing out, never mind then teach my kids.

24 The other piece is this growing morass of punitive laws  
25 legitimizes a poisonous climate of fear and suspicion on the part of

1 both staff and students. The fact that we have these laws somehow  
2 says, yeah; we really should have been frightened. Look at the laws we  
3 have to have to protect us.

4 That, again, is, I think, just escalating throughout the  
5 whole community. Additionally, I think many children are motivated by  
6 malice in reporting other kids. That comes as a consequence to that.

7 I want to say that it has always struck me as ironic that we  
8 consider it harsh when we say that felons, convicted felons, have three  
9 strikes and they are out and yet one misstep on the part of a child.

10 So, thank you very much.

11 CHAIRPERSON BERRY: There will be questions.

12 Ms. Browne, please.

13 MS. BROWNE: I thank you for this opportunity to address the  
14 Commission on this important issue and, of course, for the dubious  
15 distinction of being the very, very last panelist because I know what  
16 that means. I have got to be quick.

17 I come at this actually on behalf of the Advancement Project  
18 and the Civil Rights Project at Harvard University as two organizations  
19 that work with community groups throughout the country. What we have  
20 done is tried to, in our actual report that I hope you will also accept  
21 for the record--

22 CHAIRPERSON BERRY: We will accept it.

23 MS. BROWNE: --education denied. What we have tried to do  
24 is give you a glimpse of what is going on on the ground.

25 Every day, throughout the United States, children are being

1 shut out of the educational system through application of zero  
2 tolerance policies. The Commission should be very concerned with the  
3 long-term implications of denying educational opportunities to millions  
4 of children, particularly when the effectiveness of these policies in  
5 insuring school safety is highly suspect.

6 Of greater concern, thousands of children are being shunted  
7 into the criminal-justice system as schools have adapted criminal-  
8 justice policies to the educational setting.

9 I would like to tell you a story that comes from one of the  
10 communities that we are working with in the Mississippi Delta that  
11 underscores the extent to which there has been an overreaction to  
12 childish behavior, and that the overreaction has devastating  
13 consequences.

14 While the story may be outrageous, it is not an anomaly. At  
15 the beginning of this school year, some children were playing on a  
16 school bus, throwing peanuts at one another. A peanut accidentally hit  
17 the white female bus driver who immediately pulled over and called the  
18 police.

19 After the police arrived, they diverted the bus to the  
20 courthouse where children were questioned. Five African Americans,  
21 ages 17 and 18, were then arrested for felony assault which carries a  
22 maximum penalty of five years in prison.

23 The sheriff commented to one newspaper, "this time it was  
24 peanuts, but if we don't get a handle on it, the next time it can be  
25 bodies." The young men were also suspended from school and their bus

1 privileges were withdrawn.

2 I should mention that the bus driver--although it sounds  
3 like a very funny story, the consequences were serious for these young  
4 men--the bus driver did mention that this was a hard peanut, not one of  
5 the soft-boiled ones.

6 All five young men, who were juniors and seniors, have since  
7 dropped out of school due to a lack of transportation to travel the 30  
8 miles to their school in this poor rural county in the Mississippi  
9 Delta. One of the young men told us, "I would have gone to college.  
10 Maybe I could have been a lawyer."

11 This story exemplifies the extremely harsh disciplinary  
12 approach that has taken over in many school systems and the increasing  
13 invocation of the juvenile-justice system for minor school behavior  
14 issues. Similar stories are included in our working paper.

15 Of course, you have heard earlier today about racial  
16 disparities. Our paper highlights some of the data from South Carolina  
17 that confirms this point. In school districts throughout the country,  
18 African-American and Latino children are constantly being suspended for  
19 more discretionary offenses such as defiance of authority.

20 Zero-tolerance policies have bred the zero-tolerance  
21 attitude and has changed school environments altogether. One lawyer  
22 told us, in our interviews, that, in fact, what she has heard in  
23 several hearings is white teachers commenting about the size of the  
24 girls, referring to African-American girls, implying that she felt  
25 threatened by these children.

