

THE PRESIDENT'S INITIATIVE ON RACE

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ADVISORY BOARD MEETING

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RACE, CRIME, AND THE ADMINISTRATION

OF JUSTICE

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Tuesday, May 19, 1998

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The meeting was convened in the Dorothy Betts Margin Theatre, George Washington University, 800 21st Street, N.W., Washington, D.C., at 10:00 a.m., Dr. John Hope Franklin, Chairman, presiding.

PRESENT:

DR. JOHN HOPE FRANKLIN, Chairman

SUSAN JOHNSON COOK, Member

THOMAS KEAN, Member

ANGELA OH, Member

ROBERT THOMAS, Member

LINDA CHAVEZ THOMPSON, Member

SPEAKERS PRESENT:

STEPHEN JOEL TRACHTENBERG

CHRISTOPHER STONE

ATTORNEY GENERAL JANET RENO

ALSO PRESENT:

CHARLES OGLETREE, Moderator

JUDITH WINSTON, Executive Director

WILLIAM BRATTON

ZACHARY W. CARTER

MARIA JIMENEZ

RANDALL KENNEDY

DEBORAH RAMIREZ

CHARLES RAMSEY

KIM TAYLOR-THOMPSON

WILLIAM WILBANKS

MICHAEL YAMAMOTO

ROBERT YAZZIE

C-O-N-T-E-N-T-S

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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:08 a.m.)

3 MS. WINSTON: We are about to begin our
4 program, if you could please take your seats.

5 If you could please take your seats, the
6 meeting will begin. Thank you.

7 CHAIRMAN FRANKLIN: I'm delighted to
8 welcome you to the May Advisory Board meeting of the
9 President's Initiative on Race.

10 The Initiative on Race is a year long
11 effort to engage the nation to become one America in
12 the 21st Century, a place where we respect each
13 other's differences and at the same time embrace the
14 values that unite us.

15 Last June, the President appointed a seven
16 member Advisory Board to help meet the goals and
17 objectives of the initiative. I was quite honored
18 that the President chose me as the chair of this
19 distinguished advisory board.

20 Let me just quickly recognize each member
21 of the Board.

22 To my right is Governor Thomas Kean, the
23 President of Drew University, former Governor of the
24 State of New Jersey.

1 To my left is Madame Linda Chavez
2 Thompson, the Executive Vice President of the AF of L-
3 CIO.

4 Across from me is the Reverend Susan
5 Johnson Cook of the Faith Fellowship Church in the
6 Bronx, New York.

7 And next to her is Robert Thomas, the
8 Executive Vice President of Republic Industries.

9 And next to him is Ms. Angela Oh,
10 distinguished member of the Los Angeles Bar and an
11 activist in the Los Angeles community.

12 Unfortunately Governor William Winter was
13 deeply disappointed that he could not join us today.
14 This is the first meeting that he's missed in the
15 entire year, and we miss him a great deal. Well,
16 provide him, of course, with a transcript of today's
17 proceedings so that he will know just what we have
18 been discussing.

19 Today's meeting will focus on the issue of
20 race, crime, and the administration of justice. As we
21 work to build one America, we know that this topic
22 must be addressed if we're to be successful.

23 The issue of race and the administration
24 of justice is one of the most difficult and, at the

1 same time, most pressing issues that we face. By
2 raising this topic today, we hope to clarify some of
3 the basic facts about the problem and understand
4 better the varying perceptions of the criminal justice
5 system.

6 By the end of the meeting today, we will
7 have learned more about how communities around the
8 country have always worked to improve race relations
9 between communities of color and law enforcement and
10 insure that the criminal justice system treats people
11 from different races fairly.

12 The meeting today is meant to be a
13 catalyst for additional study and dialogue in this
14 are. We know that we will not be able to address all
15 of the issues on the topic in one morning. This
16 morning we will lay a foundation for the public to
17 engage in discussions concerning these issues.

18 We welcome and encourage anyone to submit
19 additional comments and papers on these topics after
20 the meeting.

21 Another piece of the foundation will come
22 from the President's Initiative on Race that will
23 sponsor two projects to advance the study of race in
24 America. The first one involves a national research

1 conference to be held this fall, October 15th and 16th
2 here in Washington, D.C., and this conference will be
3 organized and convened by the National Research
4 Council.

5 The second is a fact book explaining
6 social and economic data that represent or reflect
7 trends in connection with race.

8 These projects will be sponsored in
9 conjunction with the National Research Council and the
10 White House Council of Economic Advisors. These
11 projects will help develop our understanding of the
12 issues related to race and racial change.

13 Before we begin today's round table
14 discussion, I would like to thank the George
15 Washington University and its President, Dr. Stephen
16 Trachtenberg, for allowing us to hold our meeting here
17 on this campus today. I'm delighted and honored to
18 present Dr. Trachtenberg, the President of George
19 Washington University, who will make some welcoming
20 remarks to us.

21 Dr. Trachtenberg.

22 (Applause.)

23 DR. TRACHTENBERG: Thank you very much,
24 Dr. Franklin.

1 I'm always pleased to see you here at
2 George Washington University, and it's a pleasure, of
3 course, to welcome others, Congressman Conyers, Mr.
4 Stone, members of the President's Initiative on Race
5 Advisory Board for today's meeting.

6 Just two days ago George Washington
7 University held its 177th commencement ceremony on the
8 ellipse behind the White House. It was at that very
9 location, Dr. Franklin, you will recall, four years
10 ago we awarded you the Doctor of Humane Letters
11 degree, making you an alumnus of this institution.

12 On that occasion, Dr. Franklin challenged
13 the George Washington University graduates to engage
14 in the kind of activism that would make their
15 constructive presence felt. He further urged them to
16 resolve to work for the realization of the kind of
17 world in which they would wish to live so that their
18 personal success would become part of a better life
19 for all peoples everywhere.

20 How fortunate our students were to hear
21 that message and how fortunate for all of us that John
22 Hope Franklin is demonstrating his own commitment by
23 chairing this effort on behalf of our nation.

24 This past November I had the honor of

1 welcoming to George Washington University the
2 participants in the first ever White House Conference
3 on Hate Crimes. The topic was certainly not pleasant,
4 nor easy, and yet the courage and passion of our
5 participants and the panelists to give voice to the
6 possibility that hate crimes might be erased from our
7 nation's landscape was heartening.

8 Their effort were demonstrative of the
9 challenge that Dr. Franklin offered our graduates and
10 reason to hope the challenge will be met. May your
11 work here at George Washington University be fruitful
12 in furthering President Clinton's challenge to all of
13 us to become one America in the 21st Century by
14 respecting each other's distinctive differences, while
15 embracing the values that unite us.

16 My best wishes to you all. I hope you
17 have a wonderful meeting, and we're delighted to have
18 this opportunity to offer our hospitality. Please
19 enjoy yourselves while you're here and plan to come
20 back to George Washington University again and again
21 in the future.

22 Thank you very much.

23 CHAIRMAN FRANKLIN: Thank you.

24 (Applause.)

1 CHAIRMAN FRANKLIN: The Honorable John
2 Conyers from the 14th District of the State of
3 Michigan in the House of Representatives was to join
4 us and was to make some remarks at this time.
5 Congressman Conyers was flying into the city just a
6 few minutes ago when his plane was diverted from the
7 National Airport to Dulles.

8 (Laughter.)

9 CHAIRMAN FRANKLIN: And he has extended
10 his regrets that he will be unable to be here this
11 morning, and it is our great misfortune. As the
12 Ranking Democratic member of the House Judiciary
13 Committee, he has long been interested in the problems
14 which we are discussing today, and it is our great
15 misfortune that he will be unable to be with us this
16 morning.

17 To inform us of some of the facts on the
18 topic of crime, race, and the administration of
19 justice is Christopher Stone, the Director and
20 President of the Vera Institute of Justice in New York
21 City.

22 The Vera Institute of Justice is one of
23 the leading centers for research and study on the
24 issue of race and crime. It is particularly well

1 known for its work in developing innovative programs
2 to facilitate fairness and equal treatment under the
3 law.

4 Dr. Stone has been the Director of the
5 Vera Institute for four years. Even before that, he
6 was interested in the subject which we are addressing
7 today, and we are delighted that he's here, and we are
8 looking forward to your comments, Mr. Stone.

9 Please welcome him.

10 (Applause.)

11 MR. STONE: Thank you, Dr. Franklin.

12 I've been asked to talk about what we know
13 about race, crime, and the administration of justice.
14 Of course, we know about these things in many ways.
15 We know about them through study. We also know about
16 them through our experience and our emotions. I am
17 speaking this morning simply on how we know them in
18 one way, that is, through some of the research and
19 data on it, not because that's a more important way to
20 know it, but because it's important in studying this
21 field to understand it every way we can.

22 What do we know in that way about race,
23 crime, and the administration of justice?

24 At the most general level, we know that

1 many people of color, Native Americans, Asian
2 Americans, Hispanic Americans, black Americans, do not
3 trust the justice system. A study of Hispanic texts
4 in the mid-1980s found that less than 30 percent
5 thought that job performance of their police could
6 even be rated as good.

7 In a 1995 Gallup poll, more than half of
8 black Americans said that the justice system was
9 biased against them. Moreover, two-thirds of black
10 Americans in that same Gallup poll said that police
11 racism against blacks is common across the country,
12 and a majority of white Americans, 52 percent, agreed
13 with them.

14 Social scientists usually explain this
15 broad distrust in two ways: historical experience and
16 present day practice.

17 The historical experience with the justice
18 system among Native Americans, Asian immigrants, black
19 Americans, Hispanic Americans is more than enough to
20 provoke distrust, but is it being reinforced by
21 current practice? How does the pattern of crime and
22 victimization keep us from living as one America? How
23 do stereotypes work to cause people of some races and
24 ethnic groups to be unfairly suspected of crime? How

1 and when does the justice system itself treat
2 defendants and offenders differently on the basis of
3 race or ethnicity? Does a lack of diversity in the
4 justice system itself add to the distrust?

5 Social science research has shed some
6 light on each of these concerns, but our empirical
7 knowledge is uneven. We know a lot about some of
8 these issues, but there are great gaps in what we know
9 through research.

10 We know much less about discrimination in
11 judicial decisions regarding Asian American
12 defendants, for example, than we do about black and
13 white disparities, and we know much more about
14 reported index crimes, homicide, robbery, rape,
15 burglary, aggravated assault, larceny, auto theft and
16 arson, than we do about other criminal conduct.

17 The lack of data and good research on the
18 experience of Asian Americans and Native Americans, in
19 particular, is a problem that the Advisory Board might
20 want to address.

21 Let us begin with the pattern of crime
22 victimization. The basic pattern here is that whites
23 generally have the lowest victimization rates,
24 followed by Asians, followed by Native Americans, then

1 Hispanics, then blacks, but the differences are
2 dramatic.

3 In 1995, for example, there were 5.1
4 homicide victims per 100,000 non-Hispanic white males
5 in this country. The rate for Asian American males
6 was more than one and a half times higher, at 8.3 per
7 100,000.

8 The rate for Native American males was 18,
9 more than three times the white rate. The rate for
10 Hispanics was 25.1, almost five times the white rate,
11 and the rate for black Americans was 57.6, more than
12 ten times the rate for whites.

13 This pattern changes somewhat for
14 different crimes. For more common violent crimes,
15 such as robbery, the relative positions of the groups
16 is the same, but the differences are not as great.

17 For household crimes, such a burglary,
18 Hispanics report the highest rates of victimization in
19 the annual victimization surveys conducted by the
20 Census Bureau for the Justice Department.

21 Why the differences? The crudest analyses
22 focus on the offenders themselves. Most crime is
23 intra-racial. That means that it is committed by
24 people of the same group against each other. More

1 than 80 percent of homicides where we know the race of
2 the killer are either white on white or black on
3 black.

4 Research among Vietnamese and Chinese in
5 California has also shown that most crime in these
6 groups is intra-racial.

7 Does this mean that groups with high
8 victimization rates also have high offending rates?
9 Yes, but with three crucial caveats.

10 First, it is crucial to remember that most
11 crime is committed by whites. Their offending rates
12 may be lower, but there are so many of them that they
13 still manage to commit most of the crime.

14 Second, the chances that a young adult has
15 ever committed a violent offense is roughly equal
16 across race. What scientists call the ever prevalence
17 rate, the rate at which a person of any race has ever
18 once in their life committed a serious violent offense
19 against another person, is the same across races.

20 The difference in the rates for the
21 different groups is a function of the greater
22 frequency and persistence over time among individuals
23 in some groups as opposed to those in others. A very
24 important point in trying to debunk notions that

1 there's good and bad inherent in the individuals
2 involved.

3 Third, the most sophisticated analyses
4 today focus on neighborhoods, and they show us that
5 the differences in victimization and offending rates
6 between the groups may have more to do with
7 neighborhood and community conditions than with race
8 itself.

9 Where people live in neighborhoods of
10 concentrated disadvantaged, victimization and
11 offending rates are high. When researchers compare
12 similar neighborhoods across different races, the
13 racial differences seem to disappear. The problem is
14 that for the most disadvantaged urban communities we
15 can't find white communities to make the comparison.
16 That seems to be the reason that crime falls so
17 heavily on some groups.

18 Most people of all races and ethnic groups
19 are never convicted of a crime, but stereotypes can
20 work to brand all members of some groups with
21 suspicion. These stereotypes may have their roots in
22 past biases, but they can also be reinforced in the
23 present day, for example, through broadcast news and
24 newspaper reports.

1 One social scientist, for example, finds
2 that Asians are over identified in California press
3 accounts with Asian gangs. A team of researchers at
4 UCLA has found that blacks and Hispanics are over
5 represented in TV news depictions of violent crime,
6 while whites are over represented in stories involving
7 nonviolent crime.

8 These stereotypes are bad enough in the
9 culture at large, but they work their way into law
10 enforcement through the use of criminal profiles,
11 putting an undue burden on innocent members of these
12 groups.

13 A particularly clear example of this
14 phenomenon is found in a study of the Maryland State
15 Troopers, not far from here, and the searches they
16 made of motorists on Interstate Highway 95 in 1995.
17 On this particular stretch of highway motorists were
18 found to be speeding the same regardless of race.
19 Black motorists, for example, constituted 17 percent
20 of the motorists and 17.5 percent of the speeders.

21 But black motorists were the subject of
22 409 of the 533 searches made by the police after a
23 stop looking for contraband. Why were black motorists
24 searched so often?

1 The police explain that blacks are more
2 likely to be carrying contraband, and the statistics
3 show this to be true. The police found contraband in
4 33 percent of the searches of black motorists and in
5 22 percent of the searches of white motorists.

6 But the mischief in this practice is
7 quickly exposed. Blacks had a 50 percent higher
8 chance of being found with contraband, but were
9 searched more than 400 percent more often. The result
10 is that 274 innocent black motors were searched, while
11 only 76 innocent white motorists were searched.

12 The profiles apparently used by the
13 Maryland State Troopers makes 17 percent of the
14 motorists pay 76 percent of the price of this law
15 enforcement strategy solely because of race.

16 The combination of higher rates of crime
17 and higher levels of police attention produce
18 disproportionate numbers of arrests among some groups.
19 Arrest rates for violent crimes among Asian Americans
20 are about half of that among white Americans. Rates
21 for Native Americans are about one and a half times
22 that for whites, and rates for blacks are about five
23 times that for whites.

24 Again, as with crime, the arrest rate for

1 whites may be low, but there are so many whites that
2 they account for 55 percent of all arrests for violent
3 crime in the United States.

4 But then what happens? Here is the
5 problem that has attracted more research than any
6 other area under discussion today. Black Americans
7 account for less than half of the arrests for violent
8 crimes, but they account for just over half of the
9 convictions and approximately 60 percent of the prison
10 admissions.

11 At the beginning of this decade, the
12 chance that a black male born in the United States
13 would go to prison in his lifetime was more than 28.5
14 percent, more than one in four, not reform school, not
15 a few days or weeks in jail, but state or federal
16 prison following conviction for a felony and a
17 sentence of more than one year, 28.5 percent.

18 The corresponding chance for an Hispanic
19 male was 176 percent and for a white male 4.4 percent.

20 A similar pattern of disproportionate
21 representation of black and Hispanic Americans appears
22 in juvenile detention facilities, where in 1994 43
23 percent of juveniles were black, 19 percent were
24 Hispanic, and 35 percent were white.

1 These are national figures, but the
2 reality in many individual juvenile and adult
3 institutions is even more stark as geography and
4 classification systems increase the segregation and
5 concentration of minority inmates.

6 How has this happened? Is this simply the
7 result of fair minded prosecutors and courts applying
8 the law to disproportionate arrests, or is there bias
9 at work at these later stages of the justice process?

10 Researchers have looked carefully for
11 evidence of bias, and they reach different
12 conclusions. Some of the disparity we see when we
13 visit these institutions is clearly explained by
14 differences in arrest charges, and much more is
15 explained by differences in the prior record of those
16 convicted.

17 There is no evidence of disparity that
18 stretches across the adult's justice system as a whole
19 when we consider index crimes, not drug crimes, but
20 studies of individual jurisdictions and specific parts
21 of the court process do find some evidence of race
22 bias in some significant number of cases.

23 Staying local with the data and the
24 research seems to produce more interesting and

1 different findings from place to place. The most we
2 can say is that when crime type and prior record are
3 taken into account, black defendants in some
4 jurisdictions are more likely to receive prison
5 sentences than are white defendants.

6 In addition, there is some evidence that
7 race influences detention and placement decisions in
8 juvenile justice processing. The problems we
9 encounter in this research are illustrated, however,
10 in a recent study of sentencing disparity of Native
11 Americans in Arizona.

12 After accounting for prior felony records
13 and other factors, American Indians were found to
14 receive longer sentences than whites only, of the
15 seven crimes studied, only for robbery and burglary,
16 while whites received significantly longer sentences
17 for homicide than did American Indians.

18 Of course, both of these findings could be
19 evidence of bias. The longer sentences could be
20 evidence of harsher treatment of Native American
21 offenders for crimes against strangers, while the
22 lower sentences for homicide could be evidence that
23 the courts do not treat seriously offenses among
24 acquaintances within this population.

1 Across race and ethnic groups concerns
2 about both of these kinds of bias are regularly
3 voiced: under enforcement of laws within a minority
4 community, over punishment when that community is seen
5 as a threat to the majority.

6 These two kinds of bias, however, can
7 balance each other out in simple statistical analysis.

8 It is captured, this under and over
9 enforcement problem, is captured most famously in the
10 research on the death penalty, showing that black
11 offenders found guilty of murdering white victims are
12 at the highest risk for the death penalty, while
13 offenders of any race found guilty of murdering black
14 victims are least likely to receive the death penalty.

15 Finally, in considering the work of the
16 justice system itself, the special case of drug
17 offenses needs to be considered separately. Asian
18 American youth report very low drug use compared with
19 all the other groups. Black youth consistently report
20 lower rates of drug use than whites. Hispanic youth
21 report more than black, but less than whites.

22 Yet police activity, new criminal
23 legislation, special courts, and longer sentences were
24 all brought to bear in the late 1980s against the use

1 and sale of drugs, particularly crack cocaine.

2 Whatever one believes about the
3 rationality of the decision to create special, harsher
4 penalties for crack cocaine, the concentration of
5 these sentences on black defendants is striking. For
6 example, of the drug defendants sentenced in the
7 United States District Courts during the 1995 federal
8 fiscal year for powdered cocaine, 35 percent of those
9 sentenced for powdered cocaine were black, 37 percent
10 were Hispanic, 21 percent were white.

11 Of those sentenced for crack cocaine, in
12 contrast, 86 percent were black, nine percent were
13 Hispanic, and less than five percent were white.

14 As striking as these statistics can be,
15 the most powerful reminder of bias in these stages of
16 the justice system sometimes comes from qualitative,
17 not quantitative research. That's because bias in the
18 system is most often found in local practices rather
19 than aggregate statistics.

20 For example, a study in Washington State
21 in the last 1980s where researchers found
22 statistically that nonwhites were sentenced to prison
23 at higher rates in counties with large minority
24 populations. In follow-up interviews in that study,

1 justice officials and community leaders told the
2 researchers directly that the public in their counties
3 were concerned with the dangerousness, their word, of
4 these minorities and admitted using race as a code for
5 a culture that to them signified criminality.

