

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION BRIEFING:

MULTIETHNIC PLACEMENT ACT,
MINORITIES IN FOSTER CARE AND ADOPTION

+ + + + +

FRIDAY

SEPTEMBER 21, 2007

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WASHINGTON, D.C.

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The Meeting convened in Room 540 at 624
Ninth Street, N.W., Washington, D.C. at 10:00 a.m.,
Abigail Thernstrom, Vice Chairman, presiding.

PRESENT:

ABIGAIL THERNSTROM, VICE CHAIRMAN
JENNIFER C. BRACERAS, COMMISSIONER (via telephone)
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER (via telephone)
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

MANUEL ALBA
DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
TERESA BROOKS
CHRISTOPHER BYRNES, Attorney Advisor to the OSD and
Acting Deputy General Counsel, OGC
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MONICA KIBLER
EMMA MONROIG, Solicitor/Parliamentarian
KARA SILVERSTEIN
AUDREY WRIGHT
MICHELE YORKMAN

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COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER

RICHARD SCHMECHEL

KIMBERLY SCHULD

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

10:00 a.m.

1
2
3 VICE CHAIR THERNSTROM: So we turn to the
4 briefing on Multiethnic Placement? Okay. On behalf
5 of the Commission of Civil Rights, I welcome everybody
6 to this briefing on the Multiethnic Placement Act,
7 Minorities in Foster Care and Adoption.

8 At this briefing three expert panels will
9 discuss a number of issues concerning trends in racial
10 foster care and adoption including whether the
11 Multiethnic Placement Act of 1994 has been successful,
12 how well the U.S. Department of Health and Human
13 Services enforces that Act and whether transracial
14 foster care and adoptions serve the best interests of
15 children.

16 MEPA was developed out of concern that
17 many children languished in foster care as prospective
18 parents of a different racial group were not provided
19 the opportunity to adopt them. MEPA's broad goal is
20 to abolish racial discrimination for both children and
21 prospective parents in child welfare. As amended, the
22 statute prohibits states and other entities involved
23 in foster care or adoption placements that receive
24 federal financial assistance from delaying or denying
25 a child's foster care or adoptive placement on the

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1 basis of the child's or the perspective parent's race,
2 color or national origin. It also requires states to
3 diligently recruit foster and adoptive parents who
4 reflect the racial and ethnic diversity of the
5 children in the state needing foster and adoptive
6 homes in order for the state's child welfare programs
7 to remain eligible for federal assistance.

8 Critics of MEPA argue that only families
9 of the same race can provide minority children with
10 the support they require to be able to combat
11 discrimination, develop role models to confront
12 negative stereotypes. They further contend that
13 little effort is made to recruit for African American
14 adoptive families.

15 Proponents counter that if only parents of
16 the same race as a child are allowed to adopt minority
17 children, the adoption will take too long. They also
18 posit that children in transracial adoption do as well
19 as other children on standard measures of self-esteem,
20 cognitive development and educational achievement
21 among other criteria.

22 In addition, although much of the debate
23 was centered on adoption, we will also consider the
24 effect of MEPA on children in foster care.

25 The record will be open until October 22,

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1 2007. Public comments may be mailed to the U.S.
2 Commission on Civil Rights, Office of Civil Rights
3 Evaluation, Room 740, 624 9th Street, Northwest,
4 Washington, D.C. 20425. And we welcome those
5 comments.

6 So, this morning we're pleased to welcome
7 three panels of experts that will address this topic.

8 **PANEL 1**

9 VICE CHAIR THERNSTROM: Panel 1. We will
10 hear from distinguished Government officials. They
11 will discuss the enforcement of MEPA, the issue of
12 minority children in foster care. Participants are
13 Joan E. Ohl. And I hope I've pronounced your name
14 correctly. Commissioner of the Administration on
15 Children, Youth and Families at the U.S. Department of
16 Health and Human Services and Kay Brown, the Acting
17 Director of Education Workforce and Income Security
18 team at the Government Accountability Office.

19 Commissioner Joan E. Ohl, U.S. Department
20 of Health and Human Services. Prior to joining the
21 Bush Administration, Commissioner Ohl was West
22 Virginia's Secretary of Health and Human Services from
23 1997 to 2001. In addition she held a number of
24 positions in higher education, among these were Vice
25 President of the Independent College Fund of New

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1 Jersey and the Association of Independent Colleges and
2 Universities in New Jersey.

3 She has a master of education degree from
4 the University of Buffalo, New York.

5 Kay Brown, from the Government Accounting
6 Office, has more than 20 years of experience at GAO.
7 She is currently Acting Director in GAO's Education
8 Workforce and Income Security Team where she's
9 responsible for leading its work related to child
10 welfare, child support, domestic nutrition assistance
11 and other income security programs.

12 Previously in her role as Assistant
13 Director, Ms. Brown managed projects that focused on
14 improving government performance in the area of
15 program integrity, customer service, human capital and
16 process reengineering and privacy issues.

17 In addition, she has led teams evaluating
18 foreign food assistance, refugee aid and disaster
19 assistance. She has received numerous awards during
20 her career at GAO, including two honor awards for
21 meritorious service and several others for outstanding
22 achievement, leadership and teamwork.

23 Prior to her work at GAO, Ms. Brown worked
24 for a county welfare program where she first provided
25 case work services and then managed a countywide child

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1 development program.

2 Ms. Brown has an MPA from the University
3 of Pittsburgh's Graduate School of Public and
4 International Affairs.

5 I welcome you on behalf of the Commission.

6 First, please come up.

7 (Panelists sworn)

8 VICE CHAIR THERNSTROM: I will call you in
9 the order you have been given for the record.
10 Commissioner Ohl, you speak for ten minutes. Please
11 proceed.

12 COMMISSIONER OHL: Thank you very much.

13 I've been invited here this morning in
14 order to provide the Administration's perspective on
15 the Multiethnic Placement Act, and more generally to
16 the extent to which race should be a factor in both
17 foster care and adoption placement decisions.

18 Specifically, the Commission has expressed
19 interest in the Administration's view on:

20 Whether the enactment of MEPA has removed
21 barriers to permanency facing children involved in the
22 child protective system;

23 Whether transracial adoption serves the
24 children's best interest or has negative consequences
25 for minority children, families and communities;

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1 How effectively our Department, the U.S.
2 Department of Health and Human Services, is enforcing
3 MEPA;

4 The impact that HHS' enforcement of MEPA
5 has on the efforts of perspective foster care and
6 adoptive parents to adopt or to provide foster care
7 for minority children, and;

8 Whether the enactment of MEPA has reduced
9 the amount of time that minority children spend in
10 foster care or wait to be adopted.

11 I'm glad to be here this morning. It's my
12 hope that this briefing is going to lead to better
13 understanding of the appropriateness of transracial
14 adoption and whether the purpose for which MEPA was
15 enacted is being achieved.

16 The Multiethnic Placement Act was signed
17 by President Clinton in 1994 as a part of the
18 Improving America's Schools Program.

19 MEPA was enacted after a lot of debate
20 about transracial adoption and same race placement
21 policies. At the heart of the debate is the need to
22 promote the best interest of children by ensuring that
23 they have permanent, safe, stable and loving homes
24 suited to their individual needs. However, placement
25 delays and denials based upon illegal discrimination

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1 increased the risk that a growing number of children,
2 and especially minority children, in the child
3 protective system would never find a permanent home.

4 MEPA was broadly intended to remove and
5 eliminate discrimination in child welfare both for the
6 benefit of the children who need permanent homes and
7 for the purpose of perspective parents who wish to
8 provide permanent homes for children.

9 In 1996 MEPA was amended by the provisions
10 of the "Removal of Barriers to Interethnic Adoption"
11 provisions included in the Small Business Job
12 Protection Act of 1996. The IEP amendments were
13 supposed to remove what members of Congress felt was
14 potentially misleading language in the original
15 provisions of MEPA and to further clarify that
16 discrimination against children in need of suitable
17 homes or perspective adoption placements is illegal.

18 In addition, IEP strengthens the
19 compliance and the enforcement procedures including
20 the withholding of federal funds and the rights of
21 individuals to bring an action in federal court
22 against the state or any entity which is alleged to
23 have violated MEPA.

24 Congress took a very significant step in
25 passing MEPA and the amendments in order to bring our

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1 nation's child welfare policies in line with a body of
2 established civil rights law. The law makes clear
3 that race, color and national origin should not and
4 may not preclude or delay any child from being placed
5 into a loving and permanent home.

6 The debate about transracial adoption and
7 same race placement policies spurred MEPA. However,
8 to date there is no federal definition of transracial
9 adoption. Within the Bureau of Child, Youth and
10 Families, the Children's Bureau, the Data and
11 Technology Division defines transracial adoption as
12 adoptions where the adoptive parents differ in at
13 least one racial or ethnic characteristic from the
14 adopted child. Keeping in mind that definition the
15 research, most of which had been conducted by my
16 colleagues and panelists here today show that
17 transracial adoptees of color are no more likely to
18 engage in negative social behaviors than white in-
19 racial adoptees; are no more likely to engage in
20 criminal activity or drug use. And studies show that
21 transracial adoptees have exhibited academic
22 competence, which is a clear sign of positive well-
23 being. And more importantly transracial adoptees
24 experience speedier adoptions than in-racial adoptees of
25 color on the whole reducing the time that those

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1 children are allowed to languish -- a term now
2 synonymous with foster care -- in care without the
3 benefit of a permanent family.

4 Using the AFCARS data, which is a data
5 system that we collect, for example between 1996 and
6 2003 the average wait in time for an African American
7 child was 17.7 months while the average waiting time
8 for children of other races was 15 months.

9 With respect to the Multiethnic Placement
10 Act, this Administration can and should be credited
11 with taking decisive action on the enforcement front.
12 As a representative of ACF -- one of the two MEPA
13 enforcement agencies and of course within HHS both
14 ACF, the Administration on Children and Families and
15 OCR, the Office of Civil Rights, work on this jointly.

16 I'm proud to say that we have moved beyond simply
17 providing interpretative guidance to taking action.
18 Action in the form of decisions which have found
19 states in violation of the law, and we have imposed
20 financial penalties mandated by MEPA for such
21 violations.

22 The first enforcement decision involved
23 Hamilton County, Ohio in 2003. After a 42 year
24 investigation the Office of Civil Rights issued a
25 letter of findings concluding that Hamilton County in

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1 Ohio had violated MEPA as well as Title VI of the 1964
2 Civil Rights Act and ACF issued a penalty letter
3 imposing a \$1.8 million penalty.

4 The letters of finding confirmed that
5 under MEPA the child welfare workers cannot routinely
6 consider race, color or national origin in foster care
7 or adoption placement processes. OCR explained that,
8 among other things, MEPA prohibits routine
9 consideration of race, color or national origin in
10 foster care, in adoption placement decisions, routine
11 considerations of race in the context of transracial
12 placement and applying different or more rigorous
13 scrutiny to considerations of transracial placement as
14 compared to same race placements.

15 The second enforcement decision involved
16 South Carolina in 2005. Here OCR issued a letter of
17 findings explaining that North Carolina's Department
18 of Social Services had violated both MEPA and Title VI
19 and ACF issued a penalty letter imposing a penalty of
20 \$107,481.07.

21 The letters of finding emphasized that
22 strict scrutiny is an appropriate constitutional
23 standard of review and that the law forbids any
24 routine consideration of race, color or national
25 origin allowing its consideration on rare occasions,

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1 and even then to the degree that it can be
2 demonstrated to be absolutely necessary.

3 Since the enactment of MEPA the two HHS
4 agencies, OCR and ACF, have taken additional steps to
5 ensure that the delays or denials in the placement of
6 children for adoption or foster care due to race,
7 color or national origin are eliminated. In addition
8 to these cases where the letters of findings, penalty
9 letters and other corresponding corrective action
10 plans have been issued, there are ongoing efforts in
11 place to ensure effective MEPA compliance.

12 OCR has conducted over 130 investigations
13 of race, color or national origin discrimination in
14 child welfare practice and is engaged in compliance
15 efforts in numerous cases resulting in agreements by
16 several state agencies to modify their practices.

17 And ACF through policy statements and
18 technical assistance has reinforced its commitment to
19 rigorous enforcement of MEPA.

20 All tolled in terms of technical assistance
21 through our National Resource Centers, the
22 Administration on Children, Youth and Families has
23 engaged states in MEPA related compliance efforts and
24 trainings on nearly 50 different occasions since 1999.

25 The ability to foster or adopt a child

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1 without race, color or national origin discrimination
2 warrants and receives our uninterrupted attention.
3 Towards this end we are continuing to develop common
4 protocols that will assist states in their efforts to
5 implement policies and procedures that ensure
6 nondiscriminatory practices in making foster care and
7 adoption placement decisions. We similarly respond to
8 states and other inquiries about MEPA on a regular
9 basis.

10 The enforcement action and penalties taken
11 by MEPA enforcement agencies of the U.S. Department of
12 Health and Human Services ups the ante in the way that
13 agency directors and agency workers are not likely to
14 disregard. The mandatory penalties for MEPA violations
15 are steep and they cut into federal funds upon which
16 states depend on in order to operate their child
17 welfare system.

18 A recent MEPA action against Hamilton
19 County, Ohio and South Carolina in combination with
20 other broad nationwide technical assistance efforts
21 have certainty increased state's knowledge and
22 awareness of what is and what is not accepted legal
23 practice.

24 The Commission has also inquired about
25 whether MEPA has been effective in reducing the amount

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1 of time children spend in foster care. Let me address
2 that. The MEPA legislation was enacted in part to
3 prevent children from languishing in out-of-home care
4 where foster or adoptive parents of the same race were
5 found. So when we look at whether the enactment of
6 MEPA has reduced the amount of time minority children
7 spend in foster care or wait to be adopted, it is
8 important to keep in mind the law's broader intended
9 focus, which was to eliminate and remove
10 discrimination in child welfare.

11 The Adoption and Foster Care Reporting
12 System, we call that AFCARS. Everybody has their
13 little acronyms. Collects case information on all
14 children in foster care for whom child welfare
15 agencies have the responsibility for placement. In
16 order to conclude that MEPA is the primary reason that
17 there may or may not have been a decline in time to
18 discharge and/or adoption for minority children, we
19 have to look at the impact of MEPA and what it might
20 look like. I talked earlier about the definition that
21 we utilize.

22 Our data shows that the percentage of
23 African American non-Hispanic children who are adopted
24 by at least one parent who differed from them in at
25 least one characteristic or ethnic characteristic

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1 increased between fiscal year 2000 and 2005 from 24 to
2 31 percent. It decreased for Hispanic children from
3 72 to 63. And decreased for white non-Hispanic
4 children from 11 percent to 8 percent.

5 Also, the amount of time to discharge in
6 foster care for African American children has declined
7 from 4 months from fiscal year 2000 to fiscal 2005, by
8 2 months for Hispanic children and not declined at all
9 for white non-Hispanic children.

10 The average time to adoption has declined
11 for 8 months for African American children, 7 months
12 for Hispanic children and 6 months for white non-
13 Hispanic children.

14 In effect, we cannot say that all of these
15 declines are solely a result of MEPA given that the
16 direction and the percentage change of transracial
17 adoption are different for African American and
18 Hispanic, that the trends are different for both
19 African American, Hispanic and white non-Hispanic
20 children. But it's likely that MEPA was one of the
21 causal factors in what we see as an encouraging
22 outcome.

23 One of the things we'd also have to take a
24 look at is the independent effects of the Adoption and
25 Safe Families Act, ASFA, in terms of the declines in

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1 stays.

2 I want to indicate that clearly MEPA has
3 had an extraordinary positive and important impact on
4 foster care and adoption experiences of individual
5 children in families. But that number of children is
6 not large enough to produce a trend that is on a
7 national database such as the AFCARS' data.

8 I also want to say, and I know my time --

9 VICE CHAIR THERNSTROM: Your time has
10 expired, yes.

11 COMMISSIONER OHL: -- has expired. I also
12 want to indicate that as a part of looking at these
13 outcomes, we do an extensive child and family service
14 review across the country in all states and D.C. and
15 Puerto Rico. And we look at MEPA. We look at what
16 states are doing in terms of the diligent recruitment
17 of foster parents and adoptive parents.

18 And so thank you for your time. I stand
19 ready to answer questions. Obviously, my submitted
20 statement had more data and information in it.

21 Thank you very much.

22 VICE CHAIR THERNSTROM: We are going to
23 hold questions until after we hear Ms. Brown. And
24 then we will have an opportunity with questioning both
25 of you before we go on to the next panel.

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1 Ms. Brown?

2 MS. BROWN: Good morning. I'm pleased to
3 be here today to discuss our recent report on African
4 Americans in foster care. As you may know, according
5 to HHS data children of all races are equally likely
6 to suffer from abuse and neglect. However, African
7 American children across the nation were more than
8 twice as likely to enter foster care compared with
9 white children in 2004.

10 State data also show patterns of
11 disproportionate representation in foster care for
12 Native American children and in certain locations for
13 Hispanic and Asian subgroups. However, our report
14 focuses on African American children.

15 Concerned about why these children are
16 over represented in foster care, the Chairman of the
17 House Committee on Ways and Means asked GAO to study
18 three things.

19 First: The major factors that influence
20 the proportion of African American children entering
21 and remaining in foster care compared to children of
22 other races and ethnicities.

23 Second: The extent that states and
24 localities have implemented strategies that appear
25 promising in addressing this issue, and;

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1 Third: The ways in which key federal
2 child welfare policies may have influenced this issue.

3 Our report is based on the results of a
4 nationwide web-based survey of state child welfare
5 administrators in 50 states and the District of
6 Columbia, as well as site visits to five states,
7 analyses of state reported data and interviews with
8 cognizant federal agency officials, researchers and
9 issue area experts.

10 First, it is important to understand the
11 factors that cause African American children to enter
12 foster care in higher proportions than other children.

13 State child welfare directors and researchers
14 reported a complex set of interrelated factors
15 beginning with a higher rate of poverty among African
16 American families. While children of all races live
17 in poverty to some degree, nationally African
18 Americans are nearly four times more likely than
19 others to live in poverty.

20 Studies have shown that under these
21 circumstances families have difficulty gaining access
22 to social services, counseling and appropriate housing
23 that can help families stay together. However,
24 research suggests that these factors do not fully
25 account for the differing rates of entry into foster

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1 care. State child welfare directors we surveyed also
2 responded that bias or cultural misunderstanding and
3 distrust between child welfare decision makers and the
4 families they serve also contribute to the
5 disproportionate removal of children from their homes.

6 Once African American children are removed
7 from their homes, HHS data show that they remain in
8 foster care about 9 months longer than white children.

9 State officials attributed these longer lengths of
10 stay to similar factors, such as challenges parents
11 have in gaining access to subsidized housing,
12 substance abuse treatment and other services that may
13 be needed before children can be reunified with their
14 families.

15 For children who cannot be reunified with
16 their families, state officials reported difficulties
17 in finding appropriate permanent homes. In part,
18 because of the challenges in recruiting adoptive
19 parents who are willing to adopt older youth or youth
20 with special needs.

21 In addition, African American families are
22 more likely than white families to rely on relatives
23 to provide foster care. Although this type of foster
24 care placement known as kinship care can be less
25 traumatic for children, it is also associated with

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1 longer lengths of stay in care.

2 In terms of our second objective on state
3 actions, most states in our survey reported
4 implementing some strategies that experts have
5 identified as promising for reducing African American
6 representation in foster care. While researchers and
7 officials stress that no single strategy would fully
8 address the issue, strategies that specifically
9 addressed the causes I mentioned above included those
10 designed to increase access to support services;
11 reduce bias through efforts such as staff training and
12 use of formal risk assessment tools and increase the
13 availability of permanent homes including searching
14 for fathers and paternal kin.

15 Turning to our third objective on federal
16 policies, states reported that they considered some
17 federal policies helpful in decreasing
18 disproportionality while they viewed other federal
19 policies as having the opposite effect.

20 Linking back to the factors contributing
21 to disproportionality, about half of the child welfare
22 directors we surveyed reported that their ability to
23 use federal social services block grants such as TANF,
24 the Temporary Assistance for Needy Families grant, was
25 helpful. These grants, when used for preventive

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1 services and family supports, can be particularly
2 relevant for African American and other families
3 living in poverty.