1           These categories of conduct, discretionary conduct, clearly  
2 provide more latitude for racial bias to play a part of the  
3 disciplinary measures used. While Title VI and the Fourteenth  
4 Amendment provide protection for children against this type of  
5 discrimination, there are serious obstacles to obtaining justice for  
6 these children; lack of pro bono counsel, intimidation, lack of  
7 detailed, accurate data are just a few.

8           Additionally, it is quite difficult to show, under the  
9 Fourteenth Amendment, discriminatory intent. Under Title VI law, which  
10 permits use of disparate impact, that law is largely undeveloped.

11           Zero-tolerance policies are also having a great impact on  
12 children with special needs. In one story in Florida, for example, an  
13 autistic child hit a teacher. The child was expelled and charged with  
14 battery, a third-degree felony.

15           Is it worth it? Zero-tolerance policies are having high  
16 consequences for children, families and communities. Of course, school  
17 administrators should be permitted to employ a range of disciplinary  
18 measures in providing for the education of children and safety.  
19 However, they should not be senseless.

20           Some of the consequences that I wanted to focus on are the  
21 loss of educational opportunities. Suspended children are often  
22 getting failing grades for the days that they have missed in school.  
23 In many instances, they are left without any educational alternatives  
24 whatsoever.

25           For example, an eight-year-old boy in Mississippi who was

1 suspended in October of 1999 for kicking his teacher; he has been  
2 suspended for the remainder of the school year. He is sitting at home,  
3 watching t.v. and playing. Although districts in Mississippi are  
4 required to have alternative education programs, they do not provide  
5 those education programs for children that young.

6           Where alternative education does exist, it often merely  
7 serves as a holding pen for children. It keeps them off the street,  
8 but they learn nothing. We have heard several complaints from  
9 children, themselves, who say, "We are sitting in class watching videos  
10 all day," or, "We are getting worksheets and the teacher doesn't tell  
11 us how to do the work. When they grade our exams, they, then, don't  
12 tell us what we got wrong and why we got it wrong."

13           Of course, the other consequence is that children affected  
14 by these policies often drop out of school or are left on the streets  
15 to devise their own pastimes.

16           The criminalization issue is very, very important. The  
17 children are being treated like criminals. The policies, themselves,  
18 are adapted from the criminal-justice system. They are akin to  
19 mandatory-sentencing guidelines and "three strikes, you're out,"  
20 policies. They do nothing to change behavior and provide for a child's  
21 future.

22           One of the things that has happened in another Mississippi  
23 school district is that there was a child who had a disciplinary  
24 committee meeting to determine whether or not she should be suspended  
25 and sent to an alternative school.

1           One of the things that she did was defiance of authority  
2 because she had talked back to her teacher. The other thing that she  
3 was being brought up for was drug activity because she had walked  
4 around school one day with one pants leg rolled up. She has no  
5 involvement whatsoever in gang-like activity.

6           On the disciplinary committee, there were school  
7 administrators and there were two police officers. This is the first  
8 time they had used police officers on a disciplinary committee. There  
9 was another police officer who was stationed at the door to insure that  
10 no one got into that room other than the parent and the child.

11           The advocate, the student advocate, who was a community  
12 activist, was not allowed into the room and counsel for the child was  
13 not allowed in the room.

14           One of the most detrimental effects has been the increased  
15 criminal charges filed against children, regardless of age and  
16 circumstances. Of course, there is, again, the assault with the  
17 peanuts story, but there is also the seventh grader in San Francisco  
18 who bet a classmate and then, when he won, he asked the classmate for  
19 the money and he was charged with felony extortion. The district did  
20 no internal investigation and, instead, handed the child over to the  
21 police.

22           Thus, there are situations where, under state law, children  
23 are charged with criminal offenses for misconduct in school and  
24 situations where districts have simply transferred all of their  
25 disciplinary authority over to law-enforcement officials.



1           In closing, in the wake of serious violence in our public  
2 schools, policy makers and school officials have understandably taken  
3 steps to insure the safety of our children. However, in the rush,  
4 rhetoric has won over common sense. The result is zero-tolerance  
5 policies.

6           These policies, adapted from criminal-justice policies, set  
7 in motion a series of events negatively affecting children, families  
8 and communities. These adverse consequences warrant immediate review  
9 and reform to insure not only that schools are safe but that children's  
10 civil rights are protected and that they are able to avail themselves  
11 of an education.

