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**THE VIRGINIA ADVISORY COMMITTEE**  
**TO**  
**THE U. S. COMMISSION ON CIVIL RIGHTS**  
**FACTFINDING MEETING AND COMMUNITY FORUM**

**DATE:** March 6, 1997

**LOCATION:** City Council Chambers  
22 Lincoln Street  
Hampton, Virginia 23669

**COMMISSION MEMBERS:** Mrs. Jessie M. Rattley, Chair  
of Newport News

Dr. Azizah al-Hibri  
of Midlothian

Mr. Roger A. Galvin  
of Alexandria

Reverend Curtis W. Harris  
of Hopewell

Mr. Philip Y. Huang  
of Blacksburg

Mrs. Anece F. McCloud  
of Lexington

Mr. Richard E. Patrick  
of Alexandria

Ms. Naomi Zeavin  
of Falls Church

**STAFF MEMBERS:** William Darden  
Marc Pentino

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1 MS. RATTLEY: George Wallace,  
2 Assistant City Manager for the City of Hampton will  
3 be making the welcoming address for Mayor Eason.  
4 Please tell Mayor Eason I never thought I'd get to  
5 sit in his chair, and he really did miss a treat by  
6 not being here.

7 MR. WALLACE: I'm sure he knows he'll  
8 have a bigger chair to fill when he gets back.

9 Good morning, ladies and gentlemen.  
10 My name is George Wallace, and I'm an assistant city  
11 manager for the City of Hampton, and also Director of  
12 the Department of Development. I've been asked to  
13 bring a greeting to you from the Mayor and city  
14 Council. On their behalf, I bring you sincere and a  
15 most profound warm welcome. We hope that your  
16 deliberations will be productive and you accomplish  
17 all you set out to do. If I, or any member of our  
18 staff, can be of any additional assistance to your  
19 particular efforts, we stand ready to do so.

20 One of the reasons I was asked to  
21 speak to you this morning for the Mayor, who is in  
22 Washington, as you know, is to provide you with  
23 information on the Charter Review Commission and\or  
24 the Citizen Review Commission, which is the same  
25 group with two different names because it has two

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1 different missions.

2           Having served as a lead staff person  
3 for this 26-month effort, I was tapped as the most  
4 logical person to provide information on this  
5 citizens group.

6           If you first -- if you'll allow me,  
7 I'd like to present some historical context as to how  
8 these groups evolved, what it is, and where it stands  
9 at present.

10           In October of 1964, the City Council  
11 simultaneously received two requests. One request  
12 came from a citizen group called Blue Ribbon  
13 Commission, and the second from a Youth Coalition  
14 Group that had been organized the prior year.

15           The community group asked the Council  
16 to examine the feasibility of a different election  
17 process because there existed a belief that in some  
18 segments of the community, that minorities did not  
19 have representation on the council equal to their  
20 proportional numbers in the community.

21           A second assumption was that the  
22 at-large election methods precluded proportional  
23 representation for minorities and/or the election of  
24 candidates of their choice.

25           On the other hand, the Youth

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1 Coalition Group told City Council that they had been  
2 looking at some issues, and concluded that neither  
3 the coalition nor the City could reach their full  
4 potential unless and until an avenue was developed  
5 for the City and the citizens to address race and  
6 adversity.

7           The council, after some deliberation,  
8 decided both issues were urgent and both should be  
9 addressed immediately. In December of 1994, Council  
10 appointed a 56-member Citizen Charter Review  
11 Commission, that included student representatives,  
12 and gave the Commission two mandates or two charters.  
13 The first one -- the first was to establish a process  
14 that could possibly include an advisory board that  
15 would encourage appreciation and respect for  
16 diversity in all elements of community life.

17           The second was to propose an election  
18 process for a voting system that would ensure a fair  
19 and equitable representation. Council assigned staff  
20 to work with the Commission and requested they report  
21 back with them before the election process of the  
22 school board that was to take place in May of 1996.

23           The Commission began its  
24 deliberations in January 1995 and decided on weekly  
25 meetings. Since the deadline for the school board

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1 election was first and fairly close, the Commission  
2 decided to focus its initial energy on the City  
3 election process.

4           The Commission received expert advice  
5 on the legal interpretation on the Voting Right Act  
6 of 1965 as it existed at that time; and in addition,  
7 they sought out, and received, information on various  
8 voting processes, systems and procedures from college  
9 professors from the University of Virginia, Norfolk  
10 State, and the Institute of Government.

11           The Commission conducted three public  
12 hearings to solicit public input into their  
13 deliberations. They reviewed over forty maps in  
14 conjunction with various issues in our election  
15 procedures. The Commission reported back to City  
16 Council on the first mandate in time for school  
17 elections and recommended a district or board  
18 election system that called for a six-two-one  
19 representative council.

20           Thus the Council will be divided into  
21 six single district or wards, three majority black,  
22 three majority white, with one person elected from  
23 each district. Three of the previously mentioned six  
24 districts will be combined to create two super  
25 districts, one majority black and one majority white,

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1 with one person elected from each of the two super  
2 districts. The Mayors were to be elected at large by  
3 all voters, thus we have had a nine-member council.

4 After the election report was then  
5 given to Council, the Commission turned its attention  
6 to the second mandate given to them in May, diversity  
7 in community strength. Some of original members  
8 chose not to continue on the Commission and were  
9 replaced with new appointees.

10 The revised Commission's first order  
11 of business was to change its name to something more  
12 reflective of the second charter. It became known as  
13 the Citizens' Unity Commission.

14 The new group deliberated nine months  
15 and conducted a community forum, did research to  
16 ascertain what the community at large was doing as  
17 far as race relation, and finally sponsored a  
18 community telephone survey.

19 The telephone survey was structured  
20 to look at the citizens' concept of an ideal  
21 community, and compare Hampton with that ideal  
22 community.

23 The Commission was able to determine  
24 that race was the most pervasive of all the issues,  
25 and concentrated most of its initial attention in

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1 that arena.

2                   On October of 1996, the Citizens'  
3 Unity Commission gave its final report to Council on  
4 a process that would encourage appreciation and  
5 respect for diversities in all elements of community  
6 life.

7                   In summary, the Citizens' Unity  
8 Commission set out two broad goals for the community:  
9 First, that every citizen in Hampton should feel that  
10 this community or its community was one where  
11 fairness, justice, and equality are exemplified.  
12 Therefore, the community should see a closing of the  
13 gap between what our citizens have identified as an  
14 ideal community, and Hampton. This was to be  
15 measured by an opportunity index in an annual survey.

16                   Two, every citizen in Hampton should  
17 have more opportunity to come together with  
18 individuals of different cultures to build  
19 understanding and respect for each other. This was  
20 to be exemplified by increased opportunities to  
21 expand what we have existing in Hampton, what we call  
22 study circles, and to develop and create new cultural  
23 festivals and events.

24                   The telephone survey identified  
25 issues which were most prominent in the minds of the

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1 citizens. They were the judicial system, public  
2 safety, neighborhood services, the media, hiring  
3 practice and business opportunity, and the need for a  
4 sense of community cross-cultural opportunities and  
5 educational opportunities.

6 A two-pronged approach was  
7 recommended, emphasizing the need for both proactive  
8 and reactive responses to the issue of diversity.

9 First, the Citizens' Unity Commission recommended  
10 that a Citizens' Unity Commission that they called  
11 Number 2 be proposed and developed and created, with  
12 a paid staff that was to carry forth, or that is to  
13 carry forth the work of the original Citizens' Unity  
14 Commission.

15 Second, they recommended that an  
16 ad-hoc leadership group would be created, one that  
17 represents a cross-section of the community that  
18 would function as an informational conduit to react  
19 quickly to isolated racial-related events.

20 Council received the report and  
21 recommended and requested staff to develop an  
22 implementation process and give that to Council for  
23 action. That response of that implementation process  
24 was given to Council in January.

25 The following is what is to take

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1 place and recommended in the implementation of the  
2 CUC's recommendations: One, the April 15 edition of  
3 Commission's newsletter, which is sent to all  
4 households in Hampton, will feature statements from  
5 all councilmen expressing their commitment to and  
6 assurance that diversities will be a community  
7 strength; that the Council will support staff and  
8 resources to make diversity a strengthening issue in  
9 Hampton. Target date for this edition is April 15.

10 Two, a continuity group called  
11 Citizens' Unity 2 will be appointed to continue the  
12 work started by CUC-1. The group will make initial  
13 appointments by the Council and be consummated by  
14 July 15th. Recommendations from neighborhood groups  
15 and volunteers will form the list that Council will  
16 choose from.

17 Three, an ad-hoc group of twelve will  
18 be appointed to respond to crisis issues in the  
19 community. Appointed by Council, its membership too  
20 will be citizens, citizen-group nominees. Target  
21 date for completion for this particular task is  
22 September 1st.

23 Four, develop a budget and identify  
24 office space for the new staff. April 15th is the  
25 target completion date. Staff voted exclusively to

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1 CUC will be hired and actively begin by hiring new  
2 staff. The target date for that is July 1st.

3 Questions?

4 MS. RATTLEY: Thank you very much,  
5 Mr. Wallace. May we have a copy of your information?

6 MR. WALLACE: Yes, ma'am.

7 MS. RATTLEY: Thank you so much for  
8 your warm welcome and the information.

9 Mr. Wallace, would you mind  
10 responding to questions?

11 MR. WALLACE: That's my track record.

12 MS. RATTLEY: Are there any questions  
13 of Mr. Wallace?

14 MR. DARDEN: I have one.

15 MS. RATTLEY: Mr. Darden.

16 MR. DARDEN: I just made a couple of  
17 notes. This is not in any order of priority, but the  
18 last thing you mentioned was the budget. Do you have  
19 a budget figure, how much resources are going to be  
20 devoted to this?

21 MR. WALLACE: We have a number in  
22 mind. We anticipate, in terms of the quality level  
23 of the individual -- give you a parameter, we'll say  
24 somewhere between \$75,000 and \$100,000.

25 MR. DARDEN: Say that again.

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1 Seventy-five and --

2 MR. WALLACE: A hundred thousand  
3 dollars.

4 MR. DARDEN: And how many staff would  
5 that fund?

6 MR. WALLACE: Minimum of two.

7 MR. DARDEN: Minimum of two? Okay.  
8 Seems like a lot -- you staff this out, are you going  
9 to expect the staff would increase over time?

10 MR. WALLACE: Well, it depends on  
11 what activities are developing, what programs are  
12 developed by the CUC-2 group as they're created  
13 formally.

14 One thing we contemplate is that that  
15 group will be catalytic to get City departments to do  
16 additional activities to address some of the concerns  
17 that were raised by the citizens' survey, and on the  
18 basis of some of the other issues. So we see the  
19 staff as a catalytic agent as well as programmatic.

20 MR. DARDEN: I understand. That  
21 clears that up for me. Just another -- you mentioned  
22 the opportunity index?

23 MR. WALLACE: Yes, sir.

24 MR. DARDEN: And did you -- how many  
25 of those have you actually completed now?

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1 MR. WALLACE: We've been doing -- for  
2 CUC, we only had one Opportunity Index Survey. For  
3 the City as a whole, we do a Citizen Satisfaction  
4 Survey annually in October. That's been done for  
5 nine years. We have an employee bonus predicated on  
6 the degree of satisfaction of the citizens  
7 exemplified on that survey.

8 MR. DARDEN: Okay. Is there a  
9 summary of the index, something that we could have to  
10 get a baseline for --

11 MR. WALLACE: Yes, sir.

12 MR. DARDEN: -- comparisons in the  
13 future? Could you provide that to us?

14 MR. WALLACE: Yes.

15 MR. DARDEN: Thank you. The last  
16 thing, this is one of the first things you mentioned,  
17 that race was the most pervasive issue you had  
18 identified earlier. Can you talk just a little bit  
19 more about that? What is the character of the  
20 community's view on race, and how has it changed even  
21 over this short period?

22 MR. WALLACE: First, in the context  
23 of adversity, there are a lot of other issues, age,  
24 gender, all the other ethnicity-type of issues that  
25 were identified as problems -- or not as problems,

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1 but as issues that need to be faced, addressed in  
2 some type of direction or programs put towards those  
3 issues.

4 In terms of the one that was most  
5 pervasive, in terms of numbers and identification of  
6 issues that showed up in the community forum and on  
7 the surveys as the one that was foremost in people's  
8 minds. When I present you the information on the  
9 survey, you can see that in terms of numbers.

10 MR. DARDEN: So when you say  
11 foremost, they saw that as a problem, racial divide  
12 or racial tensions, as a problem?

13 MR. WALLACE: Well, problem, and also  
14 the lack of opportunity for people to come together  
15 and get to know each other and get cross-cultural,  
16 racial opportunities to meet and talk.

17 MR. DARDEN: So are you saying, then,  
18 that there is a perception, fairly widely held that  
19 race --

20 MR. WALLACE: I sense that the  
21 context you want to put it in is a problem. We don't  
22 see it as a problem. We see it as an opportunity.  
23 That's what we're addressing.

24 MR. DARDEN: That's what I wanted to  
25 understand. Thank you.

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1 MS. RATTLEY: Are there any other  
2 questions of Mr. Wallace?

3 MS. MCCLOUD: Yes, I have a couple of  
4 questions. As follow-up to the questions asked by  
5 Mr. Darden, were these responses coming primarily  
6 from the black community, or who received copies of  
7 the questionnaire? Who participated in the  
8 questioning?