4 States also considered federal policies
5 that promote adoption as helpful. One federal
6 adoption policy considered beneficial is the
7 requirement under MEPA to diligently recruit minority
8 adoptive families. In our survey 22 states reported
9 that this requirement contributes to a decrease in the
10 proportion of African American children in care.
11 However, it should be noted that state officials said
12 it was a challenge to recruit a racially and
13 ethnically diverse pool of foster and adoptive
14 parents. And HHS has reported that more than half of
15 states are not meeting the federal performance goals
16 for this recruitment.

17 State officials noted the shortage of
18 willing, appropriate, and qualified parents to adopt
19 African American children and particularly older
20 children. Researchers cited a lack of resources among
21 state and local agencies and a lack of federal
22 guidance to implement new recruiting and training
23 initiatives. Perhaps because of these challenges nine
24 states in our survey reported that the policy
25 requiring diligent recruitment had no effect on the

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1 proportion of African American children in care and 15
2 states reported that they were unable to tell.

3 Another federal adoption policy states
4 considered helpful in reducing disproportionality was
5 the provision that provides subsidies to parents who
6 adopt a child with special needs. In this case special
7 needs is a state defined term for children having
8 characteristics that the states believe make adoption
9 more difficult, such as being of older age, having a
10 disability or being a member of a minority group.

11 In 2003 through 2005 HHS data showed that
12 states designated more than 80 percent of adoptions as
13 special needs adoptions, thus enabling families to
14 receive federal financial subsidies for these
15 adoptions. However, despite these subsidies over the
16 last five years African American children have
17 consistently experienced lower rates of adoption than
18 children of other races and ethnicities.

19 Conversely, states reported being
20 constrained by the lack of federal subsidies for legal
21 guardianship. Legal guardianship is formally
22 recognized under federal law as a permanent placement
23 option and is available for relatives who want to
24 permanently care for children without necessarily
25 adopting them. As such, it is considered a

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1 particularly important way to help African American
2 children exit foster care. In fact, subsidizing
3 guardianships has demonstrated its value in providing
4 permanent families for children and in reducing the
5 number of African American children in foster care.
6 It may also be cost effective based on the experiences
7 of the states that implemented this strategy in using
8 federal waivers. Because of these factors, it may be
9 appropriate to reconsider the current distinctions
10 that provide subsidies for adoption but not
11 guardianship.

12 Not all federal adoption policies were
13 considered helpful by states. For example, the MEPA
14 provision encouraging race neutral adoptions was
15 reported by state child welfare directors to have less
16 effect than other policies in reducing African
17 American representation in foster care. Although 15
18 states reported that this provision would help reduce
19 disproportionality, 18 states reported that this
20 provision had no effect, and an additional 12 states
21 reported that they were unable to tell.

22 An HHS study reported in 2004 that
23 implementation was hindered by confusion about what
24 the law allowed or prohibited. And state officials in
25 states we visited recently said that ongoing confusion

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1 and disagreement continued to hinder implementation.

2 In conclusion, I would emphasize that
3 issues surrounding the disproportionate representation
4 of African American children in foster care are
5 pervasive, continuing and complex. They appear at
6 each decision point in the child welfare process.
7 They effect nearly all states in this nation to
8 varying degrees.

9 In efforts to reduce African American
10 representation in foster care, state and local child
11 welfare officials face numerous challenges. Despite
12 the steps that HHS has taken to disseminate
13 information about these strategies, states report that
14 they need further information and technical assistance
15 to strengthen their current efforts.

16 This concludes my statement. Thank you.

17 VICE CHAIR THERNSTROM: Well, thank you
18 very much for both of you. And it is time for
19 Commissioners to ask questions. And let me take the
20 prerogative of the Chair to start out.

21 As I'm leafing through the information you
22 provided, I do see some helpful charts giving us some
23 data. But I don't see some numbers that interest me;
24 that is precisely or not precisely, roughly how many
25 children broken down into various racial and ethnic

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1 groups are put up for adoption on average annually or
2 who have been up in recent years for adoption?

3 COMMISSIONER OHL: Currently there are
4 approximately 500,000 children in the foster care
5 system in this country. And 115,000 of those children
6 in a given year are, in effect, ready to be adopted.

7 VICE CHAIR THERNSTROM: But I want the
8 racial and ethnic breakdown.

9 COMMISSIONER OHL: I don't know whether
10 one of my colleague -- I don't have that in front of
11 me. I'll see whether one of my colleagues has that
12 with me or not.

13 VICE CHAIR THERNSTROM: Ms. Brown, do you?

14 MS. BROWN: No. We have the chart that
15 shows the adoption rates for all children broken down
16 by different ethnicities, but that doesn't answer your
17 question about the numbers of children available for
18 adoption.

19 VICE CHAIR THERNSTROM: Yes. I mean, I
20 want to know who is available for adoption broken down
21 by race and ethnicity. And then I want to know in
22 terms of parental interest what the number of parents,
23 and again broken down by race and ethnicity.

24 COMMISSIONER OHL: This is an '04 number.
25 I gave you 115,000 children who are waiting and ready

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1 to be adopted. Of that, 38,000 would be Black non-
2 Hispanic, 2 percent Alaska Native --

3 VICE CHAIR THERNSTROM: The 38,000
4 represents what percent?

5 COMMISSIONER OHL: 38,000 is -- 38
6 percent.

7 VICE CHAIR THERNSTROM: 38 percent.

8 COMMISSIONER OHL: Percent. Two percent--

9 VICE CHAIR THERNSTROM: Are African
10 American?

11 COMMISSIONER OHL: Are African American.
12 14 percent Hispanic, 38 percent white non-Hispanic.

13 VICE CHAIR THERNSTROM: What was that
14 number again?

15 COMMISSIONER OHL: 38 percent white non-
16 Hispanic.

17 VICE CHAIR THERNSTROM: Okay. So Black
18 and white basically the same percentage?

19 COMMISSIONER OHL: The same percentage.
20 Hispanic 14 percent. That's 7690. Unknown, unable to
21 determine, 3 percent. Two or more non-Hispanic 4
22 percent. And American Indian/Alaska Native 2 percent.

23 VICE CHAIR THERNSTROM: So we've got
24 negligible Asian American children in there, I assume,
25 in those numbers?

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1 COMMISSIONER OHL: Yes.

2 VICE CHAIR THERNSTROM: Okay. You've got
3 38 percent of these children are Black, 38 percent
4 white.

5 COMMISSIONER OHL: 14 percent Hispanic.

6 VICE CHAIR THERNSTROM: Yes. What year was
7 this for?

8 COMMISSIONER OHL: This was 2004.

9 VICE CHAIR THERNSTROM: 2004.

10 COMMISSIONER OHL: And we would just
11 coming out with 2005 numbers now.

12 VICE CHAIR THERNSTROM: And if we look at
13 the parental pool, what percentage of the parents are
14 white, what percentage of the parents are black? In
15 other words, the potential adoptive homes here?

16 COMMISSIONER OHL: That would be data
17 which is state data. I'm just looking to see. Are we
18 carrying any data like that with us? Yes, we don't
19 collect that. That data would be in effect data which
20 would be collected on a state level.

21 VICE CHAIR THERNSTROM: Oh, on a state
22 level? But can we assume that if we've got 38 percent
23 of the children that are available for adoption Black,
24 we do not have 38 equivalent percentage of families
25 who are African American? You probably have many more

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1 families eager for adoption, a disproportionately high
2 number that are white? Would that be correct?

3 COMMISSIONER OHL: I can't tell you that
4 definitively because I don't have that data in front
5 of me. What I can tell you, and what I was getting
6 ready to tell you in the testimony was we look at this
7 when we do the child and family service reviews. We
8 look at the recruitment and the availability that
9 states have of foster and adoptive homes. And this is
10 something that is an outcome based child and family
11 service review that we're now doing the second round.

12 And where there are difficulties, and for instance I
13 was talking with Commissioner Melendez earlier today
14 because I've been doing a lot of work in Nevada, where
15 we work in states where there are a number of American
16 Indian children. We look carefully in the same way:
17 Are there sufficient adoptive placements that meet the
18 needs of children and reflect the diversity of the
19 children who are both in foster care and ready to
20 adopted.

21 So, I can't give you specific numbers
22 because they'd be on a state level, but I can tell you
23 how we look at them when we do the child and family
24 service reviews.

25 VICE CHAIR THERNSTROM: Yes. And then,

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1 Ms. Brown, I have one quick question or comment for
2 you. You mentioned in terms of a high number of
3 African American children. You mentioned the factor of
4 high poverty among African Americans. But, of course,
5 there is a very closely related fact, and that is the
6 high number of families headed by a single mother in
7 the African American community, which surely has much
8 to do with the number of Black children available for
9 adoption. Family structure has got to be part of this
10 picture?

11 MS. BROWN: Yes.

12 VICE CHAIR THERNSTROM: And it also has to
13 have an impact on the availability of adoptive
14 parents? Because, obviously, young single mothers are
15 not going to be looking for another child to adopt.

16 MS. BROWN: The data that we have does
17 indicate that children in single parent families are
18 more likely to be at risk of harm.

19 VICE CHAIR THERNSTROM: Well, and then we
20 look at the percentage of African American children
21 born to single parent households. And, of course, it's
22 very, very high.

23 MS. BROWN: Yes.

24 VICE CHAIR THERNSTROM: So, I mean I think
25 that's an important part of that picture.

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1 COMMISSIONER OHL: Can I say one other
2 thing based upon your asking me about particular data?

3 VICE CHAIR THERNSTROM: Yes.

4 COMMISSIONER OHL: I think you indicated
5 in my introduction that I used to be a state
6 secretary.

7 VICE CHAIR THERNSTROM: Right.

8 COMMISSIONER OHL: And so I needed -- on
9 very much on that level looking at effective
10 strategies that would reach out in order to recruit
11 the adoptive and foster care parent, we worked
12 extensively with faith and community-based
13 organizations. We worked with the One Church, One
14 Child Initiative. In effect, really trying to be sure
15 that we had a diversity of potential placements both
16 foster care and adoption. And it does take diligent
17 recruit efforts in order to do that. And that's what
18 we then hold states accountable for doing.

19 VICE CHAIR THERNSTROM: And my point is
20 simply given kind of the demographic facts on the
21 ground and most notably the high percentage of single
22 parent households in the African American community,
23 there's a ceiling, the degree to which you can recruit
24 Black families as adoptive parents, or that single
25 fact makes it much more difficult.

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1 Other people must have questions.

2 COMMISSIONER MELENDEZ: Yes. Commissioner
3 Melendez here.

4 I think those statistics are really
5 important because it really would tell us whether or
6 not we're recruiting minority parents to be available.

7 Because otherwise if we don't have a handle on that,
8 basically those disproportionate statistics will grow
9 even more wide. So I was just wondering what are we
10 actually doing to recruit minorities to become
11 available for adoption?

12 COMMISSIONER OHL: We have done, as I
13 mentioned earlier, extensive trainings across the
14 country with states in terms of how it is that they
15 would go about recruiting.

16 We also have a national AdoptUSKids
17 program. And it includes both training and technical
18 assistance. It includes a website which on the website
19 is for people who have gone through home studies that
20 are cleared for both foster care and adoption. They
21 have an opportunity then to see children, profiles on
22 children. And through that website in the last -- we
23 launched that about 32 years ago. Through that
24 website we have now removed the names of 8500 children
25 who were on that website. And we expect to hit 10,000

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1 relatively soon.

2 So this is something about which we do a
3 huge amount of training and technical assistance.

4 You may well have seen a number of public
5 service announcements that we have done campaigns in
6 tandem with the Ad Council. And as a matter of fact,
7 we did an initial campaign with the Ad Council, and
8 then we did what we called a repositioning of the
9 campaign. Because we were really targeting trying to
10 recruit adoptive families for older children, older
11 than 9. And that campaign just recently got a
12 national award.

13 So we are working as comprehensively as we
14 can with states and both from an outreach standpoint,
15 a training and technical assistance standpoint. And
16 in order to generate more adoptive and foster care
17 placement.

18 COMMISSIONER MELENDEZ: It sounds like
19 we're doing some broad education.

20 COMMISSIONER OHL: Yes.

21 COMMISSIONER MELENDEZ: But what is the
22 minimal training and education you think families
23 adopting transracial children should have? I mean,
24 every state probably has some flexibility to do it
25 differently even though on a national level we're

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1 doing some educational things like you're talking
2 about. But I think instruction to people within each
3 state, what do you think we need to do more to --

4 COMMISSIONER OHL: But I think one of the
5 things that we're currently working with the Office of
6 Civil Rights on is putting together a PowerPoint
7 presentation which is targeted exactly at the
8 community level. That's the state and the community
9 level. And I think that, obviously, states set their
10 own training requirements. We in effect work with
11 them in terms of overall kinds of things. We provide
12 them technical assistance. But they have funding, for
13 instance that comes from Title IV B. You're talking
14 about supportive families, family preservation. That
15 money goes to the states and then they use those funds
16 in ways in order to work with families both in the
17 preparation for and the support of families after
18 adoptions are made.

19 That's not a large funding stream. And
20 I'm more than happy to talk about funding at some
21 point in time, if somebody would like to talk about
22 that. But how that is done is done at the state
23 level.

24 I indicated that we're about ready. We're
25 working right now and we hope within the next quarter

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1 or so to have this webcast training, which we think is
2 going to be very helpful for states and communities.

3 VICE CHAIR THERNSTROM: Yes. But so now
4 you have a video that you send?

5 COMMISSIONER OHL: No, no, no. We're
6 going to -- it's in effect we'll be available. When
7 you do a webcast, it can be done immediately in a
8 large nationwide way. But then it's available to
9 anybody anytime. It can be viewed. And this is the
10 great thing in terms of the internet with trainings
11 that can be done. But you can access it, you as
12 either a state or community level or an agency could
13 be able to access 24 hours a day, 7 days a week, 365
14 days a year.

15 VICE CHAIR THERNSTROM: I'm sorry,
16 Commission Melendez. And I'll give it right back to
17 you. I'm just following up on your question here.

18 But at the moment suppose I'm a
19 prospective parent. Is there something like a video I
20 could look at --

21 COMMISSIONER OHL: Absolutely.

22 VICE CHAIR THERNSTROM: -- on the whole
23 question?

24 COMMISSIONER OHL: There's a lot of
25 material on AdoptUSKids site. We have lots of other

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1 materials, Q&As, a variety of things that are
2 available.

3 Also, individual requests come to us and
4 we respond to them all.

5 VICE CHAIR THERNSTROM: All right.

6 COMMISSIONER OHL: But this webinar of
7 things is new and different and it will be out within
8 a few months.

9 COMMISSIONER MELENDEZ: Okay. Just one
10 more question. Whatever we do at the local level
11 within each state, do you think that we're going to be
12 able to measure how effective we are over a period of
13 time as to how well we did in recruiting minority
14 potential parents?

15 COMMISSIONER OHL: We look at it annually
16 in terms of plans that states submit to us as part of
17 their IV B funding. We are looking at it extensively
18 in the child and family service reviews. And just so
19 that you understand, when we do those reviews we pull
20 records, we look extensively at cases and everybody
21 involved in that case. We want to look at child
22 welfare practice on the ground. That's what's got to
23 change in this country. You've got to change the
24 child welfare system. You've got change child welfare
25 practices systemically across this country. And it's

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1 got to be done between that system working in
2 coordination and collaboration with the court system.
3 And that's what the child and family service review is
4 about. And we're in round number two. We are
5 completing the 14th state this year in round number
6 two.

7 There have been program improvement plans
8 in every state, the District of Columbia and Puerto
9 Rico. There is change happening in child welfare
10 across this country. It may not be as quick as some
11 people might wish and we might wish, but systemic
12 reform takes a long time to undertake.

13 Along the way, I again indicate as I would
14 like, if anybody would like to talk about, I would
15 like to talk about the financing system. Because those
16 two things go tandem, they go hand-in-hand.

17 VICE CHAIR THERNSTROM: Well, the record
18 is open. And if you would like to add some more. The
19 problem is we've got three panels this morning and so
20 I'm reluctant to get into a big discussion. But I
21 would very much like to have your statement on what
22 you see as the funding problems.

23 COMMISSIONER OHL: Yes, we have it. And I
24 think this refers directly to one of the points that
25 the GAO made in their study. And that has to do with

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1 the issue of subsidized guardianship. And we have done
2 that under a waiver. And we have done it in a number
3 of states in waivers. And some of the results -- Kay
4 is absolutely correct. Some of the results have been
5 really, really good. But subsidized guardianship it's
6 in effect not under -- it's currently not the way the
7 IV E program is set up. And so we have had a financing
8 option that we have put out, which in effect would
9 give states much more flexibility with the use of
10 their funding, which gets to some of the in community,
11 in home up front more preventive kinds of things. And
12 we think that that needs to happen.

13 VICE CHAIR THERNSTROM: Well, please feel
14 free to supplement the materials you have already sent
15 in.

16 COMMISSIONER OHL: I'll be happy to do
17 that.

18 VICE CHAIR THERNSTROM: Have other people
19 got questions before we move on to the second panel?

20 COMMISSIONER TAYLOR: A couple of very
21 pointed questions. I'm trying to acknowledge our time
22 limitation here this morning.

23 I noticed during the breakdown that the
24 Asian cohort is negligible as you mentioned. What is
25 going on in the Asian communities such that those

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1 numbers are negligible?

2 COMMISSIONER OHL: I think that probably
3 has a lot to do with how families take care of one
4 another. I think the same is, you know, in effect work
5 with where there might be issues with families,
6 families step in in order to help. And often times
7 those children then don't come to the attention of--

8 COMMISSIONER TAYLOR: Let me ask the
9 question a different way. It seems to me to be the
10 other side of the coin you all have clearly examine;
11 that is what's going on in the African American
12 family.

13 COMMISSIONER OHL: Yes.

14 COMMISSIONER TAYLOR: So I'm wondering
15 what is going on in the Asian community that is not
16 going on in the African American community
17 specifically. To me it just -- something's going on.

18 COMMISSIONER OHL: Yes.

19 MS. BROWN: I don't have the data to
20 answer that question.

21 COMMISSIONER TAYLOR: Okay.

22 MS. BROWN: The focus of our study was
23 African American children.

24 VICE CHAIR THERNSTROM: Well, wait a
25 minute. You do know the answer to that. The answer is

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1 a much higher percentage of intact families.

2 COMMISSIONER OHL: Right. Absolutely.

3 COMMISSIONER TAYLOR: It just seems to me
4 the question that's most obvious.

5 VICE CHAIR THERNSTROM: Right. Yes.

6 COMMISSIONER TAYLOR: I'm not an expert in
7 the area.

8 VICE CHAIR THERNSTROM: That's what
9 Commissioner Taylor is getting at. And the answer is
10 clear.

11 COMMISSIONER OHL: Yes.

12 COMMISSIONER TAYLOR: Let me ask another
13 question. Special needs now includes minority
14 children? The definition of special needs. How long
15 has that been the case?

16 VICE CHAIR THERNSTROM: Now wait a minute.
17 No, that's not correct, is it? That by definition if
18 you're --

19 COMMISSIONER TAYLOR: Yes.

20 VICE CHAIR THERNSTROM: -- a minority
21 child --

22 COMMISSIONER TAYLOR: Right. How long has
23 that been the case?

24 MS. BROWN: Well, states have the ability
25 to determine which factors make it difficult --

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1 VICE CHAIR THERNSTROM: I see. Okay.

2 MS. BROWN: -- for children to be adopted.

3 VICE CHAIR THERNSTROM: Oh, I see. I'm
4 sorry. Yes. Okay.

5 COMMISSIONER OHL: All I can tell you is
6 when I was a state secretary ten years ago --

7 COMMISSIONER TAYLOR: That was the case?

8 COMMISSIONER OHL: -- it was the case.

9 COMMISSIONER TAYLOR: Okay.

10 COMMISSIONER OHL: It was the case. Also
11 sibling groups. It depends upon and the way defined it
12 sibling groups, older children.

13 COMMISSIONER TAYLOR: And so states are
14 permitted to deem a child to be of special needs if
15 they fall into any minority classification, is that
16 true? Any minority classification? Okay.

17 MS. BROWN: Based on their views of what
18 would make adoption difficult for that group.

19 VICE CHAIR THERNSTROM: But if you go back
20 to the Asian question, certainly adoption of Asian
21 kids is not difficult, I would assume, or doesn't pose
22 the same difficulties?

23 COMMISSIONER TAYLOR: Thank you.

24 Anybody else got any questions? Anybody
25 on teleconference got any questions? Or not

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1 teleconference, coming in by phone.