12           During a time when education is frequently viewed as the  
13 only route out of poverty for many children, and when they must pass  
14 increasingly rigorous tests in order to be promoted or to graduate, it  
15 is especially important that they receive the best possible education  
16 available to them.

17           We have set out several recommendations in our report. One  
18 of them, of course, is that the Commission on Civil Rights should use  
19 all of its subpoena powers to investigate the issues of discriminatory  
20 application of zero-tolerance policies against minority and disabled  
21 children.

22           I would like to tell you one thing that a woman in  
23 Mississippi said to me when I called her and said, "I need information  
24 about what is going on in your school district." I hope that you will  
25 heed these words.

1           She said to me, when I said, "Well, I am compiling  
2 information about this problem." She said, "I wish you all would stop  
3 compiling information and do something to help these black children."

4           Thank you.

5           CHAIRPERSON BERRY: I want to thank the panel but I am going  
6 to do something that I would not do otherwise. Your testimony will be  
7 included in the record, but we are about to lose a quorum and we have  
8 some actions that we have to take so I want to make sure that we get to  
9 take them.

10                           **Commission Discussion and Action**

11           I will ask briefly is there anyone who has a burning  
12 question that they need to ask the panel? Or should we take the action  
13 and then--we need to take an action on this particular discussion. We  
14 need to decide what to do before we lose a quorum.

15           COMMISSIONER EDLEY: Do we have time?

16           CHAIRPERSON BERRY: We may, depending on what people decide  
17 they want to do. At least we need to pose the question whether people  
18 want to have discussion at another time, whether they want to consider  
19 having an additional proceeding on this matter, without describing what  
20 that proceeding would be, or whether they feel that today's briefing  
21 has sufficiently satisfied our interest in the subject for the time  
22 being.

23           That is what the press will ask. So we need to know at  
24 least that.

25           COMMISSIONER WILSON: Since I am half of the quorum, or half

1 of the half, or the quarter, that is about to leave, let me just say  
2 that I feel that this, in no way, satisfied my need to know about the  
3 subject and I would suggest that we hold further meetings.

4 Again, since I am the newest person, I am not exactly sure  
5 what our choices are but I would say that we hold further hearings on  
6 this.

7 CHAIRPERSON BERRY: Is Commission Lee still on the phone?

8 COMMISSIONER LEE: I am still here.

9 CHAIRPERSON BERRY: Commissioner Anderson.

10 TELEPHONE VOICE: Commissioner Anderson just had to step out  
11 for a few moments.

12 CHAIRPERSON BERRY: Commissioner Lee, are you going to be  
13 able to stay with us?

14 COMMISSIONER LEE: Yes.

15 CHAIRPERSON BERRY: Then we will have a quorum.

16 We have heard your view about this, Commissioner Wilson. We  
17 will consider that and take it into account. Commissioner  
18 Meeks?

19 COMMISSIONER MEEKS: I do think we need to do something  
20 formal on this issue. It has been demonstrated very loudly.

21 CHAIRPERSON BERRY: Are you going to have to leave, too?

22 COMMISSIONER MEEKS: Yes.

23 CHAIRPERSON BERRY: Oh; well, then, we won't have a quorum.  
24 Let's proceed.

25 VICE CHAIRPERSON REYNOSO: Our options are various. I don't

1 know that we have time now to consider them. I think it should go on  
2 our agenda next meeting, it seems to me, to decide which of various  
3 avenues we will take. The issue, obviously, is very important.

4 CHAIRPERSON BERRY: Perhaps we could at least decide whether  
5 we think we need to decide whether to do something else.

6 COMMISSIONER MEEKS: I move that we decide at the next--

7 CHAIRPERSON BERRY: Could you move that we do not rule out  
8 further proceedings on this matter.

9 COMMISSIONER MEEKS: I would move.

10 CHAIRPERSON BERRY: And you would second?

11 COMMISSIONER WILSON: Definitely.

12 CHAIRPERSON BERRY: All in favor indicate by saying aye.

13 [Chorus of ayes.]

14 CHAIRPERSON BERRY: Opposed?

15 [No response.]