9 MR. WALLACE: The questionnaire  
10 process is a random process. It was structured to  
11 ensure that the ethnic representation in the response  
12 group was comparable to the proportional numbers in  
13 the community. So in that context, we were assured  
14 that we had at least 38 percent of the respondents to  
15 the survey, participants in the survey, that were  
16 from the minority community.

17 MS. MCCLOUD: Were you able to  
18 determine a difference in the perception of whites,  
19 as opposed to African Americans --

20 MR. WALLACE: Some.

21 MS. MCCLOUD: -- in their response?

22 MR. WALLACE: There was some  
23 differences, but there were a lot of surprising  
24 similarities. Again, I can provide you copies of  
25 that document. You can read it and come to your own

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1 conclusion.

2 MR. DARDEN: What's the title of the  
3 survey?

4 MR. WALLACE: Community survey that  
5 was done, Ideal Community and How Hampton Compared  
6 with the Ideal Community.

7 MS. MCCLOUD: I have one other  
8 question, please. You mentioned the implementation  
9 which sounds as if, you know, it can be followed,  
10 that it should produce some results. Do you have a  
11 means for evaluating the results, the outcome?

12 MR. WALLACE: One of the  
13 methodologies that we see, we see how people's  
14 attitudes change. That change will be measured, one,  
15 by continuation of that annual survey.

16 MS. MCCLOUD: Thank you.

17 MS. RATTLEY: Any other questions?

18 REVEREND HARRIS: Yes, I'd like to  
19 ask a question. How -- when did this process dealing  
20 with diversity begin in Hampton?

21 MR. WALLACE: Actually, it was  
22 brought to our attention by the Youth Coalition. We  
23 formulated a Youth Coalition in 1993 with a full-time  
24 staff, and they had several meetings, including  
25 retreats and several other kinds of things, and they

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1 felt that we old people brought a lot of baggage to  
2 the table, in terms of our relationships, which  
3 precluded them from doing -- maximizing their  
4 opportunity and benefit. They said, Old folks, you  
5 got to deal with this baggage that you have; and in  
6 that context, we can become a better community and we  
7 can better relate in terms of our particular programs  
8 and opportunities as young people in the community.  
9 So that's where the impetus came from.

10 REVEREND HARRIS: Was that an  
11 integrated group?

12 MR. WALLACE: Totally.

13 REVEREND HARRIS: Before that, was  
14 government interested or aware that there were any  
15 race problems in Hampton?

16 MR. WALLACE: There are race issues  
17 all over the country. I don't think we're any worse  
18 or any better than most communities. Certainly there  
19 is sensitivities to race in our community. We have  
20 sensitivities to issues of fairness and equity in our  
21 community long before it was brought to the attention  
22 by the Youth Coalition, but I think that was the  
23 impetus that gave us to do something extraordinary  
24 and special, which is what we perceive we're doing at  
25 this point in time.

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1 REVEREND HARRIS: Thank you.

2 MR. GALVIN: I have one question for  
3 you. On your survey, if you would please, you said  
4 the survey has been done as a satisfaction survey for  
5 the past six years?

6 MR. WALLACE: That's for employment  
7 and delivery of services for the City of Hampton,  
8 yes.

9 MR. GALVIN: And could you tell me  
10 for the past six years how the rating of that  
11 survey -- has it been constantly improving, or has it  
12 had its up and downs, or has there been a particular  
13 trend over the six years if we were to track it?

14 MR. WALLACE: I would hate to say off  
15 the top of my head. I don't think there's ever been  
16 a year where there was less than 85 percent  
17 satisfaction, and as high as 96, I believe, in terms  
18 of satisfaction of delivery of service, Hampton as a  
19 community, or residency, those kinds of situations.  
20 We can get you copies of that, too.

21 As I indicated previously, we have a  
22 bonus we pay our employees, the rank and file  
23 employees, all the employees outside the executive  
24 base, which means the department heads, assistant  
25 managers, managers, we don't participate in that

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1 bonus program, but everybody else does. That bonus  
2 is usually given around Christmas. It's predicated  
3 again on the survey we take every October on citizen  
4 satisfaction of their services. We measured the  
5 satisfaction of the library, the police department,  
6 the fire department, public works, streets, roads, a  
7 whole array of issues in terms of community  
8 satisfaction, citizen satisfaction.

9 MR. GALVIN: So you would say that  
10 the staff and employees of the City have a great  
11 interest to see that the survey is rated very highly?

12 MR. WALLACE: The bonus ranges  
13 from -- it's not a large amount of money. It's  
14 basically to raise employee consciousness that that  
15 particular factor does exist. We have an  
16 organization value associated with customer  
17 satisfaction, and the value of the best bang for the  
18 buck we can possibly give to the community. We have  
19 a mission statement in that regard. That's embossed  
20 on each paycheck they get. They're aware, in terms  
21 of what our mission, what our organizational value  
22 is. We try to reinforce that with a small bonus.

23 MR. GALVIN: And just as -- you said  
24 you provide this within six years. Can you say for  
25 the past six years it has been -- the results have

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1 been constantly, steadily reported?

2 MR. WALLACE: I would be comfortable  
3 in saying yes, the response has been stable.

4 MR. GALVIN: So that whatever  
5 incentive program, or in fact, program, you had been  
6 able to maintain a certain level?

7 MR. WALLACE: Yes.

8 MR. GALVIN: Thank you.

9 MS. RATTLEY: Any other questions?

10 MR. HUANG: I have two follow-up  
11 questions on the survey. One concerns how you  
12 administer the survey. Was the survey done  
13 internally or by an independent agency?

14 MR. WALLACE: Independent operation  
15 that does surveys for all the communities in  
16 southeast Tidewater, and we happen to be one of them.  
17 It's outside of our parameters. We don't control it  
18 at all.

19 MR. HUANG: About the report, do you  
20 share the report with the ordinary citizen?

21 MR. WALLACE: Yes, we do. I  
22 mentioned the document called The Issues, a  
23 newsletter we publish on a quarterly basis that's  
24 sent to every household in Hampton, results published  
25 annually in that regard.

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1 MR. HUANG: Thank you.

2 MR. WALLACE: And copies are made  
3 available in public libraries, all the branches.

4 MR. HUANG: Thank you.

5 MS. RATTLEY: Any other questions?  
6 Thank you very much, Mr. Wallace.

7 MR. WALLACE: Thank you.

8 MS. RATTLEY: At this point, we are  
9 about to go into fact-finding session, and I've been  
10 asked to make a few remarks.

11 First of all, I should like to read  
12 the Privacy Act of 1974, Information Collected by the  
13 U.S. Commission on Civil Rights.

14 The U.S. Commission on Civil Rights  
15 is established as a fact-finding agency within the  
16 Executive Branch. It is authorized by statute. And  
17 this is in parentheses. The Civil Rights Commission  
18 Amendments Act of 1994, if anybody would like to  
19 research it, Public Law 103-419, 108 Statute 4348, if  
20 you want references, and it is authorized by law to  
21 study and collect information concerning the legal  
22 developments constituting discrimination or denials  
23 of equal protection of the laws under the  
24 Constitution because of race, color, religion, sex,  
25 age, handicap, or national origin, or in the

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1 administration of justice. This is a statutory  
2 authority for the collection of information on and  
3 about individuals.

4 Now, information supplied to the  
5 staff members of the U.S. Commission on Civil Rights,  
6 is on a voluntary basis. The Commissioners are  
7 authorized to hold hearings, to issue subpoenas, and  
8 to take testimony under oath. And this is found in  
9 Section 3, 3E, Public Law 103-419.

10 Information requested of individuals  
11 by the Commissioners, and the commission staff on  
12 behalf of the Commission, is collected and will be  
13 maintained in accordance with Notices of Systems, and  
14 records published in the Federal Register to meet the  
15 Privacy Act requirements. And you may want to check  
16 the Federal Register, September the 3rd, 1975, and  
17 October the 2nd, 1975.

18 Now, information obtained by  
19 interview or letter from you as part of the  
20 Commission project, may be used routinely as set out  
21 in the Systems Notice entitled Civil Rights  
22 Commission, 004 Commission Project. Now, this system  
23 includes reports, hearings, statements, conferences,  
24 commentaries on legislation, and possible referral to  
25 other agencies.

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1                   Now, for further information  
2 regarding the Privacy Act and information collected  
3 by the Commission, you may contact the Office of the  
4 General Council, whose address is 624 Ninth Street,  
5 Northwest, in Room 620, Washington, D.C. 20425. And  
6 the phone number, area code 202 376-8351. That's our  
7 law.

8                   Now, let me make just a few  
9 statements to try to clear the air as to why we are  
10 here and what this is all about. I've already gotten  
11 calls from some citizens and concerned citizens in  
12 the community questioning the timing of these  
13 fact-finding hearings, but I want to make it very  
14 clear to you that we started back in March of 1993,  
15 and that went on for the rest of that year. And at  
16 this time, you understand that the news media, the  
17 national news media, the weekly magazines, and  
18 everybody else provided public coverage to the  
19 Hampton Four case. And during this period of time,  
20 the committee members residing in the Hampton area  
21 became involved.

22                   So as community leaders and the  
23 evolving drama of community meetings and protests and  
24 demonstrations here in the City of Hampton -- and we  
25 might as well say it was all about Iverson at that

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1 time -- the staff people came to this city and met at  
2 one of the hotels -- and I came for two days -- took  
3 testimony from citizens of this great city, and it  
4 was very alarming some of the comments that we  
5 received.

6           The citizens of Hampton asked the  
7 Civil Rights Commission to please look into the  
8 situation here and all of the allegations. And as  
9 you know, certain organizations were formed, and we  
10 had help from the Southern Christian Leadership  
11 Conference, and the Eastern Regional Office of the  
12 U.S. Commission on Civil Rights came in November of  
13 '93, and they conducted an investigation here, and  
14 the staff people interviewed the public officials,  
15 and the African American community, and anyone else  
16 who wanted to speak with them.

17           And we have then been trying to  
18 establish a forum, and all of this has to be approved  
19 by the U.S. Commission on Civil Rights. They have  
20 studied the reports, they have discussed it, and they  
21 feel that it is well worth the time, the money, the  
22 staff, to come into this area to find the facts and  
23 then to submit them to the Commission.

24           You know, one lady called, she was  
25 just all up in arms and said, You know, why don't you

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1 just drop it; you know, let sleeping dogs lie. Don't  
2 stir it up, you know. People are a little afraid of  
3 stirring up the peace, but we don't have any peace in  
4 many instances, because they're coming to us from  
5 citizens in both communities on a daily basis, and  
6 that's not an exaggeration, but yet we like to feel  
7 that everything is fine, and as long as you keep your  
8 mouth closed and you don't rock the boat, that it's  
9 going to go away. We don't feel that way.

10 Some of the things that were told to  
11 the people who came down from Washington is really  
12 frightening. I would like to just share a few with  
13 you to give you some idea as to why we feel it is  
14 important to come to you and ask you to help us find  
15 the facts in the case so we can ask the appropriate  
16 department, be it Justice Department, or whatever, to  
17 look into it and to try to bring some resolution.

18 You know, we've had the vandalism at  
19 some of the local churches, we have had mysterious  
20 deaths, and we've had students to demonstrate, and  
21 community leaders, and the organizations are still  
22 dealing with this in several different ways. But one  
23 that we all got very concerned about is allegations  
24 pertaining to police abuse, and especially in the  
25 emergency services area. And there are certain

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1 quotes here that may not be politically correct, but  
2 if the paramedics take the attitude that there is a  
3 call, an emergency call and someone needs attention,  
4 and while driving to the scene, one of the medics  
5 stated to his junior partner that if it's an "N"  
6 word, they aren't having a seizure, and I'll talk  
7 them out of a transport. I have to teach CPR in the  
8 morning and I'm sorry -- you know, "N" word -- I  
9 don't like to say it -- isn't keeping me up all  
10 night. And sure enough, they talked the patient out  
11 of it. They didn't pick him up.

12                   And we had other examples of not  
13 rushing to an accident depending on the color of the  
14 victim, and I think that disturbed all of us.

15                   We have other allegations about  
16 beatings, allegations about hiring. And originally  
17 we really wanted to go into other areas. We wanted  
18 to go not only into the criminal justice system, but  
19 public schools, emergency services, and  
20 police-community relations.

21                   So we are here now because of this  
22 background, and it would really sicken you if you had  
23 this document that we have, just giving some idea as  
24 to some of the things that we're told during this  
25 investigation.

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1                   Now, you know that the bureaucracy  
2 works in a very slow manner most times, but we are  
3 finally here, and we don't feel as though this is  
4 disturbing the peace. We're simply trying to get the  
5 facts. One lady called yesterday and she wanted --  
6 this was a Newport News citizen -- to say that she  
7 was just totally opposed to all of this because she  
8 lives near Aquevista -- not Aquevista -- where is one  
9 up in Denbigh -- Aqueduct, and that you should see  
10 how these people behave, your people, and they do  
11 this, and they do that, and they're to blame for all  
12 of your troubles. And I just asked her if she would  
13 please come to our hearing and make her statement  
14 publicly to the Commission, Committee members, the  
15 Advisory Committee members.