2 Well, with that then I want to thank you
3 very much.

4 COMMISSIONER OHL: You're very welcome.

5 VICE CHAIR THERNSTROM: And, again, please
6 feel free to throw into the record anything else you
7 would like to add to your statements this morning.
8 And this is very informative, very helpful. And we do
9 appreciate your taking the time to do this.

10 **PANEL 2**

11 VICE CHAIR THERNSTROM: So the topic of
12 the second panel is The Best Interest of Children and
13 the Role of Race. The panel consists of:

14 Joseph Kroll, Executive Director of the
15 North American Council on Adoptable Children;

16 Dr. Rita Simon, university professor in
17 School of Public Affairs at Washington College of Law
18 at American University;

19 And our third speaker will be J. Toni
20 Oliver, Co-Chair Family Preservation Focus Group of
21 the National Association of Black Social Workers.

22 But we are actually, I had forgotten, we
23 are actually changing the order here so that J. Toni
24 Oliver goes first. This is at the request of those of
25 the panelists. J. Toni Oliver goes first, Joseph

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1 Kroll goes second and Dr. Rita Simon goes last, but
2 not least.

3 COMMISSIONER BRACERAS: Excuse me.

4 VICE CHAIR THERNSTROM: Yes.

5 COMMISSIONER BRACERAS: I just wanted to
6 let you all know that at some point I'm going to have
7 to hop off the phone, but then I will be calling back
8 in to listen to the remainder of testimony. So if
9 there are beeps or interruptions, I apologize. But I
10 will be off for a little while and then coming back
11 into listen.

12 VICE CHAIR THERNSTROM: Good. We welcome
13 your presence whenever you can provide it.

14 COMMISSIONER BRACERAS: Thank you.

15 VICE CHAIR THERNSTROM: So, J. Toni
16 Oliver, who is President and CEO of Roots,
17 Incorporated, the first adoptive agency in Georgia to
18 focus solely on improving adoption opportunities for
19 African American children. And in addition, Ms. Oliver
20 is President of J.T. Oliver & Associates, a child
21 welfare training and consultation firm based in
22 Atlanta, Georgia.

23 Currently Roots serves more than a 100
24 families per month who are actively engaged in the
25 adoption process and has placed nearly 400 children

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1 with permanent adoptive families.

2 In 1999 Ms. Oliver was program manager for
3 adoptions with the Child and Family Services Agency in
4 D.C. She served as Director of Consultation and
5 Training Services for the Child Welfare Institute in
6 Atlanta and was Associate Director for Training and
7 Consultation for the National Adoption Center in
8 Philadelphia, Pennsylvania.

9 She holds a master's degree in social work
10 from Temple University.

11 Joseph Kroll, Executive Director of the
12 North American Council on Adoptable Children. Mr.
13 Kroll directs an acclaimed nonprofit that serves
14 thousands of adoptive parents each year, strives to
15 improve the child welfare system for foster children
16 and the families who care for them.

17 His work includes talking with individual
18 families about how to obtain post-adoption support
19 training and parent group leaders, and other foster
20 and adoptive parents. And testifying before Congress
21 and speaking at the White House to achieve needed
22 system reforms to better serve vulnerable children and
23 families.

24 Rita J. Simon is a sociologist who earned
25 her doctorate at the University of Chicago in 1956.

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1 Before coming to American University in 1983 to serve
2 as Dean of the School of Justice, she was a member of
3 the faculty at the University of Illinois, at the
4 Hebrew University in Jerusalem, and the University of
5 Chicago.

6 She is currently what's called a
7 university professor in the School of Public Affairs
8 in the Washington College of Law at American
9 University.

10 She has authored 38 books including
11 several examining transracial adoption. Dr. Simon
12 says "The bottom line on all the studies that have
13 been done is that transracial adoption serves the
14 children's best interests."

15 Her books include *Adoption, Race and*
16 *Identity* and *The Case for Transracial Adoption*.

17 So, I welcome all three panelists. And I
18 call on J. Toni Oliver to start us off.

19 MS. OLIVER: Good morning.

20 What I'd like to do this morning is to
21 show how racial disparities in all level of child
22 welfare decision making create a problem that MEPA
23 addresses by ignoring these problems. My intent is to
24 make a case that shows how MEPA does not remove
25 barriers to permanency facing children involved in the

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1 foster care system. In fact, MEPA ignores or even
2 worse, accepts racial disparities on the front end of
3 the child welfare services and jumps to the back end
4 and chooses to focus on one of the resulting outcomes.
5 And has in no way eliminated discrimination in child
6 welfare.

7 In recognition of disproportionality in
8 child welfare service, a redeeming feature of MEPA is
9 the inclusion of a requirement to recruit prospective
10 foster and adoptive parents reflective of the ethnic
11 and racial communities of the children in foster care.

12 However, enforcement decisions on this requirement
13 have been ignored since the inception of this
14 legislation.

15 And what I'd like to do now is to give an
16 historical perspective of how racial disparities have
17 created and maintained key problems in service
18 delivery that MEPA does not address together with a
19 review of the literature cited in Dorothy Robert's
20 book, *Shattered Bonds*.

21 The foster care population has doubled in
22 the last two decades from 262,000 in 1982 to 586,000
23 in 1999. Growth in the 1980s was concentrated in
24 cities with sizeable Black populations. It is
25 important to note that Black families are more likely

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1 than any other ethnic group to have their children
2 taken from them and placed into foster care.

3 In 1986 Black children who made up 15
4 percent of the nation's population of children under
5 18, made up 25 percent of those entering foster care
6 and 35 percent of those remaining in foster care at
7 the end of the year.

8 According to the U.S. Department of Health
9 and Human Services' AFCARS report Black children
10 represented 42 percent of all the children in foster
11 care at the end of October 2000, even though they
12 represented only 17 percent of the nation's youth.
13 Latino and Asian children are under represented.
14 Latino children make up 15 percent of the foster care
15 population but outnumber Black children in the
16 nation's population.

17 In 1995 California reported that 5 percent
18 of all Black children were in foster care compared to
19 less than one percent Latino. Asian Pacific Islander
20 children represent only one percent of the nation's
21 foster care system.

22 In large states such as California,
23 Illinois, New York and Texas the proportion of Black
24 children ranges from three times to more ten times
25 that of white children. And the foster care system in

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1 these cities is almost exclusively Black.

2 For example, Black children represent more
3 than 75 percent of the Illinois foster care system, 95
4 percent in Chicago, over 70 percent in San Francisco.

5 At the end of 1997 in New York City of the 42,000
6 children in foster care, only 1300 or 3 percent were
7 white. Black and Latino children make up 73 percent
8 and 24 percent respectively of New York City's foster
9 care population. And Central Harlem, one in three
10 Black children are placed into foster care while the
11 odds for white children is one out of 385. White
12 children make up 30 percent of New York's general
13 population, but only 3 percent of its foster care
14 population.

15 Over representation is greater in areas
16 where Black families are fewer in number. Researchers
17 call this the "visibility hypothesis." A comparison
18 of foster care in Census data in California reveal
19 that where Blacks constitute 15 percent of the Census,
20 they are placed at a rate three times greater than
21 their Census proportion. Where they constitute less
22 than 2 percent of the Census, their placement rate is
23 15 times greater.

24 In 1997, a U.S. Department of Health and
25 Human Services' national study reported that minority

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1 children, in particular African American offsprings,
2 are more likely to be in foster care placement than
3 receive in-home services when they have the same
4 problems and characteristics as white children.

5 To the Commission's question does
6 transracial adoption serve the best interest or does
7 it have negative consequences for minority children,
8 families and communities. My response is that the
9 child welfare system as a whole has negative
10 consequences on this population.

11 In order to address the effect of child
12 welfare policies on African American families it is
13 critical understand how race influences child welfare
14 decision making in general.

15 The child welfare system is designed to
16 detect and address neglect and abuse in poor families,
17 and African American families are disproportionately
18 poor. With rare exception children in foster care
19 come from poor families.

20 Dorothy Roberts cites study after study
21 that shows poverty, not maltreatment, is the single
22 most important predictor of placement in foster care,
23 and the amount of time spent there. These studies
24 show that poor children are more likely to be reported
25 to child protective services, more likely to have the

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1 reports substantiated, more likely to be removed from
2 their home, and more likely to remain in substitute
3 care for long periods of time.

4 In 1996 a study shows that the level of
5 poverty also matters. In this study Census figures in
6 state protective services data showed that high
7 poverty zip codes have three times as many
8 substantiated physical abuse cases compared to medium
9 poverty zip codes.

10 A 1992 study revealed that children whose
11 families received welfare are at the greatest risk for
12 involvement with the child welfare system, especially
13 for neglect.

14 The over representation of poor children
15 is felt to be due more to greater monitoring of poor
16 families, public hospitals as opposed to private
17 doctors, police cruising neighborhoods, public
18 building, home inspectors and a higher incident of
19 reporting rather than higher incident of abuse.
20 According to one researcher middle class families have
21 leeway for irresponsibility that poverty does not
22 afford. Poor people have very little margin for
23 irresponsibility or mismanagement of either time or
24 money.

25 A Los Angeles child welfare administrator

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1 conceded before a congressional subcommittee that
2 about half of the children in his system were removed
3 from their home because of poverty. African American
4 families are three times as likely as white families
5 to be poor. In fact, the percentage of African
6 American families whoever lived in poverty while
7 growing up is about the same percentage of white
8 children who never did. Poverty alone subjects African
9 Americans to a form of intensive inspection that few
10 parents must endure.

11 The argument and rationale for over
12 representation of African American children in foster
13 care includes explaining poverty as stress that brings
14 about abuse and neglect in larger proportions.
15 However, if poverty were to explain the racial
16 disparity of African American and Latino communities
17 who have the same percentage of households who earn
18 less than \$15,000, the income level most highly
19 associated with maltreatment, should show similar
20 involvement. The data, however, suggests otherwise.

21 A study in San Diego where 30 percent of
22 African American and 28 percent Latino children live
23 below the poverty line, Latinos were placed identical
24 to their population, however African Americans were
25 placed at a rate six times their Census proportion.

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1 Inadequate housing is cited by several
2 studies as the reason Black children come into foster
3 care and why they are not reunited with their parents.

4 In an article written in 2000 indicate a parental
5 income is a better predictor of the removal from the
6 home than is the severity of the alleged child
7 maltreatment or the parent's psychological makeup.

8 The U.S. Department of Health and Human
9 Services' 1997 National Study found that Black
10 children in foster care are more likely to come from
11 families who have housing problems. The same study
12 discovered that among families with housing problems,
13 white families are offered housing services at almost
14 twice the rate as Black families; 43 percent versus 25
15 percent. Black families are more likely offered
16 parenting skills services which do not compare with
17 the concrete benefits of housing services offered more
18 often to white families.

19 According to the latest National Incidence
20 Study of Child Abuse and Neglect Black parents are no
21 more likely than others to mistreat their children,
22 and the rates of maltreatment are the same for single
23 parent and two parent families when income is held
24 constant. While this report found that strong
25 connection between income and child maltreatment,

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1 poverty alone breeds inspection into the families
2 greater than any other factor. The National Incidence
3 Study findings suggest that different race ethnicities
4 receive differential attention somewhere during the
5 process of referral, investigation and service
6 allocation. And that the differential representation
7 of minorities in the child welfare population does not
8 derive from inherent difference in the rates at which
9 they are abused or neglected.

10 Racial bias in reporting child abuse is
11 documented by research that provides strong evidence
12 that Black children are more likely to be identified
13 as abused than white children with similar injuries.
14 Racial bias in reporting of drug use shows that drug
15 testing occurs almost exclusively in public hospitals
16 that serve poor communities. Private physicians who
17 treat affluent women to refrain from drug testing.

18 Further controlling for other variables,
19 black women are far more likely to be reported for
20 prenatal substance abuse and to have their newborns
21 placed in foster care.

22 Racial discrimination is not just poverty,
23 and not just poverty plays an independent role in
24 decisions about drug affected infants. In 1991 a
25 study in the *New England Journal of Medicine* found

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1 little difference between drug use along either racial
2 or economic lines, yet African American women were ten
3 times more likely than their white counterparts to be
4 reported to government authorities.

5 In 1993 a study of women whose newborns
6 tested positive for cocaine found African American
7 women were 72.9 more likely than white and twice as
8 likely as Latino women to have their babies removed by
9 child protective services.

10 If I could give one closing comment. I
11 know that the time --

12 VICE CHAIR THERNSTROM: Sure. One closing
13 comment.

14 MS. OLIVER: By promoting adoption so
15 myopically, MEPA legislation punishes poor families
16 and disproportionately African American families by
17 taking their children with too little energy being
18 focused on the injustice of the foster care system
19 that stems from too many children being removed from
20 their homes, not too few adoptions.

21 VICE CHAIR THERNSTROM: And we are moving
22 on to Joseph Kroll at this point.

23 MR. KROLL: Thank you, Madam Chair.

24 I noticed I have typo on the first thing.
25 I thought the Chairman was going to be the Mr. so,

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1 Madam, now I'll get that correct.

2 VICE CHAIR THERNSTROM: Well, it usually
3 is a Mr.

4 MR. KROLL: I looked at the list and I
5 guessed wrong.

6 I want to make one thing real clear here,
7 and I want to share a picture. I'm not sure if this
8 for the record. This is a picture from my daughter's
9 wedding three weeks ago. Mei-Lin Chang Hee Yung
10 married Nak Yoon Yung. I'll show it to the back of the
11 room as well.

12 I would prefer --

13 VICE CHAIR THERNSTROM: Congratulations,
14 by the way.

15 MR. KROLL: I would prefer to be showing
16 the whole slide show of the wedding, but I will not do
17 that.

18 I show that picture to make it very clear
19 that in my world in my family we have incredibly
20 successful over attached transracial adoption of a
21 young women. And I'm going to share --

22 VICE CHAIR THERNSTROM: What was over
23 attached mean?

24 MR. KROLL: Over attached, she's 31 and
25 she pretty much calls home a couple of times a week,

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1 both before being married, after being married.

2 VICE CHAIR THERNSTROM: I think that's
3 lovely.

4 MR. KROLL: Yes. And I don't talk about
5 over attached too much in my field because there's too
6 many under attached children. But I want to say that
7 because I have been in the field for 30 some years.
8 And our organization has evolved dramatically. We
9 evolved from an organization that was primarily
10 transracial adoptive families; white adults and
11 children of color. And in 1991 we published a study
12 *Barriers To Same Race Placement*. We became identified
13 at that time as an opponent of transracial adoption,
14 and nothing could be farther from the truth.

15 We just believe in social justice in
16 relationship to children in the child welfare system.
17 And to that end we work on two things primarily. One
18 is to see that children and families of color have an
19 opportunity to be matched in their communities, which
20 is one of the goals of the MEPA IEAP legislation, but
21 the goal that is widely ignored. And the second one
22 is that we absolutely believe that families who adopt
23 transracially need to have adequate training so that
24 they can parent their children appropriately.

25 I have seen in too many cases when

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1 children who look just like my daughter, when they get
2 to the age of 20/21 and do an identity search and
3 identify back with their culture of origin, either are
4 rejected by their families or a rejection occurs. And
5 what we really believe in is that we need to prepare
6 the families so that they can give the children all
7 the options so that when they make their identity
8 choices, which are their identity choices, that we
9 support those identity choices.

10 I know I can't go through my entire
11 testimony in ten minutes. I'm well aware of that. But
12 I do want to highlight a few things.

13 I was involved in the discussions around
14 the passage of MEPA, and actually met three times with
15 Senator Metzenbaum. Direct meetings with Senator
16 Metzenbaum. I think it's the elected official I had
17 the most meetings with over time. And one of the
18 things that occurred during that whole process was an
19 understanding of his anger over the case in Ohio where
20 the child was moved from the white family to the black
21 family and died. And I understood that. But I didn't
22 think we should enact legislation based on one case.

23 As the legislation evolved it was
24 interesting that I think Senator Metzenbaum acquired
25 an understanding of the other side, which was families

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1 of color really are systematically denied access to
2 children in their communities. And that we had
3 documented, particularly in the private sector, where
4 the vast number of children, 50 percent of the Black
5 and two-thirds of Latino children, were adopted by
6 families transracially. That Black families couldn't
7 even get in the door. That still goes on today, that
8 in the private sector vast majorities of the children
9 are adopted transracially. I'm talking about the
10 younger, the infants.

11 What's interesting in the *Congressional*
12 *Record*, which is the only place that you'll see any
13 discussion of MEPA, from October 5, 1994, Senator
14 Metzenbaum made the comment "Let me make my position
15 clear. If there is a white family and a Black family
16 that want to adopt a Black child and they're equal in
17 all respects, then the Black family ought to have
18 preference." Doing the equal in all respects is
19 always difficult, but clearly at that time Senator
20 Metzenbaum said for the record that we ought to be
21 able to look at race.

22 The second thing that was in the record
23 from the co-sponsors of the bill was acknowledging the
24 importance of the second half of MEPA, which focused
25 on increasing the pool of appropriate and available

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1 perspective families for the children from their
2 communities.

3 So those two things were talked about in
4 the *Congressional Record*.

5 The amendments to MEPA passed in 1996, and
6 you didn't swear us in, but to the best of my
7 knowledge--

8 VICE CHAIR THERNSTROM: My --

9 MR. KROLL: -- there was no discussion,
10 public discussion in any hearing. There was one
11 comment made on the floor during the block grant
12 debate in March of 1995 by then Representative Bunning
13 that MEPA wasn't working, even though the regulations
14 hadn't been approved. And so IEAP amendment occurred
15 under what I call the cover of darkness. And we all
16 know that congressional legislation, many times things
17 are slipped in that never get discussed and you don't
18 know about it and you don't know that you voted for it
19 until three weeks after the bill is published and
20 someone is reading it. That's what happened with
21 those amendments.

22 There were discussions in the community,
23 but there were no discussions or any record in
24 Congress. And I think that's important as I look at
25 some of the questions that you had asked me.

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1 And the question that I wanted to turn to
2 was question 2 on page 5 of my testimony. In 2005 the
3 Hague regulations from the State Department were
4 promulgated. And these were regulations. And those
5 regulations say that perspective adoptive parents are
6 as fully prepared as possible for the adoption of a
7 particular child, and those who train parents focus on
8 the child's cultural, racial, religious, ethnic and
9 linguistic background. That's in the State Department
10 regulations related to implementation of international
11 adoptions.

12 In 2003 in an information memorandum from
13 Wade Horn just the opposite I think was said. State
14 child welfare agencies must ensure that they do not
15 take action that deters families from pursuing foster
16 care or adoption across lines of race, color or
17 national origin whether subtle or direct efforts
18 cannot be tolerated.

19 The chilling effect that that has on the
20 field is to say don't talk about race, its
21 implications in parenting. Don't talk about racism.
22 Pretend racism doesn't exist. Be color blind.

23 At the beginning of my testimony I make an
24 illusion to nooses hung from a tree. Six weeks ago
25 not many people knew about that. This morning

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1 everybody knows that that occurred because of the
2 demonstration yesterday in Louisiana. But racism is
3 alive and well. And if we do not prepare families for
4 what their children will face, we are not serving
5 those children and we are not serving those families.

6 And it's my belief that the U.S.
7 Department of Health and Human Services is
8 interpreting the law, and it doesn't say it in the
9 law, is that we have to be color blind in our training
10 of families. And that is a complete disservice and it
11 is naive.

12 In question number 3 related to
13 enforcement, Commissioner Ohl testified that there had
14 been, I believe, 130 -- I think that's the number I've
15 heard -- investigations. All 130 of those
16 investigations relate to the delay or deny portion of
17 MEPA. None of those investigations relate to the
18 recruitment portion of MEPA.

19 When you look at the recruitment portion
20 of MEPA and the fact that nearly half of the states on
21 the child welfare service reviews don't get a passing
22 mark, why haven't we had enforcement? And if you look
23 at the regulations and the *Child Welfare Policy*
24 *Manual*, there are no means to enforce that portion of
25 law. We only enforce the delay or deny section. And I

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1 think that that is a big mistake. That we need to be
2 looking at the recruitment of the families like the
3 second part of MEPA said we were supposed to do.

4 One of things that I wanted to share with
5 the Committee were some statistics that were
6 generated, and I will submit this for the record as
7 well, but these are kind of like color copies so I
8 only made a few of them. This is a chart from a
9 report that was distributed in 2004 at a meeting of
10 the Child Welfare League Adoption Committee.