6 If these biases were eliminated from the
7 justice system itself, would we still have a problem?
8 If the police abandoned the use of offensive
9 stereotypes and profiles, if the remnants of
10 institutional bias were driven from the courts, would
11 the justice system deserve and win respect across
12 lines of race and ethnicity, or is the sheer volume of
13 black and Hispanic prisoners in America a problem in
14 its own right?

15 There is little empirical evidence on that
16 question, but it is a question worth considering for
17 respect for the justice system can be won or lost not
18 just by its decisions, but in who is making them.

19 There has been much progress in some parts
20 of the justice system, but there is signs that in some
21 parts of the justice system the effort to expand
22 diversity is slowing. A recent study of hiring of
23 police executives, for example, in Florida
24 commissioned by the National Institute of Justice

1 concluded that the number of minority law enforcement
2 executives has declined in recent years after earlier
3 gain. A large percentage of minority officers remain
4 in entry level positions throughout their careers, and
5 the outlook for any change, the researchers concluded,
6 is bleak, again, their word.

7 If there is a strong reason for optimism
8 among all these data, it is in the steady decline in
9 crime over the last several years. Let me focus here
10 on the often neglected, yet dramatic decline in
11 domestic homicide where we again find a stark
12 difference between black and white.

13 Twenty years ago white men were rarely
14 victims of domestic homicide, about one victim per
15 100,000 males age 20 to 44. White women were victim
16 at about twice that rate.

17 Both rates have declined modestly over
18 these two decades, over the last two decades, and now
19 the rates are about a little less than two-thirds down
20 for men and about half or less than half down for
21 women, but very small -- still higher for women than
22 for men.

23 Rates for black victims of domestic
24 homicide were roughly seven times higher 20 years ago,

1 and they have plummeted since. The rate for black
2 male victims has dropped from more than 16 per 100,000
3 to less than three homicides per 100,000 a year ago,
4 and for black women the rate has fallen from more than
5 12 to less than five.

6 Not only are these drops dramatic, but
7 they also involve a switch of the relationship.
8 Twenty years ago more black males were killed in
9 domestic homicides than black females. That
10 relationship is now reversed, though the gap is much
11 smaller than it is for white victims.

12 These declines leave us with two important
13 lessons. First, they remind us again of the power of
14 neighborhood disadvantage for as stark as the black-
15 white differences are, it seems, based on a study in
16 Atlanta, they seem to disappear when you control for
17 housing density of extreme poverty.

18 Second, they remind us of the power these
19 communities have to heal themselves with help. There
20 are certainly some aspects of the drop in crime in
21 this country that police can claim as their
22 accomplishment, and there's lots of drop to go around.
23 But this drop is particularly interesting. It
24 occurred steadily over 20 years, well beyond the

1 length of any government initiative or anybody's term
2 in office.

3 It is dramatic. It is one directional,
4 and it brings the disparity between black and white
5 far, far down. There's evidence here of real cultural
6 change, of people changing the conditions and
7 experiences of their lives.

8 In some these declines hold out the
9 promise of a day when race will no longer be a proxy
10 for suspicion and crime no longer a proxy for
11 concentrated community disadvantage.

12 Thank you.

13 (Applause.)

14 CHAIRMAN FRANKLIN: I'm certain that I
15 speak for all of you when I say thank you, Mr. Stone,
16 for that highly informative and very thoughtful
17 analysis and sometimes chilling conclusions or
18 observations that go to the heart of the problem.
19 We're deeply grateful to you for your presentation.
20 Thank you very much.

21 Now we're extremely pleased to welcome to
22 the platform the Attorney General, Janet Reno, who is
23 joining us today.

24 And on March 12th, 1933 (sic), she was

1 sworn in as the Attorney General of the United States,
2 the 78th Attorney General, and she in that position is
3 the top law enforcement official of the United States,
4 oversees some 92,000 employees.

5 I'm particularly delighted to welcome the
6 Attorney General for she has given evidence of a deep
7 and abiding interest in the problem that we're
8 discussing today.

9 Thank you, Attorney General.

10 (Applause.)

11 ATTORNEY GENERAL RENO: Thank you so very
12 much, Dr. Franklin, and thank you for that warm
13 welcome, but don't clap. We've got too much to do on
14 the area that we're discussing today to take any
15 satisfaction.

16 I'm so pleased to be here to participate
17 in this forum. The work that you are doing by
18 bringing Americans together to discuss the issues that
19 both unite and divide us is essential if we're going
20 to move forward as one America in the next century.

21 The key to our effort will be building
22 trust and an effective partnership between minority
23 communities and law enforcement, and this is one of
24 the most significant advances we can make in creating

1 safe neighborhoods and insuring that all people are
2 equal in the criminal justice system.

3 It is unfortunately true that there is a
4 great, great gulf in how the criminal justice system
5 is viewed by whites and minorities. Many in minority
6 communities fear and distrust police officers and
7 question the fairness of our courts and prosecutors.
8 Some of this lack of trust grows out of real
9 experiences of many minorities with law enforcement
10 officers.

11 Others have witnessed the negative effects
12 on our urban centers of having such a high percentage
13 of African American men under the supervision of the
14 criminal justice system. In many immigrant
15 communities people come from countries where there was
16 a justifiable fear of government authorities.

17 Added to that are the fears of
18 undocumented aliens in reporting crime and dealing
19 with law enforcement agencies.

20 The critical importance of addressing
21 these issues cannot be underestimated. We have seen,
22 and I have seen first hand, the dangers of mistrust,
23 of pent up frustrations, and breakdown in community
24 relations in places like Miami, in Los Angeles, and

1 St. Petersburg, and yet at the same time we must
2 recognize that minorities are disproportionately the
3 victims of crime, a fact that many people don't
4 realize.

5 Nothing is more important to the quality
6 of our lives and our children's lives than a safe
7 environment. The quality of the school a child
8 attends will matter less if she is not safe in getting
9 there or while she is at school.

10 We must start by redoubling our efforts to
11 insure that equal justice under law means the same
12 thing in minority communities as it does in the larger
13 community. The keystone to justice is the belief by
14 the people that the legal system treats them fairly,
15 that law enforcement officials are their protectors,
16 that prosecutors bring cases based on evidence and the
17 law, that juries decide without weighing race, and
18 that judges sentence defendants based on the character
19 of the crime of the individual, not the ethnic or
20 racial group to which he or she belongs.

21 We must also make sure that those who
22 cannot afford a lawyer know and believe that their
23 lawyer representing them is equal to the lawyer
24 representing the person who can afford a lawyer. We

1 must do more in terms of providing for indigent
2 defense in this country.

3 (Applause.)

4 ATTORNEY GENERAL RENO: I think there are
5 some points that must be made first.

6 First, it is wrong to assume that members
7 of one race or ethnicity are more prone to criminal
8 behavior than any other. That's simply not true.
9 Reliance on such stereotypes is as wrong in law
10 enforcement as it is in other endeavors.

11 This includes situations where law
12 enforcement officers improperly use race to target
13 individuals for a traffic stop, a pedestrian stop, or
14 a request for consent to search in the absence of
15 information about a specific suspect or other special
16 characteristics.

17 Under President Clinton's 1994 Crime Act,
18 the Justice Department now has the authority to bring
19 what are called pattern and practice cases against law
20 enforcement agencies that engage in such practices.
21 Our Civil Rights Division is currently looking into
22 allegations of discriminatory traffic stops in a
23 number of jurisdictions.

24 Secondly, the existing disparity in

1 sentencing for crack and powdered cocaine also
2 contributes to the sense of unfairness and bias in the
3 criminal justice system.

4 In addition, the crack powder disparity
5 has not led to the most effective use of law
6 enforcement resources. We should be focusing our
7 enforcement efforts on mid and high level drug
8 traffickers rather than low level drug offenders.

9 We believe that the cocaine penalty
10 structure should be revised to reduce this disparity.
11 This will target our resources more effectively and in
12 a manner that does not seem to fall more harshly on
13 minority communities than others.

14 (Applause.)

15 ATTORNEY GENERAL RENO: Third, there are
16 many points throughout the criminal justice system
17 where discretion plays a role, from the investigation
18 stage to the determination as to whether you treat a
19 child as an adult or as a juvenile, to arrest, to the
20 charging stage, to sentencing. Race neutral policies
21 at all of these states are essential to sound and
22 credible law enforcement and the fair administration
23 of justice.

24 It is incumbent on law enforcement to

1 critically review our efforts to insure that
2 stereotypes and prejudice, whether conscious or
3 unconscious, do not creep into the work we do. All
4 citizens must respect the law, but the law must also
5 respect all of our citizens.

6 And in that connection, I think the first
7 step that every agency in the criminal justice system
8 must take is how can we meet our obligations under the
9 ethical rules in which we operate to try cases in the
10 court, to conduct appropriate investigations without
11 discussing them in headlines. But how can we do that
12 and also be as open as possible about the process so
13 that people can have confidence in the process?

14 There are privacy issues at work that must
15 be dealt with, but I came from a community which had
16 as much open government as any community I know, and
17 it was very helpful at the conclusion of a matter to
18 be able to sit down with someone and explain why a
19 case was handled in a certain way.

20 It was very rewarding to be able to
21 inquest a case involving a police shooting in which
22 the court determined that there was insufficient
23 evidence to charge. When the community could sit in
24 that courtroom and see from the gavel to the gavel

1 just what had transpired, they had far greater
2 confidence in the system.

3 With privacy issues at stake, we must look
4 to how we balance this effort, and one of the efforts
5 that can best be undertaken by all of us in law
6 enforcement is to do as much outreach as possible, to
7 explain in general concepts the issues that we face,
8 what is necessary in terms of prosecuting a case, what
9 is necessary to file a case in federal court, what is
10 necessary to file a case in state court.

11 We must involve our communities, all of
12 our communities in the process of the criminal justice
13 system so that they feel they have an ownership
14 interest in it and that it is not some alien
15 institution over which they have no control.

16 This will require all of us to engage is
17 what we are now pursuing in the Justice Department,
18 which is a self-assessment, to make sure that what we
19 do in terms of charging, what we do in terms of
20 process is fair and does not have any unsuspecting
21 discriminatory feature involved in it.

22 We must make sure that in our hiring and
23 recruiting and promotion processes for the criminal
24 justice system that we do it the right way and that we

1 give everyone equal opportunity.

2 One of the issues that we must focus on is
3 how we build the trust throughout the criminal justice
4 system. I heard the last part of Dr. Stone's
5 comments, and he made a very powerful point about
6 where we have come with respect to domestic violence.

7 I have a certain insight into that. In
8 1978 we applied for a domestic violence intervention
9 grant through LEAA. We had looked at the figures in
10 Miami, and 40 percent of the homicides over the
11 previous 20 years had been related to domestic
12 violence.

13 We developed a program. It was named one
14 of the best in the country. The state wouldn't take
15 it over because they said that's not what a prosecutor
16 should be doing. So we got the county to take it
17 over.

18 In those days, it was hard to get
19 prosecutors in the criminal justice system to even
20 focus on domestic violence cases. It was harder to
21 get police and judges to focus on domestic violence
22 cases, but if you keep trying and you keep involving
23 the whole community, if you explain to that person who
24 says, "I don't want to prosecute," and explain to

1 everyone and hold every case important, you begin to
2 make a difference.

3 And it requires a dedication and a
4 commitment of everyone in the criminal justice system,
5 not just to prosecute and gain a conviction, not just
6 to defend and get your client off, but to do problem
7 solving so that when I left Miami in 1993, we had a
8 domestic violence court. We had a one stop shopping
9 facility so that the person wouldn't be taken from one
10 place to another to deal with the problem.

11 We have got to make sure that our problem
12 solving reaches across the communities because one of
13 my great pleasures was then to participate in the
14 passage of the 1994 Crime Act that provided monies for
15 the violence against women effort, and to see the
16 steps that are being taken across America now, the
17 message is: let's problem solve, and we can, though
18 sometimes slowly, frustratingly slowly, make a
19 difference.

20 We can see the difference beginning to
21 appear with respect to community policing, and I'd
22 like to take the steps of the whole criminal justice
23 system to show how important each step is.

24 There is prevention first, and I'll come

1 back to that because that's my favorite subject, but
2 then there is intervention, and intervention is key.

3 Whenever I go to a community, I try to
4 talk to young people who have been in trouble or who
5 are in trouble. I went to a detention facility this
6 past year in Madison, Wisconsin. Again and again
7 young people say, "The officer just needed to know how
8 to talk to me. He didn't know how to talk to me. He
9 doesn't know how to talk to a younger person. He puts
10 me down. He makes me feel about this high."

11 An officer with a tone of voice, a manner,
12 an attitude that's right can make an extraordinary
13 difference, and it is so important that we train our
14 officers to relate to young people, to relate to
15 minorities, to understand the differences, and to
16 reach out and be a mentor.

17 It is so exciting to see the community
18 policing program at work, and I think it is one of the
19 most hopeful developments in building trust and
20 improving law enforcement services in minority
21 communities.

22 With community policing we have police
23 officers who are committed to serving the community,
24 who reach out to neighbors and involve them in

1 identifying problems in the community and who work
2 together to achieve solutions.

3 It is wonderful to stand in the Great Hall
4 of the Department of Justice and have two young men
5 who were Hispanic look up at two African American
6 community police officers and tell the President of
7 the United States that, "These guys, Mr. President,
8 kept me out of bad trouble."

9 And just to see how they related to each
10 other, you understand how exciting it can be, and it's
11 happening across the country, but it's also bringing
12 the elderly woman out. Community policing in a
13 neighborhood is making her feel safe enough for the
14 first time to go down to the community center and give
15 everybody a piece of her mind, and she's doing that.

16 (Laughter.)

17 ATTORNEY GENERAL RENO: She would not walk
18 out from behind her door because she was afraid, and
19 now she is the glue that is bringing that community
20 together.

21 In cities across the country, police
22 departments are increasing their presence, having
23 police officers move into the neighborhoods they
24 patrol and encouraging officers to organize and

1 participate in community meetings and activities.

2 By breaking down suspicions and building
3 up trust, the neighborhood police officer is once
4 again known as a peacemaker and a problem solver
5 without relinquishing his or her enforcement
6 responsibilities.

7 But I suggest to you that there is a
8 danger because as we bring things into the community
9 and you get somebody who's known in the community, you
10 want to make sure that there are checks and balances,
11 and all of those of us who are involved in policing
12 and development of policing policy, I think, are
13 taking great encouragement in the work being done by
14 Jeremy Travis and the National Institute of Justice
15 and the COPS Program, to understand how we can
16 professionalize and enhance the ability of police
17 officers to work in the community while at the same
18 time retaining the highest standards of integrity
19 possible.

20 In this connection, one of the things that
21 we can do that is so exciting is to develop more
22 effective conflict resolution, programs for every
23 community police officer, for every teacher, for every
24 student across this country.

1 In these last three years, I have been to
2 numerous schools in this community, focusing on
3 conflict resolution and what is being done. Bell
4 Multicultural High School is one classic example of so
5 many people together learning how to talk to each
6 other, learning how to listen, learning how to problem
7 solve, and it is exciting to hear the students'
8 feedback of what it is doing for them to reach across
9 cultures, to reach across race to better understand.

10 One of the things clearly we must do is
11 listen to our young people. They are so wise. They
12 have so many good ideas, and they want so to be heard.

13 One of the groups that can do an awful lot
14 along those lines is a group that is very near and
15 dear to my heart, and that is the Community Relations
16 Service. I have watched the Community Relations
17 Service go into a community before problems started
18 and keep them from starting. I have watched them ease
19 it afterwards.

20 I think we need to enhance their capacity
21 in every way possible and return them to at least the
22 strength that they were at when I came into office.

23 One of the keys, however, in all that we
24 undertake, we have thought about victims. We have got

1 to focus on victims in the criminal justice system.
2 In the development of conflict resolution initiatives,
3 one of the keys is to first find the victim because
4 what they are telling us, particularly with respect to
5 young people is that that victim is going to be the
6 perpetrator ten days from now out of vengeance and
7 anger.

8 Let's get to them quickly and make a
9 difference. Let's get to that victim or the child who
10 watches domestic violence in their home and interrupt
11 that cycle of violence before he observes violence and
12 comes to accept it as a way of life, but let's make
13 sure we make these services available across the
14 community.

15 And that leads us to something that is an
16 opportunity that we have to truly make a difference.
17 We developed a neighborhood intervention program
18 around a housing project that had a high crime rate.
19 We had a community friendly police officer, a public
20 health nurse, and a youth counselor.

21 The neighbors were mad at the judge
22 because he kept giving these kids a slap on the wrist,
23 and they wanted to tell the judge what they thought of
24 it, but the court was about 30 miles away.

1 The police officer got them on the bus,
2 took them up to the court, and they gave the court a
3 piece of their mind.

4 They weren't punitive. What they were
5 saying was, "We know this kid. We can give you good
6 advice. We care about this kid. We don't want him
7 thrown away, but we don't want him to think that he
8 can push us down and give us trouble and get away with
9 it."

10 And watching that whole process in action
11 made me realize how alien courts can sometimes seem to
12 minorities. There are so many of us that know all of
13 the judges. There are so many of us that don't even
14 know the name of any of the judges, and it is so
15 important that we bring the courts back to the people,
16 whether it be in Brooklyn, whether it be in Portland.
17 Community justice is catching on and will be a vital
18 force in giving everyone, minorities across this
19 country, a feeling that they have a voice in their
20 justice system.

21 But if we build a justice system, we've
22 got to make sure that sentencing makes sense and that
23 sentencing involves problem solving, as well as
24 punishment.

1 We have seen the establishment of drug
2 courts focused on nonviolent first offenders charged
3 with possession of a small amount of drugs. Properly
4 done, these courts can be magnificent forces for good,
5 operating on a carrot and stick approach that says,
6 "You can go for treatment and we're going to work with
7 you and we're going to do job training and placement
8 with you and we'll give you support and after-care and
9 follow up, or you're going to face a more certain
10 punishment each time you come back having tested
11 positive."

12 That system is working if you have
13 understanding people who can make a difference in that
14 system.

15 But then you come to the stiffer sentence.
16 It has always been my experience that the experts say
17 that the best sentence for most offenders is a short,
18 firm, certain sentence that let's people know we mean
19 business.

20 But none of those sentences are going to
21 work unless we have after-care as a follow-up, and
22 this is particularly critical to the minority
23 community. If you return a child at 16 from the
24 juvenile detention facility where there's been a

1 wonderful program to the apartment over the open air
2 drug market where he got into trouble in the first
3 place, without providing after-care and follow-up and
4 support, you are going to see the continued increase
5 in the number of young, African American men who have
6 been in custody at some time in their life.

7 We can reverse that if we focus on this
8 issue and provide the support. One of the key areas
9 that I think we must address is the whole problem of
10 transitional housing. If he goes back to the
11 apartment where everybody else is using crack, it's
12 going to be very difficult for him.

13 He says, "Look. I want to go to college,"
14 and this is what one young man told me. "How am I
15 going to get out of this? I'm 16 years old. I can
16 take care of myself. Help me find someplace to go."

17 If we can develop transitional housing for
18 some of these young people and make sure they have
19 this opportunity, we're going to reverse this pattern
20 very quickly.

21 We've also proposed a program of community
22 prosecutors, prosecutors modeled on the successful
23 program here at the U.S. Attorney's Office for the
24 Fifth Precinct in D.C.

1 The mission is to interact more directly
2 with people in the community. What are your problems?
3 How can we solve them? How can we work together?

4 But you won't be successful unless we also
5 bring into the picture community public defenders who
6 have also got to have a problem solving attitude about
7 them. Let's find out what caused the problem in the
8 first place, and let's do something to solve it.

9 One area that requires immediate,
10 important attention is the whole issue of tribal law
11 enforcement and tribal justice in Indian Country.
12 This year the President has asked Congress for 187
13 million in new funding for tribal law enforcement,
14 courts, and various crime prevention programs.

15 We're working to tailor programs that
16 respect tribal traditions. This has been one of the
17 most neglected areas of the justice system. We are
18 seeing an increase in drug use, in gangs, in gangs
19 coming from Los Angeles and other places to impact our
20 young Indian youth. We have got to step forward and
21 assume our proper role in the trust position we hold
22 as sovereign to sovereign.

