

CCR
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Meet.
188.2
V.3

1 UNITED STATES COMMISSION ON CIVIL RIGHTS

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3 LIBRARY
4 U.S. COMMISSION ON CIVIL RIGHTS
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6 THE ANNUAL
7 STATE ADVISORY COMMITTEE
8 CHAIRPERSON'S CONFERENCE
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14 Volume III

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16 Friday, June 28, 1985

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18 Washington Hilton Hotel
19 1919 Connecticut Avenue, N.W.
20 Washington, D. C. 20009
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22 The above-described meeting was convened, pursuant
23 to notice, with Mr. Max Green presiding as Chairperson.
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P R O C E E D I N G S

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2 CHAIRMAN GREEN: This morning we will have
3 Terry Eastland speak to us. He is the chief spokesman for the
4 Department of Justice and an expert in his own right in the
5 area of civil rights.

6 He is the co-author of an important civil rights
7 book, Accounting by Race, Equality from the Founding Fathers
8 to Bacche-Weber, a book which he co-authored with
9 Bill Bennett of the Department of Education.

10 Terry this morning is going to be speaking on what
11 the Administration has been doing to further the cause of
12 civil rights since President Reagan was elected in 1980.

13 Terry.

14 [Applause.]

15 MR. EASTLAND: Thank you. And thank you, Max.

16 I think it was Justice Frankfurter's wife who once
17 said that the Justice typically made two mistakes when he
18 would speak. The first was to depart from his text and the
19 second was to return to it.

20 This morning I hope I will not make either of those
21 mistakes. I have no text.

22 Instead, I thought what I would do was try to fill
23 the mandate of this morning's program by sharing with you, I
24 guess, in the course of 15 or 20 minutes, what the
25 Administration's policies are and what we have been doing in

1 regard to civil rights.

2 Then I thought we would just take questions from
3 there as they come.

4 When Max called me and asked me to do this a couple
5 of months ago, I recall a philosophy professor I once had whom
6 I asked with regard to a test we were about to have.

7 I said, "What are we going to be responsible for on
8 this test?"

9 And he said, "Responsible? Why, in philosophy, you
10 are responsible for the whole damn universe."

11 I feel somewhat like that today inasmuch as civils
12 rights has come to implicate so many subjects that I may feel
13 somewhat responsible for almost everything we do in the
14 Administration.

15 However, my own area of knowledge is primarily at
16 the Department of Justice where I have been for the past two
17 years with the exception of several we have spent at the
18 Department of Education where I was assisting Bill Bennett
19 during his transition.

20 However, as all of you here are quite well-aware,
21 the Federal Government has quite a few statutes regarding
22 civil rights and many of the federal departments and agencies
23 have enforcement responsibilities including the Department of
24 Education, the Department of Labor, the Department of
25 Transportation -- to name just several -- and, of course, the

1 EEOC.

2 This morning I thought I would like to focus on the
3 Department of Justice and what we have been doing in
4 particular.

5 Toward that end, I thought I would begin this
6 morning by going over some of the areas and what we have been
7 doing, just to try to give you a sense of some of the vital
8 statistics.

9 One of the areas in which we have been particularly
10 active has been in the area of criminal civil rights
11 violations. This is an area in which we have been especially
12 concerned since 1981. I think it is fair to say that we have
13 been more active in this area than any previous
14 administration.

15 The area here deals with racial violence,
16 policemen's conduct, the abuse of aliens and migrant workers.
17 We have brought 195 criminal civil rights prosecutions.

18 Our criminal section -- the way the process works,
19 our criminal section as well as the U. S. Attorney's Office
20 has screened about 10,000 complaints a year.

21 It is after this screening process that the FBI then
22 will conduct investigations and we routinely investigate, I
23 think, 3,000 to 3,500 investigations each year.

24 It is probably a little bit easier to make this a
25 reality as to what we are doing by describing at least a case

1 or two.

2 One of the maybe more dramatic instances of what the
3 Federal Government can do and what we have done occurred a
4 couple of years ago in a case involving a jazz musician who
5 happened to be black. He was in Kansas City. He would play
6 his instrument at night often in a city park. He happened to
7 be accosted one night and was beaten and clubbed to death, as
8 it happened.

9 The state authorities there tried to prosecute those
10 who did this and they were acquitted of those charges.

11 We were able to go in behind that, charge the
12 individual and he is now serving a sentence of life
13 imprisonment.

14 Again, this is what the Federal Government, I think,
15 is uniquely positioned to do, is to be able to go in and see
16 that justice is done in a particular case. That is one
17 example of our efforts in the criminal civil rights area.

18 Let me turn to another area of our responsibility,
19 dealing with public employment. Sometimes people think the
20 Justice Department deals with all the employment cases. We do
21 not -- or at least we do not have primary responsibility for
22 all of them.

23 We have primary responsibility for public employers,
24 that is, governmental entities -- state and local
25 governments. Typically here we are speaking of police and

1 fire departments, county governments, city governments and not
2 private employers, although we do, of course get some private
3 employee cases that come to us through other channels.

4 In this area, we have filed or we have intervened as
5 parties since 1981 in 54 suits. This compares favorably, I
6 think, with the previous Administration which had a level of
7 activity that was comparable. It had 51 employment cases, 10
8 of those, by the way, being amicus participation, or friend of
9 the court participation.

10 I think that sometimes figures maybe do not tell us
11 all that we need to know. We need to know, for example, how
12 many violations, total, there happen to be in the country
13 regarding anything.

14 As the Attorney General says about marijuana, "We do
15 not get crop reports on marijuana so we do not know how much
16 is being eradicated."

17 Similarly, with something like this, again, in law
18 enforcement, you will not know how many cases are out there or
19 how many instances of incrimination there might be but
20 nonetheless, we have been as active here as the previous
21 administration has and I would like to point out several
22 things that we have done in these cases.

23 Our approach in each of these cases since 1981 has
24 been to ask several things when we find a violation.

25 Now, the first thing we ask for, of course, is an

1 immediate halt to all the discriminatory conduct on the part
2 of the employer.

3 The second is that we ask for make-whole relief for
4 each individual against whom there has been discrimination and
5 that is, we want to see each individual placed or returned to
6 the place -- put in the place he would have or she would have
7 been in, but for the discrimination, whether that is in terms
8 of hire or promotion.

9 This has been the, again, the make-whole relief, the
10 effort to make an individual whole again who has been
11 discriminated against.

12 As well, we seek back pay. This may be part of the
13 make-whole relief. Here again, the effort is to find out how
14 much pay might be awarded to a particular individual.

15 I might note here that in Fairfax County, Virginia,
16 which is a neighbor here of Washington, D.C., in 1982, a case
17 that had been in the works for several years, we managed to
18 there negotiate the largest back pay settlement in any
19 government, any Justice Department decree at least to date.

20 I think the award in that case was almost -- well,
21 it was \$2.75 million, I believe. There were 685 individual
22 recipients total over these four years -- now five years, I
23 might add -- that there has been nearly \$11 million in total
24 back pay awards to individuals.

25 Again, this is all in an effort to make whole those

1 people who have been victims of discrimination.

2 As well and importantly, I think, in this area, we
3 have been seeking affirmative action. We have been seeking to
4 make a difference in the personnel and employment practices of
5 the public employer who was, in this case, guilty of the
6 discrimination.

7 I say we are trying to make a permanent change. As
8 you all know and are quite aware of, in prior administrations
9 there often was an effort to use goals or quotas -- in any
10 event, numerical devices.

11 We have not sought that as a remedy for
12 discrimination. Quotas and goals, we believe, are often
13 temporary expedients. I do not know of anyone -- well, maybe
14 a few who defend those numerical expedients as a proposition
15 that will extend into eternity.

16 Most often it is said, "This is only a temporary
17 expedient and we will abandon it at some point."

18 It is often the easy way to go, just to pick out by
19 numbers and by race, "To count by races," as one book calls
20 it. But we believe that we need to make -- and we try to
21 make-- a permanent impact upon the work force.

22 We can do that best by not going the easy route, and
23 what we judge to be the immoral route, but, rather, to go
24 directly to the employment practices and to try to change
25 those.

1 Now, what do we do?

2 Well, we do this. We insist on enhanced
3 recruitment, an active recruitment effort that casts a net, as
4 it was said earlier on in the Kennedy Administration, far and
5 wide and try to seek out every individual who might be
6 interested in the particular jobs available and might have
7 some of the threshold qualifications.

8 So we have tried to make sure that in these cases --
9 and by the way, we have entered into more than 40 consent
10 decrees during the past four years where we have been seeking
11 this kind of relief -- we have tried to make sure that the
12 employers make this enhanced recruitment effort.

13 This, again, is the -- these are the basic facts and
14 figures in the employment area. I would be happy, of course,
15 to focus -- for those who want to do it -- a little bit later
16 on on the Stotts case and on its implications.

17 The third area that I will touch on briefly is the
18 voting rights area. As all of you are quite well-aware, we
19 have the authority of the Justice Department for enforcing the
20 voting rights which was enacted in 1965 and amended, in
21 particular, in regard to Section Two, in 1982.

22 We have several different types of enforcement
23 activity and responsibilities under the Act itself. I might
24 add that, under Section Five, we must review all of the
25 submissions by each of the covered jurisdictions in the

1 country.

2 That is, the counties, the states, the cities,
3 whatever change or whichever changes they wish to make and how
4 they elect or anything related to voting must be cleared
5 through the Justice Department.

6 Typically after censuses are taken, there is quite a
7 business because often, as many of you are aware in your
8 particular states, there are the redistricting efforts at that
9 time.

10 We have had a tremendous volume in the Section Five
11 area. The sheer volume is suggested by the numbers, again.
12 The last numbers I had here indicate that we had looked at
13 50,322 voting changes.

14 We happened to object to the implementation of 266
15 of those changes.

16 Again, the complexity of these vary. Some of them
17 are very routine submissions. Some of them involve
18 annexations in more complicated situations and so that does
19 take some more time, some more man-hours of work.

20 We also have been active in the area of the new
21 amended Section Two, where we have been involved, both
22 defending the Act and enforcing the Act -- or at least that
23 portion of it. There is a unit of lawyers who have been very
24 active in that area.

25 Let me move to the public education area. This is

1 one area in which our filings are probably not as impressive
2 in number as maybe in some of the other areas.

3 There is, I think, a good explanation for that. I
4 think most every county in Mississippi, for example, has been
5 in litigation and eventually under court order and you, at
6 some point, tend to run out of places to find discriminatory
7 activity in a particular school district.

8 Many of the states where there have been problems in
9 this area over the past 20 years have been litigated and have
10 come under court decree; either private parties have done the
11 litigation or the government has, as many of you are aware.

12 We have brought several suits here, three as a
13 plaintiff. We have intervened in another. We filed as a
14 friend of the court in still another. Several additional
15 suits have been proposed and we have several more
16 investigations -- I think the number is 11 -- that are
17 currently underway.

18 We have sought some supplemental relief in three
19 particular cases, Americus in Sumpter County, Georgia, for
20 example, Lawrence County, Missouri and in Conoco County,
21 Alabama, where we have sought supplemental relief.

22 We have obtained in all, I think, 17 consent decrees
23 and, again, many of a number of these cases are cases that
24 have been continuous over the years with the Department.

25 There is, as well, in this area, I should mention

1 the remedies we have sought in this area.

2 As with the public employment area, here we have
3 tried to make a permanent change in the way schools approach
4 the problem of desegregating a school district. Once again,
5 busing has been -- at least it was viewed in previous years as
6 a temporary measure, something that we could move beyond at
7 some point.

8 We are not persuaded that busing is something, in
9 some jurisdictions, that will be ended. We have tried to
10 insist, rather, upon other devices that would desegregate the
11 schools and do so on a long-term basis that would provide
stability for the school systems.

13 We have sought magnet school plans. We have sought
14 boundary adjustments where they are useful. We have tried to
15 find incentives for voluntary transfer of students.

16 This has been an approach that we believe works. We
17 have found that in cities such as Chicago and Bakersfield that
18 these plans -- and also in Odessa, Texas -- that these plans
19 have won community approval and it seems, at least on the
20 evidence so far, to have been working well.

21 The Fair Housing Act is another act that we have
22 some responsibility for. So, of course, does the Department
23 of Housing and Urban Development. We, in this area, had an
24 administrative problem that we had to correct early on.

25 In the previous administration, because of some

1 administrative shifts of responsibility, housing cases were
2 farmed out to the U. S. Attorneys toward the end of the Carter
3 Administration and were not done in our own office.

4 It was determined that we should change that and
5 bring the focus back into the front office for the housing
6 cases. Our enforcement activity declined. It was declining
7 in the last years of the previous administration. It was low
8 in the first couple of years of this administration.

9 In recent years it has been increasing. In fact, in
10 November of 1983, it was decided to reorganize our effort and
11 we have been well-pleased with the results so far.

12 During the past 16 months we have filed 29 new
13 housing complaints under the act and we have another 11 more
14 cases that are authorized to be filed and several in the
15 negotiation phase.

16 I might add, too, that in this area we see the need
17 for some more legislative change. We, last year, endorsed a
18 bill regarding Fair Housing. There were, in fact, I think two
19 bills on this. Neither passed. We expect some more activity
20 on this this year.

21 Our bill would give us the authority which we do not
22 have to sue. It would give us the ability also to seek
23 stiffer penalties for violations under the Fair Housing Act.

24 I would like also to talk a little bit about our
25 responsibilities under what is known as CRIPA, the Civil

1 Rights of Institutionalized Persons Act. Under this act,
2 which was passed in 1980, the intent behind the act is to try
3 to resolve a particular problem short of going into court.

4 We have taken that approach but we have also, where
5 necessary, gone into the courts. We have filed seven suits so
6 far to enforce the Act. There are some 22 further
7 investigations that are pending at the moment.

8 We have obtained a number of consent decrees, five
9 in all and there have been voluntarily submitted remedial
10 plans in 14 other instances.

11 Finally, I might add, in addition to these areas of
12 activity, several others. We have in the Department a
13 coordination and review section which works with other federal
14 agencies, some 91 in all, in trying to develop and publish the
15 regulations that would protect the rights of handicapped in
16 federally-conducted programs covered by the relevant portion
17 of the act here, Section 504.

18 We also have focused in particular on the
19 enforcement of the civil rights laws as they relate to Native
20 Americans. We have successfully challenged several voting
21 systems in the southwest where we believe that they have
22 resulted in discrimination against Indians and we are
23 currently litigating an employment discrimination case against
24 the City of Gallup, New Mexico.

25 We have obtained court decrees under the Equal

1 Credit Opportunity Act protecting Indian victims.

2 Finally, I might add, we have an active appellate
3 program at the Department. This is not a particularly active
4 year for us in the Supreme Court, unlike last year, which had
5 a very heavy load.

6 We have taken a position on the merits of a
7 particular case in some 31 cases over the past five years
8 now. In 22 of these we were pleased to see that the court
9 agreed with our position.

10 Some of these are familiar names now. One is
11 Stotts, which was decided last year. Another, maybe less
12 familiar one which we will talk about in a moment, is Palmore
13 versus Sadatti, also decided last year.

14 But this is an area in which things tend to
15 fluctuate according to what the business of the court is and,
16 while there are some cases there this year that we have been
17 involved in, none are really of the high profile nature that,
18 for example, the Stotts case was last year.

19 I would like to point out several areas in which I
20 think we have been emphatically enforcing the civil rights
21 laws, areas that may be of some interest to you.

22 In Chicago in this administration, we challenged the
23 allocation of the resources in that city within a public parks
24 system. We had determined that the money was not being
25 allocated in a fair manner. Some parks were getting short

1 shrift, essentially.

2 It was the first time that such an effort had been
3 mounted by the Federal Government to ensure that the money
4 would be allocated in an appropriate, fair manner.

5 We negotiated a decree there, a consent decree with
6 the city and are pleased that we have corrected that problem.

7 Meanwhile, nearby, in Cicero, Illinois, which has
8 been a particularly nettlesome problem over the years of civil
9 rights enforcement -- in our judgment -- we filed a law suit
10 that charged both employment and housing discrimination in the
11 same law suit -- the first time that the Federal Government,
12 that our department had ever done that in one law suit.

13 Just recently we challenged a test that was used in
14 Nassau County, a test used for the hiring of police officers.
15 We felt the test was discriminatory against blacks.

16 I might note that our interest here is that we think
17 that any test, any barriers that cannot -- any kind of test
18 that cannot be justified should be eliminated and that is why
19 we focused -- or we have focused on these tests where we have,
20 found them to be a problem and Nassau County is one area where
21 we think there has been a barrier erected.

22 Finally, I would like to return for a moment to the
23 issue of Stotts. In Stotts, as you know, we argued before the
24 Supreme Court the position that Title VII of the Civil Rights
25 Act prohibits or at least limits the remedial authority of the

1 courts, limits it to giving remedies to specific individuals
2 who are victims of discrimination.

3 In Stotts the case involved a lay-off quota. We
4 believe the language in Stotts also extends to other parts of
5 the employment spectrum.

6 Our concern here has been to restore the original
7 intent of the law and we were pleased to see that the Court
8 decided that way.

9 As you know, there are a number of -- there has been
10 a flurry of activity subsequent to Stotts. I would be happy
11 to discuss that, those questions, if you would like.

12 I would like to point out that there are further
13 issues that relate, in a sense, to Stotts. One of those, in
14 fact, is contemporaneous with my being here today. This week
15 we are filing in the Supreme Court in a case styled Wygant
16 versus Jackson Board of Education.

17 The Supreme Court has decided essentially two cases
18 involving the constitutionality of racial quotas or racial
19 preferences, Bakke being one case, Fullila being another.

20 Essentially, there is unstable law in both of those
21 opinions of the court.

22 We have here in Wygant another constitutional issue
23 that has been raised. It is the issue that is similar to
24 Stotts, yet it involves the Constitution, where Stotts
25 involved only Title VII, only the Civil Rights Act.

1 The question is whether a public entity, a public
2 employer -- in this case, the Jackson County Board of
3 Education -- may voluntarily -- in other words, not from a
4 judicial decree, but voluntarily, whether it can voluntarily
5 decide to use a race-preferential system.