16 CHAIRPERSON BERRY: So ordered.

17 The other thing I wanted to do before everyone left, and  
18 this has nothing to do with this--it will only take a second--is to  
19 point out that this morning when I said that Commissioner Edley was  
20 wrong about the budget process, I did not mean that Commissioner Edley  
21 was wrong about how the budget process goes. I simply meant that the  
22 history of what has happened at this Commission was not the same as  
23 what he has described.

24 I wanted to say that so you would hear it.

25 See you, guys.

1           COMMISSIONER WILSON: I have one question having to do with  
2 the statement on candidates, do you need--

3           CHAIRPERSON BERRY: Yes. Let me read it.

4           Elsie, could you wait for this. It is very short.

5           "The U.S. Commission on Civil Rights is deeply concerned that  
6 candidates avoid the use of racial slurs in the current Presidential  
7 campaign. Commissioner Berry said, 'We believe that the use of such  
8 language by those who run for election to the nation's highest office  
9 is particularly objectionable when it occurs. Racial slurs can  
10 inadvertently exacerbate racial tensions and undermine racial harmony.  
11 The Commission has consistently called upon political leaders to avoid  
12 using racial and ethnic epithets and it has been nonpartisan in  
13 reminding candidates of its importance.'"

14           That is all it says.

15           CHAIRPERSON BERRY: That's fine.

16           CHAIRPERSON BERRY: Does that mean anything or should we  
17 flesh it out more and pass it around for you to read?

18           COMMISSIONER WILSON: I would suggest we pass it around.

19           COMMISSIONER LEE: I agree.

20           CHAIRPERSON BERRY: We will put some substance in it. What  
21 about the tone and tenor of what he has written.

22           COMMISSIONER WILSON: That's fine.

23           COMMISSIONER EDLEY: It is innocuous enough that it won't  
24 cause a ripple. I think that is what is problematic about it. If we  
25 are going to fire a shot across somebody's bow, it shouldn't be a

1 blank.

2 CHAIRPERSON BERRY: He wrote another draft in which he  
3 directly said we should tell--reminded by Senator's McCain's behavior,  
4 we take this occasion to make this statement.

5 COMMISSIONER WILSON: Maybe what would be helpful is to read  
6 both of those--pass both of those around and let each of them read them  
7 and compare them.

8 COMMISSIONER EDLEY: Maybe the bland one and then a muscular  
9 alternative.

10 CHAIRPERSON BERRY: More substance about what we have done  
11 in the past in the context. We will pass it around. There is no hurry  
12 about it. The campaign is going to go on for a while.

13 [Commissioners Wilson and Meeks leave the Commission  
14 Meeting.]

15 Questions for Panel III

16 CHAIRPERSON BERRY: Are there any questions for the  
17 panelists?

18 COMMISSIONER LEE: I have a question for either Ms. Browne  
19 or any of the other panelists. I should have asked this question of an  
20 earlier panel. About two years ago, there was a fifteen-year-old  
21 student who was expelled from school after an altercation with a white  
22 student. Apparently, the school did not call the parent or did not  
23 give the student any chance to explain himself.

24 Instead, the police escorted him home and told the parents  
25 that he was being expelled. The kid felt ashamed that he had caused

1 the family embarrassment and he shot and killed himself. This happened  
2 in Phoenix a couple of years ago.

3 My question to Ms. Browne was the earlier panel mentioned  
4 that the parents have the right to challenge certain kinds of  
5 disciplinary actions. Obviously, in this case, the family nor the  
6 student was given that right.

7 Is it a legal requirement or is it a practice that was done  
8 by different districts? Is it a legal requirement that they have to  
9 inform the parents before any kind of disciplinary action is taken?

10 MS. BROWNE: It is actually under the due-process clause of  
11 the Fourteenth Amendment. It is actually not a requirement. It  
12 depends on the term of the suspension. It is my understanding that if  
13 it is nine days or less, you are not entitled to a "formal hearing"  
14 which would permit you to have counsel and be able to cross examine  
15 witnesses.

16 If it is less than nine days, you are not entitled to that.  
17 So, for example, the case where I talked about the disciplinary hearing  
18 with the child in Mississippi, she was not entitled to counsel in that  
19 room under the Supreme Court's decision on due process in school  
20 disciplinary issues.