23 These are some of the initiatives that we
24 must undertake. I look forward to working with you,

1 Dr. Franklin, and all members of the Commission to do
2 everything I can to continue to spread the word. We
3 have so much to do. I have not covered everything
4 that I would like to address, except to make one final
5 pitch.

6 I would pick up the presentence
7 investigation of a child that I had just had
8 adjudicated guilty of armed robbery and see four
9 points along the way where we could have intervened to
10 have made a difference in that child's life.

11 The crack epidemic hit Miami, and the
12 doctors took me to the public hospital to try to
13 figure out what to do about crack involved infants and
14 their mothers. The doctors taught me that 50 percent
15 of all learned human response is learned in the first
16 year of life, that the concept of reward and
17 punishment and the conscience is developed during the
18 first three years.

19 And I suddenly thought to myself: what
20 good is all of the punishment going to mean 15 and 20
21 years from now if that child doesn't understand what
22 punishment is all about? What good is educational
23 opportunity going to mean if he doesn't have a
24 foundation upon which to learn?

1 We have got to develop a coherent pattern
2 of building blocks that we put in place and keep in
3 place for our young who are at risk. Strong
4 parenting, focus on domestic violence, child support
5 enforcement, proper preventative medical care
6 including prenatal care, proper edu-care in those
7 first formative years, afternoon and evening programs
8 to provide our children who are unsupervised proper,
9 constructive, mentored supervision, truancy prevention
10 programs that make a difference, conflict resolutions
11 programs, school-to-work programs.

12 If we put those building blocks in place,
13 we are going to see a turnaround in crime in this
14 country on a long range basis. We are going to see a
15 reduction in disparity in the criminal justice system,
16 but we have got to start early and build carefully as
17 we go along.

18 It is happening in this country. Lest
19 people think that there are discouraging signs, what
20 I see happening is the modern, professional police in
21 so many instances are out at the forefront of
22 designing programs that are making a difference in
23 prevention.

24 With the work of this Commission, with the

1 work of so many people who are in this country, I
2 think we can make a difference. We are on our way,
3 but we can't be in any way idle. There is too much to
4 do.

5 (Applause.)

6 CHAIRMAN FRANKLIN: Need I say more?

7 Thank you very much, Attorney General
8 Reno, for your very wonderful insight into the
9 problems that we all confront.

10 She's given evidence today of her own
11 commitment to the solution to these problems, and
12 we're deeply grateful to her for the time and
13 attention she's giving to them, and we're deeply
14 grateful, too, for her presence here this morning.

15 Now, it's my great pleasure to introduce
16 Executive Director of the President's Initiative on
17 Race, without whom the Advisory Board would be no more
18 than a kind of dangling participle.

19 (Laughter.)

20 CHAIRMAN FRANKLIN: I'm delighted to
21 present Judith Winston to this audience, who will in
22 turn introduce the moderator and the panelists and
23 explain how we'll be taking questions from the
24 audience.

1 MS. WINSTON: Thank you very much, Dr.
2 Franklin.

3 I do have the pleasure of introducing our
4 distinguished panelists and our moderator for today's
5 round table discussion. I'm going to start the
6 introduction on the far end.

7 Just left of Advisory Board member Linda
8 Chavez Thompson is Zachary Carter, the U.S. Attorney
9 for the Eastern District of New York and former judge
10 for the Criminal Court for the City of New York.

11 Next to him is Michael Yamamoto, law
12 partner at Horikawa, Ono & Yamamoto, formerly a deputy
13 public defender in Los Angeles.

14 Randall Kennedy is Professor at Harvard
15 University School of Law and author of Race, Crime and
16 the Law.

17 I'm making these introductions very short
18 because we have a very interesting set of issues that
19 we need to cover, and I want to make sure that we get
20 to them.

21 And next to Professor Kennedy is Maria
22 Jimenez, Director of the American Friends Service
23 Committee's Immigration Law Enforcement Monitoring
24 Project, which is involved in documenting abuses in

1 the enforcement of immigration laws in Houston, Texas.

2 Next to Ms. Jimenez is William Bratton,
3 President and Chief Operating Officer of the Cargo
4 Group and former New York City Police Commissioner.

5 Kim Taylor-Thompson is Associate Professor
6 of Clinical Law at New York University School of Law
7 and former Director of the Public Defender Service of
8 the District of Columbia.

9 Sitting next to her is Robert Yazzie,
10 Chief Justice of the Navajo Nation. Chief Justice
11 Yazzie presides over all cases appealed to the Navajo
12 Nation Supreme Court.

13 On his left is William Wilbanks, Professor
14 of Criminal Justice at Florida International
15 University and author of The Myth of a Racist Criminal
16 Justice System.

17 Deborah Ramirez is a professor at
18 Northeastern School of Law and a former Assistant U.S.
19 Attorney in Boston.

20 Seated next to her is Charles Ramsey, our
21 own District of Columbia Chief of Police and creator
22 of the nationally acclaimed Chicago alternative
23 policing strategy.

24 Thank you all for joining us here today.

1 We look forward to your comments.

2 Before I introduce the moderator of
3 today's round table discussion, Professor Charles
4 Ogletree, I'm going to briefly describe the format for
5 the round table.

6 Professor Ogletree will lead today's
7 discussion by posing hypothetical situations and
8 questions to our panelists that will allow them to
9 examine some of the issues related to race, crime, and
10 the administration of justice.

11 We will obtain audience input through your
12 questions and comments written on the index cards
13 provided to you when you checked in this morning. If
14 you did not receive an index card and would like one
15 or need assistance in phrase or providing your
16 questions if index cards are not an appropriate method
17 for you to do that, please do raise your hand and our
18 staff will provide you with the assistance you need or
19 the cards that you need.

20 Some of these questions will be addressed
21 during the latter part of the round table discussion,
22 and Professor Ogletree will indicate at some point
23 during the round table discussion when we will be
24 collecting the cards, and they will be brought to the

1 front for him to use.

2 Now, we are fortunate to have with us
3 today Charles Ogletree, a distinguished professor on
4 the faculty of Harvard University School of Law. He
5 has written extensively on race in the criminal
6 justice system, and he has moderated panel discussions
7 very much like the one we will have here today on PBS,
8 NBC, and CSPAN. He is frequently seen on television
9 as an expert commentator on the issues that will be
10 discussed this morning.

11 As we were planning this round table
12 discussion, just about everyone that we spoke to
13 indicated in very strong terms that there was one
14 thing we needed to do, and that was to get Professor
15 Ogletree to moderate this discussion.

16 So we are honored and delighted to have
17 you here with us this morning, Professor Ogletree.

18 (Applause.)

19 MR. OGLETREE: Thank you very much and
20 good morning.

21 The panelists have been sitting for a
22 while. I'm going to ask them as I'm doing this
23 overview if they can stand up for a minute and just
24 stretch to get ready before we get started, to get

1 their energy back before we get going.

2 (Laughter.)

3 MR. OGLETREE: And you can stretch, too,
4 if you'd like.

5 We are going to have a discussion where
6 we're going to raise questions of these panelists to
7 get a sense of the issues of race, crime, and the
8 administration of justice.

9 We will not be able to talk about all of
10 the issues that we'd like because of the limited time,
11 and in fact, one of our panelists and a member of the
12 Advisory Board have flights to catch, and so we're
13 going to be moving rather quickly through a very
14 ambitious agenda.

15 But we do want your participation. If you
16 do have questions on these topics or other topics,
17 please write them and bring them down. If I can have
18 the staff members hold their hands up so they can tell
19 you who's going to be collecting your cards, the
20 people in the back and along the sides will collect
21 your cards.

22 I will announce twice during the session
23 that cards will be collected. You can pass them over
24 to the end of your row from left to right, and they'll

1 pick them up and bring them down, and we will try to
2 get as many of them answered as possible.

3 This Advisory Board has been working very
4 hard since President Clinton announced its existence,
5 I believe, on June 14th a year ago. They've traveled
6 the country, collectively and individually, talking to
7 literally thousands of citizens, experts, everyday
8 citizens, professionals, about the one issue that
9 seems to be pervasive in this society and has so many
10 difficult aspects to it and seems to have so many
11 irreconcilable differences.

12 There is no topic on the issue of race
13 that's probably more volatile and controversial than
14 the issue of crime and the administration of justice,
15 and we have assembled a group of experts today to help
16 us grapple with those difficult issues.

17 We're going to be talking about just a few
18 of the most complicated and complex issues involving
19 the administration of justice, including racial
20 profiling as will be explained to you, issues of
21 disparity and punishment in the criminal justice
22 system, and importantly, issues of access to the
23 justice system. Is it accessible to every individual
24 regardless of race or ethnicity or gender or other

1 factors?

2 And finally, some concrete solutions: how
3 do we go from identifying the complexity of the
4 problem to identifying some rational solutions to help
5 this Advisory Board pursue its great mission?

6 And we hope that you will join us in
7 constructing those questions and helping to frame that
8 agenda.

9 Professor Kennedy, let me start with you.
10 There is a young, Asian American male who stops in his
11 car in Southern California. It doesn't appear that
12 he's speeding. It doesn't appear that he has violated
13 any law, but he's stopped in his car, and the first
14 impression he has when he's stopped by police officers
15 is that something's wrong. He thinks that something
16 is wrong.

17 Is he right to have the perception that
18 his ethnicity, his race may have something to do with
19 him being stopped?

20 MR. KENNEDY: In many jurisdictions, he
21 would have a basis for thinking that his race has
22 something to do with it. Certainly in -- I don't know
23 about with respect to the Asian American person that
24 you've hypothesized. If the person were of apparent

1 Mexican ancestry in the Southwest and he was stopped
2 by border patrol officials, certainly he would have a
3 good reason to think that his apparent Mexican
4 ancestry had something to do with him being stopped,
5 or if he were a black American, especially a black
6 American man between the age of 18 and 40, and he was
7 being stopped, he would have a good reason to think
8 that race had something to do with the stop, yes.

9 MR. OGLETREE: Is something wrong with
10 that?

11 MR. KENNEDY: Yes. I think that if the
12 police officer is taking -- if race, if the police
13 officer's perception of the person's race is one of
14 the things leading to the stop or the increased
15 suspicion, that is a racial discrimination, and by and
16 large, we believe that public officials particularly
17 should not be taking race into account unless there's
18 an extraordinary justification for doing so.

19 Throughout the United States police
20 officials at the state level and at the federal level
21 on a routine basis take race into account as a
22 negative signal of an increased risk of criminal
23 misdoing, and I think that's a profoundly misguided
24 policy.

1 MR. OGLETREE: Commissioner Bratton, I
2 doubt that there are many police officers who would
3 just say, "I stopped this person because they're Asian
4 American," or because they're Hispanic or because
5 they're African American. Police officers aren't
6 stopping people because of their race, are they?

7 MR. BRATTON: Unfortunately that's the
8 reality in some instances. It shouldn't be, but that
9 is the reality.

10 MR. OGLETREE: Does that ever come up on
11 a police report? "I stopped them because they were
12 black." "I stopped them because they were Asian
13 American," or is it presented in some other way?

14 MR. BRATTON: I would be very surprised to
15 see it represented in that way or that that was one of
16 the indicators that drew the attention of the officer
17 to precipitate the stop, but once again, is it a
18 reality in certain departments in this country? It
19 certainly is.

20 MR. OGLETREE: Why?

21 MR. BRATTON: I think it's a manifestation
22 of the issues that we're here all discussing, the idea
23 that there is great pressure to deal with the issues
24 of particular drugs in this country, and while at this

1 particular time there is a focus on police action very
2 similar to the parallel, I would argue, to -- you
3 cannot separate the two -- the issue of "testilying"
4 where in recent years we have come to understand and
5 appreciate that that is a fact of life in our society,
6 in our policing, in our criminal justice system; that
7 as we look at this issue the focus over the last
8 several months as this has boiled to the surface has
9 been on police action.

10 But similar to "testilying," we need to
11 look beyond just the police into the rest of the
12 system, prosecutors and judges, who are in positions
13 to review the actions of the police and oftentimes
14 don't question enough what was the rationale for the
15 stop.

16 MR. OGLETREE: Ms. Jimenez, in your
17 working looking at issues of immigration, do you find
18 these issues of disparity in police stops,
19 particularly of Hispanic youth?

20 MS. JIMENEZ: Oh, that's definite. It
21 starts from even further than described earlier. It
22 starts with national policy makers who define the
23 undocumented immigrant as a Spanish speaking immigrant
24 who crosses the southern border. Studies indicate

1 that only four out of ten undocumented people in the
2 United States cross the southern border. Yet 85
3 percent of the resources to stop it are in these
4 communities.

5 And thus, the Mexican origin population is
6 selectively singled out as being an -- infringing,
7 transgressing immigration law, and so many police
8 officers believe wrongly that it is their duty to
9 question and to participate in enforcing immigration
10 laws, and current law permits local law enforcement to
11 be designated as deputies of immigration law
12 enforcement provider training and other
13 specifications, but nonetheless, we've had examples
14 recently like in Chandler, Arizona, where the Chandler
15 Police Department simply stop anyone that looked
16 Mexican, whether U.S. citizen or not.

17 MR. OGLETREE: Professor Wilbanks, is
18 this --

19 CHAIRMAN FRANKLIN: I was wondering if
20 this policeman could give any, could offer any
21 plausible defense that the Asian American really
22 didn't have a green card if he was working or the
23 Hispanic was an undocumented alien or that the African
24 American was, indeed, in possession of drugs, would

1 the officer have any satisfactory defense as a result
2 of his having discovered these transgressions?

3 MR. OGLETREE: Commissioner Bratton?

4 MR. BRATTON: If he's referencing the
5 immigration laws, I just don't have any working
6 familiarity with the immigration laws. I under the
7 border police, border patrol immigration officials
8 have very significant --

9 MR. OGLETREE: What is the --

10 MR. BRATTON: -- powers that may be
11 possibly different than what we would have in, say,
12 New York City.

13 MR. OGLETREE: Professor Kennedy.

14 MR. KENNEDY: Here's the way in which it
15 would come up. Let's imagine that a young man is
16 flying from Los Angeles to Kansas City, Missouri. The
17 drug enforcement agent meets him at the airport and
18 says, "I'd like to ask you a few questions, and I'd
19 like to take a look in your bags." The agent says,
20 "The reason why I'm stopping you is because you are a
21 man, because you're between the ages of 18 and 40,
22 because you paid for your ticket in cash, because you
23 seem to be nervous, and because you're black."

24 The courts allow the police officer to

1 take blackness into account as a negative signal, and
2 it is the case that police officers openly say that,
3 and furthermore, it's the case that our officials
4 permit that. That is police with respect to the
5 border patrol. That is police with respect to the
6 Drug Enforcement Agency, and our courts allow it.

7 MR. OGLETREE: Chief Ramsey, let me ask
8 you about that. How does that affect a police
9 department if they know they can use race? And are
10 you worried about it being used, as Professor Kennedy
11 has suggested, maybe improperly?

12 CHIEF RAMSEY: Well, certainly we're
13 concerned about it being used improperly. The example
14 that was just cited for a drug courier profile is
15 certainly one that is used quite often in most
16 jurisdictions, especially if you're talking about a
17 city that is known to be a point where drugs are being
18 brought in and then dispersed throughout that
19 particular region.

20 Chicago, the jurisdiction I came from, had
21 a reputation, and there were a lot of drug agents
22 assigned to O'Hare as a result of that, but it extends
23 beyond those kinds of things and is really based on
24 some kind of profile that is established as a result

1 of past experience, arrests of individuals,
2 intelligence information, and so forth when you start
3 talking about the day-to-day stops that are made on
4 the street.

5 Those are not so much done as a result of
6 a profile because you're talking about police officers
7 that have not been trained in any of these particular
8 matters to even know what that profile is. That's
9 where you start to run into problems of stereotyping
10 and people making stops solely on the basis of race or
11 what they believe to be behavior that could be
12 criminal in nature.

13 So that opens the door to the issues that
14 we're talking about here where you have a lot of
15 abuses.

16 MR. OGLETREE: Professor Wilbanks, are
17 police officers making up this or aren't these court
18 approved practices? Is there any racism or
19 discrimination here when the court says, "Give us the
20 13 factors that create a profile and if you follow
21 them, it's legal"?

22 MR. WILBANKS: Yeah, I think the intent of
23 the police is to be more efficient. There is clearly
24 a variation by age, sex, and race in offending, and if

1 you're going to stop somebody, you're more efficient
2 if you stop somebody who's a high risk offender from
3 somebody who's a low.

4 The question is: being suspicious and
5 what you do are two different things. You cannot help
6 but be suspicious of males or females, blacks or
7 whites or Arabs or any other group. The question is:
8 what do you do?

9 I think what we've not done in police
10 agencies is distinguish between suspicion, which I
11 think is legitimate, and what do you do. If you see
12 somebody walk up behind you and you turn around, as
13 Jesse Jackson said, and you say, "Oh, my God, they're
14 white. I'm relieved," that's legitimate. The
15 question is: what do you do about it?

16 You can turn around and say, "Get the hell
17 away from me." Do you pull a gun and shoot them?

18 MR. OGLETREE: Well, what do you want
19 police to do though? Suspicion should --

20 MR. WILBANKS: I want police
21 administrators to help train officers that it is
22 rational, it is logical to suspect one person over
23 another. The question is what do you do. What is
24 legal?

1 I think the essence of the problem is not
2 their seeking efficiency. I think it's the financial
3 incentive.

4 If you look at what's happening in I-95 in
5 Florida and throughout the country; Louisiana, you've
6 been reading about what's happening in Louisiana. The
7 reason is you're allowed to keep the drug money that
8 you seize.

9 What would you do if you were a cop and
10 you could keep the drug money you seize and you feel
11 like one guy that you stop has a 50 percent chance of
12 having drugs and the other is an elderly white female
13 and they have a one percent chance?

14 What you would do is you would stop the
15 guy with a 50 percent chance you're going to make more
16 money. What we need to do is take away the financial
17 incentive in Louisiana, which gives 20 percent to the
18 judges, 20 percent to the court, and 20 percent to the
19 police.

20 You're asking them to discriminate, but
21 police don't want to be involved in this. They, "Oh,
22 I don't want to deal with this. I don't want to talk
23 about this. I'm sure that happens."

24 It's logical that people make these kind

1 of suspicions. The question is we need to train
2 police. What do you do? When do you stop? That's
3 the issue, not should I be suspicious.

4 Everybody has got differences. If you go
5 to Israel and you're Arab, they're going to take a
6 second look at you. Now, is that legitimate? If it
7 is, then what do you do about it? Do you arrest
8 everybody who's Arab? Do you stop them?

9 That's the issue. We need to separate
10 suspicion and what do you do about it.

11 MR. OGLETREE: Professor Kim Taylor-
12 Thompson.

13 MS. TAYLOR-THOMPSON: What makes this so
14 logical is my question. We're talking about these
15 profiles, drug courier profiles as though they are
16 legitimate objective criteria that give us some
17 indication of someone who is going to be bringing
18 drugs.

19 If we take a look at these drug courier
20 profiles, they cover such a wide range of factors that
21 they really make no sense. If you're the first off a
22 plane, you might be someone who's considered a drug
23 courier. If you're the last off a plane, you might be
24 considered someone who's a drug courier. If you are

1 leaving a city like Chicago or you're flying to a city
2 like Chicago, you might be considered a drug courier.

3 If you're using cash when you pay for your
4 ticket or you're using a credit card, you might be
5 considered a drug courier. If you're wearing a
6 jogging outfit or you're wearing a suit, you might be
7 considered a drug courier.

8 These make no sense, and the notion that
9 there is something objective and legitimate about
10 these profiles is something that I think that we
11 really need to question.

12 The courts certainly seem to think that
13 it's legitimate, but I believe that they are not, and
14 I think that what they are doing is encouraging people
15 to act on, as you've just indicated, their suspicion,
16 act on it and stop people based on this, and I think
17 that it has no basis in reality.

18 MR. OGLETREE: Chief Yazzie.

19 CHIEF JUSTICE YAZZIE: In Navajo Nation,
20 we have 250,000 Navajos, and we have a high prison
21 population in New Mexico. Somebody told me in
22 Montana, 30 percent of the prison population is
23 Indian. There five percent of the population is
24 Indian.

1 So the experience with the Navajo Nation,
2 individuals who drive outside Indian Country, the
3 police usually focus who the bad guys are, meaning if
4 you're dark skinned, you're a bad guy. If you have
5 long hair or a hair knot, you're a bad guy.