6 In this case it was in regard to lay-offs and how
7 the lay-offs would be conducted.

8 In our briefs submitted this week before the Supreme
9 Court -- in fact it was filed in typscript, I think, Tuesday
10 and it was published today -- we argue -- and this is the
11 first time the United States has argued this position on the
12 merits in the Supreme Court -- that, under the Constitution, a
13 government, a public entity such as the Jackson Board of
14 Education may not do that. It may not use that kind of
15 race-preferential system.

16 That case I believe is significant, not simply
17 because it is the first time we have argued that in a merits
18 brief. It is also significant because the state of the law
19 has been -- well, there are huge zones of grey, if you will --
20 and one of the fall-outs from the Stotts decision has occurred
21 in some of the courts of appeals.

22 In some of the circuits, at least in two of the
23 circuits, the circuit seemed to make a distinction between
24 orders of the court between consensual decrees -- consent
25 decrees, in other words, that are entered into by the parties

1 prior to litigation or at least before an order of the court
2 -- and orders of the court that typically come after
3 litigation.

4 Courts have said that those -- two courts, the Sixth
5 and the Eleventh -- have essentially said that whatever our
6 interpretation of the Justice Department of Stotts may be, it
7 does not reach these consensual decrees as such.

8 If the Supreme Court were to hold in Wygant versus
9 Jackson as we are asking it to hold, it would seem to me to
10 have at least an implication for the consensual decree that,
11 in two circuits in any event, have been excluded from what we
12 regard as our interpretation of Stotts because, under the
13 Constitution, a public employer could not enter into a
14 so-called "consensual decree."

15 In any event, that is now before the Supreme Court
16 and there will be further clarification, we hope, of that law.

17 I might add that -- I mentioned Palmore versus
18 Sadatti. Our view here is that the Constitution, as Justice
19 Harlan said, is color blind and in Palmore versus Sadatti we
20 felt last year that there was an impermissible use of race in
21 a child custody case.

22 We were pleased to see that the Court agreed with us
23 that race should not be a factor under the Constitution in
24 deciding a child custody case. It was a case that came out of
25 Florida.

1 But that case unites with Stotts. It unites with
2 our filing Wygant and all of them basically are bottomed, at
3 least for us, on the notion that the principle of
4 non-discrimination of regarding each individual without regard
5 to the race of the individual is the morally superior manner
6 to go in this country.

7 Max, I probably have not left enough time for
8 questions, but --

9 CHAIRMAN GREEN: That is all right. We will have
10 time for a few questions.

11 MR. EASTLAND: I would like to add one last thing
12 before I finish. There is one area of civil rights that I
13 have a particular interest in and that I would just note to
14 you today.

15 I feel one of the major accomplishments -- I do not
16 know that I should brag about it as administration but I think
17 that we can brag about it as people and here in Washington
18 maybe the Congress can also brag. It is the passage of the
19 Child Abuse Act last year.

20 In April of 1982, as many of you know, the Baby Doe
21 case came out of Indiana and we saw considerable amount of
22 debate regarding civil rights of handicapped newborns.

23 In the Indiana case there was a Downes Syndrome baby
24 born with an esophageal condition or problem with blocked
25 esophagus. All of you know the outcome of that particular

1 case. The infant was denied the surgery and died.

2 The debate that followed that eventually led to the
3 Child Abuse Act that was passed last year. This act will
4 basically give the state child protective agencies more
5 authority in trying to make sure that there is not a quality
6 of life standard that is imposed in such a manner that a
7 handicapped newborn is not treated and therefore dies from the
8 lack of treatment.

9 But I think that it is an important development. I
10 think there has come about a recognition in the country that
11 these are difficult cases, yes, but there are at least some
12 areas in which we as a people should not allow an infant who
13 has a handicapped condition to die.

14 Certainly I think in the case of a Downes Syndrome
15 child, after the Indiana example, there seems to be -- it
16 seems to be widely agreed that we should not deny treatment to
17 that child simply because of the Downes condition.

18 It seems also that we have a better understanding of
19 the harder cases. For example, where a child is born without,
20 a brain -- I guess that is maybe a crude way to put it -- a
21 brain encephalic child.

22 There is really nothing that medicine at least
23 currently can do for such a child. Such a child would die
24 anyway, so there is that class or that group of newborn
25 handicapped infants.

1 There is, of course, a third area of handicapped
2 newborns. This is perhaps the harder area. And that is the
3 area involving those with more severe problems. Spina bifida,
4 for example, is sometimes classified in this area.

5 That is what the Baby Jane Doe case out of New York
6 was about. This administration vigorously tried to help that
7 infant up there. We currently are in the Supreme Court
8 defending our efforts under the regulations to obtain our
9 records from hospitals and cases involving these handicapped
10 newborns.

11 This, I think, is an important civil rights activity
12 because the handicapped newborns happen to be perhaps our most
13 defenseless fellow citizens and they, too, need our
14 protection. so I would ask each of you -- alert each of you to
15 that case and ask you to watch it as it moves in the Supreme
16 Court this year.

17 Thank you.

18 CHAIRMAN GREEN: Thank you. We do have time for a
19 few questions. Jim?

20 MR. NUECHTEREIN: I am Jim Nuechterein from
21 Indiana. I note that for the record, not for Mr. Eastland, as
22 we know each other.

23 You have been outlining the various areas where the
24 Reagan Administration and the Justice Department have been
25 trying to enforce civil rights laws.

1 MR. EASTLAND: Right.

2 MR. NEUCHTEREIN: Now, we are all aware that
3 yesterday the Judiciary Committee rejected the appointment of
4 Mr. Reynolds.

5 Now, in the debate surrounding that decision there
6 surfaced again the widespread perception in the mainstream
7 civil rights groups that the Reagan Administration is at best
8 indifferent to and at worst hostile to civil rights.

9 Now, what I want to do -- I do not expect you to --
10 obviously, I know what your response to that perspective would
11 be, but I want to get to the problem of perception that is
12 involved here.

13 That is, it is sometimes argued on behalf of the
14 Administration that the civil rights establishment opposes the
15 Reagan Administration because -- simply because of quotas and
16 busing.

17 The civil rights leadership says, "No, it is not
18 that. It is a much wider indifference toward enforcing the
19 whole wide range of civil rights laws."

20 Now, you have been, again, as I say, pointing out
21 areas where you have been trying to enforce those laws. Is
22 there anything that the administration has done or not done
23 that it could do to do something about that perception of, "It
24 is simply something you are going to have to live with," which
25 means it is something that all of us are going to have to live

1 with?

2 That attitude affects the credibility of the
3 Commission and by that, extension of the State Advisory
4 Committees.

5 Is there anything that can be done that you can
6 think of that would help deal with this question of the
7 credibility of the Reagan Administration's attitude towards
8 civil rights?

9 MR. EASTLAND: Sure. I think that, first of all,
10 Jim, I would just like to say that I think that there are some
11 issues here that have been unfairly treated by some of our
12 critics but, that having been said, let me say this:

13 I think that we do have one area that -- or at least
14 two areas -- two things that I would like to see we in the
15 administration focus on.

16 The first is that, in the area of these consent
17 decrees that we have entered since 1981, more than -- I do not
18 know what the exact number is, I guess more than 40 -- I
19 talked earlier about the affirmative action that we have
20 sought in those cases.

21 Senator Kennedy, in fact, asked Mr. Reynolds how we
22 had been faring in those cases with the affirmative action we
23 have sought, the enhanced recruitment, the outreach that I
24 discussed earlier.

25 And so far, the results are very good because we

1 think that under traditional affirmative action, that we can
2 increase the supply, the pool of qualified applicants,
3 particularly minorities and we have an indication that so far
4 this approach is working.

5 I think that there are 26 cases in which we have
6 sought in the decrees the enhanced recruitment, the casting of
7 the wider and broader net. Where we have information
8 available, it is apparent that we have met -- that these
9 jurisdictions have met the recruitment efforts that we had
10 asked for them to meet.

11 In other words, they have -- if there is a relevant
12 labor pool for a job, for example, of 25 percent in an area
13 that might be minority, the pool of applicants has been
14 reflecting that.

15 Our concern is that we get everybody into that pool
16 but at the hiring level and that then the decisions are made
17 on the basis of the qualifications of the individuals.

18 But our story, I think, that needs to be told is
19 that we have been successful in these cases since 1981 in
20 encouraging and expanding and in producing an expanded pool of
21 applicants that includes a substantial number of minorities.

22 Now, in some cases -- keep in mind that we go back
23 to 1981 and that some of these cases are relatively fresh and
24 so we may not have good information on them as yet. There may
25 not have been much activity taking place yet.

1 But on those where we have information, we
2 apparently -- there is a success story here that needs to be
3 told.

4 One area where we have not been as successful in
5 this area is in terms of women or of women applying for jobs.

6 Now, these are, largely again, public employers. We
7 are talking about police, and fire jurisdictions and for
8 whatever reason, our recruitment efforts have at the moment
9 not yielded the number of females in the pool of applicants
10 that we would like to see.

11 It could well-be that there are reasonable
12 explanations for this.

13 We do not have that problem on the race and ethnic
14 side. We do have it, it seems, on the sex side. But I think
15 that that is one success story in terms of our affirmative
16 action approach in these consent decrees that really needs to
17 be told.

18 I think it is important for another reason. I
19 mentioned earlier that I think that numerical devices such as,
20 quotas or goals are -- they are easy to satisfy because you
21 can look at the most obvious qualities about a person to
22 determine that.

23 It takes more effort and more work to change the
24 recruitment practices, to change the personnel practices of an
25 employer and that is what, really, we are trying to focus on.

1 We do not want a person to be stigmatized by a quota
2 or by a goal and so the benefit of this kind of an approach
3 is, not only are we getting results, but when people are hired
4 they do not -- people do not have to say, "Well, that person
5 may have gotten the job because of the quota or because of the
6 goal."

7 They had rather know and have everyone know that
8 these are hiring arrangements that do not have that liability
9 in them. I think that is a fairer way, that is a better way
10 for all to proceed and we can all make -- I think that is the
11 principle upon which we can all make progress in these cases.

12 The second thing, for whatever reason, perhaps if
13 there are people, individuals, if there are individuals in the
14 traditional civil rights communities who think that we have
15 not had an open door for discussions and so forth, I as
16 Director of Public Affairs would like to say at least here
17 today that anyone is welcome to come and visit with me any
18 time.

19 We want to encourage more contacts, more visits from
20 everyone, from all citizens -- both the traditional civil
21 rights groups, others who may not be in the mainstream of the
22 traditional groups but who may have, obviously, an interest in
23 this area.

24 I will be happy to talk over with you some of
25 these concerns. I want to keep a door that is open, an

1 administration that is open and willing to listen to and
2 entertain your views.

3 But we also think that it needs to be a two-way
4 street. We think that when people come and visit with us,
5 that they should do so in good faith, or the same applies when
6 we visit with them.

7 Yes?

8 CHAIRMAN GREEN: Actually, I guess I have a few
9 questions myself. The way in which you described the policies
10 of the Reagan Administration as far as the Department of
11 Justice is concerned, in every area of civil rights except for
12 in the area of affirmative action and desegregation of
13 schools, the policy has been pretty much consistent with what
14 preceded, it in that in the area of affirmative action the
15 difference you have with the civil rights movement seems to be
16 over what is more effective, a goal and a time table or
17 changing the process?

18 You are claiming that you can actually do that.

19 The goal, though, the long-term goal is the same,
20 increase in the number of blacks who are employed and you are
21 saying, "Well, we get more numbers this way than we would by
22 going your route."

23 Similarly, with regard to school integration, the
24 dispute is -- the way in which you have described it so far --
25 is, what process will lead to the most stable kind of

1 integration?

2 In other words, what process will lead to more
3 blacks attending school with whites?

4 So that the long-term goal as you have described it
5 is the same as the civil rights movement, increase in the
6 numbers of blacks and whites who attend school together.

7 So the debate, at least the way in which you have
8 described it so far, is over like, numbers. You could take
9 out your numbers and show them to the civil rights community.

10 I guess they could take out their numbers and show
11 you and then see who is right in terms of the numbers. So,
12 why are they at war with you, then, if that is all there is to
13 this? Are they nuts?

14 MR. EASTLAND: Oh, no. I would not say that the
15 dispute is purely over whose numbers are right. It is not
16 purely over the remedies, whether in the employment area or
17 the school desegregation area.

18 I must also say that I think there is a fundamental
19 difference of vision, perhaps, in terms of how we approach
20 individuals.

21 I think that we do face here in the '80's some
22 significant civil rights questions that maybe lie below the
23 surface.

24 One of them is the question of, how do you prove
25 discrimination? Do we need to rely upon finding out whether

1 someone has an intent to discriminate? Can we infer
2 discriminatory behavior from certain effects or results?

3 Do we say that merely because the work force divides
4 out into the wrong percentages of black, brown, white, female,
5 male, that that is a presumption that that entity has
6 discriminated?

7 I think these are some of the questions that lie
8 below the surface and, frankly, there are -- I would guess
9 that this is where some of the debate probably lies that has
10 not been solved.

11 It has not been as apparent, though, as the issue of
12 the remedies of busing and quotas which have been, I guess,
13 the two most obvious areas on which the Administration has
14 differed.

15 CHAIRMAN GREEN: Jim.

16 MR. BLUMSTEIN: Jim Blumstein of Tennessee. I would
17 like to follow up on Max's question. I think there is an
18 important issue about how do you frame the debate? And I
19 think Max is making an extremely important point as far as
20 language is concerned.

21 I took notes on your comment about the affirmative
22 action and you said it is a success story and it may be a
23 success story and I think that is terrific.

24 But then your evidence of the success was the
25 results. They work. And it seems to me that that is giving

1 away the gains.

2 If, in fact, success can be measured by results,
3 then we are really quibbling about means, not ends. It
4 seems to me that the intellectual issue is, if you adopt a
5 fair process, if you develop a recruitment by casting the net
6 more broadly and so forth and women do not apply, the question
7 is, so what?

8 It is a fair system if it is an open system and
9 ultimately, if women, through their own freedom of choice or
10 whatever -- as we heard yesterday from the panel -- do not
11 apply, then why is that something that the Justice Department
12 should be concerned about?

13 MR. EASTLAND: Jim, I think the answer to that is
14 that if there is a good faith explanation, if there is a
15 demonstration of good faith, if there are reasons for women,
16 for example, not applying to be a police officer in a
17 particular city or county, well, that would satisfy us.

18 In other words, it is not a presumption in favor of
19 the proposition that the entity has discriminated.

20 I do know what you are saying, though, why do the
21 numbers at all matter?

22 I think that our concern is simply to monitor and
23 see what progress there might be there at the entry level of
24 -- well, at the level of trying to find applicants for jobs,
25 candidates for jobs.

1 If a jurisdiction had simply no blacks in its pool
2 of applicants, that would raise to us -- or a few blacks or
3 whatever and we know that there are quite a few more that
4 might be qualified at a threshold level for the jobs -- we
5 would want to ask the question of, "Why is this so?"

6 I mean, we want to find that out. So we are
7 concerned about a fair process. That is absolutely right.
8 The numbers, though, are not evidence that there is any
9 discrimination.

10 It is simply something that we can look at to
11 determine -- in Washington, at least -- to try to have a sense
of what is happening.

12 MR. FEDER: Jim, I would like to follow up on that
13 and that is, I think that you make an important distinction
14 between the liability side of the case and the remedy side of
15 the case. Morris Abram talked to us about this last night.

16 I think it is absolutely right that where the
17 numbers are, by our intuition and by our understanding, such
18 that they cannot reasonably occur through a fair process, I
19 think it is perfectly appropriate and in fact, not only
20 appropriate but mandatory for the Justice Department to step
21 in and investigate.

22 That is certainly a cue, if you believe in cuing
23 mechanisms, that is certainly a good cuing mechanism as
24 to whether or not there ought to be an investigation to
25

1 determine if there is a problem.

2 So I completely agree that numbers are not
3 irrelevant. Numbers are an important first if you are going
4 to ask the questions.

5 I was addressing the remedy side, not the liability
6 side. On the remedy side, once you are sure or once you
7 believe that a fair remedy has been implemented that includes
8 a non-race-based or non-gender-based recruitment pattern --
9 and I think you need to be very conscious of casting the net
10 very broadly in good faith and with energy, not just
11 mechanistic behavior but with strong energy in achieving a
12 fair process to overcome with a group all the past effects of
13 discrimination.

14 This is part of the remedy.

15 But once you are confident that that is in effect,
16 it may be that you need two bites at the apple. You may not
17 be able to do it the first time.

18 But once you are confident you have a good process
19 for recruitment and for affirmative recruitment, and then once
20 it is a fair, level playing field and the numbers come out
21 differently, that is what I was suggesting as the kind of
22 problem.

23 MR. EASTLAND: Well, but, I did not talk about
24 numbers at the hiring or the promotion stage, did I?

25 I mean, I was not talking about it at it at that

1 stage. I mean, I understand the point you are making and --

2 MR. FEDER: That is the point that I would like
3 to discuss with you. This is a police department that I have
4 been involved with for some time -- from the beginning until
5 1974 when the Eighth Circuit told them they could not do it,
6 they advertised for police men.

7 Well, we got rid of that and fine, we got the
8 injunctive relief and it all seemed above-board but the
9 recruitment policies are still filled with things like
10 physical strength and agility tests which are completely non
11 job-related. Well, we got rid of them now.

12 But what do we do, sir, when we still have
13 administration in the police department that says, "Look, you
14 know, to be a good cop you have got to have hair on your
15 chest, you have got to run down these burglars. Why don't you
16 go home and have babies and if God had wanted you really to be
17 a cop, you know, he would have made you a man."

18 This is the philosophy. Unfortunately, this still
19 permeates an awful lot of people who are in a position to do
20 hiring.

21 Now, we could cast the net as wide as we want but
22 when these blacks or when these women or whatever their status
23 is are brought before the hiring authority and these views
24 prevail, how, then, are we going to get the results that you
25 are talking about and Jim is talking about without more than

1 just casting a net?

2 Where is the department's position on this and how
3 are the results that I presume all of us want to arrive going
4 to be implemented?