21 But what happens is that even if it is more than ten days--I  
22 have heard several stories where children are still not getting their  
23 due-process rights and that school districts--one example is somebody  
24 that told a parent, "Don't worry about it; it is not going to help  
25 you." So we are not giving them the due process.

1 MS. ZWEIFLER: May I add that that is not unusual, that that  
2 is what is going on and it is going on for children who are being  
3 permanently expelled. They are treated like criminals, but they are  
4 not afforded any of the rights and protections that they would get in a  
5 court of law in the school environment.

6 We can't get student witnesses to appear. Of course, we  
7 can't get attorneys for poor folks at all. Middle-class parents whose  
8 kids are involved in this can sometimes find lawyers but, because the  
9 law is so weighted against the child and in favor of the school, there  
10 is a tremendous reluctance for any kind of legal action.

11 CHAIRPERSON BERRY: Does anyone else have a question?

12 VICE CHAIRPERSON REYNOSO: I just more had an observation  
13 that this panel and the previous panel particularly, but even before  
14 then, there seemed to be no disagreement that the rule seemed to be  
15 clear and that there needs to be discipline when appropriate.

16 The disagreement seemed to be that zero tolerance not only  
17 called for discipline but then indicates what the discipline will be  
18 and the discipline so often is disproportionate and is not related to  
19 the infraction and doesn't really help much.

20 That is the first matter of disagreement that I see in terms  
21 of what I heard today. Secondly, I guess you folks particularly  
22 emphasized the ambiance, that the ambiance of the schools has changed  
23 to a far more recriminating type of ambiance that is so at variance  
24 with the ambiance that would should have at the schools which is a  
25 supportive and a learning environment.



1           Is my observation or summary pretty much correct from your  
2 point of view?

3           May the record show that heads are nodding.

4           MS. ZWEIFLER: Several people have mentioned how urgent it  
5 is that we require alternative education for these youngsters,  
6 appropriate, supportive education. Again, Michigan does not require  
7 that at law and does not require readmission of these kids.

8           VICE CHAIRPERSON REYNOSO: I was a little bit taken aback  
9 that such a large percentage of school districts nationwide don't even  
10 have alternative education. My concern in California has been that  
11 alternative education so often is little education at all.

12           I have a daughter who taught in an alternative high school  
13 for a while. They would bring back the few graduates that they had who  
14 had gone on and done well to talk to the students, to education them.  
15 But students learn not just from teachers, but from one another, et  
16 cetera.

17           When you have all of these youngsters, all of whom have done  
18 poorly in school, it is not the best environment for them to do well.  
19 So I have been concerned that what is called alternative education in  
20 California so often is not much of an education. But, apparently, many  
21 areas in the country are worse off.

22           MS. BROWNE: It is actually very like tracking at its worst.

23           MS. FIRST: Throwaway kids in throwaway schools with  
24 throwaway teachers who have the least experience. We have an office in  
25 West Palm Beach, Florida, the Palm Beach County Schools. They recently

1 ran into a lot of trouble because the administrator of the school  
2 system's alternative school program was falsely reporting the number of  
3 kids who were being served to the state and there was a big flap about  
4 this.

5 It eventually ended up with the superintendent being  
6 dismissed. But the whole thing never would have happened around a  
7 gifted-and-talented program. You can be really certain of that.

8 VICE CHAIRPERSON REYNOSO: My daughter, who happened to like  
9 working with these kids, told me that several of the teachers there  
10 hated those kids. They had sort of been assigned to that school I  
11 guess by administrators who were unhappy with them and they hated the  
12 very kids they were teaching.

13 MS. FIRST: That is very often the case.

14 COMMISSIONER EDLEY: If any of you are expert enough on  
15 Title I, I have two questions. First, I guess I am just surprised  
16 that--I think the figure was about 60 percent of districts don't have  
17 alternative programs available. There must be some cullable argument  
18 under Title I that that violates the ESEA. That is point number one.

19 Point number two, I would be curious if any of you have an  
20 impression about the effectiveness or lack thereof of the civil-rights  
21 enforcement activities in this domain by OCR or by state civil-rights  
22 agencies, because they think they are doing a fine job. I was just  
23 curious as to whether you share that.