11 And what's important about this chart, it
12 dramatically tells us which children are being adopted
13 transracially. That what is orange or brown, I'm
14 color blind, the line there if you're to do the math
15 on the total for the children under five, about two-
16 thirds of the transracial adoptions in 2002 were if
17 children under five.

18 If you look at the line, the darker line,
19 which is blackish, relative adoptions are more
20 consistent and relatives are the folks who tend to
21 adopt the older children.

22 So if we were arguing that MEPA would
23 cause the adoption of children across age groups
24 through the vehicle of transracial adoption, it hasn't
25 occurred. And I think this is a very important chart.

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1 The final point I want to make is NACAC
2 has a series of recommendations, which I'm not going
3 to be able to read because the lights already yellow.
4 There they're detailed. But it focuses first on the
5 child's best interest on keeping the child as close to
6 their family as possible, to their community as
7 possible, to people who can meet their needs as
8 possible. And I believe that the last thing we should
9 be talking about is the delay or deny provisions.
10 That we should be looking for community resources that
11 serve the best interest of the child.

12 And one of the things that I have
13 perceived over time is that we have created a law and
14 we use the Civil Rights Law of 1962 to support the
15 case for the access of folks like myself who are of
16 Polish and scent, to have access to all the children
17 in the system so that the Civil Rights Act is being
18 used to enable white families to access all children,
19 but it is not looking at the best interests of
20 minority children. And I think that until we
21 acknowledge that the Civil Rights Act is being used
22 more to protect the interests of white adults than it
23 is of minority children, that we're missing the point.

24 And if the Act really does do that, then maybe we
25 need to re-review the Civil Rights Act of 1964 because

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1 the best interests of minority children need to be
2 considered first.

3 Thank you very much.

4 VICE CHAIR THERNSTROM: You know,
5 Professor Simon, before we proceed with you I should
6 have all of you swear and affirm that the information
7 you have provided and will provide is true and
8 accurate to the best of your knowledge and belief.

9 (Panelists sworn)

10 VICE CHAIR THERNSTROM: Okay. Professor
11 Simon, you're up.

12 PROFESSOR SIMON: All right. Thank you.

13 It's a pleasure to be here this morning.
14 And my remarks this morning are based on the research
15 that I've done on various aspects of transracial
16 adoption for almost 40 years.

17 I should also add that Senator Metzenbaum
18 had asked me to come and testify before the passage of
19 MEPA on my research. And he felt that the research was
20 strong enough that it would help gain passage of the
21 Act.

22 The studies that I'm talking about include
23 following 204 families in the midwest over a 20 year
24 period and interviewing the parents, the adopted
25 children and the birth children from the time the

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1 children were 3 or 4 years old until they were adults.
2 Altogether we interviewed 366 children, 199 adopted
3 and 67 birth children.

4 The backgrounds of the children were that
5 two-thirds, 65 percent of the children who were
6 adopted were Black children. I had 11 percent Native
7 American children, 5 percent Korean children, 5
8 percent Mexican children and 14 percent white children
9 who had been adopted in these families.

10 And a book that summarizes that research
11 is *Adoption, Race, and Identity: From Infancy To*
12 *Young Adulthood*.

13 Another study that I've done involved
14 conducting in depth interviews with 24 adult male and
15 female transracial adoptees. My co-author on that
16 book and others, is Rhonda Roorda, who is herself a
17 transracial adoptee. And that's *In Their Own Voices*.

18 Columbia University Press put that out a little while
19 ago.

20 We followed that study up with one which
21 we interviewed 16 of the parents of these adopted
22 transracial adoptees, and Rhonda and I did that. And
23 this one just came out *In Their Parent's Voices*
24 literally came out two days ago.

25 And right now Rhonda and I are doing a

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1 study in which we're interviewing the white siblings
2 in those families. And we're saying "What was it like
3 to have a Black brother or a Black sister?"

4 The major question we were asking is in
5 terms of race on the sibling things.

6 I've also studied Asian and Hispanic
7 adoptees, and that's *Intercountry Adoptees Tell Their*
8 *Stories*. And that was done with Heather Ahn-Redding,
9 who was my research assistant, who herself had been
10 adopted from Korean when she was very young.

11 And right now in press I have a book with
12 a young Native American Hernandez. We interviewed
13 Native Americans who had been adopted before the
14 passage of the Indian Child Welfare Act was passed.

15 The results of all of the studies, with
16 one exception, show that transracial adoption serve
17 the children's best interest.

18 The one exception, it's not a complete
19 exception, is the interviews that we did with the
20 Native Americans. There we did find that some of the
21 Native American adults said our parents adopted us
22 because they considered Native American savages and
23 they wanted to make human beings out of us. And some
24 of them said our parents adopted us because they
25 wanted to make good Christians out of us.

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1 Let me briefly describe what I did in the
2 20 year study. Beginning in 1970 we followed 213
3 families in Illinois, Missouri, Wisconsin, Minnesota
4 and Michigan from the time the children, both the
5 birth and the adopted, were three or four years old
6 until they were adults. We obtained the names of
7 these families from The Open Door Society. And every
8 family that we contacted that met our criteria of the
9 age of the children and so forth agreed to
10 participate. Two did not because there were recent
11 deaths in the family. It had nothing to do with their
12 unwillingness because of experiences concerning
13 adoption.

14 What we did was interview these families
15 on four different occasions. And I trained the
16 interviewers. I had African American interviewers and
17 I had white interviewers, and I had a couple of Asian
18 interviewers going to the families. Two interviewers
19 went to each family because we spoke to the children
20 separately and privately from our interviews with the
21 parents. The parents could not be around when the
22 children were being interviewed.

23 And what we did the first time was give
24 the children the famous doll test, the Kenneth Clark
25 doll test where you had a Black doll and a white doll.

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1 And in this case we also had what I thought was an
2 Asian looking doll. And we gave them the standard
3 questions which doll is prettier, which doll is
4 smarter, which doll would you like to have as your
5 friend, et cetera, and which doll looks like you.

6 I should tell you that our study, and I've
7 published this separately in articles, was the first
8 one in which the children did not pick the white doll
9 as the prettier one or the smarter one, or the one
10 they'd like to have as their friends. But when you
11 asked the children which doll looked like you, they
12 correctly identified the doll that looked like them.

13 We also gave them other productive tests
14 to say put together this family from puzzle pieces.
15 And you could see that they understood. They put
16 together white parents and for those who had siblings,
17 they put together a white sister and then they put
18 themselves in. And if they were Black, they put in
19 the Black puzzle piece and so forth. So these
20 children even at a very young age understood who they
21 were, what their family was composed of and so forth.

22 In terms of the interviews with the
23 parents, we asked them the demographics, age,
24 occupation, religious ethnic background, what they did
25 for a living and why; why they wanted to adopt the

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1 child of a different race. Okay. Most of these
2 families at the time could not have either a birth
3 child or a second birth child and they very much
4 wanted children, which was the reason most often
5 given.

6 Okay. We then spoke to the parents only
7 the second time when the children were preadolescent,
8 they were about 9 and 10 years old. And everything
9 seemed to go well except about a third of the parents
10 said there's some problems among our adopted children.
11 They steal from their siblings or from us. They're not
12 generally involved in delinquent activities, but
13 they're stealing within the families.

14 And so I went and talked to some
15 clinicians about that. And they said that is quite
16 common among adoptive children. They're testing to see
17 will you love them, will you keep them even if they do
18 things that are not right.

19 By the time we came back and the children
20 were adolescents, all that had disappeared. There was
21 no more of that. And we interviewed separately the
22 children again and separately the parents. And what
23 we found among the children, yes, there was some
24 drinking problems, there was some drug problems, but
25 there was no difference between the adopted children

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1 and the birth children on these problems.

2 We also gave the children the famous Self-
3 Esteem Scale and the Family Integration Scale. These
4 are scales that had been used and tested. And it was
5 to see how integrated the adopted children felt in
6 their family. So, for example: I enjoy family life,
7 do you strongly agree or disagree; people in our
8 family trust one another; most families are happier
9 than ours; I'm treated in the same way as my brother
10 and sister.

11 And we looked at the scores on those tests
12 between the transracially adopted, the white adopted
13 and the birth children and found no difference.

14 We also looked at the Self-Esteem scores
15 on the different kinds of children, and again found no
16 difference.

17 By the time we interviewed the parents to
18 see what the parent's view was on what their children
19 were doing, and it's very interesting. The parents
20 knew very much about their children's lives. They
21 knew, for example, that when Johnny who was adopted
22 and Black went to pick up what he thought was going to
23 be his date that evening and the date was a young
24 white girl in the community, and the father came to
25 the door and said "Who are you?" And he said "I'm

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1 here to pick Mary up. We have a date." And he said
2 "Oh, no, you don't," threw him out. That the parents
3 knew that that had happened, and very often they would
4 then contact the girl's parents. Or if there had been
5 trouble in school, the parents knew about it and would
6 talk to the teachers. So there's a great deal of
7 openness in those families. And we knew that because
8 we interviewed the children and the parents
9 independently and separately.

10 The fourth time we met with them, most of
11 the children were already adults. Some were off at
12 college. Some were living in the same community but
13 were working and so forth. And, again, we found that
14 there was a great deal of contact with the families.

15 And among the transracially adopted
16 children in terms of their racial identity, were they
17 aware of it and comfortable with their racial
18 identity, they laughed at it and was scornful of what
19 the position of the National Association of Black
20 Social Workers' characterization of them had been.

21 Oh, dear. All right. I'll try --

22 VICE CHAIR THERNSTROM: Yes, it's an oh
23 dear time.

24 PROFESSOR SIMON: The National Association
25 of Black Social Workers had often referred to them as

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1 Oreos, black on the outside but white on the inside.
2 As young adults the Black adoptees stressed their
3 comfort with their Black identity, their awareness
4 that while they may speak, dress and have different
5 tastes, say, in music than innercity Blacks, but the
6 Black experience is a varied one in this society and
7 they're no less Black as far as they were concerned
8 then our children of the ghetto.

9 And when we asked the parents about their
10 feelings about having adopted across racial lines,
11 over 90 percent said that they were very happy that
12 they had done it. We had one or two experiences in
13 which the children were adopted when they were
14 somewhat older, and they had been abused in foster
15 care and that there were problems. And some in which
16 they were physically, there was sickness, which the
17 social workers hadn't told them about that.

18 All the participants believed that
19 transracial adoption served them well. All of them
20 felt connected to their adopted parents and all of
21 them had strong recommendations that agencies and
22 perspective parents recognize the importance of
23 learning about their children's racial history and
24 culture, and making that history and culture part of
25 their child's life and their family life. Love is not

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1 enough. The parents who adopted across racial lines
2 had to change their lifestyle: Move into more
3 integrated neighborhoods, be sure their children were
4 going to integrated schools; some joined Black
5 churches; had friends who were African American, and
6 so on.

7 Thank you.

8 VICE CHAIR THERNSTROM: Well, thank you
9 very much to all three of you. You were wonderful to
10 have here.

11 Let me start the questioning. A couple of
12 questions both Tony Oliver and Mr. Kroll.

13 First, Ms. Oliver, you stressed that
14 poverty alone subjects Black children to heightened
15 scrutiny.

16 MS. OLIVER: Yes.

17 VICE CHAIR THERNSTROM: Now I'm going back
18 to my question for the previous panel. It does not
19 seem to me that you can separate family structure from
20 poverty. After all, a lot of that poverty is
21 explained by the fact that the family structure
22 consists of one single parent, single earner or no
23 earner and a very young parent. And so what you're
24 really seeing here when you're seeing poverty is
25 you're seeing a family structure picture. And that

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1 with Latinos poverty is less associated with that
2 family structure. You've got a much higher incidence
3 of intact families, although very low earners.
4 They're often recent immigrants with no skills that
5 would earn them a middle class living.

6 I mean, I'm bothered by your separating
7 out poverty per se when you say the children are
8 subject to heightened scrutiny. Because you've got,
9 it seems to me, a more complicated explanatory picture
10 here or potentially explanatory picture here.

11 MS. OLIVER: There have been a number of
12 organizations and groups and researchers who have
13 taken a look at this because of the complexity of that
14 issue. And what they continue to raise is that racial
15 disparities at every level of child welfare decision
16 making are creating disproportionality. And that when
17 you control for income, when you control for family
18 composition, when you control for maltreatment, abuse
19 and neglect, what stands alone is that the outcomes
20 for African American children are much more negative
21 in the experience in the child welfare system than any
22 other ethnic group.

23 And so, you know, poverty continues in the
24 research to stand alone. And the types of things that
25 we typically considered earlier, definitely in my

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1 career in child welfare that would in some ways
2 explains the disproportionality, are just being struck
3 down.

4 VICE CHAIR THERNSTROM: Yes. And, Mr.
5 Kroll, you referred to parenting children
6 "appropriately." I'd like to hear from you how
7 precisely you'd like race and racism to be talked
8 about? What is the precise message you would like
9 delivered? And you went out of your way or I wouldn't
10 put this on a personal level to describe your own
11 family. What was the message that you thought that
12 was extremely important that you delivered to your
13 Asian-American daughter?

14 MR. KROLL: Actually, I have heard her
15 words right here in front of me, which I'll also add
16 to the record.

17 VICE CHAIR THERNSTROM: That would be very
18 nice.

19 MR. KROLL: But to summarize, we had the
20 opportunity in Minnesota from her very early age to
21 provide her with access to her community through the
22 support groups, but also we were one of those lucky
23 families that in our neighborhood her day care
24 provider was a Korean woman. So that she had
25 language, smells, food; that kind of interaction. We

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1 learned from that woman about what it is to be Korean.
2 We were very, very fortunate. And then within the
3 larger support structure we could provide that for
4 her.

5 When she got to be a teenager she
6 basically rejected being Asian. Pretty much ignored
7 that. She was captain of the gymnastics team, and she
8 was a jock. And she hung with the athletes.

9 When she went to an all white almost
10 college it hit her in the face, and she had to deal
11 with it. And the way we helped her is that we always
12 were acknowledging the issue of race. We supported
13 her so that as she struggled with that identity, we
14 were always there for her, whereas some of her friends
15 when they struggle for their identity, the family
16 viewed that as a rejection of whiteness, for lack of a
17 better term, and weren't accepting of that I'm
18 Korean, I'm a Korean woman, I'm going to understand
19 what that is.

20 And I think that every child makes that
21 decision for themselves. What I'm saying is that
22 families have to be prepared to help their child and
23 support their child and give them all the options.

24 VICE CHAIR THERNSTROM: All right. But
25 let's switch from the Asian picture to the African

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1 American picture.

2 MR. KROLL: Okay.

3 VICE CHAIR THERNSTROM: Because, after
4 all, Asians are, you know, half of all Asians today
5 are marrying non-Asians. And you've got, you know, a
6 tremendous amount of, for lack of a better word,
7 assimilation. But let's switch it to African American
8 families.

9 MR. KROLL: Sure.

10 VICE CHAIR THERNSTROM: What exactly is
11 the message you would like delivered about race in
12 America and racism in America, which were the two
13 terms you used --

14 MR. KROLL: Yes.

15 VICE CHAIR THERNSTROM: --to a Black child
16 in a white family.

17 MR. KROLL: Yes. A white family has to be
18 able to prepare their child to deal with racism, to
19 deal with being identified as a Black person. If I
20 were raised in an African American --

21 VICE CHAIR THERNSTROM: Put some meat on
22 that bone. Exactly what is the message about America?

23 MR. KROLL: Exactly? Sixteen year old
24 Black male has got to be prepared to be stopped by a
25 policeman and know how to react so that he is not

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1 physically harmed.

2 VICE CHAIR THERNSTROM: Okay. Fair
3 enough. But what is the message about what it means
4 to be Black in 2007 in America?

5 MR. KROLL: Okay. You're making it real
6 tough, because I'm obviously not Black. But I'm
7 talking about it.

8 VICE CHAIR THERNSTROM: Yes, but you said
9 a lot about this.

10 MR. KROLL: Yes.

11 VICE CHAIR THERNSTROM: You've thought a
12 lot about what the messages are. I mean, these are
13 messages about American culture and the whole fabric
14 of American society.

15 MR. KROLL: Yes. And you asked
16 Commissioner Ohl about -- no, Mr. Melendez is. And,
17 you know, we have training material on this which I'll
18 leave for the Commission staff that was done under the
19 auspices of the U.S. Department of Health and Human
20 Services. And what we try to get people to think
21 about are the facts that we know that children will
22 face discrimination, racism and to be prepared to have
23 those conversations. Knowing that I never faced that,
24 and so that maybe I have an African American dad who
25 is a mentor to my African American son because he's

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1 walked those shoes that I'll never walk and I'll never
2 fully understand.

3 And I think that a lot of the families
4 that Dr. Simon was talking about, because they're from
5 The Open Door Society, had that kind of training and
6 so that they were better prepared to help their
7 children deal with those issues. But you have to be
8 aware that those issues exist and not ignore them.

9 And that's my concern, is that we're
10 saying ignore them. And that we really need to help
11 the families deal with them.

12 VICE CHAIRN THERNSTROM: I think Professor
13 Simon has some --

14 PROFESSOR SIMON: I just want to add one
15 thing. What's it like to be Black in the United
16 States. My son-in-law is Black. He was a famous
17 football player at the University of Michigan. When he
18 was dating my daughter he would spend a lot of time
19 around Washington University in St. Louis where my
20 daughter lived in an all-white neighborhood.

21 Every time he came to visit her and was
22 walking on the street, a big Black guy during the day
23 he was stopped by the police and said "What are you
24 doing here?" And he said "I'm visiting my
25 girlfriend." And the police would say "There are no

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1 Blacks in this neighborhood." "My girlfriend is
2 white." "Prove it." And he'd have to go to Judith's
3 house.

4 And I used to say to Ed "What's it like to
5 have that happen to you all the time?" And Ed's
6 reaction was "You get used to it."

7 VICE CHAIR THERNSTROM: Sure. But there --
8 and I accept that, absolutely, of course.

9 PROFESSOR SIMON: I'm not sure I accept
10 it.

11 VICE CHAIR THERNSTROM: Well, I mean I
12 accept it as reality --

13 PROFESSOR SIMON: Yes.

14 VICE CHAIR THERNSTROM: -- that that is -
15 - you know, this is not in his head. This was his
16 experience and obviously it was not a unique
17 experience.

18 But my question was really broader than
19 preparing children to be stopped in a completely
20 arbitrary way to be stopped by police. I mean, it is
21 complicated how you describe -- it wouldn't have been
22 complicated in 1964, but it is complicated today. How
23 you describe the status of African Americans, what
24 they're like to experience, how to think about race in
25 the society, you know it's an altered America. And I

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1 think these message from, you know I'm just speaking
2 for myself here, are extremely important exactly how
3 they're stated and what kind of nuisance form they're
4 stated. That's an open and shut case.

5 Let me tell you, there are a lot of police
6 out there who are likely to look at a large Black guy
7 in the middle of the day in the "wrong neighborhood."

8 I mean, you know, that's an easy one.

9 MS. OLIVER: It happens for African
10 American women as well.

11 VICE CHAIR THERNSTROM: And it happens for
12 African American women as well.

13 MS. OLIVER: Yes.

14 VICE CHAIR THERNSTROM: I'm sure.

15 MS. OLIVER: And I think --

16 VICE CHAIR THERNSTROM: But beyond that it
17 gets, it seems to me, more complicated. There's some
18 easy --

19 MS. OLIVER: It's not as complicated for
20 me, and perhaps because I've had an African American
21 experience.

22 VICE CHAIR THERNSTROM: Right. Well,
23 good. I'd like to hear you.

24 MS. OLIVER: So I would say one of the
25 issues in how do you describe it is to imagine a life

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1 experience where for the majority of your waking hours
2 you are aware that it is not unlikely that today you
3 will encounter an experience where someone assumes
4 just because of how you look that you've done
5 something wrong. And you're scrutinized differently.

6 I was talking with a friend of mine just
7 yesterday who said that he had taken a couple of boys
8 from his program who happen to be African American and
9 Hispanic into the Waldorf. He wanted to take them into
10 the Waldorf Astoria because they had never seen it.
11 And he went in the door before them. And when he got
12 in he realized that they weren't with him anymore.
13 And when he turned around, he found out that they were
14 still at the outside being scrutinized to try to
15 figure out why are you here.

16 And so it's like Dr. Simon gives one
17 experience for her son-in-law. I give another
18 experience for a group of boys who happened to be with
19 a friend of mine. I give an experience of my
20 daughters in a bookstore not necessarily in a racially
21 isolated community, but in a place where few African
22 Americans tend to be being followed when they're
23 looking at magazines as though they were going to take
24 something.