5 MR. EASTLAND: Well, you know, once again, I mean,
6 in those cases that I mentioned where we so far do not have
7 the kind of recruitment that we would like to see for female
8 officers, typically, fire or police, we have to go back and
9 ask the questions and we have been doing so in these
10 jurisdictions to find out why that is.

11 I am sorry, I just simply do not know enough about
12 the seven or eight cases where we have had the consent decrees
13 with jurisdictions that involve the females of this kind to
14 know what additional steps we have taken but --

15 MR. FEDER: Is it the Department of Justice position
16 that there can never be -- I repeat never -- a situation where
17 a goal and a timetable would be appropriate remedy?

18 MR. EASTLAND: We do not think a goal or a time
19 table ever would be an appropriate remedy at the hiring stage,
20 or the promotion stage.

21 CHAIRMAN GREEN: Jim?

22 MR. SCHWARTZBERG: I think there is something very
23 different buried here and I wonder whether we might dig a
24 little deeper in looking at it.

25 I can recall a time when Ben Bauman, who later

1 became in charge of community relations for Nixon, wanted to
2 move into the north side of Chicago without incident and he
3 could not find a place.

4 At the moment, there are a large number of portions
5 of society where there may be a level playing field but the
6 person coming in at entry has to make an incident, has all of
7 the barriers of breaking attitudes.

8 In the case of the fire fighters, female, from Jim's
9 point of view I am not certain that Jim would not say that, if
10 you have some recruitment and it fails with females, it was a
11 level playing field.

12 But I assume that for most of us, until there are a
13 substantial number of people in, the person who is not willing
14 to be a pioneer is not going to enter that door and that
15 recruitment for women fire fighters and training for women
16 fire fighters becomes an important part of the society.

17 I think that is the distinction between Jim and
18 myself. I am not sure, but where does the department come out
19 in this?

20 MR. EASTLAND: Well, Mr. Schwartzberg, we come out
21 where I just said. Again, we would want to determine that
22 there has been a fair playing situation at the applicant stage
23 but we do not think that we can introduce a goal or a quota at
24 the hiring stage and we simply will not do that.

25 But I understand the difference between you and Jim.

1 MR. SCHWARTZBERG: Is fairness reached before the
2 barrier comes down?

3 MR. EASTLAND: Well, we think that is where it has
4 to be reached because I think the further question is whether
5 it is fairer, then, to use race or sex as a basis for
6 evaluation of someone and we simply say no.

7 CHAIRMAN GREEN: Actually, another way to phrase
8 this question is, is it a goal? Or should it be a goal of the
9 Federal Government that there be women fire fighters?

10 MR. EASTLAND: I think, it is a goal of whoever wants
11 to be a woman fire fighter.

12 CHAIRMAN GREEN: Not the Federal Government. They
13 have not set that as a goal.

14 MR. EASTLAND: I am not answering that question. I
15 am simply saying that for those who want to be, I think that
16 is appropriate. The Federal Government's role is to make sure
17 that the process is fair, to make sure that women, if they
18 wish to be, can fly.

19 MR. BLUMSTEIN: I would just like to kind of go back
20 to one more comment -- with all due deference. My name is
21 Jim Blumstein from Tennessee.

22 I would just like to state my own position. I
23 would like to respond to both Mr. Schwartzberg and Mr. Feder.

24 With respect to Mr. Feder's analysis, it seems to me
25 that I have a -- what I think is a reasonable response to your

1 concern.

2 Each time that there is a new person that goes into
3 that department and is told that "You can't be hired because
4 you do not have hair on your chest, so go home and raise your
5 kids," that is a separate violation.

6 And every time there is a violation there is no
7 question that the courts and any principles of the fair shake
8 or fair play suggests that a remedy is appropriate for that
9 victim, so I think that, in terms of the analysis of your
10 suggestion is that where you have got folks applying for the
11 jobs and coming into the pool and not, in fact, getting those
12 jobs for discriminatory reasons, then that is a fair remedy to
13 be sure that that victim is held harmless.

14 So I think, in response to the hypothetical you are
15 talking about, I think that there is an easy answer.

16 If you have a class or a system and a fair
17 recruitment process and people are going in and being treated
18 unfairly or discriminatorily, then those are the people who
19 are entitled to a hold harmless remedy.

20 The second point, with respect to Mr. Schwartzberg,
21 it seems to me that there is not as much difference as he
22 suggests. I think it is perfectly appropriate as part of a
23 remedy to include training, to include consciousness-raising,
24 if you want to call it that, that would encourage or induce
25 people to apply for jobs from which they have been discouraged

1 in the past.

2 To the extent that there are on-going, if you
3 will call them that, psychological effects or other effects
4 that the discrimination has levied on individuals, I think it
5 is appropriate as part of the remedy to enhance the ability of
6 the individual to compete on the fair playing field.

7 I think the goal is to orient folks so that they can
8 achieve parity so that they can compete fairly for access.

9 What I think the fair shake or fair play analysis
10 does not permit is the basically pessimistic view of not
11 feeling that that is going to work appropriately.

12 I think you have got to live with peoples' choices
13 on that.

14 MR. FEDER: I agree but the problem that we have got
15 is that it is very expensive. It is very time-consuming and
16 it is also very difficult for a plaintiff to say, "I was
17 rejected from this employment" or "He told me that I would not
18 be hired because I was a woman."

19 Why does everyone, in the words of Judge Robinson in
20 the case of Robinson versus Key Lorelei, "Do we intend to
21 freeze an entire generation of people into second-class
22 status?"

23 If women want to be fire fighters and police
24 officers, why can't they have some kind of affirmative action
25 to assure that that remedy will be available to them in the

1 event that they are being discriminated against?

2 Why does each one have to climb the same mountain?

3 MR. EASTLAND: Well, again, I think that the
4 difference between us is what we have already gone over. It
5 is at the hiring stage. I mean --

6 MR. FEDER: I just wanted to state that Jim's
7 remedy, while certainly available, is not as easy as it seems.

8 CHAIRMAN GREEN: Commissioner Guess.

9 COMMISSIONER GUESS: I want to see if I can shift
10 gears. I am Francis Guess from Tennessee.

11 Mr. Eastland, one of the things that this Commission
12 has grappled with for awhile is the theory of limits, wherever
13 we put our limits, how much elasticity are we going to allow
14 in the system?

15 Now, when you look at race-sensitive techniques, I
16 have heard you say that it is part of the policy of our
17 Administration and the policy of the Justice Department to
18 accept those activities which may be oriented toward
19 improvement or training for recruitment. Can you help me on
20 this as to what you meant with further definition?

21 MR. EASTLAND: Yes, the whole recruitment effort,
22 the training effort is part of the affirmative action we
23 seek. We also seek --

24 COMMISSIONER GUESS: To the extent that the
25 Administration accepts affirmative action techniques.

1 MR. EASTLAND: Well, that is affirmative action, in
2 our judgment.

3 COMMISSIDNER GUESS: Right, in terms of the
4 definition of affirmative action.

5 My question becomes, to what extent are the
6 resources of the public sectors you can identify utilized to
7 specific recruitment plans -- specifically, to recruit women
8 -- which may, in fact, not provide that same opportunity to
9 others in the pool?

10 Are we in fact using an approach which diverts
11 resources of an entity toward a specific race or class or sex?

12 MR. EASTLAND: Well, no. If the question is, is
13 there discrimination against other individuals in the pool by
14 virtue of resources going to that effort, that is absolutely
15 not the case.

16 I mean, what we are doing, we -- if you insist, as
17 we do -- that the employer go to the communities that perhaps
18 have not been encouraged -- the individuals there have not
19 been encouraged to apply, we can ask that they do that.

20 The other areas of the community typically will
21 maybe know about the jobs anyway. I mean, there is not a
22 diversion of resources that hurts those individuals who may
23 not be in the neglected communities, if you will.

24 I do not see how that would be a subject --

25 COMMISSIONER GUESS: Well, the use of those

1 resources in that instance which may be race-sensitive are
2 acceptable.

3 MR. EASTLAND: That is absolutely right but what
4 that is, that is recognizing that to try to overcome whatever
5 obstacles there might have been in a community.

6 If someone thinks, "Well, they have never hired any
7 black fire fighters over there so why should I apply?" we
8 want to overcome that perception but that is not to say that
9 it excludes someone else.

10 It says that we are trying to expand the pool.

11 COMMISSIONER GUESS: Okay, so what are you saying?

12 I just want to make sure.

13 MR. EASTLAND: Yes, that is it.

14 COMMISSIONER GUESS: So what you are saying is that
15 the use of resources of an entity that are race-sensitive to
16 identify, to recruit and to train, are acceptable.

17 MR. EASTLAND: Race-sensitive in the sense that,
18 yes, we are recognizing that there may be some areas in the
19 community that maybe do not know about the jobs. Maybe they
20 have not ever thought about the jobs. We want them to be
21 aware of those jobs.

22 Race enters in simply because we understand that
23 this has happened perhaps in that community, that there are
24 these individuals living, maybe, in this part of town that
25 have not been included. We want to make sure that they are.

1 COMMISSIONER GUESS: Okay. Thank you.

2 MR. HOLLAND: Ken Holland, Vermont. What is the
3 position of the department on constitutionality of minority
4 set-aside programs and the federal contractor?

5 MR. EASTLAND: Minority set-asides raise several
6 different issues. Do you mean specifically those in the
7 Federal Government or do you mean those that are in maybe a
8 local jurisdiction?

9 MR. HOLLAND: The Federal Government.

10 MR. EASTLAND: You are talking about the federal
11 ones. Our position on that is that, so long as a set-aside is
12 justified on the grounds of economic disadvantage, that those
13 are, of course, completely acceptable and lawful.

14 So far as a set-aside program is based upon racial
15 or gender selection, we regard those as inappropriate.

16 The efforts that we have made in this administration
17 at the Justice Department have been as to making sure that any
18 set-aside program is bottomed on economic disadvantage which
19 requires us to look at the particular circumstances of each
20 individual applicant to judge what those are rather than just
21 to determine on the basis of race, for example, who is the
22 person we should offer those contracts to.

23 MR. HOLLAND: You do not see any contradiction
24 between that and --

25 MR. EASTLAND: No, I think there is no contradiction

1 at all, either morally or ethically, between using economic
2 disadvantages criteria.

3 Race, in my judgment, asks the wrong question about
4 an individual. Whereas, if you asked the question of economic
5 disadvantage, that cuts across all racial lines and you are
6 trying to look and give someone a chance based upon the
7 economic conditions.

8 MR. HOLLAND: But does not the law mention race? It
9 does not mention economic disadvantages.

10 MR. EASTLAND: Well, my understanding of the law is
11 that it is based -- at least upon the one the President
12 signed, the Minority Business Enterprise -- the President
13 signed, I think, a year and a half ago -- is that it is
14 bottomed on economic disadvantage.

15 MR. LOOMIS: Loomis, from Kansas. Could I follow up
16 on the set-aside question? Given the fact that the
17 administration has articulated lots of deference toward the
18 notion of federalism, is there any reason that state set-aside
19 programs, in view of the quality of experimentation, might be
20 viewed somewhat differently in the federal sector?

21 MR. EASTLAND: Well, no, because, in fact, we have
22 challenged -- in Dade County, Miami, for example, they had a
23 local set-aside.

24 I think it is fair to say that this administration
25 believes in limited government.

1 We also believe, as the framers of the Constitution
2 believed, that government, where it is justified, should be
3 forceful and effective. It is not just simply limited but it
4 is also energetic and forceful government where justified and
5 that there is an area here, in particular, where no one, no
6 government -- whether it is state or local or federal --
7 should discriminate.

8 This is one area where we think that a set-aside
9 that is justified on the basis of race will have a
10 discriminatory impact on others who are not of the correct
11 race and if that is done by a local government, our position
12 is that that is something that we would challenge and we have
13 challenged.

14 MR. LDOMIS: What about other people of good will
15 who are not economically disadvantaged but are --

16 MR. EASTLAND: Let me put it this way: other people
17 of good will thought that slavery could be an experiment in
18 the states and we do not agree with that.

19 Other people of good will might think that it is an
20 experiment to allow handicapped newborns to die, to make
21 judgments there. We do not think that, either.

22 We think that there is a role for the Federal
23 Government to play.

24 MR. SALTER: This is always an interesting argument
25 for me to listen to because I think polarity of the

1 discussion, that polarities have excluded the people most
2 directly affected that would be black and other minority
3 people and it has become a debate among white folks.

4 I want to bring it back to the people that are most
5 directly affected.

6 Would you say it is a fair assessment that what has
7 happened, in effect, is that you have shifted goals and time
8 tables to the recruitment and training level from the hiring
9 and promotion level?

10 Then, in effect, what you are saying, in a sense, is
11 that good faith is measured by the number of affected group
members in the recruitment and training levels.

12 MR. EASTLAND: I think that is fair to say, that we
13 have redirected our attention here in our cases, in our public
14 employment cases, to the pre-hiring level, that is, the
15 recruitment level, as you have said.

16 MR. SALTER: All right, umn hmn.

17 MR. EASTLAND: And that we want to see there efforts
18 made and one way of judging the efforts made is to assess --

19 MR. SALTER: Is to count them.

20 MR. EASTLAND: Is to count, is to see the numbers.

21 Now, that, however, is not itself an indication of
22 discrimination or of something else. We want to find out, for
23 example, as I said earlier, if there happen to be very few
24 blacks, for example, in a pool of applicants and yet we know
25

1 that there is a relevant labor market there, that there are
2 more blacks than that, that have the threshold qualifications
3 for a job, then we will go back and we will try to find out
4 why that is so.

5 MR. SALTER: At what point do you feel that good
6 faith has been breached by the employer? Is there a number
7 threshold?

8 MR. EASTLAND: No.

9 MR. SALTER: Is there an intuitive --

10 MR. EASTLAND: No, it is not a number threshold. I
11 think it is something that we go back in each individual case,
12 try to find out the reasons why and if there is need for
13 further action, that we take it.

14 Now, I mean, that will be a totality of
15 circumstances and --

16 MR. SALTER: So, in a sense, we are still playing
17 with numbers and saying, "At what level in the process are we
18 going to start to count?"

19 MR. EASTLAND: No, I disagree with that, sir.

20 MR. SALTER: Well, I am trying to find out.

21 MR. EASTLAND: Right. Well, numbers are relevant in
22 the sense that we want to find out if there is a problem in
23 terms of -- that we know about.

24 We know that there might be a substantial number of
25 people from the minority community that might be qualified,

1 but we do --

2 MR. SALTER: Yes, this debate seems --

3 MR. EASTLAND: -- but we do not tell you. In other
4 words, we do not hire -- in other words, you get all these
5 people into the pool and then you are going to assess all
6 these people on the basis of their qualifications, individual
7 qualifications in each case.

8 MR. SALTER: But there are some systemic problems
9 that people have alluded to that you can get people in pools
10 and, in effect, it is a numbers game now.

11 There are people who, in effect, count and encourage
12 people to come in and join this pool and then say, "Well,
13 look, we did not hire them because they were not qualified but
14 you cannot question us because we had at least X-numbr of
15 blacks, X-number of Hispanics who applied."

16 So they do not get the job but they always apply.

17 MR. EASTLAND: Well, we have not had that problem
18 yet. I mean, we have --

19 MR. SALTER: Well, I am the President of a Board of,
20 Education. We have had that problem. There are people within
21 our system who think that good faith --

22 MR. EASTLAND: What is your Board's name?

23 MR. SALTER: Madison, Wisconsin. Who think that
24 good faith is basically getting people to apply or getting
25 applications.

1 Okay, now I think that the debate is taking place
2 within a contrived vacuum. That is, nobody wants to stipulate
3 that, indeed, there is discrimination. That is what we have
4 to stipulate or posit.

5 And that, in effect, that people have lost jobs
6 because of race and that is why you have some of those -- I
7 can at least respect some civil rights organizations lobbies
8 concerned about race and I have lost jobs because I was black
9 and so they were racial-preference-operated.

10 So that now in a sense there are people saying,
11 "Let's reverse the direction of bias."

12 So in all deference to Chief Justice Harlan, the
13 Constitution may be colorblind but the citizenry is not.

14 [Applause.]

15 MR. EASTLAND: Well, I think the question that very
16 much needs to be asked there is, "How are we going to get
17 beyond race?"

18 MR. SALTER: Sure, that is what I am trying to
19 figure out.

20 MR. EASTLAND: And if you think --

21 CHAIRMAN GREEN: All right, five follow-ups and then
22 that is it.

23 [Laughter.]

24 MR. SALTER: Not six?

25 MR. EASTLAND: And I mean, you know, I will admit

1 the difficulty of the question, how do you get beyond it?

2 MR. SALTER: Right.

3 MR. EASTLAND: And I think that reasonable arguments
4 could be made on both sides of the question. I think that the
5 judge, Justice Harlan, has made one. The NAACP in Brown made
6 the same argument. The NAACP for many years made the same
7 argument.

8 Civil rights organizations are divided among
9 themselves. The Civil Rights Commission itself has been
10 divided on this question.

11 I do think that the one thing we should be clear
12 about is that, to take a different position on that, on this
13 question of means toward the same end, is not to say that the
14 other party is guilty of bad faith.

15 MR. SALTER: Okay, no fight. I agree.

16 MR. EASTLAND: Right.

17 MR. RUFFIN: My name is Jack Ruffin and I am the
18 Chairman of the Georgia group. I would like to know what is
19 the Justice Department's intention with regard to
20 discrimination and segregation cases in light of what is done
21 in the public sector, where this starts.

22 MR. EASTLAND: You would like to know --?

23 MR. RUFFIN: Yes.

24 MR. EASTLAND: I could barely hear you. Could you
25 repeat that, please?

1 MR. RUFFIN: Yes. The Department has gone and
2 reopened cases in the public sector where this discrimination
3 starts. You have indicated that you believe that Stotts was
4 applicable in other areas and you want to extend it.

5 MR. EASTLAND: Yes, sir.

6 MR. RUFFIN: And my question is, what do you intend
7 to do in the area of school desegregation?

8 MR. EASTLAND: Well, the answer to the last question
9 or the answer to your question is that Stotts does not really
10 have an application in school desegregation and if I implied
11 that, let me correct that for the record.