16                   And, of course, we have had others  
17 who have called. And even the article in the press  
18 made it appear as though this is an effort to stir  
19 up, but it isn't. It is just an effort to find the  
20 facts and to report them. I want that to be clear  
21 before we get the wrong signals as to what it is  
22 we're trying to do, and it is simply to do what you  
23 asked this Committee to do.

24                   Now, the purpose of the proposed  
25 project is to get the pertinent information so that

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1 the Committee can ascertain facts of the situation  
2 and make recommendations as appropriate. The  
3 information will be collected from this two-day  
4 fact-finding meeting here in Hampton, and then in  
5 Newport News tomorrow, supplemented by the pre and  
6 the post fact-finding meeting, interviews and  
7 research. The project will focus on the issue mainly  
8 of the criminal justice system, but we will hear from  
9 citizens on any subject in reference to  
10 discrimination, and we want to make that very clear.

11 The meeting is being designed to  
12 provide an opportunity for all concerned public  
13 people to identify problems and express concerns.  
14 And for public officials to respond, the mayors and  
15 members of council and staff people and others. It  
16 is not a one-sided fact-finding effort.

17 Also, I would like to ask you to let  
18 your neighbors know that these meetings that are  
19 going on all day today and into the evening, and all  
20 day tomorrow are open to the public. Anybody can  
21 come. You don't have to have a special invitation,  
22 but we ask you to please sign in during the opening  
23 session and these forums; and if you wish to make a  
24 statement, let us know and we have staff -- which  
25 staff member is going to do that, Mr. Darden?

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1 MR. DARDEN: Mr. Pentino, Marc  
2 Pentino and myself.

3 MS. RATTLEY: If you wish to speak,  
4 please see this gentleman, and he will permit you to  
5 sign in so you can be called at the proper time.

6 Now, if you have any questions, I  
7 will try to answer them at this time before we go  
8 into our first discussion. We're running a little  
9 late already, but we want to make sure we're all  
10 singing from the same page and we understand why  
11 we're here.

12 And may I also say we had some people  
13 who are concerned about speaking in public because  
14 they feel that they will receive some reprisal, and  
15 if that is a concern of yours, please make it known  
16 to the staff and we can try to accommodate you. Some  
17 have said that they have been threatened, and some  
18 said they have been followed, and some said that they  
19 have been having other problems, and we certainly  
20 don't want anyone to be hurt simply because you're  
21 exercising your God-given and Constitutional right of  
22 freedom of speech.

23 Do you have any questions?

24 MR. HILLSTOCK: Ms. Rattley, you said  
25 that this Advisory Committee started during the Allen

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1 Iverson incident.

2 MS. RATTLEY: In this area.

3 MR. HILLSTOCK: Yeah.

4 MS. RATTLEY: Yeah, because they were  
5 invited to come down to speak to people. That's when  
6 we started to get to where we are today.

7 MR. HILLSTOCK: Okay.

8 MS. RATTLEY: It isn't something we  
9 just thought of last week. We've been working on it  
10 since the incident happened.

11 MR. HILLSTOCK: Was that 1993?

12 MS. RATTLEY: It's '93, I believe.

13 MR. HILLSTOCK: Reverend Hillstock,  
14 who is not afraid to speak.

15 MS. RATTLEY: Also, you know that we  
16 have a stenographer here who is transcribing the  
17 hearings, so therefore we would ask you to please  
18 identify yourself, even if you speak ten times, give  
19 us your name ten times so we'll know -- have a record  
20 who said what. Any questions on that?

21 Yes, ma'am.

22 MS. BURGESS: Marilyn Jackson  
23 Burgess, and I came this morning because I read about  
24 the advisory panel being here this morning in  
25 yesterday's paper, and I imagine that there are

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1 probably others who would have liked to have come,  
2 but because it was in yesterday's paper -- why wasn't  
3 it publicized prior to?

4 MS. RATTLEY: I will let Mr. Darden  
5 address that particular issue because all of these  
6 releases must come from Washington.

7 MR. DARDEN: I recognize that the  
8 public is always interested in getting as much  
9 advance notice as possible. Our procedure requires  
10 publication of notice of our meetings at least 30  
11 days ahead of time, which was done in this case, not  
12 only thirty days, but actually 90 days ahead of time,  
13 because we changed the date earlier from an earlier  
14 date. Those were noticed in the Federal Register,  
15 which is the publication of record for federal  
16 government activities.

17 In addition to that, we sent press  
18 releases to the media across the board, which was  
19 done in this case. We can't account for the media.  
20 Just to give you a straight answer, though, I think  
21 the interpretation I have about how this works -- and  
22 I've done this a number of times -- the media covers  
23 news, and if they go activate, release a story or  
24 start writing about events too far ahead of the  
25 actual occurrence, it doesn't sound much like news,

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1 and so you get -- no matter how early or how soon you  
2 send the press release out, you usually don't see a  
3 story about it until just before the event, and that  
4 is what happened in this case.

5 MS. RATTLEY: Other questions? Yes.

6 MS. SAUNDERS: My name is Bessie  
7 Saunders and I live in the City of Hampton, and  
8 Ms. Rattley, I understood you to say that you-all  
9 first came in contact with this meeting because of  
10 the Iverson case. Okay. That was three years ago.  
11 At that same time, three years ago, I don't know if  
12 you were familiar with another case that was going  
13 on. Why is it that the governor, or whoever, gave  
14 him the waiver to be released from jail, even though  
15 he was guilty? If there is a person that is not  
16 guilty, why is it so hard for the City to recognize  
17 that they made a mistake?

18 MS. RATTLEY: I'm afraid I cannot  
19 speak for the former governor of Virginia. I don't  
20 know, would be my answer to your question.  
21 Mr. Langford?

22 MR. LANGFORD: How many minutes this  
23 evening when the public hearings start at 6:15 --

24 MS. RATTLEY: I'm sorry. I can't  
25 hear you. Come up, please.

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1 MR. LANGFORD: When the -- first,  
2 good morning.

3 MS. RATTLEY: Good morning. How are  
4 you?

5 MR. LANGFORD: Fine.

6 MS. RATTLEY: Good to see you.

7 MR. LANGFORD: Good to see you,  
8 Ms. Rattley. How many minutes -- when public  
9 hearings begin at 6:15 this evening as I understand,  
10 how many minutes will each speaker be allowed? And  
11 if we're allowed a certain amount of minutes, can we  
12 then be allocated additional minutes if we want to  
13 talk about another topic?

14 MS. RATTLEY: Mr. Langford, I believe  
15 I read in some of this mountain of material sent down  
16 by the Civil Rights Commission, I think it's seven  
17 minutes.

18 MR. DARDEN: That's correct.

19 MS. RATTLEY: I've said, depending on  
20 the number of people who want to speak, we can always  
21 plan to speak longer.

22 MR. LANGFORD: I need about 51  
23 minutes.

24 MS. RATTLEY: But the point is, if  
25 you have a lot of people and everybody wants to

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1 speak, then we have to try to afford them an  
2 opportunity. If we don't have a lot of people who  
3 want to speak, then certainly we can permit you to go  
4 beyond the seven minutes. I know it takes  
5 politicians longer than seven minutes to make  
6 statements.

7 MR. LANGFORD: Thank you,  
8 Ms. Rattley.

9 MS. RATTLEY: Anyone else? All right  
10 then. I'm going to ask Mr. Darden if he would  
11 introduce our first panel for us.

12 MR. DARDEN: Thank you very much. We  
13 are going to start out with a panel that we've titled  
14 "No Easy Answers," an overview of problems facing  
15 African Americans under Virginia's criminal justice  
16 system.

17 The attention of titling the panel is  
18 just to give some introduction, some general idea of  
19 what the panel is supposed to pursue. You'll see  
20 after we get started that this -- the topic will be  
21 covered sometimes much more broadly than that and  
22 also sometimes in much more detail.

23 The way we're going to be proceeding  
24 with this, and the other panels, each one will have a  
25 moderator, one of the Advisory Committee members will

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1 lead in the questioning. The staff will usher the  
2 panelists to the table, and I think Mr. Pentino may  
3 be ready.

4 The first panel is made up of  
5 Dr. Donald Faggiani, who is the Senior Research  
6 Analyst for the Criminal Justice Services Department,  
7 Virginia Public Safety Secretariat. Is he here?

8 Would you please -- Marc, would you  
9 bring him to the table?

10 Also Dr. Richard P. Kern, who is  
11 Director of the Virginia Criminal Sentencing  
12 Commission. Bring him to the table.

13 Our third panelist, Mr. Robert  
14 Baldwin, Executive Secretary, Office of the Executive  
15 Secretary of the Supreme Court of Virginia, had an  
16 unexpected conflict in his schedule and has submitted  
17 a written statement, which we will read into the  
18 record at some point in time for his presentation.

19 So at this point, I'd like to  
20 introduce our moderators, who has already introduced  
21 himself to you, Mr. Robert Galvin.

22 MR. GALVIN: Good morning. I ask the  
23 panelists, if you would for the record, to identify  
24 yourself, even though we've called you by name, and  
25 where are you from and your relationship to this

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1 topic.

2 DR. FAGGIANI: I'm Dr. Donald  
3 Faggiani. I'm the with Department of Criminal  
4 Justice Services. I'm the senior research analyst.

5 MR. GALVIN: Would you use the  
6 microphone, please.

7 DR. FAGGIANI: Dr. Donald Faggiani --  
8 can you hear me? My name is Dr. Donald Faggiani.  
9 I'm with the Department of Criminal Justice Services,  
10 Criminal Justice Research Center. I'm a senior  
11 research analyst.

12 MR. GALVIN: Thank you.

13 DR. KERN: My name is Richard Kern.  
14 I'm the Executive Director of the Virginia Criminal  
15 Sentencing Commission. We are a Judicial Branch  
16 agency of the Virginia Supreme Court.

17 MR. GALVIN: And I understand you are  
18 here this morning, and have some statements and  
19 testimony, you'd like to present before the Committee  
20 on this topic?

21 DR. FAGGIANI: Well, it was my  
22 understanding I'd just be presenting some  
23 information. I have information on arrests in  
24 Virginia, and I was just going to do a presentation  
25 on that.

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1 MR. GALVIN: If you would then,  
2 please, sir.

3 MS. RATTLEY: Just a minute, sir,  
4 before you start. Could you hear him?

5 MR. DARDEN: Use the podium.

6 MS. RATTLEY: Thank you.

7 DR. FAGGIANI: It might be a little  
8 tough. I have a lot of overheads I wanted to display  
9 just to make the presentation a little bit easier, so  
10 I'll try to talk as loud as I can. Just give me a  
11 second to get set up here.

12 What I have is just some general  
13 information on arrest trends in Virginia over the  
14 last ten years or so. What I'm going to start with  
15 is just some basic information on Part I arrests --  
16 and I'll explain all this in a minute -- and violent  
17 arrests. And then I want to get into more specific  
18 information on a report that was just finished on  
19 Juvenile Murder in Virginia, and everybody should  
20 have a copy of this on the Committee. There's some  
21 extra copies that I'll pass around after I'm done  
22 here.

23 What we've done in -- at the Criminal  
24 Justice Research Center is we tried to take a look at  
25 various crime issues in Virginia. And, of course,

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1 the first place that we have them identifying a crime  
2 is with arrests. It happens, but usually the data  
3 flow doesn't start until we have an arrest made. So  
4 what I'm dealing with is arrest information, and all  
5 this arrest information comes from the Virginia State  
6 Police.

7 To begin, what I have on this first  
8 slide is the total Part I arrests. Part I arrests  
9 are the arrests that are reported to the FBI. That  
10 includes murder, manslaughter, robbery, rape,  
11 aggravated assault, burglary, larceny, motor vehicle  
12 theft, and arson.

13 You can see from this slide that the  
14 numbers are pretty high overall. This is statewide  
15 information, and we're beginning in 1986 and going  
16 through 1995 here. In 1991, we reached a peak of  
17 about 67,000 Part I offenses -- arrests for Part I  
18 offenses. Excuse me.

19 Part-one offenses are then broken  
20 down by violent and nonviolent offenses. I'm going  
21 to be focusing primarily on violent offenses, and you  
22 can see what I have here is the trend in violent --  
23 Part I violent offenses. This includes just murder,  
24 manslaughter, robbery, rape, and aggravated assault.  
25 We can see we reach our peak for violent arrests in

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1 1994. We had about 13,368 violent arrests in  
2 Virginia.

3 If we break that down by who's  
4 getting arrested, we can see that adults are far and  
5 away the majority of people getting arrested. And by  
6 "adult," I'm defining "adult" as anyone who is 18  
7 years of age or older, and "juvenile" as anyone from  
8 10 to 17.

9 We have very few juveniles who are  
10 under age ten who get arrested for violent offense.  
11 There are some. We'll talk about that a little  
12 later.

13 You can see back in 1986, juveniles  
14 accounted for about 12.2 percent of all violent  
15 arrests in Virginia. By 1995, they accounted for  
16 almost 16 percent. So there's been a gradual upward  
17 trend in juvenile arrests in violent offenses.

18 If we break that down by race, we can  
19 see that -- and this slide here, the blacks are  
20 represented by the blue line, and whites are  
21 represented by the green line. There's an "other  
22 race" category that is not on this chart. It's a  
23 very small percentage of arrests for violent offenses  
24 in Virginia.

25 You can see the majority of the

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1 arrests are generally black individuals, and that  
2 pattern is held pretty constant throughout this  
3 ten-year period.