24 MS. FIRST: I think you may have been out of the room when I  
25 touched on that.

1 COMMISSIONER EDLEY: I'm sorry.

2 MS. FIRST: That's fine. I will say it again. The whole  
3 notion of OCR doing what Norma described this morning as prevention  
4 with school districts has really meant that they go in and they do  
5 technical assistance and so forth in the way that the federally funded  
6 race-deseg centers used to do it, to try to prevent problems.

7 But there isn't the kind of aggressive compliance work going  
8 on that went on historically from OCR and there hasn't been for quite a  
9 while. I have worked with limited-English proficient parents who filed  
10 complaints. They get phone calls at home from lawyers who speak only  
11 English.

12 It is a very mixed bag. California is very fortunate, I  
13 think, it is current regional director of OCR. It varies a lot from  
14 district to district. But it is not aggressive and I wish that it were  
15 because there is a lot going on that needs to be coped with.

16 There is one other point that I would like to make before I  
17 am quiet forever here and that is that a few years ago, some  
18 researchers looked into the pool of kids who had been expelled from the  
19 Detroit Public Schools.

20 They found that 75 percent of the population of expelled  
21 students had one or no previous episode of suspension yet alone  
22 expulsion. The notion that these are the bad kids who are getting  
23 expelled leaves a lot to be desired.

24 CHAIRPERSON BERRY: Other questions from Commissioners?

25 MS. BROWNE: Can I just speak to the Title I issue very

1 quickly?

2 CHAIRPERSON BERRY: Yes, please.

3 MS. BROWNE: I think that one of the problems with Title I  
4 and alternative education is that the schools that are in existence  
5 have kind of fallen through the cracks with regard to whether or not  
6 they are meeting the Title I standards.

7 There is really no way to show that they are complying. We  
8 work with communities who are looking at Title I and saying, "Title I  
9 says this and none of our schools are meeting the standards. What do  
10 we do?"

11 That is a problem. There are school districts, several  
12 school districts that come together to set up one alternative problem  
13 and then they are all pointing the fingers at each other, "Who has got  
14 the contract?" So there is no compliance review, there is nothing and  
15 these people are just feeling hopeless.

16 CHAIRPERSON BERRY: Thank you very much for coming to us.  
17 You heard people talking about further proceedings on this matter. You  
18 have persuaded us that we need to do more rather than saying this was  
19 enough. So at least we are that far.

20 We very much thank you. It was well worth your coming.

21 That concludes the briefing for today.

22 **Further Business**

23 CHAIRPERSON BERRY: Before we leave, I have one other matter  
24 that I want to inform the Commissioners about. We have been having  
25 discussions with some of the networks about their programs and

1 activities as they relate to the inclusion of people of color.

2 We asked the networks voluntarily for some data. The first  
3 response was that--I guess I should wait because Commissioner Edley  
4 doesn't know this--

5 COMMISSIONER EDLEY: I am listening; go ahead.

6 CHAIRPERSON BERRY: Their first response was that they would  
7 give us the data and they would give it to us voluntarily. We had a  
8 meeting here with one of the networks and their officials where they  
9 went into details about giving us the data.

10 Now, they have decided that they do not want to give us data  
11 but they want to continue having meetings with us. They also have  
12 given us memorandums that they signed with the NAACP and the other  
13 civil-rights groups.

14 My own view is that having meetings to just chum it up and  
15 talk is not what I am interested in, that the Commission is interested  
16 in some baseline data so that we will be able to analyze and monitor  
17 what they are doing.

18 The memoranda of understanding do not include giving any  
19 baseline data. So, therefore, the groups will not have any baseline  
20 data with which to determine any progress. Also, some of our interests  
21 are not covered in the MOUs such as our interest in who gets to be on  
22 the air in these news shows and how do they portray issues of race and  
23 religion and the like on the shows.

24 So I don't know whether their reluctance stems from--I don't  
25 know where it comes from. One thing they expressed was that if they

1 gave us data that someone might use it to sue them. It was  
2 explained to them, I think, that so long as information is being used  
3 by the staff here, it is exempt under the Freedom of Information Act  
4 from being disclosed, particular information, to them and that,  
5 secondly, if we were to have a hearing and subpoena the information,  
6 they would have to give it to us because it is employment data and data  
7 about activities.