12 MR. RUFFIN: I did not think so.

13 MR. EASTLAND: Let me go back and state that when I
14 said I think Stotts has further applications, I do not know
15 exactly what I said there.

16 I think what I probably meant to say was that I
17 think there are some fall-out questions from Stotts that need
18 to be resolved and that is why I was talking about this
19 current case in the Supreme Court, Wygant versus Jackson.

20 MR. RUFFIN: But I still do not know what you intend
21 to do in these areas.

22 MR. EASTLAND: Do you want to talk about school
23 desegregation cases?

24 MR. RUFFIN: Yes. I am not too worried about these
25 other cases.

1 MR. EASTLAND: Yes. Well, on school desegregation,
2 again, Stotts does not have an impact.

3 MR. RUFFIN: Forget Stotts.

4 MR. EASTLAND: You want to forget Stotts?

5 MR. RUFFIN: Yes.

6 MR. EASTLAND: All right. In the school area, as I
7 explained earlier, we have filed several new suits. We have
8 been involved continuously in monitoring many of the cases in
9 which orders have been entered in previous years.

10 Georgia is probably one state where there are many,
11 many systems that have been in litigation in the past and we
12 are now monitoring the arrangements there.

13 I think, really, the emphasis right now of our
14 program, in addition to going in and filing a suit wherever we
15 believe it is justified, is also to monitor all of these
16 jurisdictions, all of these school systems where, in the past,
17 there has been litigation or where there have been remedies in
18 particular cases.

19 That is the stage we are in right now.

20 [Housekeeping conversation about check-out.]

21 MR. PERLMUTTER: You had earlier indicated that
22 goals and time tables are inappropriate at any time.

23 Now, what about those situations where there has
24 been a clear pattern of racial exclusion and the courts have
25 said, "Look, you entered into a plan with a goal and we have a

1 hiring arrangement."

2 Now, are you opposed to those kinds of agreements
3 that have been made which, I gather, you are?

4 And I then say, why? I mean, it does not to me make
5 moral or intellectual sense in that here is a clear pattern of
6 discrimination, a whole history which can be proven and we
7 come up with a formula for a temporary group solution.

8 The only alternative that I hear you saying is good
9 faith, which I understand and endorse, by the way -- except it
10 is inappropriate to a clear pattern of discrimination.

11 In short, do you still hold to that? And what do
12 you do with those?

13 MR. EASTLAND: Well, yes. Again, in that instance,
14 we insist on the discriminatory pattern or practice being
15 stopped immediately. That is part of what we seek in each
16 case.

17 We also seek to stop the entity from any future
18 discrimination. We also seek, as I have tried to explain, at
19 the recruitment level we seek enhanced recruitment.

20 We seek to change the employment practices of that
21 employer. That is what we really want to put the focus on and
22 we believe that that is the better way to go, rather than to
23 adopt a quota.

24 MR. PERLMUTTER: Well, will you fight those cities
25 which have instituted programs for hiring -- two blacks, one

1 white or whatever?

2 MR. EASTLAND: Well, we have gone -- in the wake of
3 Stotts, we have asked a number of jurisdictions -- cities,
4 counties where there was a judicial decree prior to 1981 to
5 bring its -- to fall in line with what we regard as the
6 court's holding in the Stotts case.

7 But we have only filed one motion to modify a decree
8 and that was in the Indianapolis case. The others are in
9 various stages of discussion or whatever, but that is the only
10 case.

11 Now, there are -- the District of Columbia here is a
12 good instance, I guess, of a -- it is really not a post-Stotts
13 case, although we think that the law in Stotts is relevant.

14 Here in the District of Columbia we are a party in
15 the case here where the District of Columbia adopted a pretty
16 rigid quota system at the hiring and the promotional level and
17 the court, by the way, agreed with us at the District Court
18 level that the promotional quota part of that was unlawful.

19 The judge left in the hiring quota and that is still,
20 being contested.

21 MR. PERLMUTTER: Let me first say, I am totally
22 opposed to quotas, so you know where I stand.

23 MR. EASTLAND: Well, everybody is.

24 MR. PERLMUTTER: Where I am coming from. At the
25 same time, while I think I am troubled by this, it is that,

1 when a city makes a remedy where there is a clear case of
2 discrimination, to try and undo those remedies to me is
3 socially dangerous and, as I say, unfair because what you are
4 then doing is, you are reaffirming the system that prevailed
5 so that we have patronage systems in every major city and we
6 certainly have it up on Boston.

7 So the remedy that is new, that is to undo the past
8 evils, we do away with and we say, "The game is played the old
9 way," so to speak.

10 MR. EASTLAND: Let me respond. I disagree strongly
11 with that. In fact, we are not going back into pre-'81 cases
12 on the job or the situation of any individual. Whatever has
13 occurred to this point is fine. The law, in our judgment, is
14 prospective in its application.

15 Someone who may have gotten a job some years ago
16 under a quota will not lose that job. That person has that
17 job.

18 What we are aiming at and what we are looking at is
19 a quota that will today or tomorrow or next week be applied
20 and you say it is socially dangerous.

21 Well, there are individuals who say it is socially
22 dangerous to apply the quota today, tomorrow or next week
23 because quotas have discriminatory impacts and this is what we
24 are looking at today. It is prospective.

25 So I want to make that point clear. And it is also

1 in terms of discrimination that quotas create that we are
2 trying to -- it is because of that that we are trying to go
3 into some of these cases.

4 MR. SCOTT: I am Ralph Scott from Iowa. I just
5 wonder if there is not a viability that some of our problems
6 are caused by difficulties in imagery and perception. I think
7 we are fragmenting some of the issues.

8 For example, we talked about our work conditions and
9 employment and quota problems and yet it seems to me we are
10 ignoring some of the reasons why some of these problems have
11 developed over a long period of time.

12 Reference has been made, however cursorily, to the
13 school desegregation question and when you have talked about
14 remedies, you have talked about things such as magnet
15 schools.

16 You have talked about reorganizing districts,
17 boundary changes and the incentives for voluntary
18 desegregation and yet, what is the imagery in terms of how we
19 are going to correct some of these problems by mixing bodies?.

20 The reality is that, by the time children come to
21 kindergarten, the ethnic differences are essentially
22 established and they maintain relative constancy through high
23 school.

24 The evidence is that, basically, it is family
25 dynamics and circumstances within the home, the community and

1 the school that bring about the kind of mix we need in order
2 to implement the long-term beneficial changes for
3 disadvantaged kids.

4 So I am wondering what is the extent to which we are
5 serious about linking educational problems and employment
6 problems and getting into the fundamental dynamics that we
7 must deal with rather than simply being concerned with
8 symptomatic factors which will have no long-range effect in
9 terms of cultural and ethnic disadvantages.

10 MR. EASTLAND: Well, I take it there is a question
11 somewhere in there. Yes, I agree with you, if I understand
12 what you are saying, to the extent that --

13 MR. SCOTT: Well, there is a question but I really
14 have not expressed it clearly.

15 MR. EASTLAND: I did not hear the question.

16 MR. SCOTT: Well, the question is, do we recognize
17 that there is a linkage between employment problems and
18 educational problems?

19 And if we do recognize that there is a linkage, then
20 do we believe that we should be doing something to effectively
21 change educational practices rather than simply focus on
22 exchange of bodies as in busing or magnet schools or something
23 like this?

24 MR. EASTLAND: Oh, yes, I think that it is quite
25 demonstrated, if I can take off the hat of a Justice

1 Department official and put on the hat of someone who has read
2 a lot about the subject and has some private thoughts.

3 I think it is the case that any society and any
4 groups within society, the advances they make are often made
5 over time and because of many of the things that usually do
6 not get publicity in the newspapers.

7 They are made because -- there are a lot of books,
8 for example, in the home and youngsters get acquainted with
9 seeing these things around the house and they get acquainted
10 with reading.

11 I understand what you are saying. You are saying
12 that that is the way the social organism works and that is
13 what we need to be trying to put more attention and more
14 emphasis upon.

15 One of the problems, quite frankly, that I think we
16 do have today is that we have -- you know, racism has been a
17 problem in this country and it still is in some cases.

18 Discrimination has been a problem in this country
19 and it still is.

20 One of the problems is, when we fix so much upon
21 racism or discrimination as often the only barrier to success,
22 we sometimes see the question, I think, a little wrongly.

23 There are many other problems in there that need to
24 be dealt with and corrected and I am not the first to say this
25 and plenty of people, as you note in saying that, that there

1 are plenty of areas which we do need to look at and one of
2 those is prekindergarten -- those prekindergarten years, those
3 early years of childhood.

4 MR. BARTELLE: Talmadge Bartelle, Minneapolis. Do
5 you think that the Stotts decision -- do you read the Stotts
6 position as being similar to the Webber versus Kaiser case
7 which I understand are the sanctions of private agreements
8 that might contain numerical and racial kind of criteria?

9 MR. EASTLAND: I think --

10 MR. BARTELLE: And sex in the private sector and if
11 you do think that, would you intervene in some appropriate
12 way, as an amici or otherwise in a case that would overrule
13 the Webber case?

14 And how does that square with the long-standing
15 national public policy favoring -- which has been judicially
16 sanctioned -- favoring the amicable settlements of the
17 disputes in these cases?

18 MR. EASTLAND: I think my reading of Stotts, and I
19 do not know if this is the Department's reading, so I am
20 telling you my reading, is that what Stotts prohibits is a
21 "court order."

22 Now, if you say that, you are out of the context of
23 the public and into the context of private relations as well,
24 so it would seem to me that it could have that implication as
25 well for the private arrangement.

1 As you know in Webber, the Kaiser Aluminum Company
2 and the -- I think the Steelworkers in that case -- had their
3 own agreement. It was not considered to be state action.

4 Whether that would tend to have an impact upon -- I
5 think your question was -- voluntary resolution of these
6 problems --

7 MR. BARTELLE: Voluntary resolution?

8 MR. EASTLAND: Well, you had asked me whether we
9 would intervene.

10 MR. BARTELLE: Yes.

11 MR. EASTLAND: I honestly do not know. I mean, I
12 just really do not know whether -- I have not heard of any
13 case that we have been even looking at or thinking about.

14 And upon the impact upon voluntary resolution, I
15 don't know. I guess it could have one, obviously, but I do
16 not know the answer to that one.

17 CHAIRMAN GREEN: David.

18 MR. SCHWARTZ: My name is David Schwartz. I am on
19 the staff of the Commission.

20 Let me ask two questions. First, I would like you
21 to comment on Secretary Brock's recent remarks at the NAACP
22 Convention concerning the need to use goals and time tables as
23 one method of addressing what he identified as several hundred
24 years of discrimination.

25 I guess I am particularly interested in this because

1 a number of participants and many of the members of the
2 advisory committees are practitioners and have the day-to-day
3 responsibility of dealing with officials from the OFCCP panel
4 and my sense is that those who were in the audience confirmed
5 this, that they like schedules and time tables and that they
6 are in agreement with Secretary Brock.

7 So I would like you to address that, first of all
8 and then I will get to my second question.

9 MR. EASTLAND: Well, Secretary Brock, I looked at
10 the transcript of what he said and I do not think it was a
11 very -- it was a planned discussion of his policies.

12 I think you are saying that he made a distinction
13 between quotas and goals and that goals were acceptable but
14 quotas were not.

15 To the extent he said that, if he did say that, that
16 is not the administration position and OFCCP, to the extent it
17 does that, is not in conformity with the administration's
18 policies.

19 MR. SCHWARTZ: In the use of goals or the use of
20 quotas?

21 MR. EASTLAND: In the use of goals or quotas.

22 MR. SCHWARTZ: I see.

23 MR. EASTLAND: And I say that on the basis of the
24 fact that the President himself yesterday said that the
25 policies of the Justice Department are his policies and the

1 policies of the administration, so that would have the
2 implication that Mr. Brock will, as well.

3 MR. FLOREZ: John Florez from Utah. I want to go
4 back to the perception problems. Any public relations person
5 will know that oftentimes facts have a fluid perception.

6 I think we can point out the positive things that
7 the Reagan Administration has done but why is there all this
8 seemingly being beaten over the head about this? Isn't part
9 of the problem the fact that you are going back to those
10 cities in 1981 where decisions had been made?

11 What value is that going to have? I mean, isn't
12 that just holding on to ideology instead of moving forward?

13 MR. EASTLAND: I disagree with that and let me give
14 you a little context for that. We are not, you know, rushing
15 madly up Quota Hill wherever we see the hill.

16 There happen to be 70, 80, 90 -- I do not know how
17 many decrees prior to 1981. We only are looking at those --
18 maybe half to two-thirds of those are ones that in any way
19 have any application today. A number of those are just
20 basically dormant.

21 MR. FLOREZ: My question on this is why?

22 MR. EASTLAND: But I am trying to give you a sense
23 of the list, you know, why is this?

24 We do not think the government should be a party to
25 a form of discrimination which is what a quota is and that

1 these quotas today and tomorrow and next week will have
2 real-life effects on the individuals' particular communities.

3 I might add that these quotas are not only something
4 that -- I mean, too often we think of quotas that pit black
5 against white. That is not true.

6 Take the case in New Orleans, the Williams case
7 where there were Hispanics and women who filed suit in that
8 case over the quota arrangement there.

9 MR. FLOREZ: Isn't that a matter of trying to win
10 the battle and losing the war? I am talking about perception.

11 MR. EASTLAND: Well, I know what you are saying
12 about perception, but is it not also correct for the
13 government itself? What about the perception of the
14 government being party to a decree that discriminates?

15 MR. FLOREZ: I agree. I think you are absolutely
16 correct. That is the question I move forward.

17 MR. EASTLAND: Well, if that were the only
18 perception problem we had, we could deal with that one.

19 CHAIRMAN GREEN: All right, two final questions,
20 Maxine Kurtz and then Mr. Gifford and then we will call it a
21 session.

22 MS. KURTZ: Maxine Kurtz from Denver. As an
23 attorney, I find the government speaking with two voices. On
24 the one hand, the Justice Department says, "Here is where we
25 are coming from" and on the other hand, the actual regulations

1 of the Office of Federal Contract Compliance Programs very
2 specifically calls for goals and time tables.

3 Now, is anything going to be done with regard to
4 that?

5 MR. EASTLAND: I did not dispute that, did I?

6 MS. KURTZ: No, I am simply asking a question. Is
7 something going to be done to unscramble these mixed signals
8 that we get from these different parts of the Federal
9 Government?

10 MR. EASTLAND: The signals or the eggs are both
11 scrambled and we would like to see it straightened out. But
12 until you have been inside of government and tried to work
13 through it, you would not be able to see what a difficult
14 problem it is.

15 MS. KURTZ: Oh, I am aware of the problem. I am
16 simply saying that people have the same problem and if the
17 government --

18 MR. EASTLAND: Well, OFCCP -- let me also tell you
19 -- I mean, the difficulty of this extends far and wide. The
20 Washington Post, for example, editorialized in the D. C. Fire
21 Fighters' case very solidly against quotas, whether at the
22 hiring or the promotion stage. They applauded the Justice
23 Department for its filing in this case.

24 Then it writes the editorial in yesterday's paper
25 that applauds Secretary Brock for adopting goals.

1 Now, it is hard to know -- and you are familiar with
2 OFCCP --

3 MS. KURTZ: Oh, yes.

4 MR. EASTLAND: -- it is hard to know where the Post
5 stands, for example. I mean, there must be a schizoid nature
6 to that editorial page -- either that or they have more than
7 one writer, which is also true.

8 But within the administration, if that is the case
9 in the Washington Post, then that is really not our model for
10 living.

11 [Laughter.]

12 But if that is the case in the Washington Post, then
13 it is not also surprising that within the administration we
14 might have some differences there but OFCCP is one of the
15 primary enforcers we have and it is an area that still needs
16 to be looked at and we hope that Secretary Brock will do that.

17 By the way, I want to add one final comment on
18 quotas. One of the -- and I cannot talk about the city but
19 one of the cities in the pre-1981 decrees that we were talking
20 about earlier, one of the cities has, according to that
21 decree, a 50 percent quota plan.

22 That is that you have to hire one-for-one black and
23 white and you have to hire one off the black list and one off
24 the white list and it has to be that way -- and this is for
25 all the jobs -- I think it is for all the police, fire and

1 county jobs.

2 We have found that the applicant levels of the pool
3 of applicants that, when you look at the total pool of people
4 applying, that the black applicants are running 68 and 70 and
5 71 and 72 percent of those applying.

6 It seems to us that the quota is placing a ceiling
7 or a limit upon the aspirations of blacks in that city.
8 Quotas can have that impact.

9 There are some quotas in some housing cases,
10 Starrett City, to mention a case that we are still involved
11 with in New York, a case where there is a quota there that we
12 believe limits the number of blacks that can live in Starrett
13 City. So quotas can place a ceiling as well, above which
14 you cannot go.

15 MR. GIFFORD: We had talked almost exclusively about
16 differences in the administration's approach vis-a-vis
17 policies taken by at least seven of the Presidents that
18 preceded you.

19 Is it possible for you to maybe give one or two
20 examples of actions taken by the Justice Department that have
21 been designed to help historic victims of racial
22 discrimination in this country?

23 Can you give an example or two of an affirmative
24 step designed to help blacks -- especially blacks in that role
25 which were the people in mind from 1866 through 1975 that were

1 covered by the Civil Rights Act of 1964 and 1965? Aren't
2 there some perfect examples?

3 MR. EASTLAND: Oh, absolutely. I gave several of
4 those and I want to reiterate one of them. Cicero, Illinois
5 which, if you have any familiarity with, has been a place that
6 few administrations have been willing to tussle with; we have
7 filed the first combination housing and employment law suit
8 because of the particular discrimination there against blacks.

9 Now, we are currently in the process of that case
10 but you asked for an affirmative step. I think that is
11 extremely affirmative if you know anything about Cicero.

12 CHAIRMAN GREEN: Terry, thank you very much.

13 We are going to break for a few minutes.

14 [Applause.] [Brief recess.]

15 CHAIRMAN GREEN: As you know, this is the last panel
16 that is on our schedule.

17 Not on our schedule are concluding remarks which
18 will be given by Clarence Pendelton, the Chairman of the
19 Commission at the conclusion of this panel.