25 I mean, these are the kinds of things that

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1 from a white experience you don't have everyday.

2 VICE CHAIR THERNSTROM: Well, I understand
3 that. But the question -- I mean, America has changed
4 since the mid-1960s. The question of how much color
5 matters, the answer has changed over the decades. Of
6 course it still matters, but the answer is not the
7 same in my view as it was four or five decades ago.

8 MS. OLIVER: And for me the difference is,
9 yes, there are some changes. I'm not afraid to be
10 lynched in Atlanta. But where they are not as overt,
11 covertly they are still very significant.

12 VICE CHAIR THERNSTROM: Well, let me turn
13 to other people.

14 COMMISSIONER MELENDEZ: I had a question
15 of Mr. Kroll. You had mentioned about children under
16 five years old. Do you see a significant -- is that
17 one of the issues is that there tends to be more one
18 through five year olds that are basically being
19 adopted by --

20 MR. KROLL: Absolutely. I think that what
21 we have seen as a result of these numbers, and I've
22 not been able to get statistics since 2002, but
23 everywhere you turn you see that it's the younger
24 children, whether it's the private sector or in the
25 public sector, who are adopted transracially. And the

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1 data suggests that the older children are not adopted
2 transracially. And those are the children who we
3 define as waiting. Over nine are the ones that really
4 need families and based on this data, it's the single
5 aunties, grandmothers who are adopting the older kids.
6 The kinship care providers who move from foster care
7 to adoption. That's what that data suggests, and I
8 think that we need to look at the needs of the child
9 in relationship whose waiting the longest. And it's
10 not the little kids.

11 And Toni's got families waiting in her
12 agency that are fully studied who are ready to adopt
13 younger African American kids today, but they don't
14 have access to those kids. And many of those children
15 we know are adopted by their foster family. So a kid
16 comes into care, placed transracially in a foster
17 family, parental rights are terminated. The bond is
18 there. I'm not going to argue that you should move
19 those kids. But it happens at the entry into the
20 system at the foster care level and so that the
21 significant majority of the transracial adoptions are
22 the younger children.

23 COMMISSIONER MELENDEZ: The other
24 question: Wouldn't it be bold to say that most races
25 if they found out that young children one through five

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1 were being adopted by, say, Caucasians and whether
2 it's an Hispanic or Native Americans under Indian
3 Child Welfare, they'd want to know well what can we do
4 about that statistic? Because they would look at it
5 as we're losing a lot of our children. And that's why
6 the issue of having available minority children has to
7 be something that is either there or make improvements
8 on that. You know, it just seems like you can't get
9 away from that concern.

10 I know it was a concern to Native
11 Americans in the Indian Child Welfare Act was that
12 they were losing many of their children, and they
13 didn't really have a lot of say in it. And so that's
14 why that Act was really put in place. So I imagine
15 it's the same thing to any minority group.

16 MR. KROLL: Absolutely. And if you look at
17 the recommendations at the end, they do look an awful
18 lot like the Indian Child Welfare Act in terms of what
19 we think is in the best interest of the child in our
20 organization. And we did it, and then we looked back
21 and we went oh my goodness, this looks a lot like the
22 Indian Child Welfare Act. But I think Indian Child
23 Welfare Act in terms of protecting the culture and the
24 relative connection and the family connection is the
25 appropriate way to go.

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1 COMMISSIONER MELENDEZ: It sounded like
2 you were saying that. One of the issues that brought
3 the MEPA issue up to the forefront was that there were
4 delays in the whole system, that was one of the issues
5 I heard. But isn't it not really the major issue?
6 Isn't the major issue is that everybody should have
7 access to these children?

8 MR. KROLL: The delay issue was what was
9 mentioned in the run up to MEPA. And there were
10 clearly delays. And there clearly were practices that
11 public agencies had that delayed placement. But the
12 reality is, and this is on a dangerous ground to go,
13 but you had an awful lot of white adults who for the
14 first time were told that their race is a disadvantage
15 to them. Because you are white, you do not have
16 access to these black children. White adults don't
17 handle that very well. And I think that was one of the
18 major factors that came into play. Families that I
19 talked to who were very strong supporters of MEPA, and
20 it was about there are all these children there so we
21 want access to them, and we don't have access to them.

22 COMMISSIONER MELENDEZ: So even if we were
23 to some way make African American parents available or
24 Native Americans, or any minority group and you didn't
25 hold up the system, they were ready to go as a first

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1 priority and a second priority was to either go not to
2 that race of people, we'd have a problem? So it's not
3 solely just the issue of delaying the system. It has
4 to do who has access to those children.

5 MR. KROLL: And the reality is the older
6 kids are waiting for anybody.

7 COMMISSIONER MELENDEZ: Right.

8 MR. KROLL: The older kids are waiting for
9 anybody. And you've got the younger kids who everybody
10 is competing for.

11 VICE CHAIR THERNSTROM: I'd like to move
12 on to Commissioner Taylor.

13 COMMISSIONER TAYLOR: Yes. And I think two
14 brief questions. The first for Mr. Kroll and the
15 second one for Ms. Oliver.

16 Mr. Kroll, I'm trying to get my mind
17 around something you said and something you all just
18 discussed. That is the purpose of the Civil Rights
19 laws. And that is there is a stated purpose and then
20 the reality. And if the reality is that they are being
21 essentially used, motivated by the need to expand the
22 pool of available children for white parents. If
23 that's what's really going on?

24 I guess my question is your point of
25 shouldn't we be focused on what's in the best interest

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1 of the minority children in the system, and are you
2 saying that expanding the pool for the white parents
3 does not achieve that goal, does achieve the goal or
4 misses the point?

5 So I understood what you're saying, but I
6 didn't understand whether you were agreeing or
7 disagreeing that the current motivations actually
8 advance the interests of the minority kids. What's
9 your thought on that?

10 MR. KROLL: Yes, I think I said that at
11 the very end. I was trying to be way too fast, so I
12 apologize for that and appreciate this opportunity.

13 African American children and Latino
14 children in this country who are not covered by the
15 Indian Child Welfare Act there's a lot of folks who
16 want to parent the younger children. And so the, in a
17 sense, reverse discrimination kind of provisions of
18 the Civil Rights Act give white families the
19 opportunity to get into that pool when there are Black
20 and Latino families out there, but they just don't
21 have the kind of access or maybe savvy to work the
22 system.

23 So I think that for the younger children,
24 it really is the adults rights that are playing out
25 here. For the older children what we haven't done is

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1 explore all the options for those kids. And there, I
2 think we need to go to families wherever they may be
3 to parent the older kids, whether they're Black
4 families, Latino, white families. And also there are
5 a lot of white older kids waiting, too. We need to
6 make that very clear.

7 So I think that in terms of the use of
8 Civil Rights to deal with reverse discrimination since
9 the Bakke case in the '70s, that that hasn't been a
10 pattern over the last 30 years of the 1964 legislation
11 being used to protect against reverse discrimination
12 issues, which I think this was considered in 1994.

13 COMMISSIONER TAYLOR: One more step.
14 Stick with me, if you would?

15 MR. KROLL: Sure. I'll try.

16 COMMISSIONER TAYLOR: The pool of young
17 minority kids --

18 MR. KROLL: Yes.

19 COMMISSIONER TAYLOR: -- are they better
20 off even given what you have said than they otherwise
21 would be had these measures not been taken?

22 MR. KROLL: Yes.

23 COMMISSIONER TAYLOR: I'm going to get a
24 sense --

25 MR. KROLL: Children are always better off

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1 in families.

2 COMMISSIONER TAYLOR: Okay.

3 MR. KROLL: And what I'm saying from a
4 social justice standpoint is the families in the
5 communities that the kids come from have lost some
6 access to the parenting of those children.

7 COMMISSIONER TAYLOR: Expanding the pool
8 of appropriate families to adopt?

9 MR. KROLL: Because we've ignored Part 2
10 of MEPA.

11 COMMISSIONER TAYLOR: Right. Okay.

12 MR. KROLL: Really, you know, all the
13 enforcement is on the front.

14 COMMISSIONER TAYLOR: Okay.

15 MR. KROLL: Thank you for asking.

16 COMMISSIONER TAYLOR: Ms. Oliver, I'm just
17 curious as to -- my sense of your testimony was that
18 you think the emphasis is in the wrong place.

19 MS. OLIVER: Yes.

20 COMMISSIONER TAYLOR: Give me a sense of
21 what you think we should be emphasizing if the
22 emphasis is currently in the wrong place on the back
23 end. Because I didn't necessarily hear you
24 disagreeing with all the things that are taking place
25 in the back end. Rather, the use of resources on the

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1 back end rather --

2 MS. OLIVER: Yes.

3 COMMISSIONER TAYLOR: Is that fair?

4 MS. OLIVER: That's fair. There is a
5 disagreement on the back end as far as MEPA is
6 concerned, and that is that there has been absolutely
7 no enforcement decisions made about recruitment.

8 COMMISSIONER TAYLOR: Okay. Okay. That's
9 what Mr. Kroll was saying.

10 MS. OLIVER: So that's similar to what
11 he's saying.

12 COMMISSIONER TAYLOR: Okay. Okay.

13 MS. OLIVER: Yes. However, you know one of
14 the things that has always been interesting to me is
15 that there's a quite a bit of money that's put into
16 maintaining children away from family like settings,
17 and that's just the way that the child welfare system
18 is set up. The further removed the child is from a
19 family like setting, the more money we put into that
20 service.

21 Front end services, which have to do with
22 prevention or reunification, are much more cost
23 effective and are much less traumatic to children.
24 However, we put the money on the back end. And so
25 we're not addressing the fact that there are

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1 discriminatory practices that are causing children to
2 come in too fast. And I really do believe that if the
3 carrot was in a different place, that we would be able
4 to provide services within communities to be able to
5 help families keep their children rather than take
6 their children, to provide the kinds of resources that
7 are necessary when we look at these artificial
8 measures about the fact that children are coming in
9 more so for neglect than abuse. And the neglect looks
10 exactly poverty.

11 Then we bring these children into a system
12 with strangers and we give the strangers support that
13 was not available to their birth families.

14 And the likelihood that they would ever
15 get back because the families are left out there on
16 their own with little to no resources to be able to
17 improve themselves and to prove themselves to agencies
18 that they're good enough to get their children back,
19 they fail.

20 COMMISSIONER TAYLOR: Would you agree with
21 the kinship care support as being a step in the right
22 direction?

23 MS. OLIVER: Very much so.

24 COMMISSIONER TAYLOR: And that type of
25 support?

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1 MS. OLIVER: Very much so.

2 COMMISSIONER TAYLOR: Okay.

3 MS. OLIVER: Because the other thing that
4 we're seeing in kinship care is there's far less abuse
5 in kinship families than there is in foster care.

6 So there are a number of things that we're
7 ignoring that are available to us in terms of the
8 research and the alternatives or different approaches
9 to the same population and providing services to them
10 in a way that is much more focused on sustaining and
11 maintaining families.

12 COMMISSIONER TAYLOR: I'm sorry. May I
13 have one more question?

14 Is it true that the kinship care approach
15 is used more frequently in the African American
16 community than it is other communities?

17 MS. OLIVER: I don't know in terms of
18 statistically. I do know that as far as most
19 jurisdictions are concerned they're looking at ways to
20 provide more kinship care services.

21 Now interestingly what happens is that the
22 kinship families become second class citizens in some
23 way. And that is that the services that are available
24 to them are still less than they are to strangers.

25 VICE CHAIR THERNSTROM: Unless there are

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1 people who have urgent questions still, I would like
2 to move on to the third panel. And then thank these
3 panels.

4 COMMISSIONER KIRSANOW: One short
5 question.

6 VICE CHAIR THERNSTROM: Yes, sure. Sure.

7 COMMISSIONER KIRSANOW: There's been some
8 discussion about teaching Black adoptees what it's
9 like to be Black and the notion that Black transracial
10 adoptees may not be adequately prepared by white
11 parents for what it's like to be black in America is
12 maybe a failure of acculturation. Are any panel
13 members aware of any evidence or any measurable or
14 tangible detriments that may be caused this, that is
15 in terms of their ability to thrive? In terms of a
16 differential in GPA, high school graduation, college
17 graduation, income, marriageability, anything of that
18 nature?

19 VICE CHAIR THERNSTROM: Professor Simon
20 wants to speak to that.

21 PROFESSOR SIMON: In my study when we
22 interviewed the adult transracial adoptees, they were
23 on their own Black, they felt that they could live in
24 both communities. They could live in the Black
25 community, they could live in the white community.

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1 Many of them were in college or had received
2 university degrees. They felt very comfortable with
3 their Black identity and with their acceptance and
4 participation in both the Black and white community.

5 VICE CHAIR THERNSTROM: I'm curious, by
6 the way, it's just really more of a remark than a
7 question, because I do want to end the panel. Of why
8 you used the doll experience which has been so
9 discredited, as I understand it.

10 PROFESSOR SIMON: But it was used in Brown
11 vs. the Board of Education.

12 VICE CHAIR THERNSTROM: Yes.

13 PROFESSOR SIMON: But I used this, you
14 have to remember, this was 1970 when I used it.

15 VICE CHAIR THERNSTROM: Okay. Because it
16 has been so discredited.

17 PROFESSOR SIMON: Of course. 1970. Yes.

18 VICE CHAIR THERNSTROM: Anyway,
19 Commissioner Kirsanow, did that --

20 COMMISSIONER KIRSANOW: Yes. That's the
21 answer I was looking for.

22 VICE CHAIR THERNSTROM: And does anybody
23 else before we close this panel? And I will remember
24 to swear in the next one.

25 But in the meantime, thank you very, very

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1 much. This is a wonderful panel, once again. And all
2 three of you have made your contributions. And I,
3 again, invite you to supplement -- I mean now that
4 you've heard our questions, to supplement anything
5 that you have to say in response to what you have
6 heard here so that we enrich this conversation.

7 MR. KROLL: Thank you for the opportunity.

8 PROFESSOR SIMON: Excuse me. Some of us
9 would love a cup of coffee. Could we have a five
10 minute break, do you think.

11 VICE CHAIR THERNSTROM: Sure. I don't know
12 where in five minutes you can get a cup of coffee.

13 PROFESSOR SIMON: Across the street.

14 VICE CHAIR THERNSTROM: Across the street.
15 Yes.

16 PROFESSOR SIMON: Is that okay?

17 VICE CHAIR THERNSTROM: Sure. That's
18 going to be a longer than five minutes. But we'll
19 start in five minutes.

20 PROFESSOR SIMON: All right. Thank you.

21 COMMISSIONER KIRSANOW: Commissioner
22 Thernstrom?

23 VICE CHAIR THERNSTROM: Yes.

24 COMMISSIONER KIRSANOW: I may have to jump
25 off for about 20 minutes.

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1 VICE CHAIR THERNSTROM: Okay. We would
2 like to have you back if you can come back.

3 (Whereupon, at 12:01 p.m. a recess until
4 12:13 p.m.)

5 VICE CHAIR THERNSTROM: Folks, our five
6 minutes are long up, which always happens if we take a
7 break. But I think the break was welcome to everybody.

8 **PANEL 3**

9 VICE CHAIR THERNSTROM: The third
10 panel we've got arrayed in front of me, will address
11 whether the Multiethnic Placement Act of 1995 has
12 achieved its goal.

13 The panel consists of: Thomas Atwood,
14 President and Chief Executive Officer of the National
15 Council for Adoption; Dr. Ruth McRoy of the Evan B.
16 Donaldson Adoption Institute; Dr. Elizabeth
17 Bartholet, Professor of Law and Director of Child
18 Advocacy Program at the Harvard Law School, and; Linda
19 Spears, Acting Senior Vice President of Child Welfare
20 League of America.

21 Before I forget, before I even introduce
22 you.

23 (Panelists sworn)

24 VICE CHAIR THERNSTROM: For the court
25 record I head an "I do" from all four.

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1 Thomas Atwood serves as President and
2 Chief Executive Officer of the National Council for
3 Adoption, NCFA, an adoption research, education and
4 advocacy nonprofit organization whose mission is to
5 promote the well-being of children, birth parents and
6 adoptive families by advocating for the positive
7 option of adoption.

8 Mr. Atwood served for four years as
9 Executive Director of NCFA's Infant Adoption Awareness
10 Training Program. He leads NCFA's ongoing efforts to
11 ensure sound ethical adoption policies and practice.

12 He is Executive Editor of *Adoption*
13 *FactBook IV*, NCFA's comprehensive reference on
14 adoption policy and practice.

15 Mr. Atwood has directed national research
16 education and advocacy nonprofits for 20 years such as
17 Director of Coalition Relations and Executive Editor
18 of *Policy Review* at the Heritage Foundation.

19 He was Vice President of Policy and
20 Programs for the Family Research Council.

21 He is founding President of the Board of
22 Directors of the National Safe Haven Alliance.

23 He has a master's in public policy and a
24 master's in business administration from Regent
25 University.

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1 Dr. Ruth McRoy is Ruby Lee Piester
2 Centennial Professor Emerita and a Research Professor
3 at the University of Texas at Austin. She has served
4 as the Director of the Center for Social Work
5 Research, Director of the Diversity Institute and
6 Associate Dean for Research in the U.T. School of
7 Social Work.

8 As part of the Collaboration to Adopt
9 UsKids, she is currently conducting research on
10 barriers to adoption and factors associated with
11 successful special needs adoption.

12 She has written eight books on child
13 welfare and adoption issues. She is a senior fellow
14 and a board member of the Evan P. Donaldson Adoption
15 Institute, a board member of the North American
16 Council on Adoptable Children, and a member of the
17 Child Welfare League of America's National Advisory
18 Committee on Adoption.

19 Dr. Elizabeth Bartholet, Harvard Law, is
20 the Morris Wasserstein Public Interest Professor of
21 Law and Faculty Director of the Child Advocacy Program
22 at the Harvard Law School. She teaches civil rights
23 and family law, specializing in child welfare adoption
24 and reproductive technology.

25 Before joining Harvard she was engaged in

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1 civil rights and public interest work with the NAAC
2 Legal Defense Fund.

3 She was the founder and Director of the
4 Legal Action Center, a nonprofit organization in New
5 York City.

6 And Linda Spears is the Acting Vice
7 President of the Child Welfare League of America. Ms.
8 Spears has worked at both the practice and senior
9 management levels in child welfare agencies for 24
10 years.

11 Before joining CWLA in 1992 she served as
12 the Director of Field Support with the Massachusetts
13 Department of Social Services where she oversaw
14 agency-wide services in foster care and out-of-home
15 placement, family preservation, child protection,
16 domestic violence, housing, permanency placing and
17 adoption and India child welfare.

18 I will call on you in the order you have
19 been given for the record. So, Mr. Atwood, you are
20 starting out for ten minutes.

21 And thank you all very much for appearing
22 today. It's an incredibly interesting and important
23 topic, obviously.

24 MR. ATWOOD: My name is Thomas Atwood. And
25 as I serve as President and CEO of the National

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1 Council for Adoption, NCFA. Founded in 1980 NCFA is
2 an adoption research education and advocacy
3 organization. NCFA has advanced adoption and child
4 welfare policies that promote the adoption of children
5 out of foster care, present adoption as a positive
6 option for women with unplanned pregnancies, reduce
7 obstacles to transracial and inter-count adoption and
8 make adoption more affordable for families.

9 On behalf of NCFA I thank you for this
10 opportunity to present at your briefing on the
11 Multiethnic Placement Act.

12 Today an increasing number of American
13 families are multiracial by adoption. According to
14 the 2000 Census approximately one out of every six
15 adopted children in America has a parent of another
16 race. Transracial adoption is a healthy, positive
17 outcome for children. Studies of transracially
18 adopted children reveal outcomes consistent with those
19 of children adopted by parents of the same race.

20 In addition to Professor Simon's excellent
21 work, a 2004 study in the *Journal of Orthopsychiatry*
22 concluded that transracial adoption does not harm the
23 adjustment, family bonding or normative development of
24 children.

25 Growing Up Adopted, a massive Search

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1 Institute survey of 715 adoptive families found that
2 transracially adopted youth are no more at risk in
3 terms of identity, attachment and mental health than
4 are there counterparts in same race families.

5 Yes, transracial adoption is good for
6 children. But adoption professionals agree that it
7 can present additional changes to an adoptive family.