6 Even being dressed differently or driving
7 a beat up, old car, what we call "Indian car," that's
8 a bad guy. So that's the picture as far as police
9 perception goes as to who the bad guys are.

10 MR. OGLETREE: Mr. Carter, let me ask you.
11 It's such a problem. Everyone has identified it as a
12 problem. Why do you think drug profiling or profiling
13 is so popular and so legitimate as a law enforcement
14 tool, not just by the police officers, but prosecutors
15 will use those to bring charges. Judges will let
16 cases go forward, and people are convicted and
17 prosecuted, on the one hand, and Chris Stone told us
18 that there are countless examples where people are
19 part of the profile, no crimes, no drugs, and yet no
20 remedy.

21 MR. CARTER: Well, first of all, I think
22 that based on what's been described so far in the
23 hypothetical questions that the use of the term
24 "profiling" dignifies, I think, unduly a practice

1 that's really just a normal part of racial
2 stereotyping, that that isn't applicable just in the
3 criminal justice form, but in a lot of other areas of
4 our lives.

5 I don't believe that it's appropriate to
6 use racial stereotyping in order to target
7 individuals. I think part of the problem,
8 particularly with respect to drug enforcement,
9 particularly in respect to importation cases, is that
10 we have groped for a way of finding objective ways to
11 articulate intuition and instinct that experienced law
12 enforcement officers have, and unfortunately, I think
13 that a good part of that intuition is based on racial
14 stereotyping.

15 It may be combined with other factors,
16 such as the furtive look, how much luggage, whether
17 there's a lot of luggage or a little luggage or
18 whether someone pays for a ticket in cash, whether or
19 not their flight originated in a country that's a
20 source country for drugs, but it also adds in the
21 factor of race, and in my view, that's inappropriate
22 unless there is a reason for a very specific suspicion
23 in which race is an actually relevant objective
24 factor.

1 If, for instance, there is already
2 information available to law enforcement that someone
3 who is a member of an identifiable group may be
4 transporting contraband from Point A to Point B, and
5 all of the members of that identifiable group happen
6 to be of a certain race or ethnic origin, then it may
7 be appropriate if at some midpoint between the point
8 of origin and the ultimate destination you see a car
9 or a person that fits that description, race being an
10 identifier for that person; it may be appropriate to
11 stop them, but absent that --

12 MR. OGLETREE: Is there an example though?
13 I'm trying to think of an example where that would
14 work. Ms. Jimenez has told us that the majority of
15 cases of stopping Mexican Americans are wrong, and if
16 we say it's a group, we can say anyone traveling from
17 the southern border of California into California or
18 some other state should be stopped if they're of
19 Hispanic origin.

20 MR. CARTER: That I don't believe is
21 specific enough because when I'm talking about
22 specific, I'm talking about case or transaction
23 specific. I'm not talking about statistical
24 probabilities in the way that Professor Wilbanks was

1 talking about because for me statistical probability
2 can never in my view be an appropriate basis for
3 profiling a criminal suspect.

4 But if you're talking about something
5 that's more specific than just statistical
6 probabilities, that may be appropriate.

7 MR. OGLETREE: Mr. Yamamoto, what's the
8 harm in this racial profiling from your point of view?

9 MR. YAMAMOTO: It's self-fulfilling
10 prophecies is what's wrong with it. You can take the
11 populations of the prisons themselves and go out into
12 the population and determine that certain groups are
13 a higher percentage bet for law enforcement, but all
14 it does is subject certain communities to more risk,
15 higher scrutiny, possibly over charging.

16 I just think that it's the wrong way to go
17 about it. I'm totally against using race as part of
18 the profile. The police have enough resources to find
19 crime that they don't need to use that, in my opinion.

20 Apart from reasonable cause, and I don't
21 disagree with some of the examples that have been
22 placed here because if race is specifically part of
23 the information that you have in advance, that's
24 different.

1 But taking race and making it part of a
2 profile is completely racist, and it is bound to
3 exacerbate the problem.

4 MR. OGLETREE: Professor Wilbanks, let me
5 get back to you.

6 What if race were taken out the calculus?
7 What if police were told you can't use race at all?
8 You have to have other reliable indicia of suspicion
9 and of probable cause. What impact -- could you
10 guesstimate what impact that might have on the
11 effectiveness of law enforcement, both perception and
12 factually?

13 MR. WILBANKS: The difficulty is the
14 police are not told anything. It is left to the
15 discretion of the individual officer. If it's left to
16 his own discretion, what we're doing is encouraging
17 somebody who's uneducated to use whatever biases,
18 whatever stereotypes they may have.

19 I think it's legitimate to say to him,
20 "Look. There is variation by age and sex and race and
21 social class, but before you decide to do something
22 based on your suspicions, we need to talk about what
23 your views are and what actions -- what are the five
24 possible options you have."

1 I think to argue that we should consider
2 age, sex or race when we know, for example, in terms
3 of arrest rates that the level of offending may be
4 1,000 greater for a young black male than an elderly
5 white female, in my eyes if a police officer you're
6 suggested to say, "Well, that's irrelevant. I'll just
7 look at everybody alike," people don't operate that
8 way.

9 I think what you have to do is not let the
10 police officer operate in a vacuum. He needs
11 direction. He needs supervision. He needs somebody
12 in the department to say, "Look. Here are the
13 problems with profiles. If you see, for example, only
14 young black males, you're never going to find any
15 elderly white females on I-95. They get a free pass."

16 You need to explain that to the officers.
17 This is what happens when you use a profile. One
18 group gets a free pass. The other people get caught.
19 You need to educate that officer.

20 Right now we're leaving him alone with
21 this decision because we don't want to deal with the
22 issue. Police departments don't want to deal with the
23 issue. It's too controversial.

24 MR. OGLETREE: Professor Ramirez, this

1 must be something very hard to try to implement,
2 particularly on the local level, trying to figure out
3 how can you train the law enforcement establishment to
4 train officers to be more cognizant of the harm that
5 could come from racial profiling. How do we do that?

6 And it's not just black and white, right?
7 This issue is across racial classes.

8 MS. RAMIREZ: Well, I think first part of
9 the problem is that police officers as part of their
10 training are not trained to deal with these
11 situations. They are not trained to deal with
12 conflict management. They're not trained in how to
13 exercise the discretion that they have, even though we
14 increasingly give officers large discretion by
15 implementing minimum mandatory sentencing and other
16 variables.

17 What we're doing at Northeastern with the
18 Criminology Department is training police officers in
19 what we call ethical decision making, and we're
20 talking to them about the effect of stereotyping.

21 Now, I am a former prosecutor, and I
22 worked with the Drug Enforcement Administration in
23 Boston, but in Boston in the district court, many,
24 many, many of the judges would not allow us to use

1 race as a factor.

2 So when we talked to the DEA agents as
3 prosecutors, we said, "You have to understand that
4 while you may initially look at race and gender, that
5 alone by itself is not enough. You have to continue
6 investigating, continue looking, continue observing
7 until you have enough individualized indicia so that
8 regardless of the race of the person, you've
9 articulated and documented either articulable
10 suspicions for a Terry stop or probable cause.

11 If you don't, the evidence will be
12 suppressed. There is a very good chance in Boston it
13 will be suppressed.

14 At Northeastern, what we're doing is
15 talking to the local police officers and about the
16 stops and the frisks on the street, and we're role
17 playing. We're saying, you know, "Look. You stop
18 someone and that person happens to be black, Latino,
19 Asian, let's go through it."

20 And we have community members in the room
21 as well as police officers, and the community person
22 says, "Yeah, I'm going to be angry. I'm going to
23 start by saying you're only stopping me because I'm
24 black or Latino or Asian, and this has happened to me

1 before, and that's what's happening here, isn't it,
2 Officer?"

3 Then we turn to the officer and we say,
4 "Well, how do you feel?"

5 The officer says, "I'm angry because that
6 person has assumed that because I'm white I'm a bigot,
7 and now I'm going to start writing down everything I
8 can find about that person that's illegal, the tail
9 light."

10 And then we stop, and the community
11 members say, "You know, first of all, if you would
12 just approach the person and say, 'Look. It may be
13 that in the past you have been stopped because you're
14 black, because you're Latino, because you're Native
15 American, because you're different, but today the
16 reason I'm stopping you is we've had trouble at this
17 intersection. We're stopping everyone who goes
18 through a yellow light. There was a very bad accident
19 here, and I'm only going to give you a warning right
20 now, but we're warning people that this light changes
21 quickly, and there's danger here."

22 They said, well, at least it would do a
23 couple of things: validate the person's experience,
24 maybe ratchet down the tension a little bit, give

1 people a little bit of breathing room, and see what
2 happens.

3 There are other people who are training
4 young particularly male persons of color about how
5 they can ratchet down the controversy. Take a deep
6 breath. Remember this is a new person. It's not the
7 past ten people who you've had encounters with, and
8 trying to get those encounters to be different, and
9 also to stress with them how detrimental it is and
10 what a tax it is on all of the young, Latino, black,
11 and Asian youth who aren't violating the law when you
12 come up and act in a hostile way, and how even if you
13 personally think this is a valid statistical marker,
14 for policy reasons, for the legitimacy of the system
15 and for fairness, this is not the way to proceed, and
16 it has costs.

17 MR. OGLETREE: Let me ask both Chief
18 Ramsey and Commissioner Bratton. It sounds like there
19 is a consensus that racial profiling is a problem.
20 Let's say we were able to, as a proposal to the
21 Advisory Board, try to eliminate race as a factor.

22 My sense is that creative police officers
23 could still list a number of factors that would be
24 race neutral on their face, but with a wink and a nod

1 we'd know what they're talking about. Is that
2 possible?

3 That is, they'd identify the person by
4 dress, by demeanor, by age, by the type of car,
5 whether or not they're wearing jewelry. Commissioner
6 Bratton, have you heard descriptions like that where
7 you have a sense of what they're talking about without
8 race being mentioned?

9 MR. BRATTON: Oh, sure. Police officers,
10 criminal justice system tends to be very creative. It
11 comes back to the rules that we operate with, the law,
12 and as has been indicated, that the law in certain
13 circumstances does allow race to be used as a factor.
14 So you can't quarrel with the police officer who under
15 the law is authorized to use that as a factor.

16 Secondly, the issue of training is
17 critical. Supervision and the training issue that she
18 discusses, the idea of trying to get police to
19 understand it from both perspectives or multiple
20 perspectives. There's more than two perspectives on
21 this issue.

22 Many departments around the country now
23 are embracing training concepts such as verbal judo.
24 How do you ratchet it down so that you're able to deal

1 with these issues more effectively?

2 But can you totally eliminate it?
3 Probably not. Can you significantly reduce it?
4 Certainly can. Can you legislate changes? Those are
5 options to look at, but you have to keep coming back
6 to what is allowed, what is the training that's
7 provided, and also that, once again, looking at it in
8 a broader perspective, that it's not just a police
9 issue. It goes to the larger context of criminal
10 justice system and the laws that control that system.

11 MR. OGLETREE: Chief Ramsey, the same
12 question. Can you see officers finding ways to still
13 make arrests and stops without using race, but using
14 all the other indicia?

15 CHIEF RAMSEY: Yeah. I mean, the reality
16 is that everyone brings a certain amount of baggage
17 with them in any occupation based on past experiences,
18 their beliefs, and so forth. You're not going to be
19 able to just easily get around that particular factor.

20 If Commissioner Bratton or I just inform
21 members of our departments that from this point on
22 you'll no longer use race as a factor, everyone will
23 say, "Ten-four, okay," and go right out and do it
24 anyway.

1 MR. OGLETREE: Right.

2 CHIEF RAMSEY: So I mean, we're only
3 fooling ourselves.

4 I think that the real issue is the fact
5 that there's a lack of real understanding on the part
6 of police officers when they're dealing with members
7 of a group that is not their own group.

8 Police officers do not know how to
9 communicate with people in any way other than an
10 adversarial way. That brings in a lot of the points
11 that were made earlier around conflict resolution,
12 additional training, all of those kinds of things that
13 really I think go a long way toward correcting that
14 particular situation.

15 There is some legitimacy in when you look
16 at specific crimes, if you have enough information to
17 be able to make certain judgments about individuals
18 that fit a particular, quote, unquote, criminal
19 profile. Now, race can be a factor, but race should
20 not be the only factor.

21 You need to have a variety of other
22 factors present before you make a stop. If you're
23 investigating, for example, a drug trafficking ring
24 where the source country -- you have a flight coming

1 in from that source country. You know for a fact that
2 the only people they use as couriers are people that
3 fit this particular group, and that's been your
4 experience. That's the intelligence from past
5 arrests, all of those kinds of things.

6 It's logical then that if you see people
7 who fit that profile getting off the plane, that you
8 would at least observe them for a period of time to
9 see if there are other factors present that might lead
10 you to believe that that individual could be involved
11 in some kind of drug trafficking.

12 The problem is that many of our officers
13 are not trained. They are relying on instinct.
14 They're relying on beliefs that they may have, some of
15 which may be racist in nature, that certain
16 individuals are more prone to be engaging in criminal
17 activity.

18 That's where we run into serious, serious
19 problems.

20 MR. OGLETREE: Well, let me challenge you
21 on one aspect and go to Professor Kennedy when you
22 talk about it may be more legitimate if we know
23 someone is coming from a source country.

24 I've traveled around the world, and I've

1 been stopped coming from every country. They can't
2 all be drug source countries.

3 CHIEF RAMSEY: Right.

4 CHAIRMAN FRANKLIN: I've been stopped with
5 family, without family. I even went to the length of
6 wearing a three piece suit like my colleagues thinking
7 that would help. That didn't help.

8 (Laughter.)

9 CHAIRMAN FRANKLIN: Why is it? Because it
10 sounds like that's stereotyping that's given some
11 legitimacy because we're saying people who are
12 traveling into the country.

13 Is there a higher -- I should say a lower
14 threshold to be able to use racial profiling because
15 someone's entering the country?

16 MR. KENNEDY: Oh, absolutely. Well, as a
17 matter of law, at the border the officials are able to
18 do virtually anything, but one thing that needs to be
19 noted, oftentimes in this discussion about profiling
20 there'll be consensus on the following proposition:
21 that the police should not be able to stop people
22 solely on the basis of race.

23 Well, of course, but that's not much.
24 That doesn't change a whole lot. There are not many

1 police officers who stop people solely on the basis of
2 race. That's really noncontroversial. I mean,
3 obviously there are some bigots who do that, but
4 that's not really the nub of the problem.

5 The nub of the problem is whether race
6 should be able to be used at all in making a
7 calculation of suspicion, and here the courts allow
8 it, but just one other point about this.

9 Just because the courts allow something
10 doesn't mean that the citizenry should go along with
11 it. There are lots of things that the courts allow
12 that are unwise, and here you asked a minute ago
13 what's the cost of this. One of the biggest costs of
14 this has to do with a cost to the police themselves.

15 I think that we all need good, effective,
16 efficient, decent law enforcement. We all need to be
17 protected against crime. One of the biggest
18 impediments to law enforcement in the United States
19 today is the tremendous sense of mistrust, the
20 tremendous sense of cynicism, the tremendous sense of
21 resentment that racial minority folks feel because
22 they know that they are being dealt with differently
23 than their white neighbors.

24 Especially minority men know that day by

1 day, 24 hours a day every day they walk around with an
2 invisible question mark over their heads. Their black
3 skin, their brown skin counts as a negative factor,
4 and the police -- that's counterproductive for good
5 police work because police need the citizenry.

6 MR. OGLETREE: Well, how's it
7 counterproductive if the police in every case are
8 responding to a public demand? That is, you see it on
9 television. You see the black male drug dealers. You
10 read it in the newspaper. You hear about it in your
11 neighborhood. You see it at the jails.

12 Isn't there some sense that they're
13 responding to an environment that says, rightly or
14 wrongly, race is associated with crime, and if I'm a
15 good police officer, I'm going to take advantage of
16 that factor in doing my job?

17 MR. KENNEDY: We need to say that the
18 problem of criminality is a problem that confronts us
19 all. We should all have to pay to deal with crime.
20 We ought not put a special tax, a special racial tax,
21 on various highly visible sectors of our community.

22 If, for instance, trafficking in
23 undocumented, illegal immigrants is a problem in the
24 Southwest, make everybody -- all Americans should have

1 to pay for that. We shouldn't put a special tax on
2 people of apparent Mexican ancestry.

3 MR. OGLETREE: Mr. Yamamoto.

4 MR. YAMAMOTO: I just want to say that the
5 young Asian in the car that you started with, he
6 starts off with the proposition that he can't see
7 anything he was doing wrong objectively. The only
8 thing he knows is that he got stopped, and he's a
9 particular race.

10 Now, he's not a lawyer. He doesn't know
11 what the rules are, but if the rule is that you can't
12 use race, and apparently it is that you can, then he's
13 actually in a position to question that.

14 Now, again, all through history it's been
15 legal in our history to discriminate, to be a racist,
16 and some things were even more fashionable, and I
17 think what you're talking about, getting rid of that
18 particular criterion, it goes underground, but at
19 least he knows that there's been some sort society
20 disapprobation for that particular factor, and that
21 Asian in the car at least knows that if he can isolate
22 it down to that factor, he may get a defense attorney
23 to do it, but if he can get it down to that factor, he
24 knows it's illegal and he knows that the society

1 doesn't agree with that.

2 That's real important at that point for
3 that person in that car to know that race shouldn't be
4 a factor even if it is, because in this country we all
5 know that race shouldn't be a factor in a lot of
6 situations, but it is.

7 MR. OGLETREE: Let me ask both Mr. Carter
8 and Ms. Ramirez, as current and former prosecutors and
9 the police chiefs, whether there would be tolerance in
10 the criminal justice system if there was an executive
11 proposal to eliminate race.

12 Mr. Carter, do you think that would work?
13 Would that sell legislatively? Would it sell with law
14 enforcement in terms of their excitement to do their
15 job? Would it sell with the public in terms of their
16 sense of safety?

17 MR. CARTER: Well, in some respects, I
18 think we're kind of focusing on the tail rather than
19 the dog because we're focusing on what's inappropriate
20 to take into consideration, but not what's appropriate
21 to take into consideration.

22 In most contexts, a police officer or a
23 federal law enforcement officer in order to make a
24 stop has to have articulable suspicion, and while it's

1 possible for clever law enforcement officers to come
2 up with pretextual reasons for stopping, it's not that
3 easy to do if responsible prosecutors and judges with
4 guts and a knowledge of the law listen carefully,
5 evaluate the story, listen to the cross examination of
6 the witness, and make an honest judgment about whether
7 or not this person is giving a credible account, an
8 explanation for his suspicion or not.

9 I mean, I believe that there are going to
10 be times when, again, given an earnest recitation of
11 factors that explain an experienced law enforcement
12 officer's suspicion for why this particular person was
13 in possession of contraband or was involved in this
14 criminal transaction or that, that the added factor of
15 race will be relevant if there is a very specific
16 basis for believing that race was a relevant factor,
17 again, not based on statistical probabilities, but
18 based on specific information that there is a criminal
19 enterprise that involves only people of a certain race
20 and a certain criminal organization.

21 And so the extent that there would be any
22 abolition of race as a factor under those
23 circumstances, of course, it would meet resistance,
24 but I don't know that anyone who's responsible in law

1 enforcement would be hostile to the notion that racial
2 stereotyping should be eliminated.

3 MR. OGLETREE: Chief Ramsey.

4 CHIEF RAMSEY: Well, I agree with that,
5 but the reality is no matter what you do there's going
6 to be a certain amount of that that's going to
7 continue to exist because people are going to make
8 judgments and on occasion are going to be judgments
9 based on race.

10 I think that the problem that I see is the
11 fact that we kind of want a very easy, you know,
12 black-white type answer where just eliminate
13 profiling, period. Well, I mean, there are some
14 legitimate reasons why we should consider using that
15 as a tool, but it's not an exact science.

16 Someone like you is going to walk through
17 an airport and may be questioned because you fit some
18 so-called profile. Another individual will walk
19 through the airport and be questioned and, in fact, be
20 found to be a courier.

21 Now, you may encounter ten or 100 people
22 that had nothing to do with that particular type of
23 criminal activity, and you find the one that does.