8 We did not ask, so that everybody is clear, for scripts as  
9 in the flap over the Drug Policy Act, to either preclear or anything  
10 else. As a matter of fact, we told them that the staff could look at  
11 the network programming and tape it and see what was on the news shows  
12 and they didn't need to tell us that.

13 So what I said is that I am not personally interested in  
14 having meetings just to talk and that I would like the Commission to  
15 discuss how we might go about getting some data from them and then,  
16 once I had that discussion with Commissioners, I would get back to  
17 them.

18 I am not trying to have the discussion today. I am simply  
19 alerting you so that if you hear something about this that that is what  
20 happened. So the volunteer effort seems to have broken down and now we  
21 are in a position of having to figure out how we want to get this data  
22 or whether we actually need it.

23 My own view is that we need it. Otherwise, we might as well  
24 not do anything.

25 COMMISSIONER LEE: Madame Chair, I agree with you in that

1 more meetings will not resolve what the Commission really, really  
2 wanted to get to the bottom of, what is the representation of people of  
3 color in the entertainment industry.

4 What I would suggest is you can get the various MOUs, that  
5 would be fine, by the various parties, give it to us between now and  
6 the next meeting, and put the matter on the next agenda so that we can  
7 have a meaningful discussion before you decide whether we should  
8 proceed with the pre--or any other action can be taken.

9 CHAIRPERSON BERRY: Thank you.

10 COMMISSIONER EDLEY: I would also suggest that you or  
11 somebody on the staff chat with a couple of researchers in this field  
12 who might be able to offer some very good suggestions about what  
13 precisely kind of data might be most helpful for us to try to get a  
14 hold of; obviously, people at the Annenberg School, but I'll bet there  
15 are some other people who have done content analyses and looked at the  
16 issue generally so that when we do talk about this at a subsequent  
17 meeting, we have some ideas about what we can do beyond getting  
18 employment data.

19 VICE CHAIRPERSON REYNOSO: Madame Chair, we have spoken in  
20 times past, I think for the last couple of years, about being able to  
21 have a quick response to issues that come up or doing matters in a way  
22 that does not take quite as long as matters have taken in the past.

23 For example, if our main purpose here would be to get that  
24 data, we will discuss this more in our next meeting, obviously, but as  
25 was suggested by Commissioner Lee, we might authorize a full hearing

1 but the full hearing might be only half a day, where we have the  
2 witnesses come in, but subpoena all the documentation we need and we  
3 have accomplished what we wanted to do instead of having three days of  
4 hearing or whatever.

5 That, hopefully, our counsel could do more quickly and could  
6 expedite that. So all those things we need to explore. But I think we  
7 should keep an open mind to do whatever we need to do as expeditiously  
8 as possible and get it done.

9 COMMISSIONER EDLEY: Can we only subpoena in connection with  
10 a hearing?

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER LEE: We can have meeting hearings.

13 CHAIRPERSON BERRY: We can and we have had a full-blown  
14 hearing and not everyone has to be there. It is better to have a full-  
15 blown one since we have this--if you have a minihearing, you have to  
16 have one Republican and one person who is not. If you have a full-  
17 blown hearing, it doesn't matter so long as you have a quorum.

18 If we have any hearings, we are going to have just a regular  
19 hearing and those who can come can come, so long as we have a quorum, I  
20 guess, unless we can be assured that Commissioner Anderson is going to  
21 show up.

22 But I think it is a good idea. What we will do is we can  
23 get Kim to talk to--since she is the lead person on this--the people,  
24 the researchers, who can help. I will talk with her about identifying  
25 who they are. If I need to talk to everybody, I will. We will send



1 you the MOUs and then we will discuss it at the next meeting.

2 But, in the interim, I am not arranging a schedule of  
3 meetings with them because the meetings, unless they result in  
4 something, we are simply just sitting around chatting, which is a waste  
5 of my time and theirs, chatting about how they have concluded this MOU  
6 and isn't that wonderful, and all the rest.