20 So, when the speakers have finished speaking, please
21 do not get up and move out of the room. Please wait. Penny
22 does intend to give a ten-minute concluding presentation.

23 This panel is on Equity and Excellence in
24 Education. That is the title. This raises two questions, I
25 think, for the Civil Rights Commission.

1 One question is, what can be done to improve
2 education for minorities who have suffered from discrimination
3 in the past and in some cases in the present?

4 And, two, will raising standards and other goals of
5 the excellence movement harm minorities?

6 I think that the panelists that we have today are
7 uniquely qualified to speak on the topic. I will introduce
8 all of them now in the order in which they will speak.

9 Bernard Gifford is the Dean of the School of
10 Education at the University of California at Berkeley and
11 former Deputy Chancellor of the Board of Education of the City
12 of New York.

13 Nat Glazer is the author of Affirmative
14 Discrimination, Ethnic Dilemmas and many other works too
15 numerous to mention here and Professor of Education at Harvard
16 and is a consultant on our Project on Affirmative Action in
17 Higher Education.

18 Chester Finn is a Professor of Public Policy at
19 Vanderbilt University, author of many articles on education
20 and, in particular, on the excellence movement and he is an
21 intermittent consultant to the Secretary of Education at the
22 present time in addition to being the Professor at Vanderbilt.

23 The last speaker is Al Shanker who is president both
24 of the American Federation of Teachers and the United
25 Federation of Teachers and is my former employer.

1 So, Dr. Gifford, can you begin?

2 DR. GIFFORD: Right. In deciding what to talk
3 about, I decided what I would try to do was to put myself in
4 your shoes and to act as if I was trying to look for an agenda
5 as a member of a state advisory committee that would help me
6 to understand the relationship between education and equal
7 opportunities in my particular state.

8 So I am going to attempt to throw out a number of
9 issues that I would like to suggest might be appropriate for a
10 state level hearing investigation and, one hopes, vigorous and
11 intelligent debate.

12 In offering these suggestions, I am not implying
13 that each and every suggestion implies that there is, in fact,
14 unlawful discrimination but I will argue that with respect to
15 each and every one of these suggestions, unintended or
16 unanticipated negative results on minority children in
17 education may be the result of some of these disparities.

18 Were I a State Advisory Committee Chairperson, I
19 think, among the issues that I would want to take a look at
20 would be expenditure differences for public education across
21 school district lines.

22 One of the reasons I would want to take a look at
23 this issue, especially in light of a Supreme Court decision
24 some years ago which argued that the Federal Government had no
25 compelling interest in this area and that the state should

1 assume full responsibility for equality of expenditures in
2 education is that, in fact, as a result of the Supreme Court
3 indicating that there was no compelling federal interest in
4 this area, is that many states have actually regressed in
5 assuring equality of expenditures across district lines.

6 They have regressed because, as a result of the
7 Supreme Court decision, movements that had been made in the
8 direction of ensuring equal opportunity in expenditures in
9 fact has been arrested.

10 I know in the State of California, under the
11 pressure of a state court decision, Sirano versus Preece,
12 enormous steps had been made to eliminate the wide disparities
13 in expenditure patterns that existed in California --
14 expenditure patterns that saw a differential expenditure of as
15 much as two to one from rich districts to poor districts.

16 I am afraid to say that in many cases on the State
17 of California there is actually regression.

18 In New York State, again, under the pressure of a
19 state court decision there was movement in the direction of
20 equalizing expenditure patterns across districts. That
21 decision, unfortunately, turned out, I think, with the wrong
22 result and there is some evidence of regression in expenditure
23 patterns.

24 So I would argue that this is an area that is
25 fruitful and appropriate for state advisory commissions to

1 look at, if for no other reason than to make members of your
2 polity aware of some of these trends and their possible
3 implications.

4 I would also argue that another area that might be
5 ripe with potential for fruitful debate would be an
6 investigation of expenditure differences within individual
7 school districts and across grade levels.

8 Here, I am not arguing that differences in
9 expenditures across grade levels imply invidious
10 discrimination but I would argue that differences are to be
11 rational and that officials responsible for promulgating
12 policies that result in differences are to be at least able to
13 explain why those differences exist.

14 I would argue, for example, that a very strong case
15 can be made that we ought to be making a much larger
16 investment in early childhood education and in the early
17 grades.

18 I would argue -- and I think with some justification
19 -- that we ought to be talking about reducing class size,
20 especially among poor youngsters down to 12 and 15.

21 You probably will find an inverse of this
22 relationship. You probably will find, in many school
23 districts, smaller class sizes at the high school level and
24 you will find the smallest class size in advanced placement
25 courses and you will probably find the largest class sizes in

1 kindergarten, first, second and third grades.

2 You probably will find that the highest numbers are
3 most likely in very, very poor districts.

4 Again, I am not arguing that this is prima facie
5 evidence of unlawful, invidious discrimination but I would
6 argue that it is a public policy that touches on civil rights
7 and certainly merits intelligent discussion.

8 Another area where I think that one might gain some
9 intelligence in this area is to take a look at higher
10 education expenditures, especially in public institutions.

11 For example, it has always been a mystery to me --
12 and one that I still have not gotten satisfactory answers on
13 from people -- why certain professional preparation programs
14 receive greater subsidies from the state and the people than
15 other programs.

16 For example, at my university, far more money is
17 spent on graduate students in business and in law and in
18 engineering than students in education.

19 Now, I would argue that, certainly, if a subsidy is,
20 deserved, given the market for teachers and given the
21 potential public good, the general good that teachers are
22 capable of generating for the larger society, that if there
23 are going to be any inequalities in subsidies, public
24 subsidies, then it probably should go to education rather than
25 to law and business preparation programs that prepare people

1 for very, very high-paying positions in the economy.

2 Also, there is ample evidence that students that go
3 to law school and to business school are more likely to come
4 from very, very high-income families -- certainly much higher
5 income families than students that go into education.

6 And here we are not talking about differences in
7 qualifications because Berkeley has a uniform standard of
8 admission and students that attend the School of Education
9 have average GRE's of 1,200 and the average grade point
10 average is at 3.6, so we are not talking about second-rate
11 students.

12 I am not altogether sure that this difference is a
13 result of any rational policy, other than a long-standing
14 prejudice that characterizes higher education.

15 Another issue that I think bears some investigation,
16 if for no other reason than to force people to explain their
17 behavior, is the whole question in many state university
18 systems of allocating responsibility for educational programs
19 to the unit with the least prestige and the lowest level of
20 resource capability.

21 For example, in the State of California and I
22 believe this is also the case in Michigan and a number of
23 other places, the schools with the greatest prestige and the
24 highest standing are prohibited by a master plan from being
25 involved in education at more than a marginal level.

1 And the institutions that receive fewer resources,
2 faculty that may not be as well-qualified or as well-prepared
3 or at the cutting edge of research are assigned responsibility
4 for teaching.

5 For example, in the State of California, the top
6 12.5 percent of all high school graduates are eligible for
7 admission to the University of California and then the next 30
8 or 40 percent are eligible for admission to the California
9 State University and then admission is guaranteed to all other
10 students to the community colleges.

11 Well, statutorially in California, education is the
12 responsibility of the state university, which means that the
13 top 12.5 percent of the students are almost statutorially
14 prohibited from pursuing studies in education.

15 I cannot think of a system which is more detrimental
16 to the growth and development of a first-rate educational
17 system. I am sure there are good reasons for this but there
18 are also horrible consequences of this action.

19 The other issue that I think bears some
20 investigation in education is the whole question of
21 differential rates of scholarship support provided by state
22 governments across different disciplines.

23 Obviously, I am going to argue that education is in
24 such serious trouble in this country that we need to be doing
25 everything possible to provide adequate loans, adequate

1 scholarships and adequate support to attract our best and
2 brightest into the profession.

3 However, if one were to look at patterns of
4 scholarships and fellowships, you would find a pattern which
5 is just opposite of all of our proclamations about the need to
6 restore competence to our elementary and secondary school
7 system.

8 Another area where I would suggest we might have
9 some fruitful discussion is in the whole area of testing and
10 teacher competency.

11 I have written a great deal about testing. I have
12 absolutely no problem with examinations. I think they are
13 important and I think they are important for reasons that are
14 not well-understood.

15 When most of us speak about testing and education,
16 we tend to point the finger at teachers when, in fact, often
17 people that come out of educational programs are victims
18 rather than the guilty ones because what has happened in
19 American education is that the college degree is no longer a
20 guarantee that the possessor can read, write and compute at a
21 relatively low level.

22 So when we see students failing basic competency
23 exams upon graduation from a four-year college, I think we
24 should not be dumping on students because often the students
25 are the victims of mis-education.

1 But we certainly ought to be asking our colleges
2 and universities what in the hell are they doing over the
3 course of four years? And what kind of standards are they
4 adhering to when students can come out with B.A. degrees and
5 B.S. degrees and not be able to show a command of numeracy or
6 literacy at a very, very basic level.

7 I would also suggest that in investigating testing
8 that it would be appropriate to conduct hearings where one
9 invites representatives of major testing corporations to
10 explain what is being done to rid many standardized
11 examinations of items that may invidiously discriminate for
12 non-legitimate reasons-- that is, to rid the exam of items
13 that might be culturally biased or give unfair advantage to
14 certain groups for reasons that are not related to the purpose
15 of the examination.

16 Ridding the examination of cultural bias will not
17 eliminate disparities but what it will do is to make it very
18 clear that those disparities can be attributed to reasons that
19 can be corrected through targeted assistance programs.

20 Another area that I think one ought to discuss in
21 testing -- and I know that this will cause me to differ with
22 some of you -- is the, I think, the misuse of rank order in
23 testing.

24 I have read a lot of the materials put out by this
25 Commission and I frankly think that many people place too much

1 confidence in very, very small differences on examinations.

2 I know in New York City we used to rank exams out to
3 the third decimal place and so people would be ranked 92.387
4 and the person receiving 92.387 was considered better than the
5 person receiving 92.386.

6 Ranking is often an administrative convenience and
7 certainly not an indicator of quality.

8 Now, I am not going to argue that there is no
9 material difference between the student or the applicant that
10 scores 70 and the applicant that scores 95. I think that is
11 patent nonsense.

12 But I would argue that there is no distinction,
13 there is no proper distinction that can be made, let us say,
14 between the student or the applicant that scores 95 and the
15 applicant that scores 92.

16 I think one of the things we might be talking about
17 in testing is, rather than this severe rank-ordering, is
18 probably development of some competence bands.

19 That is, students that score maybe between 94 and
20 100 will be in one competence band and those that score
21 between 88 and 94 -- the point is, I think there are more
22 rational ways of using the exams and thus ridding the exams,
23 at least in the eyes of many members of minority communities,
24 of exams being instruments of invidious discrimination rather
25 than instruments of justifiable selection and sorting.

1 The other issue that I would argue requires a great
2 deal of investigation and conversation and vigorous debate is
3 the whole question of the relationship between diagnosis and
4 testing.

5 One of the great disservices that I believe our
6 testing services perpetuate is that they give us exams -- they
7 give us scores but rarely do they give us intelligence on what
8 the scores mean.

9 Rarely do they provide us advice on what needs to be
10 done to correct our teaching and learning approaches so that
11 results in the future would not show the large disparities in
12 passing rates among various population subgroups.

13 So I would argue that they need to be called on the
14 carpet and encouraged to spend more time providing diagnostic
15 information to receivers of testing results.

16 Another area that I would argue requires vigorous
17 debate is the question of early childhood education. I
18 alluded to this earlier.

19 As the evidence mounts on the terrible toll that
20 young, innocent children are paying because they have had the
21 misfortune to be born in poor families, and as the evidence
22 mounts that it is increasingly difficult to close the gap the
23 longer you wait, I think a compelling case can be made that
24 the development of early childhood education programs ought to
25 be a central plank in any civil rights agenda.

1 We are never, ever going to be able to get to the
2 point where we can talk about multiple opportunities and equal
3 opportunities until we are able to close the achievement gap
4 that separates large numbers of poor children from non-poor
5 children and I frankly think that waiting until high school or
6 college, we are waiting too late, that we are waiting too
7 long.

8 I think a very strong case can be made that local
9 school districts and state education departments should be
10 pursuing widespread programs in early childhood education, not
11 only because it is sound education policy, but because it is
12 good, it is part of our policy of social justice.

13 I hope I have given you at least three or four items
14 that should keep you busy at the state level.

15 Thank you.

16 [Applause.]

17 MR. GLAZER: Much of what Dean Gifford has said, I
18 would agree with and I would like to begin by commenting on an
19 aspect of his presentation which I think is most important.

20 His presentation is really about policy rather than
21 discrimination and it is about policy rather than law.

22 Inevitably, the Civil Rights Commission, owing to
23 its origins, owing to its mission, owing to the significance
24 of law and litigation, at least in the past, has always
25 thought in litigational terms.

1 If we do not have enough early childhood education,
2 then a few bright young lawyers will be able to find a
3 solution to that and will arrange things so we can have more
4 childhood litigation.

5 I think most of us -- or many of us by now believe
6 -- some of us believed earlier -- that there was always a
7 problem with this approach. Not everything was caused by
8 discrimination. Not everything could be settled by law.

9 There is such a thing as policy. There is such a
10 thing as, a decision as to where resources should go which are
11 not to be dictated by the litigation and judicial decisions.

12 Now I know that many people undertaking the
13 difficult tasks of politics are very disappointed when they do
14 not win and cannot get these decisional patterns changed.

15 For example, the pattern by which -- and I fully
16 agree -- more should be spent on early childhood education, on
17 elementary grades; that, indeed, one can well-manage with
18 larger classes at the later high school years on the
19 assumption that a good foundation has been set.

20 Having gone through a school system with large
21 classes everywhere, I feel I speak with some authority on this
22 question but I do think that one can manage a good deal by
23 redistributing resources to a better advantage.

24 Let me make one other comment on the problem of the
25 discrimination approach or the law approach rather than the

1 policy approach.

2 Here I will not take issue with Mr. Gifford but I
3 will point out a problem that I see when he spoke of lesser
4 resources going to the schools of education.

5 I am fully aware of this sad fact since I get less
6 than my colleagues on the faculty of Arts and Sciences and
7 much less than my colleagues in business, law and so on and
8 the annual reports of the American Association of University
9 Professors makes this painfully clear to me every year.

10 I am also aware that the problem is that you have to
11 pay more to get a business teacher since he has other
12 alternatives and you have to pay a good deal more to get a law
13 teacher and more to get a medical school teacher and so on.

14 Unfortunately, it seems you do not have to pay that
15 much to get a teacher in the school of education which, by the
16 way, is no comment on their qualities necessarily but only on
17 their career choices.

18 So that a policy approach raises problems and it
19 does not give all possible answers. Sometimes it is said that
20 the policy approach will never work for minorities because
21 they are minorities. They cannot twist resources away from
22 the more privileged or the more numerous.

23 I think of the fascinating case of education for the
24 disadvantaged who are an even smaller minority than racial and
25 some racial-ethnic minorities and yet they have done

1 remarkably well at twisting these resources away.

2 By the way, my reference to that indicates that
3 there is also a role for law and litigation too, but it has
4 very much been a policy matter in which state laws, for
5 example, in Massachusetts have been passed which almost
6 guarantees substantial resources for the disadvantaged.

7 It is possible,

8 The main body of my remarks, which shall not be too
9 extended, surrounded as I am by most competent people, all of
10 whom will undoubtedly say things I fully agree with, is to
11 comment on the problem of the new competency movement and
reactions to it.

13 It is a very strong trend and it is a trend which
14 would be a big mistake for people concerned with civil rights
15 and minorities to stand against as such.

16 It is, one should note, not a trend that has been
17 started by interest groups as such. Teachers' unions are not
18 particularly active in it, nor are administrators of school
19 systems.

20 It is really one of those things that happens in
21 politics and education that represents a kind of a mass
22 feeling -- a mass feeling that too many children are getting
23 out of school without basic competencies -- a feeling among
24 businessmen that they cannot trust a high school diploma
25 to mean that this person can read or write or calculate and

1 so on.

2 So it is wrong to be on the other side of competency
3 and the raising of standards.

4 Why one gets on the other side, one understands.
5 There are very substantial disparities between how people in
6 different ethnic and racial groups and minorities achieve in
7 these areas.

8 I will not rehearse the bad news. It is familiar to
9 all of you. But there is a good deal of it on the second page
10 of the Washington Post today on the effects of the Arkansas
11 Teachers' Test.

12 I am thinking both politically and substantively
13 when I say one really cannot oppose these things.

14 Dean Gifford has pointed out that there are -- we
15 know there are problems with tests. I think the civil rights
16 tact on tests has actually produced a good deal of good.

17 There has been a certain kind of nonsense in tests.
18 Tests for principals, for example. I do not know what a test
19 for a principal should be, a written test. I do not think
20 that anyone will ever find out. And it might be better to
21 abandon them.

22 Certainly tests, of course, for superintendents of
23 schools exist. There is nonsense in tests and insofar as
24 there is nonsense, which should be attacked, and insofar as
25 there is nonsense, it will probably be to the disadvantage of

1 some minorities. Other minorities may do better at tests.

2 In fact, one reason for the nonsense is another
3 minority that once passed through the school system 30 or 40
4 years ago that thought that taking tests out to the third
5 decimal point would be to their advantage. That is another
6 story. It is not now.

7 So, yes, nonsense where it is still in place.

8 But so many of the tests involve those elementary
9 competencies which mean that it cannot be a broad-scale and an
10 across-the-board attack.

11 And actually tests, I think, on the basis of
12 litigation, are getting better. They are getting more related
13 to functions.

14 I recall, in one test developed by the National
15 Association for Educational Progress on Functional Literacy, a
16 wonderful test item -- as I thought it -- in which you show
17 the testee three doors and one is marked "Lunchroom" and one
18 is marked "Principal" and the third is marked "Nurse" and you
19 say, "Where do you go when you are hungry?"

20 And the proportions failing are disastrous and I
21 will not tell you that bad news, either. But you cannot argue
22 with such a test. That test is life. Where do you go to
23 renew your license? What do you do?