24 I think we have to be wiser. The one

1 thing -- and I worked in narcotics for a long period
2 of time -- a person getting off the plane that you
3 looked at and you felt that this is an individual that
4 fit a profile, we would keep that individual under
5 observation. We would walk through the terminal. We
6 would see who they meet with, all of those kinds of
7 things.

8 They come in contact with an individual
9 known to us to be a drug trafficker, now I think we go
10 beyond just the stereotypes and what we're talking
11 about here.

12 So some of it has to do with at what point
13 do you intervene and take some kind of action and
14 begin to question, which oftentimes police officers
15 act prematurely, and then when they're wrong, that's
16 exactly how it's viewed. You just stopped me because
17 I'm black. You had nothing else to go on, and that's
18 a lack of training. In many instances, they don't
19 know what they're doing, so they do it.

20 And then you have other instances where
21 officers unfortunately -- I mean racism does exist in
22 policing. I mean to deny that fact is ridiculous.
23 And how you overcome it, I wish I had the answer.

24 You are going to have police officers that

1 are going to make judgments that are going to stop
2 people, that are disrespectful toward people simply
3 because they're dealing with individuals that they
4 have no respect for. That clouds the issue because
5 the majority of police officers don't conduct
6 themselves that way, then get painted with that broad
7 brush, and an individual who's trying to do their job
8 properly and is making contact not because of the race
9 of the individual, but because they're legitimately
10 trying to intercept drugs that may be coming into the
11 city, get painted with this broad brush, and then we
12 wind up in a situation where we're sitting around at
13 a round table discussing an issue because of the bad
14 apples that we have that do abuse the system.

15 MR. OGLETREE: Well, there's another
16 point. It sounds like in addition to worry about the
17 stereotypes of suspects, we also have to worry about
18 the stereotypes of police officers.

19 CHIEF RAMSEY: Of police, exactly, without
20 question.

21 MR. OGLETREE: Quickly, a response from
22 Chief Justice Yazzie and Professor Wilbanks, and then
23 we're going to switch to the issue of disparity.

24 If you have questions, please start

1 handing them down now, and we'll start screening them
2 for our later comments.

3 Chief Justice Yazzie.

4 CHIEF JUSTICE YAZZIE: Your question is if
5 there's a legislation to eliminate racism that would
6 do the job. I feel like I sit in a different world
7 here, and that what the issues that are being
8 discussed are understood in a different context with
9 respect to the Navajo Nation and other Indian nations.

10 We have our own problem as to what
11 question. I mean all of the laws in the world we feel
12 are not going to eliminate anything unless we get the
13 assistance from Congress who's supposed to protect
14 Indian nations from state intrusion. One of those is
15 to provide resources to help the Indian nation
16 revitalize its traditional concepts, traditional legal
17 practices, to help.

18 These things were used way back in time to
19 help maintain social order, and because we have the
20 introduction of the Western style of justice, that has
21 destroyed much of the common Navajo traditional law,
22 and we're trying to revitalize it.

23 So to us, you know, to eliminate racism is
24 to recognize that Indian people are people, that I am

1 a human being, that I count in this America, and that
2 we deserve to be recognized for what we are.

3 MR. OGLETREE: One of the things you
4 propose then, if we're talking about racial profiling,
5 it sounds like in the Navajo Nation you don't have the
6 same problem with law enforcement treating people
7 differently because they're Native Americans.

8 CHIEF JUSTICE YAZZIE: Yes, we do. We do
9 have the same problem. We have a reservation that's
10 25,000 square miles. We have border towns, and once
11 we go into border towns, we go through the same
12 experience, what these people are talking about here.

13 MR. OGLETREE: Simply because of your race
14 and ethnicity, the same problem occurs.

15 CHIEF JUSTICE YAZZIE: Exactly.

16 MR. OGLETREE: Okay. Professor Wilbanks.

17 MR. WILBANKS: I think as a first step we
18 ought to try honesty. I've been stopped because I had
19 Dade County plates, and they said, "Well, sir, we
20 stopped you because you're following too close."
21 Right there --

22 MR. OGLETREE: Commissioner, is his mic
23 on? I don't think we hear it.

24 MR. WILBANKS: Right there you lost me.

1 Why not say, "Look. We have a problem with Bloods and
2 Crips in this neighborhood. You look like you could
3 possibly be a member of a gang. We're trying to
4 protect people in this neighborhood. I wonder if
5 you'd mind telling me why you're here."

6 I think people would respond better to
7 that than, "We think you're following too close." I
8 mean that is so asinine that when people are stopped
9 for those kinds of reasons, they automatically get
10 angry and resent everything else you say. You've
11 completely lost them.

12 Why not try honesty? Why not tell people
13 why we're stopping them?

14 MR. OGLETREE: And you're bringing victims
15 into the calculus as well --

16 MR. WILBANKS: Absolutely.

17 MR. OGLETREE: -- saying, "I'm a citizen,
18 and I'm glad you're out here doing something positive
19 for me, for the community."

20 MR. WILBANKS: We had three purse
21 snatchings in this neighborhood. We're trying to stop
22 this, and I hope you won't be offended if I ask you
23 what you're doing in this neighborhood.

24 Now, he may not like that, but he'll like

1 that better than if you say, "You are following to
2 close."

3 MR. OGLETREE: Now, would that work well
4 with what Ms. Jimenez talked about, the whole
5 identification of people by race in terms of Hispanics
6 simply being Hispanics provides a large basis for
7 stopping people? Will it work in that context when
8 you're not looking for a particular crime? You're
9 looking at the question of immigration, and that's
10 almost civil as opposed to the criminal conduct you're
11 talking about.

12 Shouldn't there be a different standard?

13 MR. WILBANKS: Probably so.

14 MR. OGLETREE: Okay.

15 MS. JIMENEZ: But I thought the standard
16 for all of these, whether they're crime or civil in
17 the context of immigration enforcement, is the
18 Constitution, and that's why I agree with Professor
19 Kennedy in the sense that what's wrong with profile is
20 that race shouldn't be used at all because the
21 Constitution does allow for consensual stops and then
22 detentive and then finally arrest, and they are all
23 based on individualized suspicion of certain facts or
24 probable cause.

1 So I even find shocking the question that
2 there should be controversy to eliminate race when
3 what we're talking about is the application of the
4 Constitution and the idea that suspicion is
5 individualized.

6 Now, that becomes complex in applying it.
7 Well, that's where the training comes in.

8 MR. OGLETREE: Professor Taylor-Thompson.

9 MS. TAYLOR-THOMPSON: I think that the
10 controversy arises when you start talking about taking
11 race out of the picture because I really do think that
12 it does go underground. If you stop talking about it
13 and you stop acknowledging that people are actually
14 using race in the calculus, then I think that what
15 ends up happening is they will talk about a furtive
16 gesture; they will talk about someone having a bulge;
17 but they will notice those things among people of
18 color, but just not mention it.

19 There might be a white person walking down
20 the street who has a bulge or who made a gesture, but
21 that somehow is not suspicious. It's suspicious when
22 it's a person of color who does it.

23 So if we take it out of the calculus, we
24 just simply stop mentioning it, it doesn't mean that

1 it stops happening. People's minds operate in that
2 way. We tend to categorize. We tend to look at
3 people that are different from us and are not part of
4 our in group and look at them suspiciously.

5 I think that what we need to do is start
6 thinking about education, not only education of police
7 officers, not only education of people and how they
8 interact with police officers as citizens, but we need
9 to talk to the media.

10 The media presents a face of crime that is
11 a person of color. What we see on the TV constantly
12 is a young man of color with handcuffs on, and that's
13 the person that we're afraid of because we think
14 that's the person who's committing crimes.

15 But if you look at the numbers out there,
16 for example, if you look in California, six out of ten
17 times that a woman is raped, the offender is a white
18 man, not a person of color, and yet the person who is
19 arrested most often for a violent crime in California
20 is a person of color.

21 If you look at drug users, 80 percent of
22 the drug users across this country are white. Twelve
23 percent are people of color, and yet what ends up
24 happening is that people of color tend to populate our

1 courts because the sense is that these are the folks
2 that are committing crimes. These are the images we
3 see, and we operate on those images.

4 When you asked a moment ago would the
5 general public agree with changing this method of
6 policing, taking race out of the picture, I don't
7 think they would agree with it. I think that
8 philosophically they may say that race shouldn't play
9 a role, but they tend to see these images, and they
10 are fearful of people of color because they think
11 these are the people who are committing crimes.

12 We need to educate them so that they
13 recognize that the face of crime is a multicultural
14 face. It's not just black faces or brown faces. It's
15 white faces, too.

16 MR. OGLETREE: Quickly, Mr. Carter and Mr.
17 Yamamoto.

18 MR. CARTER: Yes, I think that the notion
19 that racial stereotyping is ever legitimate in
20 determining whether someone is an appropriate suspect
21 or not is extremely dangerous. I think that we live
22 in a society in which we have to struggle hard to
23 change people's perception that people who are of a
24 certain ethnic group or racial group are more likely

1 to be criminal offenders than others.

2 I mean, if I'm walking down the street and
3 you are walking behind me and Professor Wilbanks is
4 walking behind me, I think if I turn around and see
5 you both, there's an equal probability that I'm not
6 going to be mugged by either of you, and I think that
7 to convert this into some notion that if we're more
8 honest with people who are victimized by racial
9 stereotyping that they'll receive it better, I think,
10 is not construction.

11 MR. OGLETREE: Mr. Yamamoto.

12 MR. YAMAMOTO: I have to say I would
13 absolutely agree with the idea of eliminating race
14 from the profile. In a sense you're right. I can see
15 where some things might go underground, but at least
16 it shows a disapproval of something on the part of
17 society.

18 I know those of us in the system have to
19 work on practical issues and practical considerations
20 on these things, but I think that that person on the
21 street and that person in the car, if he knows this
22 country says the law is that you can't put race in
23 here, and then you have to figure out some other way
24 to actually get probable cause on me, even if they do

1 it surreptitiously, whatever else they've got to do
2 surreptitiously, it reflects a group value that we all
3 have, and I think it would reconcile minorities to
4 this society if they knew that that was the rule.

5 MR. CARTER: Let me make just one quick
6 point. There's actual proof positive that there are
7 worse things than driving this issue underground, and
8 that's in the Batson context. I think most people who
9 practice criminal law would agree that after Batson,
10 racial -- jury selection is far fairer than it was
11 before Batson, even though creative lawyers can come
12 up with pretextual reasons occasionally for why they
13 exercise peremptory challenge against a minority.

14 On balance, I think we have a fairer
15 system than we did before.

16 MS. TAYLOR-THOMPSON: It doesn't happen
17 occasionally. It happens all the time. If you're
18 from a particular neighborhood, that will be the
19 argument, that he's from a particular neighborhood,
20 and that person out to be struck.

21 They will not mention that the person is
22 black or Latino, but that's what happens.

23 MR. CARTER: But the question is whether
24 the system is fairer now than before.

1 MS. TAYLOR-THOMPSON: I'm not sure that it
2 is. I think that what ends up happening is that you
3 can still use the pretextual reasons and still get
4 people struck, and so we have this sense that now it's
5 much more fair because the law has indicated that you
6 can't do this, but it happens all the time.

7 MR. OGLETREE: Mr. Kennedy.

8 MR. KENNEDY: The back-up, Mr. Carter,
9 however, I mean we're talking as if we don't have a
10 lot of experience. The fact of the matter is we have
11 all sorts of anti-discrimination laws. In the
12 employment area, we have something called Title VII of
13 the 1964 Civil Rights Act. Employers cannot take race
14 into account in making employment decisions.

15 We have the 1968 Civil Rights Act that
16 says the same thing with respect to housing. In lots
17 of different areas we have law. In all 50 states we
18 have laws that say that insurers cannot take race into
19 account in setting rates for people, even though we
20 know that white people tend to live longer than black
21 people.

22 So it's not as if this is some area that's
23 totally alien. In lots of areas of our social life we
24 have said that for the good of the society in the long

1 run, even if, in fact, there are real differences, we
2 will not permit policy makers, we will not permit
3 decision makers to make distinctions among people on
4 a racial basis.

5 And I think by and large, over the past 30
6 to 40 years that has helped better our society.

7 MR. OGLETREE: Ms. Oh, you had a comment.
8 We're going to be going to this issue of participation
9 later, but you wanted to respond to that?

10 MS. OH: I just wanted to say that, in
11 fact, you know, this points to how each part of the
12 picture needs to be put together by a different set of
13 players, and to have someone at the leadership or the
14 executive level say it will not be a consideration,
15 then to give practitioners the basis to object and to
16 cite Batson, and then to find a judge who will have
17 the courage to say, "Well, I didn't hear the word
18 race, but I think that's what you're doing," and to
19 make the proper call, you see, will discourage the
20 continuation of using race as a factor or
21 consideration in whatever decision making process
22 there is.

23 So I think it just points to the different
24 parts that everybody plays.

1 MR. OGLETREE: Quickly, Ms. Ramirez.

2 MS. RAMIREZ: Official sanction would also
3 strengthen the police training aspect of it because in
4 addition to saying it's wrong and it has costs, you
5 also say to the police there's a disincentive. The
6 evidence will be suppressed if the court finds that
7 you don't have sufficient individualized nonracial
8 criteria to support this search or this seizure.

9 So I think a two-pronged approach in which
10 you do the training and you change the official
11 system's response and sanction strengthen one another
12 and are helpful.

13 MR. OGLETREE: Let me move to the issue of
14 racial disparity, if we can, moving our story further,
15 and, Professor Wilbanks, let me start with you.
16 You've written a well cited book about the myth of a
17 racist criminal justice system, and ask you about the
18 difference between what is the reality and the
19 perception about discrimination in the criminal
20 justice system to kind of frame this issue as we go
21 into the issue of disparity.

22 MR. WILBANKS: Yeah, to make clear what
23 I've said, I've said blacks, for example, are 50
24 percent of prison because of the offending levels.

1 It's not a difference in processing. It's a matter of
2 differential offending.

3 I have people who tell me, for example,
4 blacks are two or three times more likely to be
5 convicted. There's no study that shows that. In
6 fact, the Department of Justice said blacks are less
7 likely to be convicted.

8 We've got a difference in terms of
9 perception and reality. If you tell a young black
10 man, "Look. There's a 50 percent greater chance
11 you'll be convicted in court," first of all, that's
12 not true.

13 Second, what you're doing is you're
14 creating a lack of commitment to the law. You're
15 telling him, "Look. The system is not fair to you."

16 I think the one reason you have a higher
17 level of offending is because of a lack of commitment
18 because people believe the system is unfair. What I'm
19 saying is not only is the perception wrong. I think
20 the perception of a totally unjust system, although
21 there are cases of individual racism, I think that's
22 creating a greater level of offending which is causing
23 the problem in the first place.

24 And, again, the Department of Justice has

1 done a study of the 75 largest urban areas in the
2 country and have found from arrests to sentencing
3 there was no harsher treatment.

4 People say, "Oh, that's not true. I know
5 a case where. . . ." We're not talking about
6 individual cases. We're talking about overall.

7 And if you believe it shouldn't be 50
8 percent black, my question would be: then what should
9 it be? Should it be 12 percent? Should we have a
10 system saying, "Okay. We're going to reserve 12
11 percent of the prisons for blacks, and that's the only
12 people who can go to prison," or should it be 24
13 percent or should it be 50 percent or should we leave
14 it to the level of offending?

15 And all I said in the book is 50 percent
16 of blacks are in prison and 96 percent of prisons are
17 male because males are more likely to be offenders.
18 Age, sex, and race disproportionately involve
19 offending and result in disproportionate
20 incarceration. I don't think that's a radical
21 concept, but it seems a lot of people do.

22 MR. OGLETREE: Let me ask you. We ought
23 to relate that not just to a group of offenders, but
24 to specific subject areas of alleged disparities in

1 sentencing, that is, both the powder cocaine and crack
2 cocaine disparity and the death penalty.

3 How do you response?

4 MR. WILBANKS: I agree with Samuel Walker,
5 who wrote a book about this, that there are pockets,
6 and I think one example is the powdered cocaine. I
7 would not justify in a minute a 100 to one ratio. I
8 wouldn't justify the 20 to one or two to one. I think
9 it ought to be one to one. Cocaine is cocaine, and to
10 continue to have that against the law, when Janet Reno
11 and others have said this is ridiculous, and the
12 President, in essence, says, "Well, politically, I
13 guess, you know, there's not much we can do about
14 that. I support it."

15 I don't see how anybody can support that.
16 Certainly I do not.

17 MR. OGLETREE: Chief Ramsey, you're
18 nodding your head in agreement. You don't think that
19 the disparity in sentencing between crack cocaine and
20 powder cocaine is justified from the community's
21 reaction or any other --

22 CHIEF RAMSEY: No, I don't think it's
23 justified at all. In fact, when the issue came up in
24 Illinois, I argued strongly against it because I

1 didn't see the difference between crack cocaine and
2 powdered cocaine.

3 Cocaine is cocaine. It's just a question
4 of processing. What was a political reaction to the
5 violence that was surrounding the crack markets that
6 sprung up in the city and pressure on politicians to
7 do something, and the only thing they know how to do
8 is pass a law that just increases the penalty and just
9 burdens the system more than it already is.

10 By default it has an uneven impact on
11 those individuals engaged in that particular type of
12 activity. Where do you see open air drug markets? In
13 minority communities. In Chicago you're not going to
14 see one on North Michigan Avenue. You're going to on
15 the west side and the south side of the city. That's
16 where you're going to see them.

17 Who are the people who are standing there
18 selling? The people that are unemployed, the people
19 that are members of gangs and so forth that engage in
20 that kind of activity. So they're the ones that are
21 going to be sentenced to longer terms in the
22 penitentiary.

23 Who's bringing drugs into this country?
24 It is a multi-billion dollar a year industry.

1 Minorities in this country do not handle that kind of
2 money, and yet when you look at the penitentiaries,
3 the people that are in there are the ones at the very
4 low level of the drug trafficking operation, the
5 street dealers, the people who are buying a rock at a
6 time because they can't afford anything else.

7 I think it's terribly unfair, yet it
8 exists.

9 MR. OGLETREE: Professor Kennedy, even if
10 you assume all of the arguments are accurate, is there
11 a question about victimization and disparities in
12 victimization that might support these penalties?

13 MR. KENNEDY: Well, I would agree with the
14 earlier speakers. I think that the large difference
15 in the punishment of crack cocaine as opposed to power
16 cocaine is probably counterproductive, but it seems to
17 me it's important to distinguish between things which
18 are unwise and things that are racially
19 discriminatory.

20 I think that this aspect of the war on
21 drugs is very unwise. On the question of it being
22 racially discriminatory, however, that's a different
23 matter.

24 If one goes back and takes a look at the

1 origins of the federal laws that punish crack cocaine
2 more harshly than power cocaine, if you want to ask,
3 "Well, who first talked about crack cocaine and the
4 need to crack down on crack cocaine?" we have
5 Representative Rangel. We have Representative Owens.
6 We have other African American Representatives who
7 were very insistent that the federal government crack
8 down on crack.

9 Now, the federal government did, indeed,
10 do that. It seems to me that it has proven to be
11 counterproductive. It was a mistake.

12 Well, a lot of times people acting from
13 good motives make errors. I think this was one of
14 them, but that is a different thing than saying that
15 this is a racist policy.

16 So in my view it is a mistaken policy, but
17 it is a policy that ought to be reversed. I do not
18 think, however, that it is a policy that can properly
19 be viewed as a racist policy.

20 MR. OGLETREE: Mr. Yamamoto?

21 MR. YAMAMOTO: You know, part of it is I
22 think that all of these issues of sentencing,
23 including the death penalty, are impossible to
24 separate out from issues of poverty and class, and to

1 some extent that is why there is a different sort of
2 cultural aspect to crack and powder, but I don't think
3 that the motives of the individuals and activists just
4 by legislation matter at this point because of the
5 dramatic disparity that's shown in these communities
6 and the really disparate impact it has in the
7 communities.

8 From my point of view as a practitioner,
9 when you have a client, it's impossible to reconcile
10 that for the long, Draconian sentences they're going
11 to receive compared to the other people in the system.
12 It's impossible. It's impossible to make anybody's
13 family or community feel as though that was fair,
14 given that disparity.

15 And it doesn't matter what the intentions
16 of the people were in enacting it. It has an
17 incredibly dramatic, disparate effect, and it changes
18 the community's attitudes towards the government and
19 what they think is the government's attitude towards
20 their race.