8 These challenges arise from a surrounding culture
9 that finds transracial adoption curious and that still
10 contains strains of racism.

11 The decision to adopt transracially should
12 not be made on the basis of reactions from others.
13 But it is important for parents to anticipate how
14 their family, neighbors, associates and strangers in
15 the mall or at the park may react. Because it may be
16 easy to see that the child is not genetically related
17 to her parents, there may be intrusive questions or
18 even racist comments that would not be raised in a
19 same race adoption.

20 Adoption professionals also generally
21 agree that transracial adoptive parents should help
22 their children feel comfortable in their racial
23 identity and teach them about their cultural heritage.

24 It is difficult to assess how much MEPA
25 has by itself affected transracial placements.

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1 However, we do know that since 1997 when the Adoption
2 and Safe Families Act and MEPA's Interethnic Adoption
3 Provisions went into effect that adoptions out of
4 foster care have increased from 31,000 a year to more
5 than 50,000 and have remained at more than 50,000 per
6 year for six years straight. Because HHS does not
7 count transracial adoptions, it may be impossible to
8 prove conclusively that MEPA and IEAP contributed to
9 those increases, but it can be reasonably inferred.
10 However, African American children continue to be
11 disproportionately represented in foster care.

12 For fear of violating MEPA due to
13 misinterpretations of MEPA and the HHS Guidelines,
14 states are abandoning good social work practices. A
15 common misinterpretation is the idea that state
16 agencies can run afoul with MEPA from only discussing
17 the issue of race with prospective parents, because a
18 wrong word could be interpreted as discrimination.
19 But to say that race should not delay or deny a
20 child's placement does not mean that the challenges
21 that can be posed by transracial adoption may not be
22 discussed. It does not mean that parents should not
23 be asked to assess themselves regarding their
24 suitability for a transracial adoption. Any
25 regulation that indiscriminately prohibits parent

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1 education and self-assessment is based on a
2 misinterpretation of MEPA.

3 MEPA serves the best interest of children
4 in several ways. My written testimony has more detail
5 on this point, but here are several.

6 First, MEPA reduces obstacles to
7 transracial adoptive and foster placements for
8 children in need of families. There are many children
9 who need families, including a disproportionate number
10 of minority children. And the record of transracial
11 placement is very successful.

12 It comes down to the basic principle that
13 racial differences between prospective parent and
14 child should not prevent or delay children from having
15 families.

16 Second, MEPA Part B prohibits
17 consideration of race when such consideration would
18 delay or deny a child's placement. A plain reading of
19 this language makes it clear that parental self-
20 assessments and agency education of parents are
21 allowed under MEPA.

22 It is further clarified in HHS' questions
23 and answers on MEPA which state: "Agencies are not
24 prohibited from discussing with prospective adoptive
25 and foster parents their feelings, capacities and

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1 preferences regarding caring for a child of a
2 particular race or ethnicity." HHS is quite clear on
3 this point.

4 Third, MEPA Part A allows children access
5 to transracial placements in their best interest by
6 restricting racial discrimination against prospective
7 parents. This part, although it refers to the
8 prospective parents, this part, too, is actually a
9 child-focused principle. By not allowing agencies to
10 deny any individual the opportunity to foster or adopt
11 based on race, Part A protects children from
12 arbitrarily imposed same race placements when it would
13 be in their best interests to remain with different
14 race placements with whom they had already bonded.
15 Thus, as directed by HHS "An agency may not rely on
16 generalizations about the needs of children of a
17 particular race or ethnicity, or on generalizations
18 about the abilities of prospective parents from one
19 race or ethnicity to care for a child of another race
20 or ethnicity."

21 HHS further states "Because placement
22 decisions are based on the needs of the child no one
23 is guaranteed the right to foster or adopt a
24 particular child."

25 Fourth, MEPA allows, according to HHS, for

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1 exceptions in "circumstances where the child has a
2 specific and demonstrable need for a same race
3 placement." The most common example is the case of an
4 older child who would prefer an in-racial placement.

5 Finally, MEPA requires states to provide
6 for the diligent recruitment of racially diverse
7 parents. Fulfilling this requirement would result in
8 increased same race placements.

9 Overall, HHS's MEPA guidelines are fairly
10 clear and helpful. However, as noted in more detail
11 in my written statement, some of its guidance could be
12 clearer.

13 Another problem with HHS's MEPA execution
14 is that the Department has apparently not done enough
15 to enforce state's requirement to conduct diligent
16 recruitment of racially and ethnically diverse
17 parents. Even though more than 20 percent of children
18 in foster care are waiting to be adopted, a mere 1.3
19 percent of all federal child welfare dollars available
20 are spent on adoptive and foster care recruitment and
21 training.

22 Some child welfare advocates assert that
23 "all things being equal" between prospective
24 placements case workers in agencies should choose in-
25 racial placement over transracial placement. This is

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1 a somewhat appealing argument in theory -- in theory.

2 However, there are virtually always differences
3 between placement options. "Things" are rarely if
4 ever, equal.

5 Furthermore, any language that could be
6 drafted to provide for this discretion would create a
7 giant loophole that would render placement decisions
8 vulnerable to subjective and ideological
9 considerations of race.

10 In conclusion and in summary, the problems
11 with the treatment of race in placement decision
12 making today do not lie primarily with MEPA, nor do
13 they lie mainly with HHS enforcement. They lie mainly
14 with state agencies and case workers'
15 misinterpretations of MEPA and of HHS' MEPA
16 guidelines. MEPA allows for common sense
17 consideration of race and ethnicity in making
18 placement decisions, including prospective parent
19 education and self-assessment regarding transracial
20 placement, and recruitment of prospective parents from
21 America's diverse racial and ethnic communities. It
22 does not allow, however, agencies to use
23 generalizations regarding race and ethnicity in making
24 individual placement decisions, nor should it.

25 HHS should make greater efforts to clarify

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1 these issues and states should reform their policies
2 and guidelines to follow the actual meaning of MEPA
3 rather than the mistaken notion that MEPA prohibits
4 any discussion or consideration of race.

5 Thank you.

6 VICE CHAIR THERNSTROM: I'm impressed with
7 the level of consensus among panelists on certain key
8 issues this morning. I think it's very interesting.

9 All right. Dr. Ruth McRoy.

10 DR. McROY: Good morning.

11 VICE CHAIR THERNSTROM: Good morning.
12 Thank you for coming.

13 DR. McROY: Thank you for this
14 opportunity.

15 In thinking about the impact of MEPA/IEPA,
16 it is important to note that these policies were based
17 on the following four primary assumptions:

18 1) There are large numbers of white
19 families seeking to adopt minority children in foster
20 care;

21 2) There's an insufficient number of
22 African American families able or interested in
23 adopting;

24 3) A large number of minority children
25 will not achieve permanency unless race matching

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1 policies are prohibited and transracial adoptions are
2 promoted broadly.

3 4) Children fair just as well or better
4 when they are adopted transracially. The issue we
5 must address is whether or not these assumptions are
6 true and what, if any, impact has MEPA had on the
7 adoption of African American children in the child
8 welfare system.

9 MEPA-IEP has created a different status
10 for African American children who are adopted from the
11 foster care system with regard to
12 racial/ethnic/cultural identity-a status that diverges
13 significantly from that recognized in law for American
14 Indian/Alaskan Native children, children adopted
15 internationally and children who are adopted through
16 private adoption agencies that do not receive federal
17 funds. MEPA-IEP prohibits an agency receiving federal
18 funding from considering race and ethnicity in the
19 foster or adoptive placement of a child except, as has
20 been interpreted by DHHS, when a compelling government
21 interest is at stake. The Indian Child Welfare Act of
22 1978 places strong value on racial/ethnic heritage by
23 giving statutory preference to the placement of Native
24 American children with members of their own tribes or
25 other Indian tribes. Similarly, the Hague convention

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1 and the Intercountry Adoption Act of 2000 require that
2 attention be paid to children's cultural, racial,
3 religious, ethnic and linguistic background needs and
4 the preparation of parents to meet those needs.

5 Next, it is also important to look more
6 closely at the children who are in foster care. We
7 began earlier talking a little bit about the data, but
8 we need to drill down and more carefully look at what
9 do these children look like and what have their
10 experiences been.

11 According to the federal AFCARS data for
12 fiscal year 2005 there were 513,000 children in foster
13 care who are an average of 10 years old. 32 percent
14 of these children or 166,482 were African American.

15 Also in 2005 114,000 children were
16 awaiting adoption and 36 percent or 40,840 of these
17 children were African American.

18 The children who have been awaiting
19 adoption were an average of 5 years old when they were
20 removed from their parents. They have been in care an
21 average of 27 months since parental rights were
22 terminated. These children are now an average of 8.6
23 years of age. The recent 2007 GAO report on
24 disproportionality noted that, "according to Health
25 and Human Services' adoption data over the last five

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1 years, African American children as well as Native
2 American children have consistently experienced lower
3 rates of adoption than children of other races and
4 ethnicities."

5 It is also important to examine the
6 reasons these children are in care in the first place.

7 The majority of children enter care because of
8 parental neglect. Some have experienced abuse, either
9 physical or sexual abuse, some of these have
10 experienced prenatal exposure to drug and alcohol.
11 All of these are factors that have to be considered in
12 looking at who are the children and what are the
13 family resources for these children.

14 We also know that although there have been
15 small increases in transracial placements of African
16 American children there are thousands who still need
17 permanency.

18 We also know that many of the children
19 that have been placed are the younger children, and
20 this has been mentioned earlier today.

21 It's important to recognize that the
22 children that are most in need of placement are older,
23 have been waiting in care for some time and we need to
24 be identifying who is currently adopting those
25 children.

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1 Penny Maza of the Children's Bureau has
2 indicated that in the year 2000, older African
3 American children were more than three times as likely
4 to be adopted by a single female than were older white
5 children. She found that half of the adoptive mothers
6 of African American children adopted from foster care
7 are 50 years of age or older. Many of those have been
8 kinship adoptions. We need to look at all the data in
9 terms of who is adopting, not just the young children
10 but the older children as well.

11 It's important also to note that if more
12 services were being provided in the front end, many of
13 these African American children would not enter care
14 and remain in care for such long periods of time. We
15 know that although the incidence of child abuse and
16 neglect does not vary significantly by race or ethnic
17 groups, African American children are represented in
18 the system at a rate 2.26 times greater than the
19 proportion they comprise in the U.S. population.

20 We also know from the recent GAO
21 disproportionality report that African American
22 children are more likely to be removed from their
23 families. They're less likely to be adopted once their
24 parental rights have been terminated.

25 There are a number of interrelated factors

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1 that have been identified that may influence these
2 disproportionate outcomes for African American
3 children. According to that recent GAO report such
4 factors include: African Americans high rates of
5 poverty; difficulty in accessing support services to
6 provide a safe environment and prevent removal; and
7 racial bias and cultural misunderstandings among child
8 welfare decision making.

9 That GAO report also attributed longer
10 lengths of stay for African American children to the
11 following: lack of appropriate adoptive homes for
12 children; the greater likelihood of using kinship
13 care, and; parent's lack of access to supportive
14 services needed for reunification. The report
15 recommended that if states could offer these services
16 to birth families, many child removals could be
17 prevented and more birth families could be preserved.

18 The study also noted that since the
19 majority of federal funding through Title IV E is for
20 foster care maintenance payments, states do not have
21 the flexibility to use these funds for support of
22 prevention services for birth families. Moreover,
23 it's important that we recognize that when African
24 American children in foster care cannot be safely
25 reunified with their parents or with extended family

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1 members, they need the security, stability and love of
2 adoptive families.

3 To ensure that African American children
4 in foster care are placed in a timely way with
5 adoptive families who can meet their needs, including
6 their racial and ethnic needs, we recommend the
7 following:

8 1) We need to look specifically at what
9 is good ethical adoption practice. That calls for
10 consideration of issues of race and ethnicity. Policy
11 and law should be consistent with established best
12 adoption practice and explicitly state that the racial
13 ethnic identity needs of children should be addressed
14 throughout the adoption process and after the
15 adoption. Federal and state laws should state that
16 race is one factor that can be taken into
17 consideration in matching prospective adoptive
18 families and children in care. Laws should be in
19 accord with practice that calls for consideration of
20 whether specific families are able to meet all the
21 needs of a child, including race ethnic identity
22 issues.

23 2) All foster and adoptive families
24 should receive some level of training in parenting
25 children of culturally diverse backgrounds. When

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1 families adopt transracially or transculturally, they
2 should receive additional training and other support
3 services to ensure that they are prepared to meet
4 their children's racial ethnic, cultural and
5 linguistic needs.

6 3) We need to recognize that the child's
7 best interest should always be paramount in decisions
8 regarding children's foster care and adoption
9 placements. By focusing on the Title VI and
10 protections for prospective adoptive parents, DHHS has
11 placed too little emphasis on the best interest of the
12 child.

13 There is broad practice and legal support
14 for assessments of prospective families to ensure the
15 safety and well-being of children. Just as these
16 assessments take into account the family's ability to
17 meet children's physical, emotional, social and
18 developmental needs, they must take into account the
19 family's ability to meet children's racial and ethnic
20 identity needs as well. We must be able to
21 prepare those families.

22 4) In addition, we need to address the
23 barriers to in-racial placements. We know from a
24 number of studies that African American agencies have
25 been successful in recruiting and placing African

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1 American children in foster care and adoptive
2 placements. But many state agencies do not contract
3 with them, or only call them for help in placing the
4 oldest children and those who are the most difficult
5 to place for adoption.

6 Casey Family Programs, reporting on a
7 recruitment project involving 22 public child welfare
8 agencies, found that a history of negative
9 interactions between communities of color and child
10 welfare agencies contributed to a lack of success in
11 finding adoptive families of color. As the
12 participating public child welfare agencies developed
13 and implemented new strategies, including developing
14 partnerships with faith-based organizations within the
15 African American community, they were able to achieve
16 significant increases in the number of African
17 American families adopting.

18 We also recommend that agencies follow the
19 MEPA requirement to do diligent recruitment of more
20 families that reflect the ethnic, racial and
21 linguistic diversity of the children served. We need
22 to support that requirement through financial
23 resources and be sure that it is fully enforced.

24 We also recognize as Hill studied and
25 reported in 2004 that African American controlled

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1 organizations have success in finding African American
2 families and NACAC recently released a report of 24
3 such agencies located throughout the United States
4 that can help states become compliant with the MEPA
5 recruitment requirement.

6 We need to also recruit in-racial foster
7 families. So many of the families adopting today, in
8 fact 60 percent of adoptions from foster care are by
9 foster families.

10 We need to provide funding for subsidized
11 guardianships because we recognize that relatives are
12 a significant resource for the placement of older
13 African American children.

14 And finally, it's an important point to
15 note that we have a problem so much bigger than the
16 issue of transracial adoptions. We're talking about
17 113,000 children in the nation's system that need
18 permanence. We need to identify the strategies to
19 enable all of these children to have a permanent
20 family.

21 VICE CHAIR THERNSTROM: Thank you very
22 much. And I turn to Professor Bartholet.

23 PROFESSOR BARTHOLET: Thank you. I'm
24 Elizabeth Bartholet, and I am on the faculty at
25 Harvard Law School. And for the last two decades plus

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1 at Harvard Law School I have specialized in issues
2 involving child welfare and adoption. It's out of
3 that work that I founded Harvard Law School's Child
4 Advocacy Program and the commitment of that program is
5 to try to advance children's interests. I see myself
6 as a children's advocate, among other things.

7 I have focused a tremendous amount of my
8 time and energy in the last two decades also
9 specifically on transracial adoption and international
10 adoption. And I am one of those, actually rather few
11 I would say, who were fighting on the side to
12 encourage the passage of the Multiethnic Placement
13 Act. And I'm pretty familiar with the others who were
14 on that side.

15 And I want to say that my very strong
16 impression of the motivation for those of us fighting
17 for passage of MEPA was concern about the interests of
18 Black kids. And it's concern that arises out of what
19 I'll call a numbers mismatch, which I think Vice Chair
20 Thernstrom was trying to get at in some questions way
21 earlier today.

22 The basic dilemma, or part of it, is that
23 the number of minority race kids in the child welfare
24 system is grossly disproportionate to their number in
25 the population. If you look at prospective adopters,

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1 they are overwhelmingly a white group, not entirely
2 but overwhelmingly because those are the people who
3 are more in a position of privilege and thus able to
4 step forward to parent additional kids. It's not what
5 you do if you're desperately poor often.

6 There's been so much talk here and I will
7 disagree with many people who have sort of chimed in
8 about how we have to do more on recruitment. Part of
9 what's amazing is actually that African Americans are
10 adopting at essentially the same rate as whites are,
11 which is a sign of the level of successful recruitment
12 and, I believe, differential standards favoring
13 minority race applicants that we've had for decades.
14 And we've had it because, particularly in the era of
15 same race matching what happened is the system which
16 wanted to same race match ran out of Black parents for
17 the Black kids, thought it couldn't place those kids
18 with whites and so started saying, you know, let's
19 forget about it having to be a couple, let's start
20 recruiting from welfare rolls, et cetera. So I think
21 we've been doing differential and very aggressive
22 recruitment of black prospective adopters for a long
23 time. Could we do more? Yes. But should that be the
24 primary thrust? I do not believe it should be. I
25 think the primary thrust in terms of what HHS should

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1 be doing is just right. I would just like to see it
2 be a little more aggressive.

3 I also want to comment on Metzenbaum and
4 the difference between the '94 and the '96 Act. Many
5 of the people who have spoken today critically of MEPA
6 are basically saying at least let's go back to MEPA
7 '94. And Joe Kroll acted as if the '96 version of MEPA
8 was just kind of an accident and it all happened
9 behind closed doors.

10 I actually think MEPA happened because the
11 doors were opened for a change. And Congress when it
12 sat down and had it put before them do we want to
13 continue race discrimination in the context of
14 adoption had to say no, and said it quite
15 overwhelmingly.

16 But Metzenbaum, with whom I also had many,
17 many talks over the years, we talked for a long time
18 before passage of the '94 Act. And I tried to argue to
19 him, along with some others, that the '94 Act wouldn't
20 work, couldn't work because it allowed race to be used
21 as a factor in placement. And the fact is -- and
22 everything I say is, you know, documented in
23 infinitely greater and probably boring length in
24 various articles and books that I've cited to you --
25 but the fact is for two decades prior to the passage

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1 of MEPA we had a constitutional rule that said to
2 child welfare agencies you can use race a little, but
3 you just can't use it systematically. It will be
4 unconstitutional if you use it in a categorical way.
5 And under that rule in 50 states of the nation child
6 welfare agencies used race systematically.

7 To a great degree the '96 Act is a
8 practical Act that says we have to say race cannot be
9 a factor because that is the only rule that will work.
10 And that, to a great degree, is what our nation has
11 chosen to do throughout the civil rights realm.
12 Because we have believed that if you let race be used
13 a little, it will take over. And that is what happened
14 in the child welfare area pre-MEPA.

15 Now I believe that MEPA is a tremendously
16 important law and a very important part of the civil
17 rights panoply of laws in this country. And my
18 personal history here also includes my time as a
19 Harvard Law School student deeply involved in the
20 civil rights movement in the South.

21 So I believe this for two reasons. First,
22 it knocks down barriers to the placement of Black kids
23 and it expedites the placement of Black kids. Now can
24 we prove definitively how much faster Black kids are
25 being placed today because of MEPA? It's very

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1 complicated to try to prove that. But we used to have
2 barriers, we used to have child agency officials
3 throughout the country saying I will hold these kids
4 for six months, for 12 months, there were laws, there
5 were regulations on paper and there were even more
6 powerful unwritten policies saying we will hold kids
7 for six months, 12 months, and often their entire
8 childhood rather than place them across racial lines.

9 You can't tell me that that kind of
10 barrier isn't likely, highly likely to have a negative
11 impact on the placement of Black kids when the
12 overwhelming number of homes are in white families. I
13 went to great length to try to document the barrier
14 and the degree to which it caused Black kids to be
15 held in foster care throughout their childhood in my
16 *Penn Law Review* article.

17 The second reason I think this law is
18 tremendously important is that it sends the message
19 that the state cannot/should not say to people we as a
20 state prefer same race families. Same race matching
21 policies were direct descendants of white supremacy
22 and Black separatism. And I think that is not the
23 path our country has chosen to take for very good
24 reasons. And I see MEPA as directly in line with the
25 interracial marriage case *Loving v. Virginia*.