4 MR. DARDEN: Would you put that back  
5 one more time. You're going a little fast here.

6 DR. FAGGIANI: I'm sorry. I also  
7 have a copy of these charts. I don't think -- I've  
8 given them out, but I don't have copies for  
9 everybody.

10 MR. DARDEN: All right.

11 MR. GALVIN: In 1992 to '93 is where  
12 there was a largest rated change difference between  
13 the two, the disparity being -- in other words, up to  
14 in '92, if I read that right, it was about fifty  
15 percent difference?

16 DR. FAGGIANI: Yeah. Looks that way.  
17 I haven't figured out the percentage, but we could  
18 easily do that. But, yeah, it looks like between '92  
19 and '93 is where we have one of the largest raises.  
20 We have a very large decrease in '94 and '95.

21 MR. GALVIN: But the ratio stays --  
22 is increased?

23 DR. FAGGIANI: Right.

24 As I said, violent offenses are  
25 murder, manslaughter, robbery, rape, aggravated

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1 assault. What I'm going to do here is break them  
2 down, give you an idea of where some of these  
3 patterns lie and what's going on with some of these  
4 crimes.

5 On this chart, the three lines  
6 represent -- red line represents the total number of  
7 robbery arrests for this period, so in 1995, we had  
8 2,785 arrests.

9 MR. DARDEN: You said you have these  
10 charts that you're going to distribute to us. Could  
11 you do that now so we can follow along? Some of  
12 these numbers take a while to sink in, at least they  
13 do with me.

14 DR. AL-HIBRI: Somebody was asking,  
15 in '94 it was -- the ratio was 1.7 and in '95, 1.5.  
16 You can round it to 1.6.

17 MR. GALVIN: Thank you.

18 MR. DARDEN: So what you've given us  
19 corresponds exactly to your overhead? These are not  
20 numbered, but we'll follow the title. All right.  
21 Figure 5?

22 DR. FAGGIANI: This is Figure 5,  
23 right.

24 We can see, for example, that in  
25 1995, as I said, over 2,785 arrests for robbery in

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1 Virginia. 78.1 percent who were arrested were black,  
2 and we don't have a breakdown, unfortunately, by  
3 gender as well, so it's just black individuals. 21.6  
4 percent were white individuals. And whatever is left  
5 from that, about .3 percent, or something like that,  
6 is the other category.

7           If you look at aggravated assault,  
8 which is, I believe Figure 6, we see a somewhat  
9 similar pattern. There was a peak for aggravated  
10 assaults in 1994 with about 9,492. About 60.7  
11 percent were arrests for black individuals. I am  
12 including burglary here. Burglary is not a violent  
13 offense, although there are some burglaries that have  
14 been defined as violent offenses during the  
15 pro-aberration system, but most burglaries are not  
16 violent offenses.

17           An interesting pattern emerged here  
18 when we were looking at that, and that's why I'm  
19 showing this. We have quite a few burglaries in  
20 Virginia, but the pattern is most of the burglaries  
21 are committed by white -- or most of the arrests are  
22 white individuals, as opposed to black individuals.  
23 And, for example, in 1995, about 59 percent are white  
24 and 40.3 percent are black.

25           Then we have the most serious of the

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1 offenses, which is murder. And, I believe, in your  
2 handout there, I think murder is probably Figure 4.  
3 They're a little bit out of order.

4 We can see that 1993 was the peak  
5 year for murders in --

6 MR. DARDEN: Just a minute. I'm not  
7 following you now.

8 MS. RATTLEY: Figure 4.

9 DR. FAGGIANI: Back to 4. It's a  
10 little bit out of order there.

11 MR. DARDEN: All right. Go ahead.

12 DR. FAGGIANI: In 1993 was the peak  
13 year for murders in Virginia. We have 534 murder  
14 arrests. I can't remember the exact number of  
15 victims. I think there were somewhere around 570  
16 victims during that year. About 74 percent of the  
17 arrests for murder were black, and about 25.7 were  
18 white in that year. That 74 percent is pretty high.  
19 It's been averaging between the upper 50s, low 60s  
20 before that. After that, you know, we reached the  
21 peak in 1993, and it looks like it's starting to  
22 go down a little bit.

23 What we're going to do now is we're  
24 going to switch to this report. It provides a lot  
25 more specific information, particularly about

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1 juveniles who are arrested for murder in Virginia.  
2 And the reason I'm using this is because we have some  
3 detailed information on what kind of arrest trend  
4 we've uncovered.

5 MR. DARDEN: I'm assuming you are  
6 going to allow us to go back and question you on some  
7 of these things when we're finished?

8 DR. FAGGIANI: Yes, very definitely.

9 This first figure is Figure 1.3, even  
10 though mine says 1.4. It's on Page 5 of the Juvenile  
11 Murder Report. For people in the audience, there's  
12 some murder reports up here. If you don't get one,  
13 my name is in there. Please let me know, and I'll be  
14 happy to send you a copy.

15 MR. DARDEN: Do you have another copy  
16 of this report for the record, for the court  
17 reporter? And also, would all the panelists, as you  
18 provide documents, provide a copy for the court  
19 reporter -- to the court reporter.

20 DR. FAGGIANI: When we began to look  
21 at juvenile murders in Virginia, one of the first  
22 things that we looked at was distribution of age.  
23 And this figure shows the age distribution for murder  
24 and non-negligible manslaughter arrests in Virginia  
25 between 1984 and 1994. The blue line is 1984. The

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1 red line is 1994.

2 You can see that in 1984 the peak  
3 age, the age where most people were arrested, was age  
4 22. In 1994, that shifted down to age 19. This is a  
5 national trend. We've seen this throughout the  
6 country. This is not something new.

7 What we tried to do then, is figure  
8 out where, you know, what age groups the real problem  
9 is lying with murder and non-negligible manslaughter.  
10 You can see the dashed line that goes up is age 18,  
11 and the increase between the blue line and the red  
12 line is the increase in number of arrests for murder.

13 MR. DARDEN: Excuse me. Just for the  
14 record, would you identify the chart in the report so  
15 -- it's Figure 1.3, and that's Page 5 of your report  
16 entitled Juvenile Murder in Virginia.

17 DR. FAGGIANI: Right. Okay.

18 Once we looked at the age  
19 differentials and the differences, we decided to take  
20 a look at the weapons that are used, and we know that  
21 guns, you know, are pretty commonly used these days.  
22 Back in 19 -- the early 1980's, it wasn't as common.  
23 Between 1980, I think, and 1994, I think there was  
24 probably about 60 or 70 percent increase in the use  
25 of guns in murder.

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1                   Between 1980 and 1994, 81.5 percent  
2 of all juvenile murders, juveniles arrested for  
3 murder or non-negligible manslaughter in Virginia  
4 involved the use of a firearm. Most of that  
5 percentage is the latter years, probably 1990 to  
6 1994.

7                   MR. DARDEN: Now, was that chart in  
8 this?

9                   DR. FAGGIANI: Yes. That's Page 4.

10                  MR. DARDEN: Would you do that for  
11 the record, tie your visual to the page and figure  
12 number in the document?

13                  DR. FAGGIANI: Okay.

14                  MR. DARDEN: Thank you.

15                  DR. FAGGIANI: Well, this one isn't  
16 in there, so what we did, though, is we broke down  
17 the firearm use of juveniles, and we can see that the  
18 majority of the firearms that were used were  
19 handguns. This one isn't in the report for some  
20 reason.

21                  MR. DARDEN: Is it part of this other  
22 set?

23                  DR. FAGGIANI: No.

24                  MR. DARDEN: So all we have is your  
25 visual?

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1 DR. GALVIN: Is your visual -- Chart  
2 2.5 on Page 12? While the years there are '86 to  
3 '94, your visual is '80 to '94, would that not be the  
4 same representation valid here for '86 to '94 for the  
5 same point you're making?

6 DR. FAGGIANI: Right. The only  
7 difference is this breaks down the firearm use  
8 itself. The previous chart was Figure 2.5. This is  
9 a subset.

10 MR. GALVIN: I see.

11 DR. FAGGIANI: What we're doing is  
12 just taking a look at what firearm is being used for  
13 murder in Virginia, and it overwhelming is a handgun.

14 MR. DARDEN: Now, since that wasn't  
15 -- would you give the percentages that you showed  
16 that are on the visual so we'll know what they are.  
17 Read the title as well.

18 DR. FAGGIANI: Okay. It's Firearm  
19 Uses of Juveniles Arrested for Murder, Non-negligible  
20 Manslaughter in Virginia, 1980 to 1994: 83.2 percent  
21 used a handgun, 9.5 percent used a shotgun, 4.7  
22 percent used a rifle, and 2.5 percent used some other  
23 firearm.

24 DR. AL-HIBRI: Could we ask that he  
25 submit this as an exhibit for the record?

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1 DR. FAGGIANI: I'll get a copy.

2 MR. DARDEN: Thank you.

3 DR. FAGGIANI: This is Figure 2.7 on  
4 Page 13. Now, this isn't Figure 2.7. It's the wrong  
5 one. The percentages are different. The year is  
6 different. I have 1990 and 1994. In the book, it's  
7 1986 to 1994. Let me explain that. We have general  
8 arrest information from 1980 to present, actually  
9 1995. When we began the Juvenile Murder Report, we  
10 started looking at the general trend. Then we got  
11 more specific information, but we only had the  
12 specific information for a limited period, from 1986  
13 to 1994, so that the graphs that went into the murder  
14 report include the more specific information, as  
15 opposed to the general information. So to be  
16 consistent for this report, we just used 1986 through  
17 1994. A lot of these graphs are from a previous  
18 presentation, so they're -- but if you look at -- the  
19 pattern is the same. The percentages are slightly  
20 different, but the sex and race of juveniles arrested  
21 for murder and non-negligible in Virginia, in the  
22 book I have, 86.5 percent were male, 13.5 percent  
23 were female. This one is slightly different. It's  
24 92 and 8.

25 In the book for race, 68 percent are

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1 black, 29.6 percent are white/Mexican Americans, and  
2 2.4 percent are other. You can see the percentages  
3 here are also slightly different.

4 MR. GALVIN: Would you also read  
5 those percentages from '80 to '94 in, please?

6 DR. FAGGIANI: Right. From 1980 to  
7 1994, for Sex and race juveniles arrested for murder  
8 and non-negligible manslaughter in Virginia: Male  
9 arrests were 92 percent. Female arrests were 8  
10 percent. Black arrests were 80 percent.  
11 White/Mexican American were 18.7 percent. Asians and  
12 Pacific Islanders were 1.4 percent.

13 MR. GALVIN: Thank you.

14 DR. AL-HIBRI: Could we agree that  
15 all the slides that are not in the books will be  
16 attached as exhibits?

17 DR. FAGGIANI: Yes. Page 11. This  
18 is the victim-offender relationship for juveniles  
19 arrested for murder and non-negligible manslaughter  
20 between 1980 and 1994. Again, the one in the book is  
21 1986 to 1994. It's slightly different percentages, I  
22 think.

23 MR. DARDEN: They look the same in  
24 the book here. You mean Figure 2.3 on Page 11?

25 DR. FAGGIANI: Figure 2.3 on Page 11.

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1 MR. DARDEN: I'll have to read this  
2 transcript. I'll never figure out what you were  
3 saying.

4 DR. FAGGIANI: Right. I understand.

5 MR. GALVIN: Would you also note in  
6 your figure that the 1980 is a typo and should be  
7 1986.

8 DR. FAGGIANI: Right. The visual  
9 Figure 2.3 I have up here should be 1986 to 1994.  
10 All the rest of my graphs, by the way, should be  
11 correct. Because now we're starting to get into more  
12 specific information, and this information is only  
13 available from 1986 to 1994.

14 This is the Victim-offender  
15 Relationship of Juveniles Arrested for Murder and  
16 Non-negligible Manslaughter, 1986 to 1994. You can  
17 see that the victim-offender relationship,  
18 acquaintance was the most frequent, about 53.8  
19 percent; family members were about 11.6, neighbors  
20 2.5, dating 1.2, friends .9, strangers about 28.9,  
21 and undetermined is about 1.4 percent.

22 I'm going to move into Chapter 3 of  
23 the book. That should be a little more consistent  
24 from this point on. This is Figure 3.1 in Chapter 3,  
25 Page 15. What we're doing here is we're trying to

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1 take a look at juvenile murder trends and what we're  
2 calling syndromes. And I'll explain syndrome in a  
3 few minutes.

4 Figure 3.1 is juveniles arrested for  
5 murder and non-negligible manslaughter, and firearm  
6 involvement in 1986 to 1994. The red line represents  
7 firearms that are involved in the murder arrests, and  
8 the blue line is no firearms are involved. You can  
9 see that beginning around 1988, and especially  
10 between 1989 and 1990, there was a major increase in  
11 use of firearms in murder arrests for juveniles in  
12 Virginia. That percent, I believe between 1989 and  
13 1990, was about 115 percent increase.

14 Figure 3.2, which is on Page 16, is  
15 juveniles arrested for murder and non-negligible  
16 manslaughter and firearm involvement by gender. And  
17 in this case, we'll see that the pattern for firearm  
18 involvement, and the pattern for male involvement is  
19 very similar. The male arrests again began around  
20 1989, actually about 1988, beginning an increase.  
21 That increase was dramatic between 1989 and 1990 and  
22 has stayed at a fairly high level from that point.

