

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

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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       there's not an awful lot done to reinforce values  
2       along the way. As a person 15 years, 20 years later,  
3       can we really expect them to be the same individual  
4       that they were when they were raw recruits? No, a lot  
5       has happened between then, and we have to constantly  
6       revisit certain issues and talk to people and retrain.

7               And that's something that, quite frankly,  
8       in the two departments that I have experience in was  
9       always on the back burner. Training was not seen as  
10       being that important. Most in-service training was  
11       mandated by the state. Recruit training drove  
12       everything that the Training Division in the Chicago  
13       Police Department did, and right now the Metropolitan  
14       Police Department in-service training is nonexistent  
15       for all practical purposes.

16              But we have to turn that around because I  
17       think it's essential in dealing with the issues that  
18       we've been talking about now. Sensitivity training  
19       didn't exist in the 1970s. Now that's all you hear  
20       people say in policing now, is that we need  
21       sensitivity training, not that that's the end all and  
22       it's going to solve all of our problems, but it is a  
23       beginning.

24              People are talking about these things,

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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