21 MR. OGLETREE: Let me ask you, Mr. Carter,
22 about the community's attitude. Isn't there a sense
23 of communities being victimized by these drugs as well
24 and want tougher penalties? Do you see a tremendous

1 amount of unrest uniformly in minority communities
2 saying these laws are bad, or is it a mixed response,
3 that maybe this is doing something good for our
4 community?

5 MR. CARTER: I think that it's a
6 schizophrenic response, as it is in a lot of areas
7 that involve racial justice, whether it's police
8 misuse of force or disparate sentencing and charging
9 policies.

10 I mean my own view in terms of the power
11 to crack ratio is that the 100 to one ratio wildly
12 exaggerates any difference, any rational difference,
13 between crack and powder and the impact of it on
14 neighborhoods, but quite frankly, it would be my own
15 view that one to one trivializes the difference
16 because for those who were in law enforcement at the
17 time that crack first hit the streets, there was an
18 extraordinary change in the level of violence in inner
19 city neighborhoods that were besieged by crack
20 trafficking that was markedly different than anything
21 that had ever occurred with respect to powder cocaine.

22 And the fact that we cannot explain those
23 differences, we can't articulate those differences
24 scientifically or pharmacologically doesn't make less

1 valid the view, in my view, based on substantial
2 empirical experience that there was a level of
3 violence associated with the drug that justified some
4 difference in treatment, but not so much that we swept
5 into the clutches of the criminal justice system
6 people who were low level and street level dealers as
7 opposed to people who were at the top of the food
8 chain in --

9 MR. OGLETREE: Well, let me understand the
10 question or solution that you're posing. If there is
11 violence associated with crack cocaine, that to me
12 seems to be a separate and distinct crime that can be
13 punished. Why punish --

14 MR. CARTER: It can't be.

15 MR. OGLETREE: Well, let me.

16 Why punish the person for the selling or
17 use of the drug in a disparate way simply because of
18 the drug. I'm not talking about the other things.

19 MR. CARTER: Because what I think the law
20 enforcement experience has been is that there's a
21 certain level of violence that has been -- and it may
22 be something that's a changing phenomenon -- but it
23 has been inextricably intertwined with the trafficking
24 in crack cocaine.

1 And to the extent that it is, I think that
2 some disparity, though not the disparity that
3 presently exists, may be justified.

4 MR. OGLETREE: The majority of the
5 offenders who are in prison on drug offenses are there
6 not for the violent crimes, but for the selling of the
7 drugs, right?

8 MR. CARTER: That's correct, but let me
9 point out one thing that's very important. Let's
10 assume for a moment that you are a mid-level crack
11 dealer, and that you're smart enough --

12 MR. OGLETREE: See, that's why I keep
13 getting stopped at airports. Don't use me. Use
14 Professor Kennedy.

15 (Laughter.)

16 MR. CARTER: Any member of the panel here
17 is a mid-level crack dealer, and a crack dealer who's
18 sophisticated enough never to be found in possession
19 of a gun, never to give the direct order that someone
20 should be hurt or killed.

21 This person in my view, and I think the
22 view of a lot of people who are practicing in this
23 area, is as responsible for the violence as someone
24 who personally engaged in it, and consequently, it's

1 rational to charge them for their contribution to the
2 violence even though they did not participate directly
3 in it.

4 Because if you remove the trafficking, you
5 remove the violence.

6 MR. OGLETREE: Let me, before I go to some
7 other people and probably different arguments.

8 Professor Kennedy, do you agree with that
9 rationale for the disparity?

10 MR. KENNEDY: Well, yes, I agree with
11 that.

12 MR. OGLETREE: Okay, good. That's what I
13 wanted to know.

14 MR. KENNEDY: There's something else.

15 MR. OGLETREE: Okay.

16 MR. KENNEDY: There's another point. One
17 doesn't have to even really go into the question of
18 the pharmacological differences. The fact of the
19 matter is that crack cocaine revolutionized the drug
20 trade in the United States. It democratized cocaine.

21 MR. OGLETREE: Right.

22 MR. KENNEDY: Before crack, you had to
23 have a lot of money. After crack, you could be a
24 relatively poor person and get into the cocaine trade

1 and cocaine usage.

2 So I agree completely with this position.
3 The 100 to one ratio is irrational, goes way
4 overboard, but is there a rational basis for
5 distinguishing between these two types of cocaine? In
6 my view, yes.

7 MR. OGLETREE: Okay. Chief Ramsey.

8 CHIEF RAMSEY: I was working Narcotics in
9 Chicago at the time that city was hit with the crack
10 explosion. There were a couple of interesting things
11 that took place at that particular time. You just
12 mentioned the fact that it made the drug more
13 affordable. A gram of powdered cocaine in 1986 in
14 Chicago was probably selling for around 100, \$125.

15 When crack hit the market now, you could
16 buy a rock for \$10. So it became affordable for poor
17 people to be able to get involved in that.

18 At the same time, you had street gangs in
19 Chicago take that leap from being just simply street
20 gangs, moving into more organized crime. They took
21 over the drug market that prior to that had been
22 dominated by people from South America to a large
23 extent, and they had no way in because they didn't
24 have the connections. They didn't have the ability to

1 be able to make large purchases and all that sort of
2 thing.

3 They also moved to open air drug markets
4 from inside apartments. They became targets. It's
5 very easy to shoot someone standing on a corner. So
6 you have rival gangs that began to fight over
7 territory.

8 That spawned the violence. So all of
9 these things were going on at the same time, but what
10 wound up happening is the fact -- is crack
11 responsible? Yes, it was responsible, but the
12 decisions that were made relative to the sentencing
13 were made as a result of all the violence and the
14 other issues that resulted from crack, and not so much
15 that crack harms the body any more than powdered
16 cocaine over a sustained period of time or heroine or
17 any of these other kinds of drugs that are still out
18 there.

19 It was targeted because of all of the
20 violence that occurred at the same time, and I was on
21 the street during that period of time, and it was
22 amazing to see just the differences in the way in
23 which drug trafficking took place in that particular
24 city.

1 MR. OGLETREE: Professor Ramirez.

2 MS. RAMIREZ: Well, I'd like to move the
3 discussion towards other areas in which we see racial
4 disparities, though I agree, you know, that if there's
5 violence with respect to crack and powder, I always
6 thought as a government prosecutor I would have to
7 prove that, and those situations were had evidence
8 that this person in addition to distributing crack
9 either did it with possession of a gun or carrying a
10 gun or had use of violence or made threats; that I
11 would have to have evidence of that in order to punish
12 them for violence, not that I could say anyone who
13 engages in this crime is violent and, therefore, I get
14 an aggravated punishment without the evidence.

15 But there are other areas. I mean, I
16 think a bedrock principle of law enforcement has to be
17 that people who are similarly situated in terms of
18 their prior criminal record and have committed similar
19 offenses ought to be punished similarly, and I want to
20 look at two areas that disrupt that.

21 One is the minimum mandatory sentencing,
22 which no one has talked about here yet. Now, the U.S.
23 Sentencing Commission in 1991 found that when you
24 looked at how people were punished after the minimum

1 mandatory sentences were implemented, that when you
2 looked at race, race was an explanatory variable, and
3 what does that mean?

4 Even when they took into account differing
5 criminal histories, even when they took into account
6 the nature of the offense and the activity of the
7 offense, two people who committed essentially the same
8 offense with the same criminal record were being
9 punished disparately.

10 And they recommended that these minimum
11 mandatory sentences be abolished because they are
12 contrary to every sentencing principle that we have,
13 and they disrupt horizontal and vertical equity. They
14 have not been changed, and that is one area where you
15 see this kind of disparity.

16 The other, of course, is the death penalty
17 in the Balda study in which, again, they found that
18 even when you took account of the differing natures of
19 the offense, some serious, some middle, some low, and
20 hundreds of possible race neutral explanatory
21 variables, race was an explanatory variable in
22 determining who got the death penalty, and it was race
23 of the victim. That is, you were much more likely if
24 the victim was white to get the death penalty than if

1 the victim was black.

2 Those kinds of disparities lead to the
3 perception that this system discriminates. There's no
4 other word for it, and I just want to give you one
5 anecdotal way in which this occurs.

6 I'm working on a project in Dorchester
7 District Court in which they have minimum mandatory
8 penalties for people who distribute cocaine within
9 1,000 feet of a school. Well, in Dorchester, 80
10 percent of Dorchester is within 1,000 feet of a
11 school, 80 percent, in fact, every residential area
12 except these areas where no one goes.

13 The police have tremendous discretion
14 here. It's a two-year minimum mandatory. Now, one
15 person comes before a judge in court, and that person
16 is with their friends and hands their friends some
17 crack or powder cocaine, and they are brought before
18 the court, and the court says, "What's the
19 recommendation?"

20 And they say, "Oh, it's a first time
21 offense, no prior criminal record. We're only
22 charging possession. Probation."

23 Okay. The next, you know, couple of weeks
24 go by. The judge gets another case, again, this time

1 a black youth sharing the same drug and the same
2 quantity with friends. They charge possession with
3 intent to distribute because just handing it to
4 someone is distribution whether you're selling it or
5 handing it or sampling it.

6 And because it was within 1,000 feet of a
7 school, it's a minimum mandatory two-year sentence,
8 and that disparity exists, and the judge has no power
9 when there are minimum mandatories to say or do
10 anything about that kind of disparity.

11 And those statistical stories, as well as
12 anecdotal stories are some of the reasons why there's
13 alienation in the community of color.

14 MR. OGLETREE: Let me ask --

15 CHAIRMAN FRANKLIN: Are you saying that
16 this is racially discriminatory?

17 MS. RAMIREZ: Yes, I think if --

18 CHAIRMAN FRANKLIN: And if so, does that
19 help to explain the fact that there are three times
20 more blacks in prison than whites, or whatever the
21 statistic is?

22 MS. RAMIREZ: Well, I want to be careful
23 about this. First of all, there are the nonviolent
24 crimes and those crime rates and violent crime. There

1 is a high, significant Latino and black violent crime
2 rate, and so even if we were to reduce the disparity
3 between crack and powder, eliminate all mandatory
4 sentences, and eliminate -- well, the death penalty
5 applies to the violent crimes. Most of the minimum
6 mandatories don't -- that would certainly reduce the
7 prison population.

8 But we would still have a black and Latino
9 crime problem. So both things are going on. I don't
10 want to say that, because statistically it's not true,
11 that this is the whole picture, but this is certainly
12 part of the picture.

13 MR. OGLETREE: I'm trying to get someone
14 to help this Advisory Board because we're throwing a
15 lot of terms around, and there's a lot of information,
16 and Dr. Franklin's question goes to the word
17 "discrimination."

18 What I've heard all of the experts say,
19 racial differences, which is not necessarily
20 discrimination; racial disparity, which is not
21 necessarily discrimination. He's asking for
22 discrimination.

23 Is there something illegal or maybe if
24 it's not illegal, immoral that we are addressing with

1 these differences? And if we can't find
2 discrimination, do we still want to come up with some
3 remedies to try to address it?

4 Professor Wilbanks.

5 MR. WILBANKS: Disparity is a difference.
6 Discrimination is a difference based on race or
7 factors that we can't account for, for example, prior
8 record. So obviously there are disparities.

9 The question is not whether there are
10 disparities. It's whether that disparity can be
11 explained by other factors, and I think largely, for
12 example, prior record and that sort of thing explain
13 that.

14 MR. OGLETREE: Okay.

15 MR. WILBANKS: I agree with her. I
16 disagree with the minimum mandatory. I think
17 anything that takes away from the discretion of the
18 judge, who I think is in the position to judge the
19 proper sentence better than anyone else is a mistake.
20 Certainly a politician living in Washington doesn't
21 know better than the judge sitting in the case before
22 him.

23 MR. OGLETREE: So if the Advisory Board is
24 going to address this administration of justice issue,

1 mandatory minimums is one concrete area.

2 MR. WILBANKS: Absolutely.

3 MR. OGLETREE: Where they may not be able
4 to -- where someone says discrimination, but here is
5 something you can fix that would eliminate some of the
6 problems that we see of disparity across the system.

7 MR. WILBANKS: And even in this
8 administration, Janet Reno has expressed her view that
9 mandatory minimums are improper in many circumstances.

10 MR. OGLETREE: Okay. Chief Justice
11 Yazzie.

12 CHIEF JUSTICE YAZZIE: One of the things
13 that I want to stress is the number of prisons, the
14 population of prisons. It's high as to Indians.
15 Within Indian Country, we have tribal courts, Indian
16 nation courts, that try cases, and we also have
17 federal courts, and then we have the state courts
18 which have no jurisdiction over crimes committed in
19 Indian Country, but they have jurisdiction over crimes
20 committed by Indians outside Indian Country.

21 So when we talk about federal courts,
22 we're talking about that the Indians are subject to
23 the federal guidelines, and that is very important to
24 note.

1 The U.S. Commission on Sentencing asked
2 the question whether they should use tribal court
3 convictions to enhance federal sentencing, and my
4 response to that was that the guideline or whatever
5 direction that the Sentencing Commission was to take
6 should note certain things that are never told to the
7 public.

8 One thing is that I've been a judge for
9 seven years in the Navaho courts before I became Chief
10 Justice, and in 1993, we had 93,000 cases, and
11 whenever a Navajo comes before the bench, you would
12 read them the charges, and they would say 90 percent
13 of the time, "I am guilty," and the reason for that is
14 because the word "guilt" doesn't exist in the
15 language.

16 So this means that when the Navajo who
17 speaks English as a second language goes into a
18 federal court proceeding, he has a heck of a time
19 understanding what is being said, and a lot of times
20 the FBI would just force them to plead guilty just
21 because of the language hang-up.

22 There's a failure in explaining to a
23 person the rights in the language that they
24 understand. So that's a real problem, and our job as

1 Indian judges is to go to the state judges, to go to
2 the federal judges, and to explain that we have a
3 jurisdiction. We have a court system, and that we
4 have the capability.

5 I mean I went to law school to go back and
6 help my own people, and that's exactly what I'm doing.
7 So my job is to come to you, to come to the state
8 judges, federal officials, even Congress to say that
9 we have a legitimate system, and it deserves to be
10 recognized, and we need support, support meaning allow
11 us to be, to be recognized on the Advisory Board.
12 Allow us to be recognized at the White House level, at
13 the congressional level; that what we have, we need to
14 be left alone.

15 We know what we're doing as to having our
16 own justice system, very different from federal and
17 state court system. We don't deal so much with drug
18 dealers. We deal a lot of vehicular homicide, alcohol
19 related crimes. Those are the things we deal a lot
20 with.

21 So the issues here as to the Navajo
22 Nation, Indian Country are very different, and the
23 public needs to know that.

24 MR. OGLETREE: Okay. Let me ask Ms. --

1 I'm sorry. Go ahead.

2 MS. CHAVEZ THOMPSON: I just have a
3 question, addressing it to anyone, but what can be
4 done or should be done, for instance, when we talk
5 about the education of officers or the training, to
6 address some of these issues at the level of police
7 academies?

8 I mean this is where the major training
9 for police officers on approach, on the way to handle
10 the citizen rather than automatically making them feel
11 like they are a victim immediately rather than the
12 honest approach that we talked about, say, "Look. The
13 reason you're being stopped is. . . ."

14 The police academies have so much that
15 they could do in this area. What can be done to
16 address it because of the -- whatever curriculum is
17 set, at what level it is set -- that we could start
18 there?

19 MR. OGLETREE: Let me ask Commissioner
20 Bratton and Chief Ramsey to answer that, and I'm going
21 to assume that your departments do a good job, your
22 current and former departments.

23 CHIEF RAMSEY: Absolutely, absolutely.

24 MR. OGLETREE: But are there models?

1 One of the things that the Advisory Board
2 is trying to come up with is are there models to
3 follow where someone has grappled with an issue, done
4 a good job? What do you look for in a police academy?

5 MR. BRATTON: Well, actually you're
6 dealing with three things. You're dealing with
7 selection, recruiting. You're dealing with training,
8 police academy, and then you're dealing with
9 supervision and in-service training after they get on.

10 And we have come light years in 20 years
11 versus what the academy was when I went through it in
12 1970. Six weeks, out on the street I went. The
13 issues we're talking about around this table would not
14 have been discussed until the last half dozen years in
15 most academies.

16 If there is a solution to this issue or a
17 modification in a more positive way, the training
18 issue is going to be a part of that solution, and if
19 training is not address, the three issues I talked
20 about, the three types of training, it's not going to
21 happen.

22 In New York, in response to the corruption
23 issues that we spent a lot of time on, corruption,
24 anti-corruption training, and looking for profiling

1 actually in the sense of people coming into the
2 department that might be corruption prone in the sense
3 of young males in particular living at home with
4 mother and father, no job after high school.

5 There was a former profile we engaged in
6 that these people showed a propensity for trouble
7 absent better training on our part. so training is
8 key.

9 And there are tremendous programs, whether
10 it's the one she's talking about, the Northeastern
11 situation with the Boston Police Department; in New
12 York we spent and are continuing to spend a ton of
13 money on verbal Judo. Cops get into more trouble with
14 their mouths than with anything, their hands, their
15 clubs, their guns. Their mouths are what get them
16 into trouble, and you can train them how to not only
17 not escalate situations, but de-escalate.

18 So I have been a firm advocate of that for
19 all of my time when I was in the profession and now on
20 the outside as a resident gadfly. Training, training,
21 training.

22 MR. OGLETREE: Chief Ramsey.

23 CHIEF RAMSEY: I agree with that. I think
24 community policing has dramatically changed training

1 in policing, and for the better. When I became a
2 police officer back in the late 1960s, communications
3 consisted of, you know, "Please give me your driver's
4 license and hit the wall." I mean that was basically
5 it.

6 Now we're talking about positive
7 interactions with people, going to community meetings,
8 listening, which police officers, many police
9 officers, are very poor listeners. They're used to
10 giving orders and directions and not listening.

11 Another area that I think is very
12 important is in the area that Commissioner Bratton
13 mentioned around ethics and integrity. There is far
14 more emphasis on that now than it was several years
15 ago.

16 The Naval Academy at Annapolis began a
17 program they call Ethics Across the Curriculum. When
18 I was in Chicago, I sent people out there to take a
19 look at that because we were having a lot of problems
20 at that particular time, which is always a problem,
21 but we had several cases that were in the headlines
22 that dealt with corruption of police officers.

23 Well, when you really look at it, police
24 officers receive an initial basic training, but

1 recognizing that there are problems that need to be
2 addressed, and training and education is the way to do
3 it.

4 MR. OGLETREE: Let me ask both of you
5 quickly, briefly, if diversity of law enforcement has
6 made a difference in the effectiveness of law
7 enforcement, and whether that should also be a key
8 feature of any Advisory Board recommendation about
9 improving police diversity of the force.

10 MS. JIMENEZ: Well, in the case of
11 Houston, I think there are two issues which have made
12 a difference in policing. It's one west of our city,
13 and the second one, I think, is the community oriented
14 policing as opposed to other philosophies of policing.
15 I think that's key.

16 And one goes right in hand with the other.
17 It was the Organization of Spanish Speaking Officers,
18 for instance, that instituted a policy of separating
19 immigration law enforcement from local law enforcement
20 as a method of increasing trust and confidence in the
21 police and, therefore, encouraging the community to
22 report crimes, aid in the investigation of crimes, and
23 to receive equal protection of police services which
24 they would not have had access to had there been

1 distrust or lack of confidence.

2 And then I think the other area, of
3 course, is the issue of transparency in mechanisms
4 that handle and investigate complaints against
5 officers, especially with respect to the public and
6 its understanding of what those mechanisms for
7 accountability are and how they are to serve not only
8 the community, but also the police department in
9 increasing its professionalism.

10 MR. OGLETREE: I think quick Chief Ramsey
11 and then go on to Chief Justice Yazzie.

12 Chief Ramsey, one of the other benefits of
13 diversity that you mentioned before we started this
14 program was the idea that it also would protect
15 victims, the idea that if the police force looks more
16 like the public, that that might help you do your work
17 in terms of witnesses and getting people to respond to
18 issues of crime.

19 Do you want to make a comment about that?

20 CHIEF RAMSEY: Well, I think that
21 diversity is certainly important. It is something
22 that has made a difference in policing.