23 Figure 3.3, also on Page 16 of the  
24 report, is the race of juveniles arrested for murder  
25 and non-negligible manslaughter. And you can see the

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1 same pattern holds for black arrests at about 1988,  
2 actually just slightly before that, around 1987; but  
3 between '87, '88, and '89, there was the beginning of  
4 an increase; between '89 and '90, there was a very  
5 large increase, and it stayed at that higher level  
6 for the remainder.

7 Figure 3.4, which is on Page 17 of  
8 the report, is the type of location where the crime  
9 was committed. And again these are juveniles  
10 arrested for murder and non-negligible manslaughter,  
11 1986 to 1994. And as has been reported numerous  
12 times, it seems to be in the urban areas of the  
13 state. MSA's are statistical -- metropolitan  
14 statistical areas defined by the U.S. Bureau of  
15 Consensus. There are eight metropolitan statistical  
16 areas in Virginia, and basically what it involves is  
17 independent cities, suburban counties, and suburban  
18 cities.

19 You can see that even though the  
20 murder arrest rate increased slightly in the rural  
21 areas over this period, it still is below ten in  
22 1994, ten arrests; whereas for metropolitan areas,  
23 it's increased dramatically again. 1989 to 1990 is  
24 the period where that increase was.

25 If we take a further look at the

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1 metropolitan statistical areas and break that down,  
2 we can see that the majority of the arrests are  
3 happening in central cities, as opposed to suburban  
4 cities or suburban counties. In fact, suburban  
5 cities are pretty low. In 1992 to 1994, there was  
6 virtually zero. Suburban counties, there was a  
7 slight increase around 1989, 1990; but the major  
8 increase was in central cities. And this is Figure  
9 3.5 on Page 17.

10 If we bring it all together, and we  
11 look at, you know, specific groupings of individuals  
12 arrested, Figure 3.6, which is on Page 18, is the  
13 juvenile black males arrested for murder and  
14 non-negligible manslaughter with a firearm in  
15 metropolitan statistical areas. That accounts for  
16 about 90 percent of all the arrests in this period in  
17 this category, in metropolitan areas.

18 You can see that black males arrested  
19 for murder with firearms increased again around 1988  
20 when it started. 1989 through 1990, it was growing  
21 pretty rapidly and stayed at that higher level. All  
22 other juveniles arrested for murder rose a little bit  
23 in 1989 to 1990 but continues to decline since that  
24 period.

25 Figure 3.7, this is slightly

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1 different than the Figure 3.7 in the book, but it's  
2 the exact same information. It just looks better on  
3 the overhead this way than what the two lines -- the  
4 one in the book has two lines, but it's the same  
5 information.

6 This is juvenile black males arrested  
7 for murder and non-negligible manslaughter with a  
8 firearm in metropolitan statistical areas versus all  
9 other juveniles arrested for murder. That includes  
10 males and females. And you can see that around 1986,  
11 juvenile black males represented only slightly over  
12 30 percent. By around 1993, they were well over 80  
13 percent and stayed there.

14 This is Table 3.1 on Page 19, and  
15 what we just -- this presents the numbers. In 1986,  
16 there were seven black males with a gun that were  
17 arrested. That represents 35 percent. Other males  
18 with a gun were four; black males without a gun,  
19 seven; other males without a gun, 2. You can see the  
20 changes in the 1994 column. Other males with a gun  
21 stayed at four; black males without a gun decreased  
22 to two; other males with a gun, there was zero; and  
23 black males with a gun, 46. That 46 represents a 557  
24 percent increase in arrests of black males with a gun  
25 between that two-year period. Between 1986 and 1994,

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1 all the others had either zero increases or  
2 decreases. The total increase was about 160 percent.

3 One of the things we were trying to  
4 do is figure out exactly the patterns that were  
5 developing in these murder arrests; and you know, one  
6 of the important issues, of course, is the victims.  
7 But we'll look at other things, like the motivating  
8 circumstances, and that kind of information as well.

9 Figure 3.8, which is on Page 20 of  
10 the report, is the distribution of victims of  
11 Virginia juvenile murders by the victim-offender  
12 relationship; and you can see the majority of them,  
13 almost 60 percent, were acquaintances. 16.4 percent  
14 were family members, and only 24.1 percent were  
15 strangers.

16 One of the things that is, I think,  
17 misunderstood about murder especially is that it's a  
18 random act of violence against unknowns and  
19 strangers. Well, the data doesn't support that so  
20 much. I mean, almost 25 percent is strangers.  
21 That's not something to be ignored, of course, but  
22 the overwhelming majority of murders are against  
23 people that the offender knows.

24 Figure 3.10 on Page 21 is  
25 distribution of Virginia juvenile murders by homicide

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1 syndrome classification. There's a group of  
2 literature that talks about homicide as not simply  
3 one offense. Homicide is actually multiple offenses,  
4 and it's multiple offenses because they all start as  
5 some form of confrontation. If you can define that  
6 form of confrontation, you can probably identify the  
7 motivation for the offense.

8           There is essentially two primary  
9 types of motivation. One is expressive. The other  
10 is instrumental. Expressive is violence for the sake  
11 of violence. You know, there is an argument. They  
12 just take the argument too far. Instrumental is that  
13 the homicide or murder started as something other  
14 than an argument. It could have been a robbery. It  
15 could have been a drug transaction. It could have  
16 been a car accident. Could have been something else.

17           Then there is gangland and street  
18 gang murders, and rape and sex offense murders.  
19 Those are a very small percentage of the murder in  
20 Virginia for juveniles.

21           What Figure 3.10 does is tries to  
22 break down the type of motivation by the type of  
23 victim-offender relationship. 34.3 percent are  
24 expressive acts of violence against known victims,  
25 7.6 are expressive acts of violence against family

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1 members, and only 6.2 percent are expressive acts of  
2 violence against strangers.

3 Instrumental represents about 48.6  
4 percent of all the homicides by juveniles. I'll  
5 break that down shortly.

6 MR. DARDEN: What does that term  
7 mean, instrumental?

8 DR. FAGGIANI: Instrumental means it  
9 had some other motivation, like a robbery, a  
10 burglary, a drug transaction, or something along  
11 those lines as the motivation for the incident.

12 MR. GALVIN: So what you have there,  
13 approximately fifty percent of the homicides are by  
14 expressives -- I mean, the category expressive, and  
15 fifty percent by some other means other than a  
16 motive?

17 DR. FAGGIANI: Right, exactly. If we  
18 take a look at the homicide syndrome, or the murder  
19 syndrome -- this is Figure 3.12, and this is on Page  
20 22 -- it's distribution of Virginia juvenile murder  
21 syndrome by race of arrestee, and the red bars on the  
22 chart are black. The blue bar is white. And you can  
23 see that there seems to be something of a pattern  
24 here. The other known, expressive, and instrumental  
25 seems to be primary syndromes for black, or blacks

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1 represent the majority of those syndromes. 36.7  
2 percent of other known expressives are committed by  
3 black juveniles; 20 percent of other known  
4 expressives are white juveniles.

5 Family expressive, this was rather  
6 strange. It's 32 percent white. 3.1 percent are  
7 black. Also, the other thing about family  
8 expressive, there's a lot of females in that  
9 category, not that there were a lot of females  
10 arrested for this, but most of the females that are  
11 arrested are in that category.

12 Stranger expressive, fairly even.  
13 Instrumental, about 52 percent are black and 35.7  
14 percent are white. Gangland street murder, majority  
15 are white, and rape, sex offenses, the majority are  
16 white.

17 MR. DARDEN: Excuse me just a second.  
18 Is your presentation going to move into the other  
19 data beyond the murder data?

20 DR. FAGGIANI: Yeah.

21 MR. DARDEN: All right.

22 DR. FAGGIANI: This is the last one  
23 on the murder.

24 MR. DARDEN: You're killing me.

25 DR. FAGGIANI: This is the percentage

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1 of drug arrests involving juveniles for sale and  
2 distribution of Schedule 1 or 2 drugs. Schedule 1 or  
3 2 drugs are defined as opium, cocaine, and  
4 derivatives of cocaine, including crack cocaine. You  
5 can see that around 1987, it started to increase; and  
6 by 1990, there was a fairly significant increase in  
7 drug arrests of juveniles. In fact, for arrests for  
8 sale and distribution of Schedule 1 or 2 drugs,  
9 juveniles in 1991 represent 12 percent of all arrests  
10 for that offense. Since 1991, it looks like it's  
11 been declining gradually.

12 The next is the percentage of -- and  
13 this is Figure 12 in the handout, the percentage of  
14 drug arrests involving juveniles for sale and  
15 distribution of Schedule 1 and 2 drugs by race. As  
16 we saw with murder, by juvenile black offenders seems  
17 to be the ones where the increase was, particularly  
18 in the late 1980s and in to 1990. Now, it may be  
19 encouraging that the most recent numbers beginning in  
20 '94 and '95 are showing a slight decline.

21 The next one is Figure 13. It's  
22 percentage of drug arrests involving juveniles for  
23 sale and distribution of marijuana, and you can see  
24 that there's a fairly significant increase. This  
25 time the increase begins around 1992, and it's still

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1 increasing in 1995. By 1995, juveniles represent 15  
2 percent of all offenders arrested for this offense.

3 If we look at the percentage of drug  
4 arrests involving juveniles for sale and distribution  
5 of marijuana by race -- this is Figure 14 -- there  
6 doesn't really seem to be a difference between black  
7 and white. One year the black might be higher. The  
8 next year white might be higher. It's hard to say.  
9 It fluctuates quite a bit throughout this whole  
10 period. However, there is continuing to be an  
11 increase.

12 The way that Figure 14 would be read  
13 is that in 1995, let's see, whites represent 7.9  
14 percent of all arrests -- white juveniles -- I'm  
15 sorry -- represent 7.9 percent of all arrests for  
16 possession and sale and distribution of marijuana,  
17 and blacks represent 7.10.

18 I'm going to skip Figure 15, and just  
19 to speed this up a little bit. This is Figure 16.  
20 It's the sale of narcotics arrests for juveniles in  
21 metropolitan statistical areas by race. And again,  
22 we'll see that this is all narcotics, including  
23 marijuana and Schedule 1 or 2 drugs.

24 Beginning in the late 1980s, there  
25 was a significant increase in the metropolitan areas

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1 of -- for black juveniles being arrested for  
2 possession of drugs. If we superimpose this on  
3 violent crime increases and murder increases, the  
4 pattern will look very, very similar.

5           Finally, I'm going to talk just  
6 slightly -- a little bit about conviction  
7 information. The Department of Criminal Justice  
8 Services released a drug report in 1989. What we've  
9 done is we've updated some of the figures in that  
10 drug report to see if any of the patterns had  
11 changed. What we're finding is that they pretty much  
12 stayed the same throughout this period.

13           This is Figure 18, and this is  
14 percentage of drug convictions involving -- this is  
15 for possession of Schedule 1 or 2 drugs by race; and  
16 you can see that back in 1986, percentage of whites  
17 was not much higher than the percentage of blacks.  
18 Around 1988, it started to change, '87, '88, it  
19 started to change. And by 1995, about 72 percent of  
20 the arrests are black and about 26 percent of the  
21 arrests are white.

22           And again, just to go back to that  
23 figure, this is conviction information. This is, you  
24 know, for individuals who are convicted in circuit  
25 court for a drug offense or a narcotics offense,

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1 narcotics felony offense. The previous one was  
2 possession.

3 This is Figure 18. This is for sale  
4 and distribution of a Schedule 1 or 2 drug; again,  
5 percentage of drug convictions involving white and  
6 blacks. We see the same pattern as we saw with the  
7 possession. Back in 1986, whites represented about  
8 59 percent, blacks about 38 percent. It completely  
9 switched in the late '80s to a point where in 1995,  
10 82 percent of the convictions for sale or  
11 distribution of Schedule 1 or 2 drugs are black  
12 offenders, and 15 percent are white offenders.

13 Again, this is conviction  
14 information, percentage of drug convictions involving  
15 whites and blacks for marijuana sales, the sale and  
16 distribution of marijuana, again, convictions in  
17 circuit court: 1986, whites represented about 70  
18 percent; 1995, they represented about 79 percent.  
19 The pattern didn't really change here. It pretty  
20 much stayed the same. In fact, black convictions  
21 might be going down somewhat for sale of marijuana.

22 I also have a request to just kind of  
23 summarize the breakdown in our state responsible  
24 population. These are people that are housed in the  
25 prisons and jails, and are state responsible, which

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1 means they were convicted of a felony. During most  
2 of this period they had to have a sentence of two  
3 years or greater. For 1995 to the present, it was  
4 six months.

5 The pattern here is, you know, blacks  
6 represent about 63.7 percent in 1990, and about 67.2  
7 percent of the confined Department of Corrections  
8 population through this period. Whites represent  
9 about 31 -- 35.7 in 1990, and 31.94 in 1996.

10 REVEREND HARRIS: Would you repeat  
11 that last one?

12 DR. FAGGIANI: Whites represent about  
13 35.73 percent of the state responsible population in  
14 jails in 1990. By 1996, they represent about 31. --  
15 almost 32 percent, and this is Figure 20 in the  
16 handout.