7 I can read the MOU. I don't have time for gestures on this.  
8 I don't mean to be impolite, but it is just a waste of everybody's  
9 time.

10 So we will do that for the next meeting.

11 COMMISSIONER EDLEY: Can I ask--we did zero tolerance today.  
12 What is on the horizon? Is there a subject-matter focus for the next  
13 two meetings? I know we had an impressive lineup for the year as a  
14 whole, but I just wondered--

15 CHAIRPERSON BERRY: We are waiting for the New York report.  
16 Eddie thinks that--what do you think, now, April? You will give it to  
17 us sometime in March. Is that what you are thinking?

18 MR. HAILES: Yes.

19 CHAIRPERSON BERRY: And we will act on it, you think, at the  
20 April meeting?

21 MR. HAILES: I don't remember the April date for the  
22 meeting.

23 CHAIRPERSON BERRY: That is the idea. So that is the  
24 biggie. We have that one. The regional directors are coming in in  
25 March to talk about their regions with us which has not been done since

1 you have been on the Commission.

2 We have the South Dakota report sometime in March. Those  
3 who want to go to South Dakota, again. I am going--to release the  
4 report and to give our recommendations. We will have to consider, at  
5 the next meeting, what responses we want to make to the recommendations  
6 made by the SAC.

7 COMMISSIONER EDLEY: So that is on the agenda for two weeks  
8 from now?

9 CHAIRPERSON BERRY: That will be two weeks from now. We  
10 hope it will be on two weeks from now. If it is not on two weeks from  
11 now, we will have to do it in between meetings by circulating the  
12 document and getting feedback because we promised that, by the end of  
13 March, we would have it out. And it will be finished except for what  
14 we have to do.

15 COMMISSIONER EDLEY: We were going to have a discussion at  
16 some point about--sort of a strategic discussion about the SACs,  
17 thinking more about their roles and how those people get appointed and  
18 our expectations.

19 CHAIRPERSON BERRY: Why don't we do that next time with the  
20 regional directors here.

21 COMMISSIONER EDLEY: They will be at the meeting in two  
22 weeks?

23 CHAIRPERSON BERRY: They will be at the meeting.

24 COMMISSIONER EDLEY: Oh; great.

25 CHAIRPERSON BERRY: They are the ones who recommend the

1 people, so it is appropriate to talk to them about it.

2 We still have in the pipeline the Mississippi report. Eddie  
3 is hiring staff and he has not gotten enough lawyers yet. We have that  
4 in the pipeline to do.

5 What did we do with ADA? Remind me.

6 MR. HAILES: I have recommended that we establish new time  
7 lines with new staff.

8 CHAIRPERSON BERRY: And we didn't say no, so we are waiting  
9 for the new staff. So those are the next things. And, remember, we  
10 have, also, after the New York Police report, we are going to have a  
11 briefing or something where we bring in experts to add recommendations  
12 and revise and update the National Police Practices Report. That will  
13 happen, probably, in May, with the hope that sometime in the summer, we  
14 can release the Police Practices National all over again.

15 But we hope to release the New York report after the April  
16 meeting. There has been considerable interest in the New York report,  
17 as you can imagine. By then, we will know what is happening with the  
18 Diallo case. Maybe we already know what is happening in the Diallo  
19 case.

20 COMMISSIONER EDLEY: Just one other thought. At one point,  
21 we had a discussion about the idea of, at some meetings if not at every  
22 meeting, having somebody from one of the civil-rights enforcement  
23 agencies come in and do a song and dance for us about what they are  
24 doing, what their priorities are, what their budget issues are,  
25 whatever, something of that sort.

1           CHAIRPERSON BERRY: I am wondering if we should do that now  
2 with the campaign and with the winding down of the administration, or  
3 if should wait until the next crew because people are leaving all of  
4 the government. If they are not leaving, they are focused on their  
5 resumes.

6           So we probably need to wait for the new crew, now.

7           COMMISSIONER EDLEY: Fair enough.

8           CHAIRPERSON BERRY: Thank you very much. We are adjourned,  
9 without objection.

10           [Whereupon, at 3:49 p.m., the Commission Meeting was  
11 adjourned.]  
12