24 So I think we simply cannot pursue the theme of
25 discrimination further than it is legitimately pursuable, or

1 the theme of test nonsense further than it is legitimately
2 pursuable.

3 Even when we come to teachers, I think here the
4 attack on teacher testing, an attack which many joined, was in
5 some respects a mistake, though I have not seen the tests. I
6 would like to see the Arkansas test.

7 But insofar as they were tests of proper spelling or
8 reading comprehension or numeracy, it simply puts everyone on
9 the wrong side and it is a lost cause because there is a
10 national commitment that we should do better in education.

11 Now, I want to say one more thing about the
12 disparities. We do not want to look at them too sharply and I
13 am not going to look at them too sharply, but one has to
14 recognize where the problems lie.

15 The issue, for example, is not necessarily language
16 as such -- foreign language as such -- which seems like a
17 perfectly good reason why people should do worse. It is not
18 necessarily so.

19 And the issue is not even necessarily poverty as
20 such.

21 By the way, having said what it is not, you will
22 want me to say what it is and I do not know what it is but
23 there is an order of test results which has been almost
24 uniform for 20 years or so, beginning with Coleman's Equal
25 Educational Opportunity Report.

1 Blacks did worst, Spanish a little better, Indians,
2 interestingly enough not so badly, Asians above the norm, if
3 anything, so we had a range of issues there.

4 One more point on discrimination. It is true the
5 law and litigation approach can be pushed very far. It can be
6 pushed on disparities, on discipline and so on.

7 And by the way, it can be pushed to areas where I
8 suspect or believe a real discrimination exists, differential
9 treatment by teachers and so on.

10 But there is always an issue of declining pay-off.
11 It is like wiping out the last piece of sin if one is subject
to that discrimination or wants to do something.

13 When my wife and I are walking to a movie in a
14 working-class section just north of Cambridge and someone
15 shouts "Nigger" at her, she wants the law on him.

16 Well, you know, it is probably more trouble to bring
17 the law in than it is worth and it is a terrible thing but
18 there is nothing to be done, probably and for a lot of these
19 things, it is a question of pay-off. One has to select issues
20 of where one significantly gains something.

21 A lot of minority groups live with the heritage and
the reality of differential behavior of one kind or another.

23 I think the places where energy is to be selected is
24 really on what the competency movement points to -- as other
25 tests have pointed to -- and that is, what does one do about

1 these disparities?

2 And I do think we have some evidence as to what
3 helps. In the last few years we have seen increases in
4 achievement and reduction of disparities between blacks and
5 everyone else so all these things we can go into and speak of
6 in more detail under the national assessment of educational
7 progress.

8 Since about 1982 we have been seeing some
9 improvement and that is a good sign. I suspect, though I will
10 never prove it, that it is a fact that we do steadily spend \$2
11 or \$3 billion a year directed to more or less children of poor
12 districts, that that is achieving that.

13 Actually, those Title I funds, when you look into
14 them, are really used in a rather practical way. I mean,
15 there are problems there but they are just used for a lot more
16 drill or mathematics and teaching -- mostly.

17 They are not used for psychology and that is the way
18 they tend to be used -- at least in some studies I have seen.
19 And it shows effects.

20 We are going to have two other people speaking who
21 know a lot more about what goes on in the schools than I do
22 and have a lot more ideas about what can be done.

23 It is not only a bias on my part, it is also my
24 interpretation of what those small achievements that we have
25 been seeing are due to that lead me to think that such things

1 as fairly traditional approaches are important.

2 That is, drill and going over things, insisting that
3 it is important to learn something before going on to the next
4 thing, homework. There has been a great deal of discussion
5 about this. We have yet another Coleman study,
6 Coleman-Greeley on private schools.

7 I think the thing to take out of those studies is
8 why the schools are better.

9 Now, why they are better does not give us a
10 blueprint as to how other schools could be made better. You
11 could say they are better because they take discipline more
12 seriously -- and I am sure that is true.

13 It is a real problem in saying that schools are
14 better if there is discipline and then taking schools with a
15 lot of disturbed children and saying, "We are going to have
16 the same discipline."

17 It just cannot be transferred in the same way.

18 If you say the schools are better because they have
19 homework, that is maybe more transferable. Some things are
20 transferable. Some things are not.

21 In conclusion, the competency movement is going to
22 throw up a lot of bad news. It is throwing it up already.
23 Some of that bad news may involve nonsense.

24 We want to look at the tests. We want to see what
25 is going on and we should not accept, you know, sorting by

1 three decimal points. We should not accept tests in which
2 every answer is right.

3 I say that because I am a teacher of sociology and
4 once having had to lecture to a class of 1,000 engineering
5 students at Berkeley -- long before, Bernie, you were there --
6 my wife once overheard one student telling another student,
7 "You know, sociology is very hard. It seems there are no
8 right answers."

9 Or he might have said it the other way, "Sociology
10 is very hard. There are all right answers."

11 Okay, when there are all right answers or no right
12 answers, you do not tell a principal, "What do you do when?"
13 Who knows what you do? It depends.

14 So, when there is nonsense, we attack it.

15 When there is real news about things we consider
16 important, we simply have to accept the notion that there is
17 only one answer and to go to work. And we just have to learn
18 how to do better at those skills which we all accept as key.

19 [Applause.]

20 MR. SHANKER: Could I say first that you may find an
21 awful lot of disagreement in this panel? Though I am never
22 entirely willing to predict Al Shanker, in general I think you
23 may find a cumulative concurrence in most of what has been
24 said which is probably reason for us to speed up because there
25 may be some questions or dispute or further issues in the room

1 that people would like to talk about. So I will, at the very
2 least, promise to speak quickly.

3 I would also like to stipulate in advance that I do
4 not in any sense today represent the Department of Education.
5 If I did, I would have had to get what I would describe as
6 being cleared at OMB and I am not about to go through that.

7 I am going to talk mostly about -- also, as Nat
8 suggested -- about policy, not law in education, not about
9 discrimination per se but about some of the issues that have
10 arisen under the banner of excellence and equity.

11 One of the reasons that you were given a panel on
12 that issue, Excellence and Equity in Education, is because
13 there has arisen in the education profession a kind of
14 conventional wisdom that there is a trade-off between
15 excellence and equity in education, that we are dealing here
16 with some kind of a zero-sum game in which raising standards
17 leads automatically and irrevocably to some kind of injustice,
18 to some kind of inequity, to some kind of discrimination.

19 It is very interesting to me that that alleged
20 trade-off, that zero-sum game, which seems to me to be taken
21 for granted in much of the education profession, the
22 headquarters of which is in the colleges of education; that at
23 least three of us are associated with and others of their ilk
24 -- that this conventional wisdom about the trade-off does not
25 apply in many other spheres of our national life.

1 And, incidentally, it does not work in the English
2 language, either. I have yet to find a dictionary in which
3 excellence and equity or excellence and equality appear as
4 antonyms.

5 It does not work in common parlance. You would
6 never find yourself saying, "That was not an excellent meal I
7 just ate, that was an equal meal."

8 You would never find yourself saying, "Instead of
9 making those two dresses of equal length, would you please
10 make the blue one excellent."

11 You just would not say it. You would not use this
12 kind of oppositional language in common parlance, but in
13 education, we talk as if it were the case.

14 I want to suggest to you that while there are some
15 trade-offs having to do with the resource allocation in
16 education and with how we spend our time and concentrate our
17 energies, that these are not ideological or philosophical
18 trade-offs.

19 These are not, if you will, conceptually in
20 opposition. There are always resource trade-offs. There is a
21 resource trade-off in school between English and Math. There
22 is a resource trade-off in school between preschool and high
23 school.

24 How much of our money? How much of our teachers'
25 time? How much of our energies are we going to give to one or

1 the other?

2 Those kinds of problems can typically be solved or
3 at least alleviated, either by adding resources or by making
4 more efficient use of the resources we have already got.

5 I suggest to you that the same kinds of ways of
6 thinking about educational excellence and equity are useful
7 and incidentally, though Al may disagree with this, I want to
8 suggest that we are not necessarily lacking in resources in
9 education.

10 We are spending enormous sums on education -- not in
11 teachers' colleges, of course, but in schools.

12 The average per-pupil expenditure in this country
13 this last year was \$3,500. That means that a classroom of 30
14 kids -- which is too large but, nevertheless, not infrequent
15 -- a classroom of 30 kids sits on top of a public expenditure
16 of \$100,000 a year.

17 I will say that again. A classroom of 30 kids, on
18 average, sits on top of a public expenditure of \$100,000 a
19 year.

20 The teacher's salary last year averaged 23.5. So
21 somewhere there is \$76,500 being spent for that classroom of
22 30 kids that is not going to its teacher in salary.

23 I am honestly not crystal clear where it is going.
24 I can make some guesses and have some thoughts about where at
25 least some of it is going but \$100,000 for a class of kids is

1 a lot of money and I think it is fair to ask, is it being
2 spent well? Is it being spent wisely?

3 And, of course, is it being spent fairly?

4 But, mainly, is it being spent to achieve the
5 objectives that we would want it to be spent for and this, to
6 me, is a more interesting question than the alleged
7 philosophical trade-off between excellence and equity.

8 Now, Max Green and David Schwartz are putting out a
9 wonderful magazine called New Perspectives, that perhaps you
10 all have subscriptions to. In it, the issue that arrived on
11 my desk a week or so ago, there is a wonderful article by
12 Morris Abram about the question of whether educational
13 standards are, in fact, good or bad for disadvantaged and
14 minority kids.

15 It is a very interesting article on the excellence
16 and equity issue and it -- Morris Abram says, "No, this is not
17 a trade-off. This is not a problem."

18 He suggests that the discussion be altered to a
19 discussion of what he and I would call "educational fraud."

20 The question is, are we supplying promotions and
21 diplomas that are meaningless for kids? And are we, by the
22 absence of standards, fooling, misleading a number of kids
23 into thinking they have achieved something that, in fact, they
24 have not achieved because, in fact, no real meaningful
25 standards that the world would honor were associated with the

1 awarding of that promotion from one grade to the next for that
2 diploma at the end of the high school experience.

3 This, Morris says and I would agree, is a very
4 important question about the validity, the worth, the value of
5 the educational credentials that we do bestow.

6 I am prepared to suggest to you that educational
7 fraud is a bona fide, even major issue in this country,
8 especially for underclass kids, minority kids, disadvantaged
9 kids.

10 Now, I do not want to suggest that it is the result
11 of a conscious conspiracy to keep -- by schools or anyone else
12 -- to keep kids ignorant.

13 Now, there is a Marxist line of analysis that runs
14 along those lines that says, "Big evil capitalist society
15 conspires to keep poor kids in place by not teaching them
16 anything." I do not think that is the case.

17 I think that fraud where we have it is the result of
18 a series of bad luck, coincidences, misjudgments and
19 accidents. I think that it exists, however, and is not likely
20 to be solved by denying that it exists or by opposing the
21 kinds of standards that are, in fact, a necessary part of the
22 solution.

23 I am here suggesting a kind of education consumer
24 protectionism, if you will, that is asking on behalf of the
25 kids whether what they are getting has worth?

1 I do not know whether that is a civil rights
2 issue. It is surely someone's issue and surely a valid way to
3 think about education from the kind of consumer's standpoint.

4 I have to tell you that I find more and more I am
5 glad that nobody has asked for my advice on economic policy
6 because with the whole series of education issues I have
7 concluded that I am an absolute, confirmed demand-sider.

8 I think that what we get in teachers is what those
9 who employ teachers are willing to hire. I do not think the
10 proper fulcrum here is the teachers' colleges. I think it is
11 the employers of teachers. Who are they willing to hire?

12 The teachers' colleges would eventually respond to a
13 change among those on the demand side. Likewise, textbooks.
14 The proper place to deal with the textbook problem is not with
15 the publishers. They will publish anything anybody wants to
16 buy. The proper place to deal with the textbook issue is with
17 the purchasers of junk and with their notions about content
18 that underlie their decisions about what they are willing to
19 purchase.

20 And I am suggesting similarly from the students'
21 standpoint, ask from the consumer's viewpoint, the purchaser's
22 viewpoint, if you will -- the kid, his parents.

23 Is he purchasing? You know, in a well-informed
24 manner, something that has innate worth and value to it.

25 Well, let me -- Morris Abram's concluding paragraph

1 you could read for yourself. It says the following:

2 "What will doom the children of the disadvantaged is
3 not high-quality education and the imposition of educational
4 standards. What will doom them is chaotic classrooms in
5 schools that do not teach whose diploma is worthless.

6 "On the other side of the playground lies a world
7 there in which the one who cannot read or count or solve a
8 complex problem is the one who is lost."

9 Now, this is not to say that the sudden imposition
10 of exacting standards, especially the retroactive imposition
11 of exacting standards is not going to lead to unacceptably
12 high levels of failure among kids, indeed, among teachers and
13 that that failure may be unacceptably concentrated among
14 minority group or disadvantaged kids.

15 This is, in fact, a real problem, especially when
16 you start at the end and impose standards backwards -- when
17 you start with a high school kid and suddenly tell him he has
18 to demonstrate in 12th grade that he learned something that,
19 in fact, he should have learned in sixth grade but never
20 learned it there because there was no standard when he was in
21 sixth grade.

22 Working backward from the end of the educational
23 process is probably not fair.

24 Starting with tomorrow's first graders and asking
25 whether they are ready to begin meeting standards and then

1 having meaningful standards that they will meet all the way up
2 through school is, I think, the proper way to begin and I
3 would like to absolutely endorse what Bernie and Nat have both
4 said about, if you will, early childhood education or other
5 ways of ensuring that the kid arriving in first grade is ready
6 to start serious learning when he arrives in first grade.

7 Because if you have standards waiting for him in
8 first grade and he is not ready to meet them, he is going to
9 begin to slide down the slippery slope of failure that from
10 which it will be very, very hard to rescue him and some kids,
11 alas, are not ready for first grade -- a few for developmental
12 reasons but an awful lot more for social, cultural and family
13 reasons are not ready for what we would like them to be ready
14 for in first grade.

15 So I think that is a very proper place to focus a
16 lot of our energies.

17 I would in general say our purpose here has got to
18 be to maximize the success rate of kids in relation to --
19 maximize success in relation to minimum standards that are
20 going to be imposed and make it possible for all kids who are
21 halfway motivated to succeed to do so.

22 We will never have universal success in relation to
23 any meaningful standard because we will always have to deal
24 with differing degrees of motivation and enthusiasm for
25 meeting that standard.

1 handicapped if the kid does not bring some of those with him
2 from home.

3 It is reasonable to hold schools accountable for
4 what they do during their hours with kids, but a very rough
5 calculation shows you that the kid at the end of 12th grade
6 will have spent about 13,000 hours in school.

7 That sounds like a lot but it turns out that is only
8 eight percent of his life at age 18 and he has spent 92
9 percent of his life outside of school.

10 Now, what are the influences on him during the other
11 90 percent of his life? And what reasonably can we expect the
12 10 percent to do?

13 Obviously, in 13,000 hours you can learn a lot of
14 math and French and literature and things that schools can
15 teach and if you multiply, magnify the 13,000 hours with some
16 homework, you can learn even more.

17 But let us not disregard the 90 percent that he
18 spends elsewhere and let us not mislead ourselves into
19 thinking that schools are good at doing everything.

20 In the same Abram article there is a very
21 interesting quote from W. B. Dubois from 1935 on what it is
22 schools can do and cannot do and how we need to concentrate on
23 what we can reasonably expect of them as institutions.

24 Well, I was going to give you a long rendition of a
25 view that John Gardner eloquently wrote in 1961 in his famous

1 book entitled Excellence, the subtitle of which was, Can We Be
2 Excellent and Equal, Too?

3 It is a very interesting book that continues to
4 gain attention 24 years later, I think, because Gardner's
5 basic answer was, "Yes, we can be excellent and equal, too,
6 provided we define the terms correctly and are smart about how
7 we go about it."

8 He did not see these as antonyms. He did not see
9 these as trade-offs. I do not think the man in the street in
10 the United States today sees them as antonyms or as trade-offs
11 and I would simply like to suggest that we guard against those
12 who do and insist that they need not be -- but to make sure
13 that they are not, we have got our work cut out for us.

14 Thank you.

15 [Applause.]

16 DR. FINN: Well, the three previous people said that
17 this was not going to be a debate and they are right, it will
18 not be. I take very slight issue with one point but we will
19 get to that in a minute.

20 First, on the question of what can be done, I think,
21 clearly, the evidence that we have, the research evidence is
22 kind of soft but I think experience is very hard on this in
23 terms of a strategy of doing as much as you can early.

24 Those who work in schools, if they admit what they
25 see, which they frequently do not, but if they admit what they

1 see, they will tell you that somewhere around the fourth or
2 fifth grade you can probably spot about 95 percent of all
3 those students who are not going to make it later on, because
4 there is something that I think is not too difficult to
5 understand.

6 Most of us during our lives have tried to do certain
7 things. In some cases we succeeded and in other cases we did
8 not and if we look back at those cases where we did not, we
9 will find that we tried once or twice or three or five or 52
10 times and, depending upon our own motivation and a whole bunch
11 of other things -- but at a certain point we gave up and after
12 that point, no one could convince us that it was worth it or
13 that we were going to be able to do it, with respect to that
14 something.

15 Kids are like that, too. If you have been to a
16 kindergarten and first grade and second grade and third grade
17 and fourth grade, that is a very long time and if you see most
18 of your friends around you and they are able to read and to
19 write and to count and you can't do anything with it, you
20 start saying that you can't and you do not believe that you
21 can and it is not worth it or that you are dumb and, it is
22 very difficult to undo that -- to change that attitude.

23 So I am not saying it cannot be. But the chances of
24 doing it, of succeeding after that, are much smaller and what
25 has to be invested is much greater and therefore, the strategy

1 of trying to get it right the first time is something like our
2 philosophy with respect to education is something like our
3 philosophy with respect to automobiles.

4 The Japanese view of quality control is to get it
5 right in the first place and keep working on the system until
6 you do get it right in the first place because then it is both
7 better and cheaper.

8 Our system is to get it out and sell it and wait
9 until there is a fault and then recall 300,000 and do them
10 over again.