17 And the last chart I'm going to show  
18 is the Juvenile Correctional Center Admission, and  
19 this is Figure 24 in the handout. It's the last  
20 figure, and this shows the racial breakdown of  
21 juveniles who are committed to the Department of  
22 Youth and Family Services, now called the Juvenile  
23 Justice, Juvenile Correctional Centers in 1990, 1996.  
24 Blacks represented about 61 percent in 1990, and  
25 about 30 percent in 1990 were white. About two

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1 percent were other. By 1996, blacks represented  
2 about 59 percent; whites, about 36 percent; and  
3 other, about five percent. Looking at this, there  
4 seems to be a slightly downward trend for blacks  
5 throughout the period 1992 to 1993 and through 1996.

6 And that's all the presentation I  
7 have. I'll be happy to answer any questions.

8 MR. GALVIN: Take the questions of  
9 the panel now, please.

10 DR. AL-HIBRI: I have a couple of  
11 questions. And correct me if I missed something.  
12 There have been quite a few figures. One thing I  
13 found very striking was on your figures, there was a  
14 sharp rise in the statistics relating to black  
15 individuals after 1987. And while I know you're  
16 collecting figures and drawing graphs, have you  
17 looked behind it? Have you asked why there is such a  
18 sudden change? It sounds like it's something  
19 environmental, something extraneous? What would that  
20 be?

21 DR. FAGGIANI: I haven't looked  
22 behind it. My intent in looking at these figures is  
23 to give information to people who can look behind it  
24 and come up with the answers.

25 One of the problems with crime data

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1 is it's not very specific; and one of the things  
2 that's been happening, particularly in the last ten  
3 years or so, people have been making broad  
4 assumptions about patterns, without specific  
5 information. What I'm trying to do, particularly in  
6 the Juvenile Murder Report is say, Here is some more  
7 specific information.

8 We know that not all homicides are  
9 committed against strangers; in fact, only about 25  
10 percent. We know there's a lot of blacks from  
11 metropolitan areas who are using a gun and being  
12 arrested for homicide. Why, I'm not sure. We know  
13 there seems to be a relationship with narcotics  
14 arrests during that same period.

15 DR..AL-HIBRI: I see. Okay. So I  
16 can conclude that in the data-collection process, no  
17 light was shed on this issue.

18 Let me ask you something else. Did  
19 you do a study in one of the figures -- I've been  
20 trying to see if I find the answer, but I couldn't.  
21 I hope I didn't miss it. In breaking down the  
22 various offenses, did you see how many of them were  
23 committed within the same race, and how many were  
24 cross-racial? I know you did family versus  
25 strangers, but that doesn't tell me much.

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1 DR. FAGGIANI: We looked at it for  
2 juvenile murder. Let me see if we actually reported  
3 it in here.

4 No, we didn't report it. We didn't  
5 pursue the issue, not because we didn't want to. I  
6 think it's just because we didn't really see any  
7 patterns there, although we know a lot of the  
8 homicides are black and black.

9 DR. AL-HIBRI: As you said, there are  
10 a lot of assumptions that go around, and I would  
11 love, since you have the data, if you could put  
12 together a chart on this issue in particular. At  
13 least we can try and figure out some lessons from  
14 that.

15 DR. FAGGIANI: Sure. I'll do that.

16 DR. AL-HIBRI: Thank you.

17 MR. GALVIN: Other questions?

18 MS. MCCLOUD: Could you say a word,  
19 please, about your methodology in collecting the  
20 data?

21 DR. FAGGIANI: Okay. What we've done  
22 is, for most of this, we just use the Virginia State  
23 Police uniform crime reports, and especially for the  
24 juvenile murders, we use the supplemental homicide  
25 report. The supplemental homicide reports are

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1 whenever there's a homicide in Virginia, the  
2 arresting officer fills out a separate report from  
3 just the UCR report with specific information on the  
4 offenders, if an offender is arrested; the arrest  
5 information on the offender, such as race;  
6 motivation, if they know it; whether a weapon was  
7 used, and that kind of information.

8           Very little information is included  
9 on the victim. We do have sex and race information  
10 and acquaintance information, but outside of that, we  
11 don't have a lot of information on the victims. And  
12 basically we just -- this is just a descriptive  
13 analysis. We just put the numbers together. We try  
14 not to make any interpretation of the numbers. We  
15 try not to bias it in any way. This is just the  
16 State Police report.

17           MR. GALVIN: Have you done the same  
18 report, or summary, for adult crimes in the same  
19 categories and track that against that of juvenile  
20 crimes?

21           DR. FAGGIANI: We're working on that  
22 right now. We don't have that ready yet, but we're  
23 working on it.

24           MR. GALVIN: How far along are you on  
25 it?

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1 DR. FAGGIANI: We have the data  
2 ready. It's quite a bit of data actually. We're  
3 trying to -- what we're trying to do with the adult  
4 one is increase it, or expand it to 1996 data. We  
5 now have 1996 data. That's not ready yet, but we're  
6 getting there.

7 MR. GALVIN: Would you have it for  
8 the earlier years already done so there would be --  
9 you could provide us with some tracking to see how  
10 the adult community and the juvenile community,  
11 through the same crime rates and ratios, compare?

12 DR. FAGGIANI: I haven't done any  
13 analysis as of yet, so I really don't have anything I  
14 could report at this time.

15 MR. GALVIN: Okay.

16 REVEREND HARRIS: Excuse me. Of the  
17 information that you have shared with us, who gets  
18 this information? Who commissioned your staff to  
19 make this report, and where does this report go?  
20 Does it go to the General Assembly finally? And how  
21 can -- how can we expect that something will happen  
22 as a result of all of this work that you are  
23 reporting?

24 DR. FAGGIANI: That's a real good  
25 question. Anyone gets the report that wants it. We

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1 began the report, we were working -- the Criminal  
2 Justice Research Center at Department of Criminal  
3 Justice Services was supporting the governor's  
4 Commission on Juvenile Justice Reform. We had  
5 collected a lot of information for that.

6 The information that we collected  
7 during that commission was reported to the commission  
8 when we got it. They did with it what they needed  
9 to, I guess, and you know, they made some changes to  
10 legislation.

11 After the commission disbanded, we  
12 just took this data and started working with it and  
13 trying to figure out what else we could extract from  
14 it.

15 So no one specifically commissioned  
16 this report. We just kind of took it on our own to  
17 do it. We felt it was something that needed to be  
18 done. We had the data to do it. We printed up about  
19 2,000 copies. We sent copies to everyone we had  
20 addresses for, and everyone who wants a report will  
21 get a copy. We have about 700 left.

22 MR. GALVIN: Do you know at this time  
23 if there's any group, or activity of the group, or  
24 people that are involved in making some conclusion or  
25 analysis of this data?

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1 DR. FAGGIANI: Not that I know of,  
2 no.

3 MR. HARRIS: Is this -- are you  
4 commissioned by the State of Virginia, and who is  
5 paying the price? Is it the taxpayers paying the  
6 salaries? It's very important to find out whether  
7 you're just looking around and nothing is going to  
8 happen; and if I'm helping to pay for it, I'd like to  
9 know that kind of information.

10 DR. FAGGIANI: Well, the Commonwealth  
11 of Virginia pays my salary. I know that. The  
12 specific funding for this report outside of my salary  
13 came from a federal grant that we have. We have --  
14 we've been getting a grant to look at various issues.  
15 One of the things we're also responsible for is  
16 forecasting the local jail population, the local  
17 inmate population. Part of that grant is to cover  
18 that. Part of the grant is also to cover the, you  
19 know, analysis of some juvenile justice data. That  
20 comes from the burned anti-drug abuse funds.

21 REVEREND HARRIS: In your report to  
22 us, for the record, the various places from which you  
23 receive funds, and for the record, so we can discover  
24 all monies dedicated for the project that you just  
25 described.

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1 DR. FAGGIANI: As far as I know,  
2 that's the only outside funding source we have.  
3 Everything else is with the -- from the Commonwealth  
4 of Virginia. There is a Statistical Analysis Center  
5 grant, which is Statistical Analysis Center for  
6 Virginia, and that money comes from the Bureau of  
7 Justice Statistics. That money wasn't used for this  
8 particular project.

9 MS. MCCLLOUD: I want to go back to  
10 your selection of data. I don't know if you can  
11 answer this or not, but in using police reports as  
12 your primary resource, have you been able to  
13 determine any differences in the way reports are  
14 given or written up?

15 DR. FAGGIANI: Well, we haven't seen  
16 the actual written report. What we're getting is the  
17 same information that is sent by the State Police to  
18 the FBI for their analysis, so we're just looking at  
19 data tapes. We're just getting data tapes. So we  
20 haven't seen any written reports.

21 I have compared the Virginia UCR  
22 data, and particularly the Virginia Supplemental  
23 Homicide Report data with other states, and the  
24 Virginia system seems to be more complete than the  
25 other states' homicide data, seems to be in better

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1 shape.

2 MS. MCCLOUD: How do you mean  
3 complete?

4 DR. FAGGIANI: There's more  
5 information. There's less missing information than  
6 we had expected. Most of the -- most of the murders  
7 that have an arrest made for, as far as we  
8 determined, are included, if not all of them. There  
9 may be one or two in that ten-year period we don't  
10 know about, but we've tried to look through  
11 newspapers accounts to see if we can find any  
12 discrepancies or anything like that, and we've been  
13 unable to find any major discrepancies with the  
14 supplemental homicide data in Virginia.

15 MS. MCCLOUD: Thank you.

16 MR. GALVIN: May I ask you one  
17 question, Doctor? In the course of doing your work  
18 and collection of the data and relating it to the  
19 commission on this study, have you found that there  
20 is additional studies that you would have found been  
21 useful if you had been commissioned to do, or for you  
22 to have this study done in greater depth because of  
23 research is someplace where you feel there is  
24 something missing by what the study is not showing?

25 DR. FAGGIANI: Yes.

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1 MR. GALVIN: Could you state what you  
2 think those are?

3 DR. FAGGIANI: One of the things  
4 that -- well, there's actually a lot of things, but  
5 one of them we're working on right now is including  
6 adults and doing a comparison between juveniles and  
7 adults. That's something we wanted to do initially.  
8 We just didn't have the resources to do it. We had  
9 the data for juveniles, so we focused primarily on  
10 juveniles.

11 The other main issue for us anyway is  
12 not having any court information. We know what's  
13 happening at the front end of the system. We know  
14 what's happening at the back end of the system. We  
15 know very little about the middle of the system. And  
16 that's something that, you know, if we had access to  
17 that data, we'd love to analyze it.

18 MR. GALVIN: The data is available;  
19 you just don't have access to it?

20 DR. FAGGIANI: I'm not sure the data  
21 is available. I talked with several people, and it  
22 may be available, you know, to some extent, but not  
23 fully. It's always available on hard copies. If we  
24 had enough research assistants, we could go to every  
25 file and get it that way, but that would take years.

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1 MR. GALVIN: Other members'  
2 questions?

3 MR. HUANG: Your findings seem to  
4 indicate various unique patterns. Are those findings  
5 consistent with the national data?

6 DR. FAGGIANI: Pretty much. The --  
7 it depends on where you look in, you know, the  
8 national scene. A lot of the urban areas, some of  
9 the violence started a little bit earlier than it did  
10 in Virginia. Crack cocaine started a lot earlier in  
11 some of those areas. Virginia is just a few years  
12 behind in that regard; but outside of that, it's a  
13 pretty similar pattern.

14 I didn't display this, but in the  
15 report on Page 4, Figure 1.2, we compare Virginia  
16 with the United States for juvenile arrests for  
17 murder, and you can see that the pattern is very,  
18 very similar.

19 MR. GALVIN: Have you any plans to  
20 take this as well into the same study for cities?  
21 You're comparing Virginia to the rest of the country.  
22 How about cities within Virginia?

23 DR. FAGGIANI: That's something that  
24 I'm also working on. I just reworked some of the  
25 data to try to be able to do that. We do have

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1 comparison of the cities in this report. If you  
2 look, I think it's Appendix A, basically gives the  
3 change in the four-year period between 1986 and 1989  
4 as compared with 1991 and 1994, and it lists the  
5 difference for all 136 Virginia localities.

6 MR. GALVIN: Could you point out the  
7 localities here just for the record for Hampton and  
8 Newport News?

9 DR. FAGGIANI: Sure. For Hampton,  
10 let's see, Hampton City is, between 1986 and 1989,  
11 there were zero reported juvenile arrests for  
12 homicide. Between 1991 and 1994, there were 16  
13 juvenile arrests for homicide. So it was a fairly  
14 significant increase.

15 Newport News is, between 1986 and  
16 1989 -- I'm sorry -- yeah, Newport News, 1986 to  
17 1989, there were 12. 1991 to 1994, it dropped to 10.  
18 So there was a decrease of two during those areas for  
19 that four-year period.

20 Also in here, just to give you kind  
21 of a visual representation, I believe it's on Page 9,  
22 there's two maps, Map 2-1, is the total amount of  
23 arrests for -- juvenile arrests for murder in  
24 Virginia localities for 1986 to 1994, and Map 2-2  
25 represents that appendix visually.

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1 MR. DARDEN: I have a question. And  
2 please forgive me, I was out of the room, so some of  
3 this you may have already -- but if I step back and  
4 think about what you've presented, I get a picture, a  
5 really sort of frightening one of really enormous  
6 increase in deaths among young black males in  
7 particular, and violent deaths, use of guns, and  
8 namely drug-related, among people who know one  
9 another.