23 But I would also say this. My experience
24 has been that even police officers from the same

1 ethnic group over time can become abusive toward the
2 citizens, can do the same things that we're talking
3 about here.

4 If you don't have communication, if you
5 don't have police officers that meet on a regular
6 basis with the public and do not stereotype groups of
7 people as being criminals -- and you have to
8 understand the stress in policing or the fact that to
9 a large extent we've been incident driven. We only go
10 to scenes of crime. We interview victims and
11 witnesses. We fail to see that the vast majority of
12 people are decent, law abiding citizens.

13 That happens to a lot of police officers,
14 regardless of race. So diversity in and of itself
15 does not translate into better police service, a more
16 understanding police force. You still have to have
17 all of these other factors present if you want to make
18 a difference.

19 MR. OGLETREE: I want to turn next to the
20 issue of access to the criminal justice system, that
21 is, juror citizens, interpreters, things like that,
22 non-English speaking participation, but I wanted to
23 get a quick response from Chief Justice Yazzie and
24 Professor Ramirez.

1 CHIEF JUSTICE YAZZIE: Yes, the question
2 I have is what can be done if community policing is
3 not possible, meaning if you don't have the money and
4 you don't have the resources.

5 President Clinton said that the crime in
6 this country has gone down. The crime in Indian
7 Country is going up. So what do you about -- if we're
8 talking about community policing, what do we do in
9 Indian Country situation?

10 We have a solution for that. Just because
11 we don't have the resources doesn't mean that we're
12 helpless. We use the community themselves to be the
13 community police. We use the community to serve as
14 community courts. This is where we use peacemakers.

15 We have 250 peacemakers among our 250,000
16 Navajo population, and what they do is they bring
17 together the offender and the victim, the offender's
18 family, the victim's family together, and then say,
19 "Focus on the issue. What's the issue?"

20 And one of the focuses there is, while
21 involving the victim and the offender in the process,
22 is to make the offender responsible for his actions.
23 I mean the focus in America, the penalty, is to focus
24 on the bad person. You're bad. You're going to jail.

1 I hope you learn something. It doesn't work in the
2 Navajo thinking.

3 The Navajo thinking says what you do is
4 wrong. We don't like that, and if I am drinking all
5 the time and I beat up on my wife and I don't support
6 my kids, in the peacemaking process these people would
7 be my relatives. They would know me. I don't have to
8 raise my hand and say, "I swear to tell the truth, the
9 whole truth and nothing but the truth." That's
10 irrelevant.

11 That's why I say guilty is irrelevant.
12 The better thing to do when we talk about Navajo
13 thinking, Navajo peacemaking, is to get to the
14 underlying problem.

15 People go to court to deny, and they
16 create revolving doors. The way to stop it is just
17 through community courts where the families are the
18 judges, not the judges, not the police officers, not
19 the lawyers. It is the family that get into the minds
20 of the offender and say, "What is wrong? We know you
21 have a problem. Now, what is the solution?"

22 MR. OGLETREE: Professor Ramirez, we're
23 running short on time, but I wonder if you could
24 summarize or just bullet point some of the ways we can

1 improve the administration of justice by improving the
2 opportunities for access to a multiracial and
3 multiethnic group of citizens.

4 What are the things that can and should be
5 done to make participation in the criminal justice
6 system more accessible and more equal for more
7 citizens?

8 MS. RAMIREZ: Well, in some ways the
9 police encounters that we're talking about animate the
10 whole debate about how to include people in the
11 criminal justice process because any time people think
12 that the system doesn't work in their interest or the
13 system devalues them, they're less likely to
14 participate in it, which leads us to juries.

15 And if the encounters of the community of
16 color with the police on the street are hostile and
17 alien, then they're less likely to come into the
18 system as witnesses with information, as jurors who
19 would help to decide a case, or to provide -- or even
20 as victims to report a crime.

21 So that the two issues are interrelated.
22 When we talk about the under representation of people
23 of color in the system at every level, it's not
24 unrelated to what they've experienced before.

1 MR. OGLETREE: Ms. Kim Taylor-Thompson,
2 your idea of how to make the system more available to
3 citizens?

4 MS. TAYLOR-THOMPSON: Well, again, I guess
5 I would echo some of the things that Professor Ramirez
6 has said, particularly if you think about the jury
7 system. It is an opportunity for citizens to come in
8 and interact with the criminal justice system,
9 particularly since they are making decisions about
10 significant questions, questions of innocence or
11 guilt, degrees of responsibility in terms of crime
12 that have occurred or may have occurred.

13 These all hinge on a juror's
14 interpretation of evidence, and I think that to the
15 extent that you have a wide range of views and a wide
16 range of experiences that can help to interpret the
17 evidence that is presented, you have a better chance
18 of achieving justice.

19 What we tend to do is either exclude
20 people of color from juries or women even from juries,
21 as well, and they tend to be unrepresented on juries,
22 and there are certain proposals that have been offered
23 that might make it a little easier to bring people of
24 color onto the jury, for example, having affirmative

1 selection of jurors of color if you have a defendant
2 of color, and giving the defendant of color an
3 opportunity to select three people that share racial
4 characteristics with the defendant might be one way of
5 doing this.

6 This also helps with respect to
7 understanding the victim's story. Often the victim
8 may be someone who is a person of color, as well. You
9 need to have jurors that can understand that
10 perspective, as well.

11 What we've found in terms of polls, in
12 terms of statistics that we've seen is that jurors of
13 color tend to bring perspectives that are often
14 missing in conversations if they are excluded. They
15 have a certain skepticism about what police officers
16 will say in testifying in a courtroom.

17 And what judges will instruct jurors is
18 that they should treat police officers just as they
19 would treat any other witness, but that tends not to
20 be the case with white jurors. White jurors tend to
21 credit police officers more than jurors of color.

22 So if you have a mixture of people, some
23 who may be skeptical of police officers and others who
24 are crediting, that combination of viewpoints might

1 ultimately produce some justice.

2 MR. OGLETREE: Let me ask both
3 Commissioner Bratton and Zachary Carter. Mr. Carter,
4 you were a former judge on the state court and a
5 magistrate in the federal court, and Commissioner
6 Bratton, is there another legitimation value in the
7 system if there are more diverse jurors, whether there
8 are interpreters to make sure the language is clear,
9 whether there's tough scrutiny of colleges, so that
10 decisions that are made are then legitimate from the
11 community, saying, "Look. I know that I can trust the
12 jury system"?

13 Do you see value in that as a judge, and
14 do you see value in the police department that the
15 citizens are making the decisions? Mr. Carter.

16 MR. CARTER: We've had to prosecute some
17 controversial cases in my district that had racial
18 overtones, and the fact that a jury was perceived to
19 be drawn from a representative sample of the community
20 had a substantial impact on lessening tensions post
21 verdict when sometimes there were unpopular decisions
22 by that jury, but there was a certain confidence that
23 the point of view of all members of the community were
24 represented.

1 MR. OGLETREE: Okay. Commissioner
2 Bratton?

3 MR. BRATTON: I think there's definite
4 value. One, it is the intent of the law, the intent
5 of the jury system that it be representative, but
6 that's only part of the solution. The other part is,
7 once again, back on the responsibility of the criminal
8 justice system itself in terms of going back to the
9 issue of training of police, that they are trained to
10 come into a courtroom and to testify truthfully, and
11 that they are trained to testify to the best of their
12 ability and their training in terms of the law.

13 And juries, particularly minority majority
14 juries tend to be scapegoated when they go against the
15 police, and oftentimes it is for the fact that the
16 police officer gave awful testimony or that, you know,
17 for all the reasons that officers fail to in a court
18 situation make a professional presentation.

19 And so if we're looking at this, it's one
20 of the values of having representative juries, is you
21 bring a lot of perspective, but there also is the risk
22 of then the scapegoating concept, and you compensate
23 for that on the other side of it. This is a yin and
24 yang. All of these situations are yin and yang. You

1 just can't pull on one end without having a reaction
2 on the other.

3 If you understand you're going to have a
4 reaction on the other end of it, you address that. In
5 the case of police, you train them better.
6 Prosecutors, you train them better to present the case
7 and win these cases with juries, whether the juries
8 are a majority minority or not.

9 MR. OGLETREE: Professor Taylor-Thompson.

10 MS. TAYLOR-THOMPSON: The Advisory
11 Committee might want to consider a proposal that's
12 been raised by Professor Cynthia Lee, which suggests
13 that a jury instruction be given to jurors that openly
14 acknowledges the impact of racial stereotypes, and
15 what it does is it recommends that jurors switch races
16 in their mind, that they imagine the same event and
17 switch the race of the parties, and if they find that
18 they would come to a different conclusion, then they
19 know that racial stereotypes are having an impact on
20 their decision making process.

21 That's something that often does not
22 happen in a courtroom. Race is not openly
23 acknowledged, and I think that to the extent that it
24 is, it often will prod jurors into confronting the

1 biases that they may have unconsciously acted on, and
2 it may actually get them to open up and talk about it
3 and perhaps move the discussion away from racial
4 stereotypes.

5 So that may be a suggestion that they want
6 to consider.

7 MR. OGLETREE: Before we turn to the
8 Advisory Board members for questions that they may
9 want to raise with the panel, I wanted to ask about
10 consequences. We've talked about profiling. We've
11 talked about disparity. We've talked about access to
12 the justice system. What is the impact -- let me
13 start with you, Professor Kennedy -- what's the impact
14 of this prosecution and conviction on not just the
15 communities, but on the work force?

16 Are there some impacts that we need to
17 think about with the increasing number of people who
18 are being imprisoned?

19 MR. KENNEDY: Well, sure. There's a new
20 loss to the society as a whole when people are put in
21 the position where their value to society is
22 minimized. I mean, the United States incarcerates a
23 very large percentage of its population. By a wide
24 margin the United States incarcerates more of its own

1 people than other advanced industrial countries, and
2 this is a societal problem that we need to pay
3 attention to, and the consequences are dramatic.

4 The consequences for -- this is part and
5 parcel of why so many people are distrustful of the
6 administration of criminal justice. This is part and
7 parcel of why people just feel anxiety in general, why
8 people live in racially segmented communities. The
9 consequences are many and are often baleful.

10 MR. OGLETREE: Chief Ramsey, let me ask
11 you from your point of view. Your job is to enforce
12 the law and to have the best officer available, but
13 you also want those officers if you can to have them
14 representative of the community.

15 Is there a problem when a police officer
16 is ineligible, a person ineligible to be a police
17 officer because they have a juvenile record or maybe
18 an arrest as an adult? Does that impact on your
19 ability to reach the community that you'd like to
20 reach to serve in law enforcement?

21 CHIEF RAMSEY: In Washington, if we have
22 100 applicants, we will probably lose 80 through
23 background checks. It's astounding the numbers that
24 we lose as a result of that, and the majority of those

1 are African American.

2 Many people are arrested when they're very
3 young. They're convicted of misdemeanors. In some
4 cases they're arrested for felonies, and in the
5 process of the background check, they just can't pass.

6 So it does have an impact on our ability
7 to hire. It also has an impact because if you have a
8 group of people that become unemployable, not just by
9 police, but by, you know, companies that want to hire,
10 that would like to be more diverse, and you have
11 people that apply but they can't pass a background
12 check, then what you have is a group of people that
13 are unemployable.

14 That translates into a significant number
15 of people that are going to engage perhaps in criminal
16 activity in order to support their families, and so
17 forth. So it has a tremendous impact on us, not just
18 our inability to hire, but also the kinds of issues we
19 have to deal with later on.

20 MR. OGLETREE: Let ask just Commissioner
21 Bratton your view about that, whether it has an impact
22 on both morale and recruiting if you are eliminated
23 from selecting people who might have had some brush
24 with the law.

1 MR. BRATTON: It does in the sense that
2 the concern about the reason you have background
3 checks is to try and get the best candidates possible.
4 There has been some softening of that over time from
5 a clear-cut years ago where there'd be no exceptions
6 to some changes.

7 Society is constantly changing. This is
8 one that is open to debate, subject to debate. The
9 New York City case in point, the significant increase
10 in arrests in New York for minor offenses during the
11 last, oh, three, four years. Should those offenses be
12 disqualified for young people a few years down the
13 line who -- what we're all about in New York was the
14 idea of using police to control behavior to such an
15 extent that you change it, and so you give somebody a
16 bite or two of the apple in the sense of after 25
17 years of ignoring aberrant behavior you now start
18 correcting it, and they get caught up in arrests for
19 public drinking or public urination.

20 Should that be an automatic disqualifier?
21 I think one of the things New York will have to look
22 at a few years down the line is the --

23 MR. OGLETREE: Are those disqualifiers
24 now, public drinking and public urination?

1 MR. BRATTON: I don't have intimacy with
2 the particulars on the background checks because
3 background checks include an awful lot of parameters.

4 MR. OGLETREE: Right.

5 MR. BRATTON: But the idea that if an
6 individual has a record that is a direct result of,
7 say, these initiatives, will several years down the
8 line there be efforts made to take that into context?
9 I think that may be the case.

10 MR. OGLETREE: Okay. Comments or
11 questions from the Advisory Board to any of the
12 panelists?

13 MS. CHAVEZ THOMPSON: Yes. I worked with
14 city departments in my home city, and there were some
15 departments that were considered essential services to
16 the citizens and some nonessential. Police, of
17 course, were essential.

18 One of the problems though was the
19 struggle of the police department administration to
20 get the city council to put training dollars,
21 resources into the departments. So I'd like to raise
22 the next level, which is the elected officials that
23 govern the police departments and address the issue
24 that I raised earlier, which is that instead of the

1 back burner, to look at the issues of training on
2 cultural diversity, on the sensitivity training of how
3 you speak to people you're questioning, and on the
4 issue of community policing simply because if those
5 three areas are not the way to reach a community,
6 there is no other way.

7 Certainly bringing more officers of color
8 into those areas and certainly looking also at
9 language as a way of bridging those gaps that
10 oftentimes occur in our communities, and I'd like to
11 have some thoughts on that because oftentimes our
12 elected officials get elected by saying they are
13 against crime. They are for punishing the criminals,
14 and they are elected into office riding the crest of
15 eliminating all sorts of crime, and yet not putting
16 their money where their mouth is.

17 MR. OGLETREE: Professor Ramirez and then
18 Ms. Jimenez.

19 MS. RAMIREZ: First of all, I think that's
20 a very, very important issue because training is
21 important. How do you get the funding? How do you
22 get the police officers and police departments to get
23 the funding that they need.

24 The funding for the Northeastern Project

1 is \$1 million to Professor Jack McDevit in
2 criminology, which came from the Department of
3 Justice. Now, the Department of Justice could,
4 because they have a lot of money that they give to
5 local justice systems, including the forfeiture money
6 that you referred to earlier, could say that in order
7 to get that forfeiture money, in order to get those
8 resources, they have to come up with a training plan,
9 and the Department of Justice can have funding to fund
10 seed money for initial programs so they can highlight
11 some collaborations that work.

12 Different people differ. Our
13 collaboration is one with the police department,
14 community groups, and the academic community. You
15 know, let 1,000 flowers bloom. There may be other
16 places, but there has to be someplace in the system in
17 which there is a mandate to include this kind of
18 training.

19 MS. CHAVEZ THOMPSON: So that the money
20 that is kept by a city or a county be designated for
21 the training programs rather than buying equipment for
22 the department or replacing old things, I mean, office
23 stuff or whatever.

24 Because that is the case in some areas

1 where the police department decides where they place
2 it, and oftentimes the education and training is by
3 the wayside.

4 MS. RAMIREZ: But it can be a condition of
5 receiving those monies for the equipment and
6 everything, that they have a training plan in place,
7 that it's documented, and that the funding be used
8 first for that.

9 MR. OGLETREE: I would guess that the
10 Commissioner and the Chief would take a little issue
11 with that. You'd like more unrestricted as opposed to
12 restricted funds, right? You'd want to be able to do
13 the training, but you need to decide the priorities in
14 the department. Is that fair?

15 CHIEF RAMSEY: Yeah, that's fair. I
16 appreciate the need for training, and I do think that
17 more needs to be allocated in that area, but I do
18 think that oftentimes when grants are available,
19 they're so narrow in their scope that it really limits
20 your ability to really take full advantage of the
21 funds that are available.

22 I also think that, you know, too much focus
23 is on the enforcement end of things when it comes to
24 funding and nothing on prevention, and if there's a

1 cut anywhere, it tends to be in those areas, and that
2 works directly against us, and I think as police
3 chiefs we have to say, "Hey, wait a minute. We don't
4 necessarily need more police officers. What we need
5 are programs that are going to keep people from coming
6 into the system to begin with because we will never
7 have enough police officers to really be able to
8 control crime in this country."

9 You have to use other means to do that.
10 Enforcement alone is not the answer, but we continue
11 to take the dollars, and we don't make those kinds of
12 arguments, and I think it's time that we stop that and
13 really take a different approach in dealing with crime
14 in this country. Otherwise we're going to gather here
15 every year for the next 100 years talking about the
16 same issues over and over again.

17 MR. OGLETREE: Ms. Jimenez.

18 MS. JIMENEZ: I wanted simply to state
19 that I think we're oversimplifying when we just
20 concentrate on training of officers because it is a
21 complex -- one of the issues mentioned by the Chief,
22 the issue of the prevention of crime, but, secondly,
23 if you are going to look at enforcement, if we're
24 talking about local police, then we're talking about

1 increasing the confidence and trust of the citizenry
2 to increase public safety equally for all.

3 And that means that besides training, you
4 do have to have effective supervision. You do have to
5 have systems to prevent, as well as to correct
6 inappropriate actions by officers. They have to be
7 transparent to the community at large because
8 definitely all of those things erode confidence and
9 trust in the policing body.

10 And so if we solely focus on training,
11 then we're only focusing on one small aspect of a
12 larger question, and that's simply, I think, the
13 comment that I wanted to make.

14 MR. OGLETREE: A comment from Chief
15 Justice Yazzie.

16 CHIEF JUSTICE YAZZIE: Yes. As to the
17 advisor's question, I was trying to find a way to
18 respond, but I'm having a difficult time.

19 The pitch I want to make is this. The
20 Attorney General said that the law must respect its
21 citizens, and with the Navajo Nation and other Indian
22 nations, that's the key to maintaining social order,
23 and what I want to stress here is that the advisories
24 should remember, as well as the audience, that back in

1 1975, the United States signed the final act to the
2 Helsinki Accords, and in that document there's a
3 provision that says that the Indians, people like the
4 Indian nations, have the right to culture, have the
5 right to self-government, and those are not being
6 enforced today, and we're talking about racism.
7 That's an issue for us.

8 And the other thing, too, as a strategy is
9 to give Indian nations the resources that we need to
10 function well and on levels which are comparable to
11 state law, enforcement, and judicial levels of
12 operations.

13 That means to respect and to enforce
14 Indian nation self-government. That means to refer to
15 the Indian nations priorities as to federal criminal
16 prosecution, and the more important one here is to
17 acknowledge and support Indian efforts to
18 retraditionalize as a way to use their own laws, their
19 traditional practice to maintain social order, and to
20 honor the international human rights of Indians.

21 Those are the things that I want to leave
22 with the advisors.

23 MR. OGLETREE: And I assume that the
24 Advisory Board is hearing that, but there needs to be

1 a distinct and unique approach to the problems of
2 American Indians when we look at the administration of
3 justice, that the solutions that we look at generally
4 when we talk about race and ethnicity just aren't
5 applicable to the American Indian issues of
6 criminality and victimization, and that that's going
7 to require some special attention.

8 Yes.

9 MR. THOMAS: I would just mention a couple
10 of things, I think, rather than ask a question, but I
11 think first I thank Chief Justice Yazzie for
12 enlightening us as to some of the issues from your
13 perspective on justice in the Indian nation.

14 And the other thing is you hit upon
15 something early on when you asked the question, you
16 know, would the public approve or support the removal
17 of race from profiling, and in that general subject,
18 I have an anecdote.

19 There's a community in Southern California
20 where I lived recently that had the reputation that if
21 you were young and there were several of you in a car,
22 you could not enter this community without being
23 stopped by the police, and the community loved that
24 reputation and supported it greatly.

1 And the point is that it seems to me that
2 anybody who has security and safety will gladly
3 sacrifice the rights of the individual for the
4 perceived rights of all, and that I think that was a
5 great question that you asked.