11 So, we have a similar system in education, except
12 that in education the ability to do something when you recall
13 or remediate is quite different because it depends, to some
14 extent, on the attitudes and motivations of the individual who
15 by that time may very well have been shattered.

16 So that approach, it seems to me, is very important.

17 Now, it seems to me that something follows from this
18 also and that is something that we have known for how many
19 years, 20, 30, 40?

20 This is not a new insight, that at a certain point
21 if a kid reaches fourth or fifth grade, that if we then fail,
22 no matter what methods have been used -- in elementary and
23 secondary schools -- fail to reverse that in the current
24 school setting, he is going to be a loser, and yet we continue
25 to do the same thing over and over again.

1 That is, we have a system which understands that by
2 sending that kid through junior high school and senior high
3 school with our current textbooks and teachers and curriculum
4 and everything else, that 95 percent of those who have not
5 made it by the fifth grade will not make it.

6 But we continue to go through that same set of
7 requirements and it seems to me that, while there has been a
8 good deal of overemphasis on the need for innovation in
9 schools, almost as though nothing is known or it does not
10 make any difference, and as though the important thing is
11 that, essentially, education is a kind of artistic experience
12 where doing things differently every year is a value.

13 That is a good deal of nonsense that creates turmoil
14 and where you have got what you know works, you ought to use
15 it and you ought to use it over and over again.

16 But when you know something does not work -- which
17 is the case when you take a kid in the fourth or fifth grade
18 and put him through the existing programs -- it seems to me
19 that there there is an obligation to innovate and to
20 experiment and to experiment radically.

21 I had an experience in an earlier existence as a
22 leader of a Boy Scout Troop where some kids who did not learn
23 how to read in school did learn many of these skills in a
24 totally different setting.

25 There, I think, that is something else that we ought

1 to be doing but are not doing. I think part of the reason
2 that we are not doing it is that we are very touchy that there
3 are a disproportionate number of the students who get to the
4 fourth and fifth grade who have not made it who are among the
5 minorities.

6 What would the minority community say if at that
7 point kids were taken out of regular schools and given an
8 experience more similar to Boy Scouts?

9 Would this be viewed as expelling children from
10 school?

11 Even when we know that what we are doing is wrong
12 and will not work and when we have some notions as to what
13 ought to be done, the politics and sensitivities on these
14 issues are so great that it is very difficult sometimes to
15 bring about changes that are needed.

16 I think there is a second very important issue that
17 has been touched on once or twice which I think is the equal
18 of the early childhood problem and giving kids who have not
19 made it to the fourth and fifth grade a second chance in some,
20 totally different program designed, by the way, to achieve the
21 same thing. I am not talking about taking kids out of a
22 regular school setting in order to give up on them and let
23 them have fun and play.

24 The goals would be exactly the same. As a matter of
25 fact, one of the goals would be to bring them back to school

1 after a short period of time -- if it is possible.

2 The second very important issue has to do with the
3 question of discipline and here, too, I think you will find
4 the experience of most teachers -- you will always find the
5 exception of some charismatic, wonderful individual who can
6 handle all children and all problems but there are not two
7 million teachers like that or two million doctors or lawyers
8 or anybody else.

9 So the problem is of what to do when you have a
10 certain number of children. There could be one in a class or
11 two in a class or three in a class and it is not just today or
12 this week and it is not just because Johnny had a problem two
13 weeks ago. It is not just with his teacher.

14 It is a recurrent form of behavior that sticks with
15 that child wherever the child goes and that child is not
16 learning anything and that child's behavior prevents the
17 classroom from functioning, the teacher from teaching and the
18 other children from learning.

19 Well, there is no doubt in my mind that that is one
20 of the major successes of non-public schools.

21 I taught in classes like that where I knew at the
22 end of the day or week or year that perhaps I was able to
23 spend 25 percent of my time in reaching the students.

24 And what do you do?

25 Now, it seems to me that excellence and equity are

1 not opposites. That is true. But neither is it true that
2 there does not exist a certain tension in the handling of
3 certain problems.

4 There is no doubt in my mind that a kid who has got
5 all sorts of problems probably has a better chance of getting
6 rid of those problems if placed with a bunch of kids who do
7 not have them and where the peer pressure of conforming to the
8 norm of those who do not have those problems is fairly great.

9 And if you take that kid out and put him in with a
10 bunch of other kids all of whom have similar problems, the
11 chances are you will have the same educational effect that
12 prisons do on criminals; and yet, there is also no doubt that
13 keeping that kid in the class with the others is going to
14 deprive them of some education and that there is no easy
15 answer to it.

16 There are questions of judgment and here is a case
17 where the dictionary definitions of excellence and equity are
18 not opposite to each other but any action that is taken is in
19 terms of attention or conflict between these two.

20 Now, I think something else can be done and here I
21 want to talk about the fact that a good deal is known --
22 especially, I would say, in the last 10 or 15 years we have
23 gotten to -- this is still not, it is not physics or chemistry
24 but neither are we just at the stage of absolute hunches.

25 There is a good deal that is now known as to what

1 works and what does not work and what is interesting is that,
2 in the field of education, these things -- unlike other fields
3 where some scientific development immediately gets put into
4 products or implemented fairly quickly -- in this field that
5 is not so.

6 I would just give one very important example
7 because, well, the appropriateness, I think, will be clear
8 when I have stated it.

9 There is pretty widespread evidence now, and in
10 fact, I would say it is fairly conclusive, that learning to
11 read is not merely a formal skill, that it is not just
12 learning phonics and it is not just learning to recognize
13 words; that being literate means that you have in the back of
14 your head thousands of words which come up in the course of
15 ordinary reading and that if you have to sound out every word
16 or recognize every one and look up every fourth word in the
17 dictionary, that you cannot read.

18 Well, in a sense, you have to have a series of maps
19 in your head. There was a kind of interesting anecdote in the
20 New York Times two weeks ago in New York Day by Day.

21 The headline was "Rude New Yorker" and it was about
22 a woman getting on a bus and she asked the bus driver, "Does
23 this go to 42nd? Do you go to 42nd Street?"

24 And he says, "The sign outside, lady, says I go to
25 Eighth Street."

1 And she says, "I'm from out of town. Do you go to
2 42nd Street?"

3 And he said, "Even out-of-towners can read, lady."

4 Now, of course, she is saying to him that she does
5 not know how the streets are laid out. Does it go to 42nd
6 Street? And he assumes she knows.

7 But that is exactly what reading is about. You have
8 got to have -- if you do not have the map in your head, being
9 able to read the sign that it goes to Eighth Street does not
10 do very much good.

11 Now, what is it that one has to know in order to be
12 literate?

13 Well, you have got to know a lot of words that the
14 ordinary, average person is supposed to know -- whether it is
15 Daniel Boone or Adam and Eve or alps and Himalayas and the
16 names of deserts and myths and all sorts of things which any
17 writer writing for an average audience feels that he has a
18 right to use and that it is going to be understood.

19 And if you do not have that fairly traditional
20 background somewhere in your head, you are not going to be
21 able to make sense of things.

22 Now, we know this. And yet, the schools are doing
23 very little about it. Why?

24 Well, one, because it is unpopular to get kids to
25 memorize things and if you do not have these things buried in

1 your memory somehow, you really cannot read, even if you can
2 decode or recognize words.

3 But, secondly, insofar as we do give kids an
4 acquaintance with certain facts, we feel that they have got to
5 be things that children are immediately interested in, such as
6 sports stars or rock stars and memorizing the names of a lot
7 of sports and rock stars will not help you to read at all.

8 These are not words that come up very frequently for
9 the average reader.

10 Or, the other great movement, of course, which is an
11 important movement but insofar as it drives out the words
12 ordinarily used in language, it could be bad.

13 That is the need to create pride in one's own group
14 so that, in addition to rock stars and sports stars, the other
15 heavy element in the early curriculum is a pressure for women
16 role models and various minority role models, all of which is
17 very important and don't take me wrong as saying that this is
18 not important and should be pushed out.

19 But if these role models -- if that curriculum
20 becomes a substitute for learning the two, three or four
21 thousand words that one does not have to know very much about
22 but has to recognize, then you really grow up illiterate.

23 You may develop a little bit of pride and you may
24 know a little bit about rock stars, but you are not going to
25 be able to read.

1 Now this is pretty well-known. I could cite quite a
2 number of experiments that would make it just very, very
3 apparent. These experiments do not depend upon complex
4 statistical analyses. They are very simple. They are very
5 straightforward.

6 And yet, how many schools in the United States
7 today begin kindergarten, first, second, third grade -- tell
8 the teachers, the principals and the others that, look, if
9 kids do not get the following basic standard background in
10 terms of simple vocabulary, they are lost.

11 Now, the reading scores will go up in the second
12 grade and the third grade and the fourth grade because there,
13 all you are doing is Run, Jane, Run and that, you can do very
14 well with decoding.

15 But the minute you have to pick up a newspaper or
16 something that says something -- and that is happening, the
17 scores are going up in the elementary schools and then they
18 plummet in the secondary schools and everybody wonders why
19 there is this loss.

20 And what we are doing is, we are teaching people to
21 recognize and to decode but we are not giving them this
22 cultural background they need.

23 -- So, it is very important and the unfortunate thing
24 about education is that there is not very much respect for a
25 knowledge base. There is some knowledge and what there is

1 ought to be used.

2 So let me jump on to the second question which is
3 the effect of raising standards.

4 Well, on the effect of raising standards, I agree
5 with what everybody else has said. One should not be against
6 it. You can't be against it. And the effect of raising
7 standards is not going to have just a simple impact.

8 There are an awful lot of kids out there, minorities
9 as well as majority, where the impact of raising standards is
10 going to have a wonderful effect.

11 They were pretty good students but they were lazy
12 and they knew that they would automatically graduate,
13 automatically be promoted so it did not make any difference
14 what they did and those kids now know that that is not the
15 case and so they work harder and they are going to do a lot
16 better.

17 Then there are those kids who could not even get
18 what was the smaller amount that was taught before and was
19 part of the curriculum. Now there is more. There are fewer
20 Mickey Mouse courses and those kids really are, it seems to me
21 that there is a simultaneous obligation that, when one raises
22 the hurdles, to give some practice lessons or to give some
23 special and or additional help.

24 I think that here there will be disastrous
25 consequences for the kid who has, up to now, said to himself,

1 "I am not really learning anything here but I am going to sit
2 through all this because at least I will get a piece of paper
3 at the end of four years."

4 No doubt, without special help, many of those kids
5 will say, "Now I know I am not even going to get that piece of
6 paper and there is no reason for me to stay."

7 So something special does have to be done there.

8 Now I would also like to say that one of the things
9 that is missing from the entire discussion of educational
10 improvement and educational form -- most of the discussion is,
11 you pass laws by state legislatures, you require tests of
12 teachers, you require tests of students, you do not allow
13 people to graduate unless they have certain scores, et cetera.

14 You mandate certain books or certain curriculae or a
15 certain number of hours.

16 Very, very little has been said or thought about
17 what effect the structure of the institution has on its
18 productivity, on the ability of kids to learn.

19 Let us take just one simple factor.

20 Most schools in the United States work on an annual
21 basis. You come in in August or September and you leave at
22 the other end in May or June.

23 That means a lot of things. What is the attitude of
24 a young kid who goes in in September? Does that kid really
25 think that not attending school for a few days in September

1 really going to cost him?

2 Is the data pay-off so close that he is going to be
3 concerned?

4 Is the teacher very concerned that losing a few days
5 or wasting a little bit of time in teaching means very much if
6 you have got that much time to play with?

7 Suppose you have lost some time in September and
8 October and you can no longer understand the subject and you
9 know that there is no way that you can catch up or understand
10 the rest of the year?

11 Isn't it rational to drop out? And if you have
12 dropped out for a whole year or even if you stay for a whole
13 year and do not understand the subject, then what happens?

14 Well, there are no good answers. You promote a kid
15 automatically when he does not know something, that is bad.
16 You leave him back and he is disgraced and now he is with a
17 younger bunch of kids and maybe he is bigger and he can beat
18 them up and he becomes a discipline problem. That is no good,
19 either, is it?

20 What would the effect be of not having annual
21 semesters but of having semesters that are three weeks long or
22 four weeks long? Could kids drop in and out more easily?

23 Would making up a three-week semester mean not going
24 with some other peer group? Could you drop in as easily as
25 you could drop out?

1 It is not that I am advocating these things. It is
2 that there is almost no discussion of what might be done in
3 areas like this which would perhaps help us to bring back
4 youngsters who have dropped out.

5 By the way, at the end of the year, does the
6 youngster or the teacher really know when the youngster got
7 lost? Where? Why?

8 Now, of course, there is a trade-off. There is more
9 paperwork if you do it every three weeks, more report cards,
10 more school administration. It is a problem.

11 But it seems to me that that thought is needed.

12 Now my final point, and I come back to the topic of
13 Excellence and Equity and I again want to emphasize that I
14 agree that they are not dictionary opposites and that those
15 who have painted extreme pictures that you always must trade
16 one off for the other certainly are wrong. But I think that
17 there are a substantial number of examples where there is this
18 tension.

19 I will just leave you with one more thought aside
20 from the discipline question and that is the whole question of
21 tracking which, it seems to me, most of these reports really
22 avoid.

23 Now, some years ago, I guess maybe it was the
24 Coleman stuff back in the '60's that kind of said that the
25 kids who sit around, that your kid will have quite an

1 educational influence on the kid, that kids learn from each
2 other maybe more than they do from the teacher or as much.

3 Well, if that is true, then I as a parent would want
4 all the kids who sit around my kid in school who teach mine
5 something, rather than kids that cannot.

6 So the tracking question, it seems to me, is one
7 where there are winners and losers. That for the kid who
8 needs the vocabulary of those around him, it is a big plus to
9 have a mix but for the kid who has already got the greater
10 vocabulary, it is a plus for him to have kids around him from
11 whom he learns and that there are a substantial number of
12 situations in education where that tension between excellence
13 and equity exists and that these are very serious problems in
14 a democratic society.

15 [Applause.]

16 CHAIRMAN GREEN: Well, let me begin by asking a
17 question myself. We have about 20, 25 minutes for questions
18 and answers.

19 I did notice that none of you spoke about
20 traditional civil rights remedies in terms of like improving
21 the quality of education.

22 Let me ask you specifically, do you believe that
23 busing, for example, is worth the time, money and trouble?
24 Does it have a significant impact on the quality of education
25 that is provided to the students, particularly to minority

1 students?

2 We could maybe start at the end of the table and
3 work our way back.

4 DR. SHANKER: You said you had 20 to 25 minutes,
5 Max, and then you ask that one. Make that 20 or 25 weeks.
6 Maybe in that time we could work our way through it.

7 It is almost a cliché to say the issue is not
8 busing. A great many kids go to school on buses all over the
9 country every day and it is a common sight.

10 The issue is compulsory assignment of kids to school
11 on the basis of race, whether for malevolent purposes, as used
12 to be the case, or for benevolent purposes, as is more often
13 today the case.

14 I do not personally like compulsory assignment of
15 anybody to anything on the basis of race. I do believe that
16 the integrated classroom is a good thing for almost all kids
17 but I think it should be achieved on the basis of people
18 wanting it and having classrooms that are worth wanting to be
19 in, rather than on the basis of telling people where they have
20 to go because of the color of their skin.

21 DR. GIFFORD: It would be difficult to give an
22 intelligent question to your answer [sic] and I wish this
23 question were not dominated by the courts because it really
24 depends.

25 There are some circumstances where I think

1 compulsory busing and all of the pain that is inflicted on the
2 students that would not prefer to be bused or parents that
3 would not prefer to have their children bused, I think it can
4 be justified and I can point to a number of instances where
5 compulsory busing orders were handed down by the courts where
6 it made absolutely no sense.

7 I wish that this issue, as well as bilingual
8 education, as well as handicapped education, I wish there were
9 some way for educators to get lawyers to stay the hell out of
10 the schools.

11 [Applause.]

12 MR. GLAZER: I agree. I do not think one can take
13 an absolute position on it and I think there are some very
14 frightful trade-offs here, the kind of things that Al Shanker
15 was talking about.

16 Magnet schools are great. A lot of schools are
17 being left behind. Everybody does want his kids to be
18 surrounded by kids that are to his advantage and all the kids
19 that are to his advantage are being sent off to magnet schools,
20 so what do you do then?

21 I think it is a very, very rough situation.

22 I do think, by the way, as some recent evaluations
23 and research show, that it, too, contributes to improvement of
24 educational achievement scores of minority children. I do not
25 think that can be argued with now. I am not saying a huge

1 improvement and so on but there is some improvement.

2 Maybe you say it is not because of the busing
3 because when you bus you are also spending additional federal
4 funds for desegregation or you are shaking things up and
5 everyone is trying a bit harder or something, but still, it
6 does something.

7 Whether it is worth the cost, the pain and the fat
8 battle, I think in most cases it probably is not. In some
9 cases, in smaller communities where the situation is not so
10 difficult and so on, it is worth it.

11 DR. FINN: I, too, would not take a hard line on yes
12 or not and there are some instances where it has been a plus.
13 I would say that, given the nature of our society -- and I am
14 now talking, not about the effects of discrimination and
15 prejudice but a different thing, namely, how do people buy
16 homes in our society?

17 Well, I know when I was thinking of moving, a
18 real estate agent took me around and showed me about 15
19 different types of houses and then said, "Well, you can find
20 these houses all over this county. Now you go around and find
21 the school that you want your kids to go to and I will find
22 you a house."

23 People buy schools. And just as people would find
24 it intolerable under our system of government if they were to
25 work and save for something and buy it up and then it were

1 confiscated and taken away, that over and beyond racial
2 attitudes, people do move.

3 White folks move from one place to another at
4 considerable expense because they do not like this school and
5 they like the other school down the road and what, of course,
6 the assignment and the busing essentially do is, in some
7 cases, is to take the person who has moved from this one to
8 that one and say, "Well, even though you bought this house and
9 are spending more money, we are now going to send your kids
10 right back to the other school."

11 So, ultimately, in a society like ours, if you do
12 that, I think that, had -- during the height of the busing
13 period -- had this been much more extensive than it was -- it
14 really was not done very much in this country. It got a lot
15 more headlines than there were numbers involved.