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1 I want to say a couple of things about why
2 I think this briefing is important. Because I think
3 we have to ensure that this law is being appropriately
4 enforced. And for the first six or eight years after
5 MEPA passed I was running around the country saying
6 "Congress just passed a law designed to radically
7 change the practices of child welfare agencies in 50
8 states and there's no noise. Nothing appears to be
9 happening." And I think HHS was deeply delinquent
10 during the early years.

11 I'm very excited about and think you
12 should be very pleased with what HHS has done
13 recently. So I think that the two decisions and
14 opinions that HHS came down with in the Ohio case and
15 the South Carolina case are extraordinarily important,
16 partly because they say what MEPA '96 says and its
17 regulations say perfectly clearly, which is race
18 cannot be a factor and no special screening can be
19 done of prospective transracial adoptive parents.
20 MEPA and its regulations say that. But the enemies of
21 MEPA have been running around the country seeding as
22 much confusion as they could and claiming that MEPA
23 allows for some systematic use of race and for special
24 screening of transracial adoptive parents.

25 And what these two HHS decisions say

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1 extraordinarily clearly is that is not the case. And
2 I think that's extraordinarily important, unlike many
3 of the people who have spoken today who think that we
4 should change those rules and basically go back to
5 MEPA '94.

6 I'd like to deal with some of the
7 questions that have come up about why that's a good
8 rule and why I think it's actually good social work
9 practice.

10 I do want to make one distinction, and
11 some others have made it. There's a huge difference
12 between screening based on special questions about
13 which church are you going to go to, what neighborhood
14 will you live in, what art will you have on your wall
15 and who will be your friends. That's the racial
16 sensitivity screening that was outlawed, for example,
17 in the Ohio case that HHS decided. And that is
18 outlawed clearly by MEPA, and that should be outlawed
19 for the reason I think Vice Chair Thernstrom may have
20 been alluding to, without putting words in your mouth,
21 so I'll put them in mine. I think it's deeply wrong
22 for the state through the mouth of a social worker to
23 say we know how black kids should be raised and here's
24 the orthodoxy, and we want to know if you're going to
25 toe the line. Because if you aren't, you won't get

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1 the kid. That is very different from saying we want
2 to provide education -- It has nothing to do with a
3 pass/fail test, but we would like to sensitize you.

4 I think it's great to sensitize the
5 parents. Nobody I know, and certainly not I on the
6 pro-MEPA side, believes we should be assuming a race-
7 blind world. I think that would be silly. It's a
8 world in which race is tremendously important. Of
9 course transracial adoptive parents should be
10 conscious of a whole lot of things, but having the
11 state impose an orthodoxy by saying you won't pass the
12 test unless you move, unless you promise you're going
13 to this Black church, that is wrong. If you look at
14 the record of the Ohio case, just the opinion which is
15 extraordinarily detailed and very impressive, what you
16 see is that racial sensitivity screening was used,
17 first of all, to hold disabled, seriously disabled
18 foster care kids in foster care because the social
19 worker didn't want to give that kid to the willing,
20 eager, waiting white parent. And so that kid waited
21 another six or eight months, or year or two for a
22 placement. And they waited because the answers to how
23 are you going to raise your kid in an appropriate
24 racial way were thought to be wrong by the social
25 worker.

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1 So, in conclusion, these are wonderful
2 decisions. \$1.8 million is a signal that should go
3 out loud and clear.

4 I think HHS could be doing more. I have
5 the two HHS decisions on my website, because they are
6 so hard to find. And I have been told by somebody at
7 HHS "Well, we don't want to shame states." I think
8 states need to be shamed. I think we need to
9 publicize these decisions. I think states need to
10 know that violating this law is a serious violation of
11 a civil rights law.

12 And finally, there's been a lot of
13 allusion today, this will be my final point, to how
14 things are different in the world of international
15 adoption. Things are different there. And I think
16 that the spirit that embodies MEPA is the right
17 spirit. I think the U.S. should be a leader in the
18 world in saying we're not going to allow kids to be
19 held because we conceive kids as belonging to a racial
20 group that has a right to hold on to them. So I think
21 we should be proud of MEPA.

22 I will point out to the Commission that
23 some of the regulations the U.S. Government has just
24 issued under the Hague Convention are in direct
25 violation of MEPA. They require that kids be held for

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1 two months before they can leave this country to go to
2 other countries for adoption, which is a form of
3 matching on the basis of national origin that is
4 forbidden by MEPA. And I would love this Commission
5 to look into that.

6 And although I know it's not in your
7 jurisdiction, I would love it if you could send out
8 signals to the world of international adoption where
9 millions of kids are being held in orphanages in
10 preference to being placed in international adoption.
11 Because many people think in connection with
12 international adoption as they used to think with
13 respect to racial matching inside the U.S. that ethnic
14 and racial communities should be thought of as owning
15 their children.

16 Thank you.

17 VICE CHAIR THERNSTROM: Thank you very
18 much. And you do have my implicit messages correct.

19 And again, last but not least, Linda
20 Spears.

21 MS. SPEARS: Thank you, Madam Chair.

22 It's a pleasure to be here this afternoon.
23 I am Linda Spears, and I am the Senior Vice President
24 of Child Welfare League of America. We are an 86 year
25 old organization and our focus is the development of

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1 best practice and best practice guidelines and their
2 application and implementation around the country in
3 all areas of child welfare.

4 We have been looking at this issue and a
5 variety of others in an effort to sort through and
6 sort out what is in the best interest of kids and what
7 helps them move forward. And there is, in my view,
8 much to learn and much we have already learned in this
9 nation.

10 I will say that the good news is, is that
11 I am last which means I don't get to repeat everything
12 that everyone else has said. But I will highlight
13 some points and make some of the points that I want to
14 do additionally. And, hopefully, leave a little time
15 for questions for the entire panel.

16 I believe that the Commission asked us to
17 really pay attention to the implementation and the
18 impact of the implementation of MEPA on families. I
19 think you've heard several references to the GAO
20 report, and I think that provides us with a
21 substantial framework for looking at how this question
22 really has played out, some of the data out of the
23 federal system of AFCARS, et cetera helps us.

24 I think it's important to understand that
25 the number of kids and the nature of the kids in our

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1 system have changed over the years, and that that does
2 have a direct impact on what are the strategies we use
3 to fund permanency for children in this country.

4 Since the 1970s the number of Caucasian
5 kids has dropped sharply in the U.S. Although
6 agencies continue to provide services for these
7 children, this group now constitutes a small part of
8 the population of children in need of adoption
9 planning and services. I think we know that, but I
10 want to remind us of that.

11 By contrast, the number of children in the
12 nation's out-of-home care system who need adoption has
13 grown tremendously, as we have already heard. I think
14 that there is a result, a range of social conditions
15 and policy changes that are impacting this increase
16 and the increase in the quality and the nature of the
17 needs of those kids.

18 Children have been typically exposed to a
19 range of challenging needs, in addition to the fact
20 that they are special needs by virtue of being hard to
21 place. Prenatal exposure to drugs and alcohol have
22 been referred to already. Medical fragility has been
23 referred to already. History of physical and sexual
24 abuse, being members of large sibling groups and
25 having other complicated needs which make it difficult

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1 for them to be placed without regard to which race the
2 children are from. These kids have been typically
3 difficult for us to find placements for in the child
4 welfare system around the country.

5 I think it's really critically important
6 for us to talk about this issue of disproportionality
7 in out-of-home care and in the child welfare system.
8 You heard a little bit already or quite a bit already
9 about the percentage of kids who are in the foster
10 care system and the disproportionality there. I'd
11 actually like to talk about the front door a little
12 bit so we better understand where these kids come into
13 the system and some of the impacts that are happening
14 there. Because I think that until we actually begin
15 to pay attention to the disproportionate entry of kids
16 into the system, we will not effectively solve this
17 problem.

18 The kids of color who are coming into the
19 system are coming in in many, many communities as a
20 result of disproportionate reporting, as has already
21 been mentioned.

22 I've done quite a bit of work, and this is
23 not in my testimony although the essence of it is in
24 my testimony. I've done quite a bit of work in
25 communities to help them to analyze where they're

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1 getting kids from and whether or not those children
2 are disproportionately represented across the systems.
3 And then to talk to those reporters about what they
4 are reporting and why.

5 And what I can tell you is that the degree
6 to which there is disproportionality is substantial at
7 the reporter level, before children are investigated
8 and substantiated for abuse and neglect, prior to the
9 decision of placement. There is clearly evidence that
10 those kids, that disproportionate decisions continue
11 to be made across services. But even before the front
12 door happens those kids are being identified, and this
13 goes to an earlier point about surveillance more
14 readily in the community.

15 Is that a result of racism in the
16 community? Perhaps some. But in my interviews with
17 both service providers who are Black and who are
18 white, I found an interesting thing that I could not
19 have documented before. And that really was
20 confusion, not racism, incompetence around race and
21 cultural needs of children. And an inability to
22 understand how to access services for children and
23 families of color in the community before placement is
24 needed, before abuse and neglect happens.

25 When you looked across systems, we looked

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1 at education, I looked at child welfare and looked at
2 juvenile justice. And the train of disproportionality,
3 as we all know, increases from one place to another
4 starting when children are very, very young. That
5 there's disproportionate reporting of children's zero
6 to five, that in communities where there is poverty
7 they are 50 times more likely, ten times more likely
8 to be reported for abuse and neglect as other children
9 who are comparably placed. And those kids prior to
10 entering the child welfare system were
11 disproportionately likely to have been identified for
12 special indication services.

13 If you interview those early identifiers
14 of children or who are risk, they will tell you they
15 did not know where to go or how to access the family
16 services and supports. They will tell you that they
17 did not have services for those children in the
18 community to meet their needs. They will tell you
19 that they did not feel comfortable, and this is where
20 racial competence and comfort come in. They did not
21 feel comfortable or competent to engage the family
22 effectively in helping the family sort through its
23 service and support needs.

24 This says to me that it is very
25 complicated picture for us to really unpack this

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1 question of what is it that children need and how do
2 we solve the problem.

3 All of that to say I think that what we
4 know about transracial adoption is that it can serve
5 children extraordinarily well. That no child should
6 wait. Our standards at the Child Welfare League of
7 America really call for the placements to be in the
8 best interests of children. And that agencies can and
9 should honor the birth parents' request for a same
10 race placement if it's appropriate and if it's in the
11 best interest of the child.

12 I do think that there is a significant
13 question about the difference between screening for
14 race, matching for race and understanding race and
15 culture as a factor and need and a skill area for
16 competence for children and families. And that often
17 our conversation equates all of those things as
18 coequal, and they are not coequal. We can be
19 competent around our interactions for children and
20 family as regards with race without doing racial
21 matching and without doing racial screening as
22 prohibited by the law. And that it's critically
23 important for us to look at ways that we pay attention
24 to all of those things.

25 I think for me and for the Child Welfare

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1 League the question of compliance with MEPA and state
2 compliance with MEPA with a very, very complex
3 picture. We truly believe that the answer to meeting
4 the best interest of children of color in the child
5 welfare system is to address the disproportionate
6 impact of children of color and to address the
7 comprehensive needs of kids coming into the child
8 welfare system. And that requires us, first and
9 foremost, to pay attention to prevention, early
10 intervention services and support service. And that
11 as long as we allow ourselves to be diverted from
12 attention to the things that will solve this problem
13 best, we will be on the wrong page and the wrong
14 argument. Not that there are not valid and legitimate
15 questions for us to understand about transracial
16 adoption. We really must continue to do the research
17 and to understand what this service is about and how
18 it serves or does not serve kids.

19 I think that we also need to understand
20 the treatment needs of children who are in the child
21 welfare system, and to understand what it is and how
22 it is those treatment needs are met for kids. There is
23 in the Third National Incident Study, and I'm very
24 interested in the fourth when it comes out. There was
25 a lot of evidence that there's disproportionate access

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1 to service for kids by race, both over service and
2 under service for children in the child welfare system
3 and approaching the child welfare system. The kids
4 didn't have the same access to the range of services
5 that they needed to meet their treatment needs. That
6 has to be addressed.

7 You walk into the average child welfare
8 agency in this country and they will tell you I can't
9 get mental health services, I can't get housing
10 services, I can't get basic services for the children
11 I serve. This is a barrier for those kids to be
12 placed, both return home to their families to be
13 placed in-racially in their communities if they are in
14 foster or adoptive parents, or with their kin, with
15 grandparents and grandmothers. Each and every day
16 those families are suffering from resource needs.

17 I think that the third area that I would
18 talk about is also not just prevention, not just
19 placement, but research and skill building. And I've
20 already talked about skill building. The importance of
21 research and beginning to build a knowledge base about
22 what the outcomes for children are across the service
23 areas is critical for us, and for us to pay attention
24 to the needs of children based in race and outcome is
25 really important.

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1 And I will say several folks have said
2 that prevention is critically important and that the
3 funding needs to be restructured in this child welfare
4 system in order to address that. I would say my final
5 point is the structure of this versus the needs to be
6 restructured in order to pay attention to more up
7 front services to solve this problem. And we may
8 all disagree about how that gets restructured, but I
9 think we would agree that it needs to be restructured.
10 And I'll leave it at that.

11 VICE CHAIR THERNSTROM: Once again, thank
12 you so much.

13 And once again, I'm not going to hold
14 people. Let me just ask one question and make one
15 comment.

16 I think Elizabeth Bartholet has -- it was
17 a sentence in her sentence that I thought was
18 incredibly important to hear and it has implications
19 beyond the topic we're addressing today. She said "If
20 you let race to be used a little, it will take over."
21 And that's a sentence that resonates very much with me
22 and as I said, has broader implications.

23 I am, and I guess I'll address this to
24 Professor Bartholet, what is your view of the
25 assertion made by a number of witnesses today that

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1 there is discriminatory reporting that accounts for
2 the disproportionately high number of African American
3 children that are adoption eligible? So, I mean
4 you've got Black children in this children matched to
5 the Black population about 12 to 13 percent. I don't
6 know what the population of children is, it's going to
7 be higher than that because of larger family size. But
8 in any case, if we've got up to 40 percent of the
9 children who are adoption eligible being African
10 American children, you have got a very
11 disproportionate number here. To what degree in your
12 view, because you didn't mention it but many other
13 people did, are we talking here about discriminatory
14 reporting?

15 And then I have a very kind of dump
16 question to ask of anybody who wants to answer it.
17 Where are the older children who -- I mean, where are
18 they living? What is done with the older children who
19 are so difficult to place and is there any discussion
20 of well run boarding schools for such children? I
21 mean, what are our options here and what are our
22 better options that we don't discuss, or perhaps we
23 do. I don't know. This is a topic that I don't know
24 as much about as I might.

25 So, anyway, two questions on the table.

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1 PROFESSOR BARTHOLET: I would like to
2 actually just as a preliminary matter just say very
3 briefly on the race a little, which you didn't exactly
4 ask me about but you commented, I don't want to be
5 misunderstood. Because I actually am somebody who
6 believes in some context including benign affirmative
7 action that race can and should be used in that
8 context. And since I am not a race-lined advocate, my
9 argument is that keeping kids in foster care and
10 denying placement is not a form of affirmative action.

11 You know, even if one agrees in affirmative action--

12 VICE CHAIR THERNSTROM: Right.

13 PROFESSOR BARTHOLET: -- one could be
14 against this.

15 VICE CHAIR THERNSTROM: Right. But you
16 were making a statement and this was a binary decision
17 --

18 PROFESSOR BARTHOLET: Right. Right. I just
19 know that some people who say that often take the next
20 step --

21 VICE CHAIR THERNSTROM: Right. Right.

22 PROFESSOR BARTHOLET: -- and say it should
23 never ever be used.

24 VICE CHAIR THERNSTROM: Right.

25 PROFESSOR BARTHOLET: And I just wanted to

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1 clarify that that's not where I'm coming from.

2 VICE CHAIR THERNSTROM: Right. Fair
3 enough.

4 PROFESSOR BARTHOLET: So disparate entry,
5 I'm very glad you asked me that. Disparate into the
6 foster care system and what do we do about that, and
7 how do we understand it as a phenomenon. A lot of
8 people have said it's complex to understand, and I
9 agree with that. I'm not ready to say it translates
10 as Dorothy Roberts' work would say, and some have
11 quoted that. That just because there's
12 disproportionate entry equals current discrimination.

13 You know, I believe it demonstrate that as
14 a society we've had historic discrimination. And I
15 don't believe, you know, Black parents are no more
16 genetically likely to do abuse and neglect than white
17 parents. So there's historic discrimination that has
18 resulted in a situation where Blacks
19 disproportionately are at the bottom of society, and
20 that means in unemployment and substance abuse and
21 whole set of problems that feed into the likelihood of
22 abuse and neglect.

23 I think I'm not persuaded, although I
24 can't deny the possibility, that there's some current
25 actual what you might call discrimination that helps

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1 explains, but I'm not persuaded that's it. I think
2 overwhelming abuse and neglect is a poverty related
3 problem. Now it's only poverty related. Most poor
4 people don't abuse and neglect kids, don't lose their
5 kids. So it's that if you grow up poor and you never
6 had a chance in life, the likelihood is going to be
7 greater that you're also doing drugs. 70 to 90
8 percent of the kids in foster care have parents who
9 are seriously involved in substance abuse.

10 So I think it's a historic poverty and
11 injustice and discrimination problem. But in terms of
12 today I believe almost all the kids, white and Black
13 who are removed from their parents and come into the
14 foster care system, are there as a result of serious
15 abuse and neglect. I think in fairness to the kids we
16 should be removing more kids.

17 Now I also believe in prevention. I would
18 simultaneously do more solve the rich white divide,
19 and I would early prevention. In my *Nobody's Children*
20 book I argue for early home visitation. Get to the
21 mothers when they're first pregnant and provide a lot
22 of support services. But --

23 VICE CHAIR THERNSTROM: Do you know
24 anybody who does that well?

25 PROFESSOR BARTHOLET: Yes. David Olds has

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1 brilliant, I think, both a model and research
2 demonstrating that his model of early home visitation
3 both reduces abuse and neglect, reduces second and
4 third pregnancies, gets people more likely more likely
5 and to educate mothers into education and employment,
6 which again reduced the likelihood of abuse and
7 neglect. And actually his home visitation model when
8 directed at relatively poor populations, his research
9 shows it's cost effective within five years because of
10 the savings in welfare costs.

11 Now the rest of the home visitation
12 research, nobody can come up with research like David
13 Olds that proves it works. So that either means his
14 research is better or his model is better, or both.

15 VICE CHAIR THERNSTROM: And is this model
16 very expensive?

17 PROFESSOR BARTHOLET: It's cost effective
18 in five years. So it's expensive. He uses
19 paraprofessionals. But within five years -- he's now
20 trying to take this to scales throughout the country
21 by going to the public entities, states and saying if
22 you adopt this, you will save money within five years
23 because I can show you it works. It will get people
24 into employment, off of welfare. And this isn't even
25 taking in account the reduction in abuse, neglect,

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1 juvenile justice, adult criminal system, long term
2 costs. This is within five years basically welfare
3 cost savings.

4 So, yes. I mean, I've written up his
5 research in *Nobody's Children*, although there's more
6 recent. That books came out a handful of years ago.

7 So I believe in early prevention. I
8 believe also in the way early, just clean up our
9 society and make it more just.

10 I'm a real skeptic, though, about saying I
11 think what Linda Spears and some others have been
12 alluding to, that we should just do more family
13 preservation now. That if you look at the family
14 preservation research, meaning the late stage, we have
15 certain families we're about to or we might consider
16 removing the kids because they've been seriously
17 abused and neglected, but shall we keep them at home
18 because we can provide services. If you look at even
19 the model programs doing that type of -- and even the
20 intensive family preservation research, there's a
21 social worker on your door step sort of 24/7, the
22 research doesn't show it works. The research shows
23 that the kids continue to be abused and neglected at
24 home at essentially the same rates they were before
25 these services were poured in.

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1 So I don't think if you wait until
2 families fall into very serious dysfunction, which is
3 I think what's happened with most of the kids we're
4 now removing, I think it's significantly too late. And
5 that what we should be doing, what Congress' Adoption
6 and Safe Families Act pushes in the direction of,
7 which is a fairly short window of time; 12 months to
8 get the act together, 15 out of the prior 22 months
9 child welfare agencies are mandated to move to
10 termination unless the kid's in kinship care.