10 My question is this: If that picture  
11 and these data by race were reversed, and instead of  
12 there being a huge increase in the percentage of  
13 minorities involved in dying, it were the reverse and  
14 they were nonminorities and whites, could you  
15 speculate for me what kind of reaction there might be  
16 within your department, and generally if that were  
17 the case, instead of the effect being on minority?

18 DR. FAGGIANI: I would assume if  
19 there was an increase of any crime by any category of  
20 arrestee, or individual, we'd want to look at it.  
21 Personally, I'm interested in looking at crime. You  
22 know, it doesn't make any difference who's committing  
23 it, or why it's being committed, I think it needs to  
24 be explained. I'm assuming that my agency feels the  
25 same way.

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1 MR. DARDEN: I thought when I came  
2 back, I heard you say that even though these reports  
3 have been completed, the response to them has been  
4 very negligible. Did I mishear that?

5 DR. FAGGIANI: I don't know of any  
6 response, but -- I don't know if it's been  
7 negligible. I don't know if anyone's been -- you  
8 know, doing anything with this information or not. I  
9 know we've had a lot of requests. We've had a lot of  
10 requests by the State Police because they're  
11 interested in it. I mean, my expectation --

12 MR. DARDEN: How many would be a lot?

13 DR. FAGGIANI: Well, you know, 15 or  
14 20.

15 MR. DARDEN: 15 or 20?

16 DR. FAGGIANI: But we also sent out  
17 about 1,200 of these to people that were on our list,  
18 so this is over and above the ones we've sent out.

19 MR. DARDEN: I think you might get at  
20 the obvious part of my question is, I think a popular  
21 assumption that we have, a whole generation of black  
22 males that are being almost expendable in a sense,  
23 and not much attention is being paid to what can be  
24 some really desperate life situations, and I'm just  
25 trying to get a sense of what you see being part of

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1 the -- you know, the administration.

2 Does this concern raise to the level  
3 of really causing alarm? Do bells go off so that  
4 people who are in authority say, We have a problem;  
5 we need to do something about this?

6 DR. FAGGIANI: I hope so. I mean, I  
7 don't know for a fact -- I'm not in direct  
8 communication with the governor's office, or the  
9 secretary's office, or anything like that. They've  
10 all received copies of it. I've had questions from  
11 the attorney general's office, as well as the  
12 governor's office on specific issues related to the  
13 report, but I have no idea at this point what they're  
14 doing. I don't know if any bells or whistles go off.

15 MR. DARDEN: Nothing has come to you  
16 as a priority to focus in on these issues --

17 DR. FAGGIANI: Right.

18 MR. DARDEN: -- and to report back on  
19 their development?

20 DR. FAGGIANI: Right. I also have to  
21 say that this report was only printed in October,  
22 so -- and it was sent out in -- just before  
23 Christmas, so there's a good chance that -- I mean, a  
24 lot of people haven't had time to read it. The  
25 session was just ended, so the response may not have

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1 surfaced yet.

2 MR. DARDEN: Thank you.

3 MS. MCCLOUD: Do you have any idea --  
4 if I heard you correctly, you said that the report  
5 had been -- you had given copies of the report to  
6 police officials, and so forth, who had requested it.  
7 Do you know what their purpose behind requesting it  
8 was? Did they tell you why?

9 DR. FAGGIANI: No. I have no  
10 indication whatsoever.

11 MS. ZEAVIN: I'd like to ask about  
12 the drugs, since that's where the white -- and  
13 selling drugs -- are high. So why didn't that go any  
14 special place to be studied, because that's a -- I  
15 would think a big concern.

16 DR. FAGGIANI: We're -- I don't know  
17 if anyone else has taken a look at this right now.  
18 This is fairly new data that we've just begun to look  
19 at. You know, I think it was looked at the last time  
20 in depth, back in 1989 was when the report was  
21 released. It's our intent over the next year, to  
22 update the drug report very similar to this and to  
23 report that information to whoever wants it.

24 MR. GALVIN: Yes, please. Would you  
25 identify yourself?

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1 MS. BRYANT: Yes. My name is Debbie  
2 Lee Bryant. And in your presentation, I think you've  
3 touched on it. Most of us in this audience are from  
4 Hampton and Newport News, and whereas your  
5 presentation was relevant to Virginia, it wasn't  
6 brought to Hampton, and whereas -- or Newport News,  
7 and whereas, you know, the different categories. If  
8 we could have had a comparison in the different  
9 categories, because maybe if there was a national  
10 pattern, maybe if there was a pattern in Virginia,  
11 there may be some categories in Hampton where that  
12 pattern may not be the same. You see what I'm  
13 saying?

14 So it would have helped us -- well,  
15 it would have helped me. I have to speak for Debbie  
16 Bryant. It would help Debbie if someone would have  
17 given me a comparison of how does that raw -- the raw  
18 statistics are wonderful, but if you don't have it to  
19 compare it to anything, it doesn't essentially mean  
20 anything if you don't have anything to compare it to.

21 MR. GALVIN: Yes, please.

22 DR. AL-HIBRI: I want to commend you  
23 for trying to give figures as a basis for people's  
24 conclusions in the future. I think it's an excellent  
25 first step, but as the audience and members of the

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1 panel have mentioned, one needs to go beyond to stage  
2 two, and I'm sure you're planning on that.

3 I would suggest that since you do  
4 seem to have analysis -- analytical capacity, as you  
5 did with the juvenile murders, that your next step  
6 would be to look at things like why there was this  
7 very sharp increase after '87 in criminal activities,  
8 or criminalized activity.

9 And also, I would suggest if you feel  
10 you're highly extended, then perhaps one way of  
11 dealing with this is to draw on the community and  
12 build bridges so you can do a project together.

13 MS. RATTLEY: May I -- I recognize  
14 the presence of delegate Christian, who is here, and  
15 I see her hand up.

16 MS. CHRISTIAN: Thank you. I have a  
17 question in relation to the data and Figure 19 and  
18 Figure 20. And it's indicated by race, black is as  
19 low as 16 percent, whites 79 percent, to indicate  
20 that there are many, many more sales and convictions  
21 of whites than blacks; but on the next page, you find  
22 still that the jail population is almost twice as  
23 high for blacks as it is for whites, so somewhere  
24 between the time that, even though they are convicted  
25 and we saw stats on the arrests, the numbers of

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1 arrests, the numbers that are convicted, but then the  
2 numbers of blacks in jail amount to almost 31 percent  
3 to 67 percent, so somewhere are there alternative  
4 modes of sentencing which are much different. Do you  
5 have data on how many whites or blacks get community  
6 service, or how many get incarceration, and so forth?  
7 Because there's a very disproportionate number of  
8 those convicted, twice as much, but yet twice as many  
9 land in jail. The jail population is double. Do you  
10 have any data on those that are convicted? Where are  
11 they?

12 DR. FAGGIANI: I need to point out  
13 that Figure 20 is all incarcerated individuals, not  
14 just individuals for drugs. This is every offense  
15 that incarcerated somebody in the State of Virginia;  
16 whereas, Figure 19 is strictly for the distribution  
17 of marijuana, which is actually fairly small, and  
18 most of these people probably don't go to prison.  
19 Most of -- if anything, they're going to get jail  
20 time. We don't have that kind of data for the jail,  
21 but most of them aren't going to be in prison anyway.

22 MS. CHRISTIAN: Do you have data on  
23 alternative modes of sentencing?

24 DR. FAGGIANI: Unfortunately not.

25 MS. CHRISTIAN: Numbers for whites

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1 and blacks. How many we can see get community  
2 service, home incarceration, and so forth, and how  
3 many land in jail? Having visited in the jails and  
4 institution, it's about 85 percent are black in the  
5 jails, and yet you still see they're coming through  
6 courts, but they're not in jail.

7 So I think it would be helpful for us  
8 to see what the alternative modes are, how many black  
9 young people are sentenced into drug rehabilitation  
10 programs, how many are sentenced into community  
11 service programs, and then I think we can certainly  
12 see a more balanced picture of what the criminal  
13 justice system is doing with regards to race.

14 DR. FAGGIANI: I agree. We don't  
15 have a lot of data on that information.  
16 Unfortunately it's not recorded anywhere that I know  
17 of. We've been looking for it for years, believe me.  
18 We do have several evaluation reports on specific  
19 programs, and they're generally commissioned by the  
20 General Assembly. And we have various evaluation  
21 reports. I'm not exactly sure what -- all the ones  
22 we have. I don't work in that section, but if you'd  
23 like, I can get you that information.

24 MS. CHRISTIAN: Yes, please.

25 MR. DARDEN: Can I just follow up?

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1 It just seems incredible -- not incredible, but let  
2 me ask it this way. With the kind of problem or  
3 disparity that the delegate just described to you,  
4 and then your response is you don't -- you've been  
5 looking for that data for years, you don't have it;  
6 it doesn't sound like you're going to get it any time  
7 soon.

8           The question that I have is, you  
9 know, why is there such a blind eye in your  
10 department -- and yours is the only one I know that  
11 is primarily responsible for collecting and analyzing  
12 this data -- why is there a blind eye on the issue of  
13 race?

14           DR. FAGGIANI: I guess I don't have  
15 an answer for that. I'm not sure there is  
16 necessarily a blind eye. One of the problems in  
17 Virginia isn't just unique to Virginia, this is  
18 throughout the country, there is very little criminal  
19 justice data, and when new programs start up, the  
20 data systems aren't always put in place to try to  
21 track those programs, and that's one of the issues  
22 that we've been struggling with for years to try to  
23 overcome.

24           As I said earlier, I mean, we have  
25 fairly decent information on the front end, and

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1 fairly decent information on the back end. We don't  
2 have hardly anything in between that, and we searched  
3 pretty much every source that we could search to get  
4 that information without a massive data collection  
5 effort. That information just is not going to be  
6 readily available.

7 MR. DARDEN: Just one final question  
8 and then I am through. Within the structure at the  
9 Department of Criminal Services, do you have  
10 professionals who are involved in the -- at the level  
11 of decision-making, suggesting directions, suggesting  
12 thrusts for the deployment, for the use of resources,  
13 who might speak from the minority perspective, either  
14 because they happen to be minorities themselves or  
15 have a particular interest or connection with  
16 minority community or issues of civil rights?

17 I'm trying to understand if within  
18 your circle of decision-makers, you have input which  
19 would bring to the table some of the questions that  
20 we're interested in today?

21 DR. FAGGIANI: I'm not part of that  
22 circle, but it's my understanding that there are --  
23 there is a variety of individuals who make those  
24 kinds of decisions. I have no idea who they are.  
25 I'm a researcher. I sit in the corner and crunch

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1 numbers. I give my information to the people who  
2 want it, but I am not a decision-maker, and I have  
3 very little impact on those who are decision-makers.

4 MR. GALVIN: Yes, sir.

5 MR. HARRIS: It seems to me --

6 MR. GALVIN: Identify yourself,  
7 please, sir.

8 MR. HARRIS: Marcellus Harris. It  
9 seems to me that what we have here is a scientist or  
10 an analyst who has given us just raw data, and my  
11 question would be -- first, am I right about that?

12 DR. FAGGIANI: Yes.

13 MR. HARRIS: My question would be,  
14 then, who are the persons responsible for the  
15 influence of this data and interpretation of this  
16 data? If it is predicated upon where this data goes  
17 and the inferences and the interpretations are left  
18 to folks like General Assembly folks and other folks,  
19 then the onus would be on them to -- or where do we  
20 fit in to try to get this data the attention we feel  
21 it ought to be leveled at it in the sense of some  
22 sense of alarm, some sense of crisis, because that's  
23 what it seems like to me in this audience; and I'm  
24 sure others in the audience, as the question was  
25 earlier asked; which seems to be the obvious thing,

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1 about what's happening in the black community.

2 MR. GALVIN: I don't know if you have  
3 an answer to, who should be here speaking other than  
4 you --

5 MR. DARDEN: Well, Mr. Morris would  
6 be one person, correct?

7 DR. FAGGIANI: And the Secretary of  
8 Public Safety and the Governor's office.

9 MR. GALVIN: You wanted to give those  
10 titles for the record who are the policy-makers in  
11 your division?

12 DR. FAGGIANI: Correct. The Director  
13 of the Department of Criminal Justice Services, Bruce  
14 Morris. He's the key policy-maker for the Department  
15 of Criminal Justice Services.

16 One thing I do want to mention is  
17 that they're in the process of developing a criminal  
18 justice plan that has very specific goals for the  
19 Department of Criminal Justice Services, and I  
20 believe that plan is going to be released next month  
21 or so. I think it might be April. I'm sure everyone  
22 can get a copy of that.

23 Bruce Morris is -- I assume reports  
24 to the Secretary of Public Safety, Patricia West, and  
25 she's one of the governor's secretariats, and she

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1 reports to the governor's office.

2 MR. DARDEN: Thank you.

3 MR. GALVIN: Dr. Faggiani, I want to  
4 thank you for coming here and providing us with this  
5 kind of information, and also the answering of the  
6 questions. It's been a longer time than I think you  
7 anticipated your presentation would take. However, I  
8 would like to ask you one last question.

9 In your opinion as a researcher doing  
10 this work, have you found that your expectations for  
11 the amount of response from your report coincides  
12 with your expectations? In other words, do you think  
13 this report should have caused, or should be causing  
14 more response than you have received so far?