16 But I think had it been done very extensively we
17 might not have very much of a public school system left in the
18 country. People may have decided, well, if that is what is
19 going to happen, then we are going to take care of this
20 through private education.

21 It is not as though there is no escape. If you have
22 got a China or a Soviet Union where you can really tell
23 everybody where to go, you can do something like this.

24 But you always have to ask yourself questions such
25 as whether public education has a value, whether you want it

1 preserved as an institution, whether it as an institution is
2 an advantage in terms of the goals that we seek and does the
3 institution have a chance of being destroyed if you pursue one
4 goal which is extremely unpopular with the general public and
5 against their wishes?

6 And I think the answer is yes, you stand a chance of
7 destroying the institution, so I am pretty conservative on this
8 issue for that reason because I think the preservation of
9 public education is very important.

10 CHAIRMAN GREEN: We are not going to be able to have
11 everybody ask the question they want to, but, Murray?

12 DR. FRIEDMAN: Murray Friedman, Pennsylvania. One
13 of the themes that has been permeating our group over the last
14 couple of days is the degree to which traditional civil rights
15 remedies are applicable to the problems that are facing us
16 today and tomorrow.

17 The busing question clearly was one of those
18 traditional remedies which, thank goodness, I think is less a
19 problem today.

20 Let me throw this hot potato at you and maybe step
21 back a little bit from Mr. Shanker as I am tossing it.

22 One of the things that has fascinated me is to watch
23 black Baptist parents, troubled by the failures and
24 inadequacies of the public schools, sending their children to
25 private and parochial schools where, apparently, for a wide

1 variety of reasons, they are enjoying the kind of discipline,
2 the kind of success and the kind of achievement they want.

3 I also would add to that the role of these schools
4 in maintaining the lower middle class white ethnics in the
5 city, the role that these schools seem to be playing as a kind
6 of private schools of the poor.

7 So my question to you would be, as part of the newer
8 strategies that we may want to look at, would you -- well, I
9 know what you would do, most of you -- but would you at least
10 consider, this panel consider the possibility of blanketing in
11 in some form the private parochial school system into the
12 public educational process through the utilization of certain
13 forms of government assistance, whether they be educational
14 vouchers or pushing tax credits, since they do, in fact, train
15 youngsters and, incidentally, play a major role in whatever
16 little school desegregation is actually taking place in many
17 of the big cities of America?

18 DR. SHANKER: Well, the toughest kids I ever had as
19 a public school teacher were those who were kicked out of the,
20 parochial schools because they could not handle them and we
21 did not have the right not to take them.

22 Now, if it is good public policy or acceptable
23 public policy to kick out those kids who are very difficult to
24 educate -- even after you have imposed all the discipline and
25 everything else, you can't handle them, that is good public

1 policy, then let the public schools do it and then the public
2 schools will have exactly the same atmosphere as those private
3 schools you are talking about.

4 But if you are going to impose one set of public
5 standards on the public schools -- in other words you say you
6 have got to take every kid no matter how difficult and no
7 matter how violent and you have got to take him, but, Mommy,
8 if you do not like these kids that we are putting next to your
9 kids who are so violent because they are destroying your kids'
10 education, then we are going to give you the money to go
11 across the street to a school that does not have to take that
12 kid.

13 Now that, it seems to me, is ridiculous.

14 DR. FRIEDMAN: Is that the whole story of the
15 parochial school system and their successes and failures?

16 DR. SHANKER: It is a good part of the story.

17 DR. FRIEDMAN: How about the rest of it?

18 DR. SHANKER: It is a good part of the story. I
19 would say that if you adopted the philosophy that I am just
20 talking about, look, you do not have a whole host of
21 requirements.

22 The fact is that I would like to take -- by the way,
23 we are doing it in Pittsburgh. In Pittsburgh when a kid drops
24 out of public school, both the union and the business
25 community, they have put together a fund, every parent who

1 takes a kid out of public school is called.

2 And, by the way, every parent of kids now in private
3 schools are called saying, "Was your kid ever in public
4 school? Was your kid there for religious purposes? If not,
5 why did you leave the public schools?"

6 "And if we promise you a public school just like the
7 private school you are now in, will you bring your kid back?"

8 And they succeeded in bringing back thousands of
9 kids.

10 Now, I would like to be able, in every public school
11 system in this country, to call the parents and say, "Whatever
12 you have out there, except for religious instruction, I can
13 guarantee you in the public sector."

14 Now, if you allowed that to happen, legally -- that
15 is, if we were able to do the things that a non-public school
16 can do, I guarantee that we would have sufficient number of
17 schools that would do exactly the same thing and you would not
18 have to ask the question of, do they have to move from one
19 system to the other?

20 DR. GIFFORD: Can I make just a general remark?

21 I have been reflecting on Nat's comments on policy
22 versus discrimination and I think I want to say something but
23 I do not want to be misinterpreted, but I think one of the
24 things we are struggling with is, we are learning how to come
25 to grips with being in a post-racist society.

1 What do I mean by that?

2 Most of our laws, civil rights laws, were fashioned
3 during a period when we were attempting to confront invidious
4 state-sanctioned racism and the laws did very well in
5 combatting that problem.

6 I think it is fair to say that, although there are
7 many, many pockets in American society where racism tends to
8 be invidious, there are no areas in American life where it has
9 official state sanction.

10 The instruments that we designed to deal with state
11 sanctioned racism have done their job and, frankly, they are
12 rather crude instruments in dealing with a post-racist society
13 where the impact of the legacy of the past is far more subtle,
14 far more deeply imbedded and certainly not obvious at first
15 look and frankly, I think we are at a period where we are
16 going to have to really almost try to go beyond the
17 traditional remedies and think of civil rights in other ways
18 and think of it in ways that always do not look for villains.

19 One of the other problems, of course, of being in
20 that period and I was very much a part of the civil rights
21 movement and in our search for villains, one of the
22 conveniences of villains is that you can attribute to the
23 villain all of the ills of a particular community, a police
24 department or a city.

25 I mean, Bill Connor was the best thing that ever

1 happened to the civil rights movement. Rizzo in Philadelphia
2 was one of the best things that ever happened to the civil
3 rights movement.

4 We do not have that any more and I would suggest
5 that panels like this, frankly, ought to be leading the charge
6 and helping to develop a deeper understanding, a richer
7 understanding and a far more sophisticated understanding of
8 the legacy of the past invidious state-sanctioned racism and
9 ought to be looking for a sophisticated understanding of how
10 we can rid our society of the remnants of state-imposed and
11 state-sanctioned discriminatory systems.

12 But if we apply the same language and the same
13 remedies which were appropriate in 1964 to 1985, I think we
14 are going to be aiming in the wrong direction and that is why
15 I have said what I have said.

16 Much of the language, for example, which guides
17 litigation in the area of bi-lingual education, in the area of
18 handicapped education, in the area of suspension, it is
19 language which is reminiscent of pre-1964.

20 It contains assumptions that might have been
21 appropriate in pre-1964 but are no longer appropriate now.

22 And here is the problem of depending on the crude
23 instrument of litigation rather than a more subtle instrument
24 of intelligence and policy sensitivity, so I do not mean to
25 flagellate the lawyers but I think that many of the problems

1 that we confront in education are due, in part, to a litigious
2 framework rather than a framework governed by intelligence and
3 experience.

4 DR. BALCH: Stephen Balch of New Jersey. I agree
5 with much of what you just said, Dr. Shanker, and certainly I
6 have a long and continuing interest in educational policy. I
7 think it is one of the great problem areas for our society.

8 But I am also a believer in kind of keeping the
9 concept of civil rights fairly pure and pristine and I am even
10 acknowledging the fact that the great victories, perhaps, were
11 won 15 years and we are for the time being, at least, kind of
in the mopping-up stage.

13 I think it is important to keep those concepts pure
14 and pristine because of the fundamental birthright of everyone
15 here and you never know when it will be challenged again and
16 from my own point of view, this discussion of educational
17 policy has been immensely interesting but I do not think most
18 of the things have been touched upon with respect, say, to
19 allocation of resources, teaching methods, testing, et cetera.

20 As important as they are -- they are tremendously
21 important -- I do not think most of these things are genuine
22 civil rights questions.

23 I think civil rights questions revolve around
24 protecting the basic rights of one's own personal integrity,
25 the basic rights of property ownership, the basic freedoms of

1 movement, the basic political freedoms that we all enjoy, the
2 basic freedom to be treated according to due process and of
3 course, not to be used for, let us say, an illegitimate
4 purpose, for example, the creation of a racial task system.

5 I think those are basic civil rights.

6 And I think we have to keep our minds fixed on those
7 as civil rights.

8 Now, I do think there are genuine civil rights
9 issues in the area of education and some of these civil rights
10 issues are quite germane to some of the educational
11 consequences that we all probably would like to achieve and
12 one of the things that concerns me is the protection of
13 students from injury, from harassment, from distraction
14 through the creation of an educational environment in which a
15 student can learn because the student is safe.

16 I think that is an educational question of great
17 importance. That is also a civil rights question of great
18 importance and of course, it particularly affects it and it
19 affects everyone to some extent who goes to school but it
20 particularly affects minority students and students in which
21 this kind of problem is greater than in other school
22 districts.

23 I hope that the New Jersey Committee can address
24 this question sometime during its term of office and I would
25 like to see, when we think about the relationship between

1 education and civil rights, some attempt to square our
2 legitimate concern with educational policy with a
3 determination to keep the notion of civil rights pure and
4 pristine because I think that is a very important thing we all
5 have to do to prevent this very important concept from
6 becoming intellectually degraded.

7 DR. SHANKER: I am glad Steve expressed the second
8 part of his thought, which I am generally not an advocate for
9 the creation of new civil rights -- indeed, quite the
10 contrary.

11 But frankly, imbedded in the middle part of what you
12 said is a thought that I have been harboring for awhile but I
13 am not sure it is right but let me at least throw it out for
14 you to chew on, which is the possibility that we need to
15 create what is, in effect, a new civil right which is the
16 right to attend a well-functioning, safe, orderly and
17 effective school.

18 And that to be denied that is to in some sense be
19 discriminated against.

20 And if you begin to just let your mind go along that
21 line of thought, I think it carries you into all sorts of
22 potentially interesting directions.

23 I would classify that right somewhere between the
24 rights to property, the rights to privacy, the rights to
25 freedom of movement and the right to an opportunity-filled

1 future.

2 And I say this with trepidation only because you may
3 come back at me with analagous new civil rights that I would
4 not like at all but let me invite you to ponder this one.

5 MR. COOPER: My name is Matthew Cooper. I am on the
6 Commission staff and this is directed to any one of the
7 professors of education who cares to answer it.

8 It seems to me that one of the excellent standards
9 is in itself as a result of feeding [?] and that is nothing
10 new, it is a requirement of teaching credits to teach in
11 public school.

12 Doesn't that have the effect of keeping, for
13 example, recent college graduates that might be interested in
14 going to private schools -- from diving in and spending 18
15 months, two years teaching in the New York City public
16 schools, doesn't it also keep volunteers out of the
17 classrooms?

18 Our private schools do not do it. I mean, I am
19 pressed to think of a preparatory school -- Exeter or any of the
20 major ones that does not have a program that takes people
21 fresh out of college and does not bother with that in the
22 education system.

23 DR. GLAZER: Fortunately, all of our professors of
24 education do not have an immediate personal interest in this
25 matter since their schools are more like policy-oriented and

1 do not train teachers but I think I agree with you and I think
2 we do see some creative efforts now in New Jersey and
3 elsewhere to say, "What is it that one needs to be a teacher?"

4 And I think if we put less emphasis on the classroom
5 credits and more emphasis on experience and the judgment of
6 experience that we would be better off.

7 DR. GIFFORD: I am not going to defend the
8 regulatory system that governs credentialing in the states in
9 this Union because many of the regulations are nonsense.

10 But I do want to address your question of the
11 differences between private schools and their willingness to
12 take students without pedagogical training and public
13 institutions.

14 It has been proven in survey after survey that one
15 of the greatest influences on teachers that do not come in
16 with appropriate pedagogical preparation is teachers in the
17 next classroom in the building.

18 New teachers tend to model themselves on and take
19 guidance from experienced teachers.

20 If you look at private schools -- and I have
21 actually looked into this issue -- private schools tend to
22 have a monitoring system and many of them actually will
23 provide a reduced teaching load in order to give the new
24 teacher an opportunity to learn from an experienced teacher.

25 Unfortunately for reasons that are complex and often

1 nonsensical, in our public schools, the way the school day is
2 structured, the way teachers are paid, the way contracts are
3 organized, new teachers are not given an opportunity to work
4 with more experienced teachers and as a result, a lot of very
5 good people that come in without appropriate pedagogical
6 training are lost because they are never ever given the kind
7 of assistance that they ought to be given.

8 I am for systems which permit the bright youngster
9 to come into education on a trial basis, to try it out without
10 compelling them to receive pedagogical training but the fact
11 of the matter is that we lose a lot of those young people
12 because of our failure to understand their need for
13 assistance.

14 In Los Angeles they have recently started a
15 program. They have hired 1,800 teachers in the last year,
16 many of them without pedagogical training and they are losing,
17 in some instances, up to 50 percent of these new teachers
18 without training within the first six weeks.

19 So this passage is not going to last 18 months and
20 in many instances it is not going to last 18 days. And we are
21 going to have a revolving door.

22 DR. FINN: I think the question needs a little bit
23 of a clarification. If you are talking about the present
24 state of education courses, then I have no problem in saying
25 that if you get students who really know their subject matter

1 very well, that I would prefer those students.

2 However, you could have done the same thing with
3 medical education not so long ago. That is, you would have
4 found, perhaps, at a certain point in medical education in
5 this country that having had such an education did not make
6 much difference in terms of how effectively one practiced
7 medicine.

8 But we have made some progress there, not by
9 abandoning medical education but by asking ourselves what we
10 want from it and I suggest that the fact that most schools
11 that train teachers right now are not particularly good and
12 that the education they are giving the students is not good.

13 That raises, really, several possibilities. One is
14 to eliminate the requirement and the other to ask is, is there
15 a body of knowledge? Are there skills that are not going to
16 be taught in math courses or history courses or English
17 courses that a good teacher ought to have and is unlikely to
18 have unless they get such training.

19 And I submit to you the answer is yes. I do not
20 think that 65 credits worth or 90 credits worth or 300 that
21 some teachers have asked.

22 And I would find -- for instance, we talked here
23 before about the whole question of text books. There has been
24 work done over the last decade and a half where the whole
25 question of the analysis of what works for students and what

1 is a good textbook is no longer a matter of my opinion or your
2 opinion.

3 There are some very exact analyses of this and
4 teachers ought to know this.

5 Now, how many colleges of education in this country
6 give such a course for teachers? Almost none, but that does
7 not mean that there should not be a course in professional
8 education.

9 And I could go into a number of materials like this
10 question of what sort of thing ought children to learn if they
11 are to be literate later on, what is the research on this so
12 that it is not just a matter of opinion as to what it is that
13 teachers are taking up.

14 Is there knowledge on this? Sure. Is it being
15 taught in most places? No. But does that mean that you are
16 better off without people having this education? Of course
17 not. I am not on the side of abandoning professional
18 education. I am on the side of straightening it out.

19 CHAIRMAN GREEN: Very unfortunately, we have run out
20 of time for this panel. Please, as I said before, do not
21 leave yet. We have a few more things to do, the most
22 important of which is to hear concluding remarks by the
23 Chairman of the Commission, Clarence Pendleton, who I invite
24 to come forward now.

25 I do want to thank, before he begins speaking, the

1 panelists once again for a very stimulating discussion.

2 HONORABLE PENDELTON: I promise not to be long. I
3 promise to be brief.

4 I want to reissue my challenge to you that, on the
5 part of the Commissioners from the other night and I think
6 that that challenge is even more important now that we have
7 had such fantastic discussion and debate on several issues.

8 I issue a challenge to you in light of someone's
9 question this morning about where do we go from here?

10 I think the original question was from the gentleman
11 from New Jersey, your point that you made.

12 I want to see us move beyond what our traditional,
13 in a sense, remedies are and things like that and see if we
14 can't fashion some new solutions that are in a sense
15 non-discriminatory, where people can feel as though there are
16 results without having to have numbers that tend to measure
17 results.

18 I think we have people here who are interested. You
19 have shown by your participation. The shrinkage factor has
20 not been great. People have stayed under great turmoil and
21 that turmoil has been that many of you have not had a chance
22 to dialogue or dialogue like you want to dialogue and we
23 regret that that has not occurred.

24 We can say to you that I hope that, in the future,
25 you will have a chance for some more dialogue or more of a

1 chance for you to give us input.

2 I think it is critical that you take what happened
3 here back to your own jurisdictions, if you will, and begin to
4 share it with your colleagues.

5 I wish that all of my colleagues had been able to
6 stay here through these proceedings and I think that I will
7 have something to say to them a little bit later on but you
8 have given us of your time and I think we have an obligation
9 to give you of our time.

10 Your schedules are busy and if we are going to have
11 some dialogue, it is important that Commissioners are able to
12 be around for most of this.

13 Commissioner Buckley did have a plane this morning
14 to catch and he could not stay any longer and other people had
15 to go back or even did not come but I would hope that people
16 in the future would come and sit down and spend time with you.

17 I also offer you whatever time I might have and
18 where there are things I might be able to say, to come to your
19 states and spend time with your advisory committee people.

20 We have had regional meetings in the past but I am
21 available, schedule permitting, to come and sit down with
22 people and listen to them and dialogue with them.

23 That is my personal commitment and I am sure that
24 other colleagues have the same kind of commitment.

25 One impression that I have of these panels and the

1 discussion is, whereas they were not classic civil rights
2 issues that we discussed, I am so thankful that you were able
3 to discuss them in a civil rights context and that is what is
4 important.

5 I think that, as we begin to talk about remedies and
6 solutions, if we can keep that in mind, we can go forward.

7 Thank you very, very much for coming and we are glad
8 to have you around.

9 [Applause.]

10 [Whereupon, at 12:37 noon, the conference
11 is adjourned.]