11 So I think we should do more up front
12 early, early to do prevention. But then I think most
13 of those kids who are coming in are abused and
14 neglected kids. And isn't it an issue of current
15 racial discrimination that's bringing them in. It's
16 abuse and neglect. And that in my view it would
17 discrimination against these kids if we said let's
18 just keep them at home.

19 VICE CHAIR THERNSTROM: I know Linda
20 Spears, who has something to say. And my other
21 question where are the older children.

22 PROFESSOR BARTHOLET: And what should we
23 do with them?

24 VICE CHAIR THERNSTROM: And what should we
25 do them?

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1 PROFESSOR BARTHOLET: Yes.

2 VICE CHAIR THERNSTROM: And is there such
3 a thing, I mean this is pure ignorance on my part.

4 PROFESSOR BARTHOLET: Yes.

5 VICE CHAIR THERNSTROM: But is there such
6 a thing like boarding schools that are well run?

7 PROFESSOR BARTHOLET: Yes. There are a
8 number of people today who are saying that we have so
9 many older so damaged, hard to place, some of them may
10 not even really be able to function in a family
11 because they're damaged that we ought to be doing more
12 in the way of institutions. And, of course, this
13 country does have institutions already, including
14 institutions with infants in them.

15 VICE CHAIR THERNSTROM: Well run?

16 PROFESSOR BARTHOLET: You know, I just had
17 Chuck Nelson, a brilliant Harvard medical person who
18 does early brain development who said what I think
19 most good experts have said for years, that there is
20 not an institution that works well for kids. Now, is
21 it what we have to do if we have failed so horribly
22 that we have kids who are so damaged that they can't
23 function in families? It may well be the best thing
24 for some of these kids. But my answer would be for the
25 future we ought to take ASFA seriously, Adoption and

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1 Safe Families Act. We ought to be moving sooner to
2 get kids out of abuse and neglect households into
3 foster care. We ought to be saying to the families
4 we'll put you priority access into substance abuse
5 treatment programs, but if you're not off drugs in a
6 year, you lose the kid. We move those kids on faster.
7 You wouldn't have this problem of the older damaged
8 kids.

9 And I think if you wait until kids are 15
10 and they've been through multiple damaging experience,
11 you know, yes there are miracles. But most of those
12 kids are going to have a really tough time, no matter
13 what you do with them.

14 VICE CHAIR THERNSTROM: Yes.

15 Linda?

16 MS. SPEARS: Yes. My point actually
17 wasn't about family preservation services at all. My
18 point was that in fact many of the families that are
19 identified at that front door and do get into the
20 child welfare system, that if you count back several
21 service point attempts at access over the course of a
22 child's lifetime, that by the time they've gotten to
23 the child welfare you may in fact have sustainable
24 abuse and neglect and real serious harm. But that if
25 you look back and interview informers and reporters

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1 when they first identified a need for service to the
2 family, that need often went unmet or undermet.

3 To me the thing we really need to look at
4 is from that point all the way forward to the front
5 door and through it.

6 VICE CHAIR THERNSTROM: Yes.

7 DR. McROY: In addition to the lack of
8 resources and support services for many of these
9 families, one of the reasons that poverty is linked to
10 this is the fact that impoverished birth families
11 don't have the access to the same kind of legal
12 representation more well to do families may have which
13 can get them out of this situation and keep their
14 children from being removed. If they had more
15 resources, in many cases they would not be in this
16 situation, number one. One of the most successful
17 prevention programs is family group conferencing
18 that's happening on the front end in which families
19 are brought together as part of the team along with
20 social workers to identify strategies to keep the
21 children from going into the system into the first
22 place. An example of that is Point of Engagement, a
23 model in Compton, California which has significantly
24 reduced the numbers of children that are coming in.

25 If a lot more is done on the front end,

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1 particularly identifying family members as resources,
2 these children would not end up coming into the system
3 and then moving from place to place.

4 I interviewed a young person just a couple
5 of weeks ago who has been in 38 different foster
6 placements. So when you start thinking about what
7 happens within our system, sometimes it can be even
8 more abusive than the original family ever could be,
9 number one. As I mentioned earlier, the majority of
10 the children are coming in because of neglect,
11 parental neglect. And if resources were available,
12 such as treatment, support services, child care, and
13 jobs, this would not be the problem.

14 You asked where are the older children.
15 Some of them are in group care. Some of them are in
16 foster care. Some are in residential.

17 Twenty to 25,000 children age out of the
18 system each year. Those children still wish they had
19 families.

20 VICE CHAIR THERNSTROM: Yes.

21 DR. McROY: If we could do more on the
22 front end to try to prevent kids from coming in and
23 then more rapidly connect them with families, using
24 all the strategies, implementing the requirement of
25 MEPA to recruit families, and then to encourage

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1 agencies to reach out to those programs that have been
2 extremely successful, and in fact have waiting lists,
3 of minority families wanting and waiting to adopt. We
4 need to also continue to examine what happens to
5 children who come into the system and to examine what
6 we do to prevent children from ever making that entry
7 into our troubled child welfare system.

8 VICE CHAIR THERNSTROM: And how are the
9 families identified who you've described as working
10 together to prevent children ever entering the system?

11 DR. McROY: That's in the areas that have
12 family group conferencing to decision making; that's
13 the program, that's the intervention that offered at
14 the very beginning?

15 VICE CHAIR THERNSTROM: Yes. It was
16 Compton, California, was it?

17 DR. McROY: Yes. Well the Point of
18 Engagement is the one that's referred to in Compton,
19 California in which the moment there's a call, say
20 from a hospital about a child who may have been
21 prenatally exposed to drug or alcohol, a team goes
22 out.

23 VICE CHAIR THERNSTROM: I see.

24 DR. McROY: And then they meet with the
25 family and begin to identify resources within the

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1 family or within the community. Often that child
2 never enters the system.

3 VICE CHAIR THERNSTROM: I see. Okay.
4 That's good.

5 PROFESSOR BARTHOLET: Two comments. One
6 on the neglect. Because there are a lot of people who
7 say oh the majority of the cases are neglect. By
8 definition that shows over intervention and we're
9 removing kids for poverty. The majority of the cases
10 are neglect, but my contention is that overwhelming
11 the neglect category is a serious neglect category.
12 That this is not, you know, dirty houses and social
13 workers with white gloves. Overwhelmingly this is
14 serious substance abuse and kids who are not being
15 raised. And I believe. Now that is a contended fact.

16 But I don't want you all to just accept without
17 realizing it's highly contended that neglect means
18 they shouldn't be removed.

19 Kids die from -- kids in the neglect
20 category die as a result of neglect at a higher rate
21 than kids in the abused category, just as one little
22 factoid.

23 The other comment I want to quickly make
24 is family group conferencing, the idea that well we
25 should accept that it's working because it might

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1 reduce the number of kids removed from their families,
2 family preservation people are constantly saying let's
3 make the criterion for success do the kids stay in the
4 family. Well that in my view isn't success if the
5 kids continue to be abused and neglected. Intents of
6 Family Preservation Services research, that's the
7 claim they tried to make in the beginning; look how
8 successful we are, we're keeping the kids in the
9 family. The research showed the kids were continuing
10 to be abused and neglected at the same rate.

11 So I don't--- you know, of course it makes
12 sense to talk to family members. But to say that we
13 know it's working because now we just turn it over to
14 the family to decide what happens. I mean, you know,
15 abuse and neglect tends to be an extended family
16 problem. And it's always true -- and that's why I'm
17 also a little skeptical about kinship care. Of course
18 you'd want the grandmother to raise the kid if the
19 grandmother was the great grandmother. But very often
20 the grandmother produced the kid who was abused and
21 neglected, who abused and neglected the grandkid.

22 VICE CHAIR THERNSTROM: Right. Right.
23 Other questions, not about this.

24 PROFESSOR BARTHOLET: We go on all
25 afternoon. But we won't.

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1 DR. McROY: I thought we should just
2 clarify that we were not all in agreement.

3 PROFESSOR BARTHOLET: There was an
4 agreement, but there wasn't --

5 VICE CHAIR THERNSTROM: Let me amend that
6 statement. There is more agreement than I expected.
7 I'll amend it to that.

8 Yes, Mr. Atwood and then Commissioner
9 Taylor.

10 MR. ATWOOD: I'd just like to comment on
11 everything that everybody just said -- just kidding.

12 Not much to add except one thing I will
13 highlight for you. That the emphasis on restructuring
14 the foster care financing system for purposes of
15 providing better for early intervention services, that
16 is a common agreement. I'm not sure that it's
17 something that you were expecting or needed to hear on
18 the Commission on Civil Rights, but it is --

19 VICE CHAIR THERNSTROM: No, it's
20 important.

21 MR. ATWOOD: It is something that we are
22 all pushing very hard for in the adoption and child
23 welfare community.

24 This pertains to the front door to this
25 comment, I want to pick up something that my good

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1 friend and colleague Joe Kroll said about community.
2 And I thought that I want to agree with part of it and
3 I want to maybe distinguish myself a little bit on
4 another part of it. But the part that I agree with is
5 that in determining the best placement at the front
6 door for a child, community is a great question to
7 ask. I mean, trying to find a placement within the
8 community, it's familiar to the child. So that is
9 clearly a factor that should be highly considered in
10 making the placement.

11 Professor Bartholet just pointed out the
12 fact that it can sometimes be, you know, throughout
13 the family that this problem is, so you need to be
14 careful when you make that placement within the
15 community or within the family that you're not leaving
16 the child vulnerable to further abuse.

17 But the other point I wanted to make is
18 that considering community in your placement is not
19 considering race. Those are two different things. I
20 mean, the community may have a preponderance of a
21 certain race within it or it may not. So what we're
22 talking about when we're saying consider a community
23 placement, we're saying consider a placement that is
24 within a familiar place. We're talking about physical
25 place there really. We're not talking about race.

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1 VICE CHAIR THERNSTROM: Fair enough.

2 Commissioner Taylor?

3 COMMISSIONER TAYLOR: A quick question. I
4 wonder, everybody's talked around this issue, but I
5 always come to these Commission meetings starting from
6 the point, that is active discrimination, is it
7 present. And on the disproportionate entry question
8 I've heard I think cultural ignorance, I think I have
9 heard historical discrimination which I put parent
10 inactive close paren. I put poverty related.

11 My question is do we have a consensus as
12 to the cause and effect between this disproportionate
13 entry and active discrimination? And I ask that
14 question because of the answer is no we don't have a
15 consensus on that point, that goes to what I have
16 already prepared for this meeting with respect to the
17 view in the African American community about what
18 social workers are doing, breaking up Black families,
19 et cetera.

20 So my question is to the experts do you
21 all see this disproportionate issue as being linked to
22 active discrimination?

23 MS. SPEARS: I can tell you I don't
24 believe it's that simple. That I believe that all of
25 the above exists. That there may be active

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1 discrimination. There may be ignorance and inability.
2 There may be institutional and long term and cultural
3 legacies that we're dealing with. In my view all of
4 the above exists at some level. And the degree to
5 which any one of them exists, I'm not sure we know the
6 answer to.

7 DR. McROY: A lot of times we are making
8 decisions about bringing children into the system
9 based upon stereotypes of families. And it's those
10 stereotypes that lead a worker, for example, to bring
11 in one child and not another child; stereotypes,
12 generalizations about families, especially low income
13 families of color. And that has been identified as a
14 major issue. This is something that's happening and
15 has been, of course, addressed by the GAO very
16 recently looking at the interaction of different
17 factors that lead to the disproportionate entry of
18 children into the system; and then once they're in the
19 system, the disparities that occur in terms of
20 likelihood of reunification with their families and
21 likelihood of adoption.

22 COMMISSIONER TAYLOR: And what's
23 interesting to me on that point, though, is going back
24 to what Ms. Spears said on the post-entry interview
25 when you interview the Black social worker and the

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1 white social worker, I thought I heard you say and
2 I've heard this before, that you didn't see a
3 difference on those questions. You couldn't track a
4 trend line so when the white social worker walked in
5 you saw that cultural incompetence. So what I'm
6 wondering what explains it? If it's cultural
7 incompetence and you can't directly relate it to a
8 Black social worker and a white social worker, they
9 end up with the same trend lines, what does that say?

10 If it really --

11 MS. SPEARS: To many people there's a
12 stereotypes of Black or white. Whether they're Black
13 or white. That a lot of workers, for example, if you
14 look at physical discipline for example. You will
15 find in many communities workers extremely challenged
16 to understand how to make decisions about the use of
17 physical discipline in communities of color. They are
18 extremely challenged by it, both Black and white. And
19 some of that is about Black, about the interaction of
20 Black of race in class, some of that is a training
21 issue. But workers will both in the same system use
22 the same stereotype to make opposing decisions. That a
23 Black worker or a white worker will screen a case in
24 this physical discipline because the person is Black
25 and/or the child is Black or vice versa. That they'll

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1 excuse the behavior because their perception that it's
2 acceptable in the community.

3 So to me it's a very complicated question
4 that there are not easy answers to.

5 PROFESSOR BARTHOLET: And I'd agree with
6 that. But I just want to take a stab at the question.

7 I mean, I believe that conscious and
8 unconscious racism exists throughout our society. So I
9 can't say but not in this area.

10 DR. McROY: That's exactly right.

11 PROFESSOR BARTHOLET: I mean, you know,
12 it's going to exist in this area like it exists in
13 other areas.

14 Now in this area, though, I would say two
15 things. You know, I think it's small compared to the
16 larger phenomenon. I think it's a small explanatory
17 factor, likely to be -- nobody can say how much it is,
18 but I think it's likely to be small.

19 Secondly, I think it may looked at from
20 the child's point of view be an example of pro-Black
21 child discrimination. I think we're under
22 intervening. so, you know, if people tell me that in
23 some drug situations we're more tolerate of the white
24 substance abusing parent and we're not testing, which
25 is true, we're not testing in the wealthier hospitals.

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1 And now is that discrimination, is that impact? What
2 do you want to call it. But we're disproportionately
3 testing Black substance abusing mothers because
4 they're in the poor hospitals where we're doing the
5 testing.

6 Okay. So maybe we're disproportionately
7 likely to intervene at birth with respect to those
8 kids. Now to me that is pro-Black child
9 discrimination because those kids to take a drug
10 effected child at birth and send that child home with
11 a drug abusing parent is a prescription for disaster
12 for the child.

13 So, you know, I think this notion of
14 discrimination, the way most people are using it, is a
15 completely parent oriented concept. Where the notion
16 that if we do disproportionately intervene, this is
17 hurting Black parents. Well, if we think abuse and
18 neglect is actually going on, you know it may be that
19 we're not protecting white kids as much as we ought to
20 be.

21 DR. McROY: One thing that's important is
22 that this issue of disparities is not unique to child
23 welfare. The same kind of issue comes up in terms of
24 the criminal justice system, it comes up in health
25 care, it comes up mental health. The Surgeon

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1 General's report that specifically looked at
2 disparities in mental health included the provision of
3 case scenarios to physicians all over the country, the
4 same case description, the only thing different was
5 the race of the client. And this, along with many
6 other studies, have proven that often we make
7 decisions based upon a descriptor, often that
8 descriptor being the race of the client.

9 The other issue has to do with under
10 utilization. You mentioned earlier you were asking
11 about Asian community and why there's Asian under
12 representation. And that, too, has been raised as an
13 issue in terms of the stereotypes sometimes that is
14 leading one group to come in disproportionately and
15 one group not to come in at the same level. So that's
16 another issue.

17 This is something that is happening in
18 many different systems. It has to do with cultural
19 competence. Some states are requiring workers to take
20 a course called Undoing Racism to begin to address the
21 historical and negative perceptions and stereotypes
22 that have led to different outcomes in this case in
23 the child welfare system.

24 VICE CHAIR THERNSTROM: We need to wrap up
25 here unless other people have urgent questions.

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1 COMMISSIONER MELENDEZ: I just have one
2 final question for anyone. How can race and ethnicity
3 be talked about perspective families for adoption?
4 And then secondly, are there examples you know where a
5 state social service provider is both complying with
6 MEPA and doing a great job with educating family about
7 the race and ethnicity issues?

8 PROFESSOR BARTHOLET: Oh how? I mean, I
9 think legally it can be talked about under MEPA if you
10 really separate screening for purposes of pass/fail as
11 a parent, you know, and even for purposes of which
12 child you'll get. If you make it a pure education
13 that has no sanction for the prospective parent, you
14 could talk about race.

15 I think also agencies have to do it in a
16 way that isn't specifically separating out transracial
17 parents. So if you separate transracial parents out
18 and give them extra education, they have to go through
19 what other people don't, I think that's illegal under
20 MEPA.

21 So, yes, agencies are now pushed to kind
22 of put everybody together for this racial training
23 rather than separate the transracial parents out. And
24 I actually think that's good. You know, if we think
25 people need this kind of racial education, why do we

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1 think only the transracial parents need it? Why not
2 have everybody have it.

3 And I also think you'd get much more
4 interesting varied answers from the prospective Black
5 parents than you would from the social workers as to
6 what's the right racial way to raise your child.

7 So, you know, that's what people are
8 complaining about that's going on now. It's not like
9 the HHS, I don't believe, is telling anybody they
10 can't do this. They're telling them you can't just
11 separate out the transracial parents and say you've
12 got to go through this special thing, you have to do
13 it for all the prospective parents. So, yes, it can
14 be done but in that context.

15 MR. ATWOOD: The parent education should
16 be taught for anyone adopting out of foster care and
17 generally is taught. There are additional challenges
18 that children in foster care can present to adoptive
19 parents. And so they need to be advised regarding
20 those.

21 The way I would summarize the types of
22 discussions that can occur between agencies and
23 prospective adoptive parents on the subject of race
24 would be summed up in two concepts. One is parent
25 education, which is regarding the additional

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1 challenges that can present themselves in the case of
2 transracial adoptions. And the other is parent self-
3 assessment. Asking questions of the parents that they
4 are expected to consider themselves as to whether they
5 are suited for a transracial placement. And both of
6 those things are covered explicitly in the HHS
7 comments on what parents can do.

8 I'll read, if I might, two examples. One,
9 HHS says "Prospective parents should be offered
10 typically through training provided by an agency
11 information sufficient to confirm or broaden their
12 understanding of what types of children they might
13 most appropriately provide a home for."

14 And then another one is "Agencies are not
15 prohibited from discussing with prospective adoptive
16 and foster parents their feelings, capacities,
17 preferences regarding caring for a child of a
18 particular race or ethnicity." They're not supposed
19 to steer the parents with this. They're not supposed
20 to screen parents with this. It needs to be an
21 educational activity.

22 DR. McROY: And many agencies are
23 reluctant to offer that for fear that they will be in
24 violation of the law, just as they often are not
25 complying with the legislation which requires agencies

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1 to recruit families that reflect the diversity of
2 children in care for fear that they will be seen as
3 taking race into consideration. So therefore, they
4 opt just not to do it. But think for a minute about
5 the significance of considering race. Let's say an 8
6 year old African American child who comes from an
7 African American birth family, then is placed in four
8 or five ethnically different foster homes. Now the
9 child is soon to be placed in a White adoptive family,
10 Will that child have any adjustment issues related to
11 race of family? Might that family have some concerns
12 about how to address the child's issues of racial
13 identity, as well as loss from moving from one place
14 to another to another. Should the family be prepared
15 for that? Should the child as well?

16 We talk about family preparation, but what
17 about the child? Should the child be prepared for
18 going into a family that is totally different from any
19 environment that he's been in before? The answer I
20 would think is yes. Of course. How could we not
21 prepare that child and that family so that that
22 placement is successful?

23 MS. SPEARS: And I would just want to add
24 one really quick thing, and that is that in that
25 context I think it's important for us to remember that

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1 skill required to take care of the children in the
2 child welfare system is not shallow, it's deep in all
3 areas. And that these kids needs -- they need the
4 baseline training. Every family needs baseline
5 training around mental health issues, around
6 separation and loss, around cultural issues, et
7 cetera. And the families who are dealing with
8 intensively needy kids in any area need the
9 specialized and additional skills to support that
10 child's needs. And that's, I think, the way we should
11 drive the way we look at this.

12 VICE CHAIR THERNSTROM: Well, I'm going to
13 arbitrarily -- I mean, we could talk about this
14 forever. It is really is an utterly fascinating
15 topic. I'm so glad we held this briefing today. I
16 want to thank everybody in the room who participated
17 in it. And the conversation will not be at an end,
18 obviously.

19 So, again, many many thanks. And we'll
20 bring this to a close.

21 (Whereupon, at 1:36 p.m. the briefing was
22 adjourned.)
23

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