6 And Professor Ramirez and Professor
7 Taylor-Thompson sort of gave to me a way out of that
8 because I think a lot of people just stop there and
9 say, "That security and safety is what we want, and
10 the police, we will gladly give the police carte
11 blanche to enforce that."

12 But what I also heard was to say if there
13 are groups that feel like they are disenfranchised and
14 not part of the system, then you're going to have more
15 trouble long term from that than trying to keep them
16 excluded, and I think that's an argument that can be
17 used productively for those people who do exclude the
18 rights of individuals and thereby exclude the rights
19 of minority groups.

20 So that was something that I heard from
21 this discussion.

22 MR. OGLETREE: Any other questions from
23 the Advisory Board before we ask these final
24 questions?

1 CHAIRMAN FRANKLIN: I wanted to make an
2 observation, too, if I may --

3 MR. OGLETREE: Yes.

4 CHAIRMAN FRANKLIN: -- Professor Ogletree.

5 One is that I wanted to make it clear that
6 the Advisory Board is extraordinarily unusually
7 sensitive to the problems of the Indian community.
8 The Indian community is the only group with which the
9 Advisory Board has met officially as an Advisory
10 Board, to consult with it about the problems which the
11 Indian community faces, not once, but three times, and
12 no other group. No other group, not Hispanic, not
13 African American, nor Asian or Euro-American has the
14 Advisory Board met with.

15 We've met with the Indian community in the
16 effort, in the desperate effort to understand, and any
17 conclusion or recommendation we will make at the end
18 of our tenure, it will be in connection with that
19 community. I think that that ought to be understood.

20 Secondly, let me say that as I listened to
21 the discussions this morning, and particularly toward
22 the end, I was impressed with the fact that, on the
23 one hand, we are the most advanced nation in the
24 world, we say, and, on the other hand, we have a

1 practice, as the professor brought out, that we
2 incarcerate more people than any other advanced nation
3 in the world, which, of course, means that we are
4 depriving ourselves of extraordinarily important human
5 resources.

6 And that speaks to the problem of
7 something that is essentially flawed in our whole
8 judicial system, which in this case I think does not
9 have to do with race so much as other things that we
10 need to address, and they go beyond the purview of the
11 Advisory Board, but I wanted to observe that there are
12 some flaws there that need to be addressed by people
13 other than the Advisory Board.

14 Thirdly, let me just say that with respect
15 to the whole question of disparity or discrimination,
16 that I, for one, did not get a complete answer, and I
17 think it's because we have so little time. I would
18 have pressed the point, but I didn't get a
19 satisfactory answer to the question of why there are
20 so many and such a large and disproportionate number
21 of, say, darker peoples on death row, in the
22 penitentiaries for a prolonged period of time, and so
23 forth, and whether or not there is some general
24 breakdown in the judicial administration system that

1 brings that about or whether there is, indeed, some
2 problem of race here that rears its angry head with
3 respect to the area of discrimination.

4 I will continue to pursue that question
5 and to try to get an answer to it out of the
6 magnificent readings which were provided by the Board,
7 by the Initiative, and by the observations made here
8 this morning.

9 MR. OGLETREE: Professor Taylor-Thompson.

10 MS. TAYLOR-THOMPSON: I'd like to respond
11 to some of the comments that you raised, Dr. Franklin.
12 Your question about -- your last question about what
13 explains the disproportionate number of people of
14 color in our prison system and why do we have one in
15 three African American men being arrested or being
16 under the criminal justice system if they are between
17 the ages of 20 and 29.

18 I think there are no easy answers to that,
19 and one of the reasons why you may still be asking the
20 question is because there isn't an easy answer, but I
21 think part of the answer is where we focus our law
22 enforcement efforts.

23 I think that Chief Ramsey mentioned it
24 earlier that we tend to focus enforcement efforts in

1 areas, in communities, subordinated communities, open
2 air markets, places where we can actually see people
3 committing crimes.

4 It doesn't mean that other communities are
5 not committing crimes. They're just less visible, but
6 we tend to go to those communities, and so we direct
7 our enforcement efforts where we believe that we can
8 get the most bang for the buck, but I think that's
9 problematic. And I think that we see that it's
10 problematic because of the racial impact.

11 In addition, I think that we need to look
12 at the way discretion is exercised all along the line
13 of the criminal justice process. Police officers are
14 not the only ones who are exercising discretion.
15 Prosecutors are exercising discretion about who they
16 will charge, who they will give a plea offer to, who
17 they won't, who they will charge certain crimes for,
18 who they won't, and race often enters into that
19 calculus as well because prosecutors' offices are not
20 often addressing the issue of race as openly as they
21 need to.

22 Some offices do. Zach Carter's office
23 does, but not all offices across the country are doing
24 that. So there needs to be training not only in

1 police departments, but prosecutors' offices as well,
2 talking about the impact of race.

3 But I think that one of the things that
4 we've done and I think that we shouldn't oversimplify
5 this problem, we've focused on what police departments
6 can do, what prosecutors' offices can do, what public
7 defenders might be able to do, but I think that we
8 need to think about this problem of crime as a broader
9 problem.

10 If you look at the people that actually
11 end up in our prisons, if you take a look at their
12 social backgrounds, you will find that they often have
13 been abused or neglected as children. You will find
14 that they didn't have options that other members of
15 our society might have had in terms of employment.

16 What we have decided, instead of having a
17 rational employment policy, a rational public welfare
18 system, we've decided that we're going to have a
19 criminal justice system instead, and so we imprison
20 people instead of actually trying to help people.

21 What I would propose that the Commission
22 take a look at is -- the Advisory Board take a look at
23 -- is ways that we can involve other members of the
24 community in the issue of crime before it actually

1 happens.

2 So bringing in social services departments
3 to look at the issue of neglect and abuse, not taking
4 people out of their homes, but providing them with
5 services and giving them some kind of education to
6 help them not neglect their children, help them not
7 abuse their children.

8 We ought to think about involving business
9 community members, recognizing that a business
10 community cannot function well and it cannot function
11 well economically if you have people who are engaged
12 in violence. So the business community has an
13 interest in providing jobs, providing training.

14 We need to have a much more comprehensive
15 employment policy than we have. Our welfare bill has
16 basically eliminated services to people who are poor.
17 What we need to do is rethink that and try to provide
18 services to families because when you don't, when they
19 have no other options, they will turn to things that
20 will at least provide food for their families, and
21 that often is turning to crime. We don't want to do
22 that.

23 So I think that we have to have a more
24 comprehensive, problem solving approach to this issue

1 of crime rather than simply focusing on different
2 institutions within the criminal justice system that
3 we readily identify with the criminal justice system.

4 MR. OGLETREE: I want to give each of the
5 panelists a chance to speak one brief closing comment
6 because we've run out of time.

7 I'll start with Zachary Carter and move
8 around the table, and then we'll end it.

9 Zachary Carter.

10 MR. CARTER: Sure. I agree with one of
11 the prior speakers who thought that a single minded
12 emphasis on training of police officers is probably a
13 mistake because I think the training is a means to an
14 end and not an end unto itself.

15 What we really need is to break down
16 stereotypes and increase empathy of police officers to
17 people who are subject to discriminatory stops, for
18 instance, and I think we do that best by increasing
19 exposure of law enforcement officers to community in
20 other settings other than in confrontations over an
21 arrest, over a crime having been committed.

22 I mean, if there were a way, for instance,
23 perhaps even as an alternative to a residency
24 requirement which gets resisted by unions and local

1 legislators from time to time, perhaps as an
2 alternative to residency requirement there could be a
3 mandated minimum number of community service hours
4 that would have to be contributed within a precinct
5 refereeing midnight basketball, tutoring, so that the
6 people who are policed by the police are humanized for
7 them and consequently don't become the stereotypical
8 mugger in the rear view mirror as opposed to someone
9 who has greater potential for being an innocent victim
10 or a law abiding citizen than as an offender.

11 MR. OGLETREE: Professor Kennedy.

12 MR. KENNEDY: All too often we make
13 antagonists of official law enforcement and people who
14 are proponents of racial equality, and I think one of
15 the points that's been raised by a number of members
16 of this panel is that efficient law enforcement will
17 gather strength if you have efficient law enforcement
18 and a decent, proper concern for racial equality.

19 And similarly, racial equality will
20 necessitate, will require efficient, decent law
21 enforcement. So these two camps should not be --
22 they're not antagonists. They need one another if
23 either is to fulfill their highest aspiration.

24 MR. OGLETREE: Ms. Jimenez.

1 MS. JIMENEZ: I just wanted to add to some
2 of the comments that were being made with respect to
3 the general concept of crime, and that is that
4 increasingly social problems -- the solution given by
5 policy makers is to criminalize them, and that in
6 itself increases the basis of law enforcement activity
7 and the number of people that are incarcerated.

8 And I particularly look at the
9 contradictions in the issue of immigration law
10 enforcement in which repeat enters, people who are
11 entering for a second time, are now being prosecuted
12 all over the country and then sent to the county or
13 federal facilities.

14 And I had a call recently from a jail
15 administrator in Abilene, Texas, who says, "I don't
16 know why this is happening. It costs the federal
17 government \$50 to keep someone who repeats entry at
18 the county jail, \$1,500," where if they let them in,
19 they'd get a job and work and contribute, or he says,
20 "You could even -- the State of Texas could give them
21 \$400 worth of food stamps and it would still be
22 cheaper than incarcerating people."

23 But it's the issue that mobility across
24 international border is being criminalized, but just

1 like this issue is criminalized, we have many other
2 issues in our society that increasingly are looked at
3 as a crime.

4 I think the issue of violence and crack --
5 I was wondering whether if our society during the
6 period of prohibition of alcohol would have looked at
7 different standards because of the violence created by
8 prohibition as to cognac or hard liquor and better and
9 give, you know, disparate sentences.

10 So, again, it's the question of looking at
11 the social problem, in this case drug consumption, and
12 industry, as the Chief pointed out, the multibillion
13 dollar industry and abuse as a law enforcement problem
14 or in the case of the southern borders sometimes as a
15 military problem.

16 And, again, the concept of all of these
17 social problems and how one addresses them in a
18 democratic society are important, but I think the most
19 important thing, and I draw from a law enforcement
20 officer who once called my office, who said that he
21 believed that he could do his job in keeping order and
22 at the same time abide by the constitutional rights of
23 the people that he confronted, and that it's desirable
24 as a societal goal, and it's desirable as a democracy

1 to think that we can both respect to the rights,
2 dignity, and the safety of all individuals within our
3 society.

4 MR. OGLETREE: Okay. Quick responses from
5 our last five panelists.

6 Professor Taylor-Thompson.

7 MS. TAYLOR-THOMPSON: Okay. I'll be very
8 quick. I think that our crime policies have been
9 based on the premise that harsh penalties and
10 escalating prison populations will make us safe. They
11 won't, and I think that we need to have a much more
12 comprehensive approach to the problem of crime, which
13 involves not only criminal justice players, but all
14 sorts of members of the community as well.

15 MR. OGLETREE: Chief Justice Yazzie.

16 CHIEF JUSTICE YAZZIE: One thing I failed
17 to mention is that in trying to see the big picture to
18 the rise of crime in Indian Country, with respect to
19 Navajo Nation of the total population, 250,000 half
20 are 20 years and younger, and then 41 percent of that
21 total number are children. Nine percent or -- I'm
22 sorry -- 20, 25 percent is nine years and under, which
23 is something like 56,000.

24 So when we look at that figure, we look at

1 the gang problem, the drive-by shooting and the
2 vandalism, we have that, and we say the hard core is
3 hard to deal with, and we're trying our best, but we
4 can do something with the nine year olds.

5 The nine year olds, many of them have been
6 subjected to the cycle of sexual abuse and sex
7 offenses, and studies have shown that if these
8 children are experiencing that cycle, when they grow
9 up they'll become the offenders themselves.

10 So if we think we have a big problem now,
11 wait until these nine year olds become 14, 15, 16. If
12 we don't do anything about it, then it's going to grow
13 out of proportion. What do we do then?

14 All the money in the world, all of the
15 jail in the world is not going to help, but the
16 solution is this. The Navajo nation, other nations,
17 we have treaties with the United States. We should be
18 looked at as a nation, as the treaty says, that we
19 have a government-to-government relationship with the
20 United States.

21 And in that we have the power to exercise
22 our own destiny. That's why I'm saying this, that as
23 an Advisory Board, give us the attention that we
24 deserve and pay attention to how we have solutions to

1 these things.

2 That's why I'm always talking about
3 peacemaking. We came here. I've been coming here to
4 Washington in 1993, and Clinton signed into law the
5 new Indian Tribal Justice Act, and Congress has not
6 put any money into it. It's just an authorization
7 bill. It doesn't do any good.

8 So in terms of support, we need support to
9 implement the law. Implementing the law means to give
10 assistance to Indian Country. We have 540 Indian
11 nations, and some are well off. Some are doing okay,
12 but Navajo Nation, we don't have, you know, casinos
13 like other Indian nations. Our people said no to the
14 casinos

15 So I wanted to make that final pitch to
16 the Board and to the audience.

17 Thank you.

18 MR. OGLETREE: Professor Wilbanks.

19 MR. WILBANKS: I have two quick
20 suggestions to the Advisory Board. One is Frank
21 Zimmick and Gordon Hawkins just came out with a new
22 book called Crime is not the Problem, and I think this
23 is a book that the group ought to look at.

24 What they argue is that major cities in

1 the United States have about the same, quote, crime
2 rate as Sydney, London. The difference is in
3 lethality, lethal violence. We're no more criminal
4 than other nations, but the level of lethal violence
5 is 50 times greater in our American cities than other
6 countries, and they argue that the policies that we're
7 currently implementing deal with the crime problem and
8 don't touch the lethal violence problem.

9 Why is that most altercations, many
10 altercations in this country lead to murder? They
11 don't in London. They don't in other cities. This is
12 at least a book that's got a different perspective,
13 and very rarely do you read something this different,
14 and I would recommend that book to the Advisory Board
15 and to the audience.

16 The second thing is I would ask the
17 Advisory Board to adopt a race neutral definition of
18 racism and racial prejudice. Too often I hear, I
19 guess, the common statement today: Hispanics and
20 blacks can't be racist because they have no power.

21 Every group can be racist. Every group
22 can exercise racial bias, and I have one little pet
23 peeve that I'll just mention to you. Clearly the
24 Department of Justice statistics indicate that with

1 respect to when black offenders choose a victim in
2 robbery, rape, and assault, 55 percent of the time
3 it's against whites, not blacks.

4 It's been said commonly here violent crime
5 is intra-racial. From one point of view; not from the
6 point of view -- now if that's true, and the Justice
7 Department says it is, I'm offended by statements like
8 the following. "Help stop black-on-black crime." If
9 the majority of crime by blacks is against whites,
10 what does that tell me?

11 Well, we're telling him, "Sic them." Now,
12 I argue that that plea, black-on-black crime, is
13 racist. I'm asking that you adopt a race neutral
14 definition of racism and racial prejudice.

15 Thank you.

16 MR. OGLETREE: Professor Ramirez.

17 MS. RAMIREZ: If I wanted to make one
18 point, it would be to echo Chief Ramsey's point that
19 the best way to fight crime is to invest in children.
20 I think that crime reduction and crime prevention can
21 be tied together, and they have been in Boston.

22 I will be brief, but in 1990 we had 150
23 homicides in Boston. This year to date, May 17th, we
24 have nine. How did this happen?

1 First, police and prosecutors began by
2 saying, "We alone cannot resolve this problem," and
3 they formed partnerships with community groups and
4 church groups.

5 Second, they targeted and had
6 collaboration with the federal system, and they
7 targeted the one percent of the kids who were the
8 worst trouble makers and who needed to be
9 incarcerated, and they did that federally, and the
10 kids feared that and hated that because they weren't
11 going to prison locally with their friends. They were
12 going to another community.

13 That had deterrence effect, and it also
14 cleaned up some of the problems on the street.

15 For the other 99 percent, they tried
16 prevention: midnight basketball, mentoring, tutoring,
17 the Ten Point Coalition getting these kids into the
18 churches, social services. We need not go on with all
19 of them.

20 But what has happened is that you have two
21 models of how you reduce crime. In Texas they reduce
22 it by increasing incarceration, and that's what their
23 statistics show. In New York and Boston, we reduce
24 crime while incarcerations stay stable or get reduced.

1 There is another way and I would submit a less costly
2 way to reduce crime both in the community of color
3 neighborhoods and in white communities.

4 MR. OGLETREE: Chief Ramsey.

5 CHIEF RAMSEY: Well, I agree with
6 everything that Professor Ramirez just said so my
7 comments can be very, very brief.

8 I think that we've made a lot of progress
9 in policing over the years in the way in which we deal
10 with crime and disorder in neighborhoods across the
11 country, but I think that until we really broaden our
12 perspective on crime and really take into account the
13 need for effective prevention and intervention
14 strategies, then we're not going to see the kind of
15 progress we really need to see to bring about safe
16 neighborhoods.

17 And it's not just the responsibility of
18 the police or even the criminal justice system itself.
19 It's got to stretch beyond that. The responsibility
20 for public safety rests with citizens, other
21 governmental agencies, private service providers,
22 schools. You name it; everyone has a role in public
23 safety, and we need to really figure out a way in
24 which we can achieve safer neighborhoods, but at the

1 same time be sure that we can protect the
2 constitutional rights of all people across the board
3 in doing that.

4 MR. OGLETREE: Great. Dr. Franklin, it
5 seems like you and the Advisory Board have a very
6 small task ahead, but I'm sure you're prepared for it.

7 The criminal justice system is clearly one
8 of the most difficult to try to understand, sort out
9 the contradictions and try to solve, and your task
10 will be difficult as you can see from the wide range
11 of comments and conflicting points of view we've heard
12 here today.

13 I can say that more than in any other
14 area, you should expect a lot of criticism no matter
15 what you do, and that might simply reflect the fact
16 that you're doing the right thing. It's not going to
17 be easy solutions, but very difficult, painful
18 solutions for all of us in America.

19 But my hope is that you'll have the same
20 kind of commitment and integrity and resolve in the
21 criminal justice system as you've had in the other
22 areas, and that you will help us reach that idea of
23 one America in the 21st Century.

24 If we achieve the criminal justice system,

1 I think the rest of our problems pale by comparison.

2 Before I turn this back over to Dr.
3 Franklin, I'm going to ask you to join me in thanking
4 our panelists for their very helpful comments today.

5 (Applause.)

6 CHAIRMAN FRANKLIN: On behalf of the
7 Advisory Board, I want to thank the members of the
8 panel. They've been so enlightening, so resourceful,
9 so generous in sharing their experience, as well as
10 their training and observations, and I want you to
11 know that the Advisory Board is deeply grateful to
12 you.

13 As, indeed, we are to Professor Ogletree
14 for his masterly way of handling this period.

15 (Applause.)

16 CHAIRMAN FRANKLIN: I also agree with him
17 that perhaps we needed two sessions like this at the
18 minimum, perhaps even more, but I certainly am deeply
19 grateful to all of you and to the audience, too, for
20 their patience, as well as the thoughtful questions
21 which they submitted, several of which were used.

22 We welcome any additional comments and
23 materials that you may have to offer the Advisory
24 Board, and there are members here in the audience,

1 members of staff and so forth, who will be able to
2 either take your comments now or to convey to you the
3 means by which you can submit them to the Advisory
4 Board and the Initiative on Race.

5 This, of course, has been a very
6 interesting, thoughtful, at times exciting session,
7 and the sharing of these viewpoints on your part is
8 deeply appreciated.

9 I hope that we've learned a great deal
10 today. I certainly have, and I know members of the
11 Advisory Board also have. To the extent that we have
12 learned, to the extent that we have been able to
13 assimilate and process this information and knowledge,
14 we are in a position then to perhaps take one more
15 step toward building one America.

16 The Advisory Board will meet again in June
17 perhaps for its last meeting, and we look forward to
18 that and to making our recommendations to the
19 President as a result of these experiences that we
20 have had over the past 11 months.

21 We also look forward to the President's
22 round table discussion which will be held on July 8th,
23 and which will be hosted by PBS, and we think that
24 that will be a kind of important valedictory for the

1 Board and its work.

2 So thank all of you for your patience and
3 your contributions.

4 This meeting is adjourned.

5 (Whereupon, at 1:30 p.m., the meeting was
6 concluded.)

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