15 DR. FAGGIANI: Well, I want it to. I  
16 mean, that's one of the reasons we wrote it. I guess  
17 I feel that a lot of this information has been talked  
18 about for several years now. I mean, there really  
19 isn't anything new in the report. The only thing  
20 that's new about it is that it's specific to  
21 Virginia. We're trying to identify where the problem  
22 areas lie. I'm optimistic that someone is going to  
23 pick up on that and do something about it. I mean,  
24 that's why we do this kind of research, but I am just  
25 a scientist trying to figure out where the issues

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1 lie.

2 MR. GALVIN: And so for, what's also  
3 not new, like you say, giving this report, it's been  
4 picked up to have anything done with?

5 DR. FAGGIANI: Right.

6 DR. AL-HIBRI: I have one comment  
7 before you leave, if you don't mind. I understand  
8 you're a scientist gathering numbers. There have  
9 been quite a few studies about the fact that science  
10 is not a scientific objective to a student, and very  
11 often it is shaded with personal biases, et cetera.  
12 For that reason, I ask the group who's doing this  
13 study, is it ethnically diverse, sufficiently diverse  
14 so we will avoid the kind of blind spots that  
15 Mr. Darden was talking about? And if not, could you  
16 please convey our concern, or at least my concern,  
17 about that?

18 DR. FAGGIANI: Are you talking about  
19 the group that is doing the research?

20 DR. AL-HIBRI: Well, your group and  
21 whatever Mr. Morris is doing. I think it should be  
22 systematically all the way through that, in order to  
23 assure that there is no systematic bias, either in  
24 the data or in the interpretation, or even in  
25 describing setting up the project itself, there must

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1 be an ethnic diverse group that would bring in all  
2 the concerns of the various parties.

3 MR. GALVIN: Thank you, Dr. Faggiani.

4 MR. HARRIS: He didn't answer the  
5 question.

6 DR. FAGGIANI: I'll answer the  
7 question. It's my understanding that the Department  
8 of Criminal Justice Services is very ethnically  
9 diverse. I don't know the exact proportions, but I  
10 know that it's fairly diverse. As far as my research  
11 group, there's three people. There's me and two  
12 research assistants. One is a white male, and the  
13 other is a black female, and she's the key research  
14 assistant. As far as I'm concerned, I think my  
15 research section is fairly diverse, and we're  
16 committed to finding the issues without bias, if we  
17 can. That's our objective. That's always been my  
18 objective.

19 MS. RATTLEY: Thank you very much.  
20 May I just say, sir, that our time is at a premium  
21 now. We're going to have to make some changes, but  
22 what we want to do is to hear from Dr. Kern, and we  
23 may have to push some items back later this  
24 afternoon, so we would like very much to be out if  
25 possible, sir -- I don't know how long your

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1 presentation is -- by noon if possible.

2 We will not take a break -- where is  
3 Mr. Darden? He said maybe five minutes, but I think  
4 we better push forward and finish this panel.

5 DR. KERN: Can you hear me okay?  
6 Does this work?

7 MS. RATTLEY: Yes.

8 DR. KERN: I work for a criminal  
9 justice agency, the Virginia Criminal Sentencing  
10 Commission, which is an agency that has taken  
11 research information and data and put it to good use  
12 to address problems that have been identified by the  
13 type of data that you have just seen displayed by  
14 Dr. Faggiani. And to give you a good understanding  
15 of this, I'll try to be succinct and get you somewhat  
16 back on schedule.

17 The history of sentencing reform in  
18 Virginia began in 1982 when then-Governor Chuck Robb  
19 created a task force on sentencing to take a look at  
20 the sentencing of people convicted of felony offenses  
21 in Virginia; felony offenses being offenses that are  
22 considered more serious, and those of which you could  
23 receive a prison term; and see if there were  
24 unwarranted sentencing disparity in sentencing  
25 practices in Virginia. And by unwarranted -- it's

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1 important to talk about that term, so oftentimes we  
2 hear the word sentence disparity.

3 Disparity, in essence, implies that  
4 there is some disproportionate representation of  
5 certain groups in society being sentenced to prison  
6 disparate from their proportional representation in  
7 our population. That does not necessarily mean,  
8 however, that there are unwarranted sentencing  
9 practices by judges and juries in Virginia. There's  
10 a big difference here.

11 When we talk about unwarranted  
12 sentence disparity, what we're saying, that is there  
13 empirical evidence, scientific evidence that all  
14 other things being equal, controlling for  
15 circumstances of the crime, the offender's prior  
16 criminal history, are there so-called extra legal  
17 considerations, things that are extraneous to the  
18 legal circumstances of the case before a judge, that  
19 play a role in how that particular criminal defendant  
20 is sanctioned by that Court?

21 And a good example of extra legal  
22 factors, extra legal considerations, would be the  
23 race of the defendant, their sex, their socioeconomic  
24 status, the type of legal representation they can  
25 afford, whether or not they were represented by

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1 court-appointed counsel, public defender, or whether  
2 or not they could afford a private attorney, the  
3 judge who does the sentencing, and the particular  
4 location of the courtroom. For instance, was the  
5 offender sentenced to prison because he was sentenced  
6 in a courtroom in Southwest Virginia, as opposed to  
7 having been sentenced differently had that same case  
8 been heard in Northern Virginia or, say the Tidewater  
9 area.

10 So when we talk about unwarranted  
11 sentencing disparity, we're looking at that type of  
12 particular issue. Is there a lack of fairness, a  
13 lack of equity and how people are sanctioned in  
14 courtrooms once they are before a judge for  
15 sentencing.

16 Governor Robb's commission back in  
17 1982 did a study of approximately 3,000 criminal  
18 sentencings throughout the Commonwealth of Virginia,  
19 and they did conclude that there was indeed strong  
20 evidence that there was unwarranted sentencing  
21 disparity in Virginia courtrooms. They then turned  
22 that evidence over to the General Assembly, which  
23 commissioned the Supreme Court of Virginia to take  
24 some action to address this particular problem  
25 identified by Governor Robb's commission.

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1           The Supreme Court then set in motion  
2 a process of gathering information on a more  
3 exhaustive basis of felony sentencings in Virginia.  
4 In essence, they put into place a database that  
5 recorded a wealth of information on everybody being  
6 convicted in Virginia courtrooms of felonies.

7           They then took all of that  
8 information and developed what are known as  
9 sentencing guidelines. The sentencing guideline  
10 database, in essence, consists of over 200 unique  
11 pieces of information on every criminal defendant  
12 sentenced in Virginia courtrooms. All types of  
13 information, information about their employment  
14 history, their educational background, military  
15 history, if they had one; a lot of information about  
16 their personal background, whether or not they have a  
17 history of drug abuse, or alcohol abuse, and so on,  
18 as well as a wealth of information about their  
19 criminal history and their juvenile criminal history.

20           The judiciary essentially took all  
21 this information, and after identifying which of  
22 those factors that they gathered were relevant to the  
23 sentencing decision in a scientific study, they took  
24 out all the extra legal considerations. They indeed  
25 replicated the finding of Governor Robb's commission

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1 that indeed there were unwarranted sentencing  
2 disparities in Virginia.

3           They then said we'll no longer want  
4 to consider any of these factors in our guidelines,  
5 and what was left were only the legal considerations  
6 of the case, the facts of the crime itself: For  
7 instance, was it a robbery? Was it an armed robbery  
8 with a firearm? Was there any victim injury? And  
9 prior criminal history, does the offender have any  
10 prior criminal convictions, and what is the nature of  
11 those prior criminal convictions?

12           And around those factors developed  
13 sentencing guidelines that reflected actual sentences  
14 imposed by Virginia judges in the previous five years  
15 of data that we looked at.

16           What we then did is, the Supreme  
17 Court commissioned a study -- and I believe  
18 Mr. Darden's been given a copy of this study --  
19 entitled Voluntary Sentencing Guidelines Pilot  
20 Program Evaluation. The Supreme Court wanted to see  
21 whether or not these sentencing guidelines could play  
22 an effective role in reducing unwarranted sentencing  
23 disparities in Virginia courtrooms.

24           So what the Supreme Court did is they  
25 commissioned a pilot test. They asked six circuit

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1 courts in Virginia to take part in a year-long  
2 experiment using these sentencing guidelines. What  
3 we then did is, after that year, we compared  
4 sentencing practices in the six pilot circuits that  
5 utilized the sentencing guidelines to those  
6 circuits -- the other 25 judicial circuits -- there's  
7 31 judicial circuits in Virginia -- so they compared  
8 the other 25 circuits that were not using sentencing  
9 guidelines, and we found dramatic differences.

10 We found that in the six circuits  
11 that were employing the sentencing guidelines,  
12 unwarranted sentencing disparity was significantly  
13 reduced, and in some cases, outright eliminated;  
14 whereas, in those 25 circuits that were not employing  
15 the sentencing guidelines, the sentencing disparity,  
16 the unwarranted sentencing disparity, continued  
17 unabated.

18 As a result of that evaluation study,  
19 the judiciary itself, all the circuit judges in  
20 Virginia, and the Supreme Court justices, voted  
21 unanimously to extend the Sentencing Guidelines  
22 Program statewide, and that happened in July 1st of  
23 1991.

24 Now, since then, we've had several  
25 evolutions of sentencing reform in Virginia, most

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1 recently culminating with the General Assembly  
2 abolition of parole and institution of a  
3 truth-in-sentencing system. And by  
4 "truth-in-sentencing," what I mean by that is that  
5 now if a felon is sentenced in a Virginia courtroom,  
6 they must serve 85 percent or more of whatever time  
7 is imposed by a judge or a jury.

8 In the past, prior to this new  
9 system, an offender would be eligible for parole,  
10 which in some cases would make them eligible for  
11 release after serving only a quarter of their  
12 sentence. As well, they were eligible for very  
13 generous good conduct reductions in their sentence.  
14 Under the old scheme, most felons received 25 days  
15 off for every 30 days they received for just not  
16 misbehaving in the institution.

17 When you combine the good conduct  
18 credit and the parole system under the old sentencing  
19 scheme, most felons only served about 20 to 25  
20 percent of whatever the sentence was imposed in a  
21 Virginia courtroom. Now we have a new system where  
22 they will serve at least 85 percent or more.

23 And I brought along today -- and we  
24 have brochures in the back -- two brochures which  
25 address this new sentencing system. This particular

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1 brochure here is entitled Virginia's New Criminal  
2 Sentencing System, and this describes the new  
3 sentencing system in a little more detail than what I  
4 just provided for you.

5           The second brochure is a progress  
6 report on the new sentencing commission that was  
7 created as part of this new legislation that  
8 abolished parole. We still have today a sentencing  
9 guideline system. The sentencing guideline system is  
10 different than the old system. Rather than a system  
11 of guidelines that is calibrated on historical  
12 sentences imposed, the new sentencing guidelines are  
13 calibrated on actual historical time served for most  
14 felons.

15           The exception are those who are  
16 convicted of violent crimes. If a felon is convicted  
17 of a violent crime, the new sentencing guidelines  
18 call for enhancement that will extend their length of  
19 incarceration over what it would have been under the  
20 old sentencing system.

21           So before I move on to another topic,  
22 what I'd just like to say is, what we have here in  
23 Virginia -- and it reflects about 16 years of data  
24 collection and research -- is at least one example of  
25 a situation where research, scientific research did

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1 identify a fairness problem, an unwarranted disparity  
2 problem in the criminal justice system, and action  
3 was taken to address that problem and a mechanism was  
4 put into place to correct that problem.

5 Now, that being said, you must  
6 understand that having in place a sentencing  
7 guideline system that corrects for unwarranted  
8 sentencing disparity that ensures more consistent and  
9 predictability -- consistency and predictability in  
10 sentencing, does not mean it eliminates outright  
11 disparity, unwarranted disparity in the criminal  
12 justice system because sentencing guidelines do not  
13 address disparate practices by police departments in  
14 their policing strategies and the use of police  
15 discretion in deciding whether or not to make an  
16 arrest or not in a particular situation.

17 The sentencing guidelines in no way,  
18 shape, or form deal with prosecutorial discretion and  
19 abuse of prosecutorial discretion.

20 One of the most hidden areas of the  
21 use of discretion in the criminal justice system is  
22 the decision by the prosecutor whether or not to  
23 charge the defendant at all with a crime; and if so,  
24 if the decision is made to charge, at what level do  
25 they charge. Do they charge him with a felony, and

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1 what level of felony, or do they reduce the charge to  
2 a misdemeanor.

3 And even if they do decide to charge  
4 the defendant with a felony, we know about plea  
5 bargaining practices, the fact that some defendants  
6 will get some concessions, in terms of charge  
7 reductions or negotiated sentence reduction. In  
8 return, sometimes we get cooperation in prosecuting  
9 others.

10 But nonetheless, we have tremendous  
11 discretion that is being exercised by other critical  
12 actors in a criminal justice system, prior to the  
13 point in time when a criminal defendant is convicted  
14 of a felony and before a judge for sentencing. So  
15 oftentimes you pick up literature, like we have in  
16 the back of the room, that takes a look at disparity  
17 in imprisonment and disparity in sentencing. Part of  
18 the reason for that is that, for one, we do have good  
19 data on people once they're convicted and sentenced  
20 to imprisonment; and a lot of the studies that you  
21 find, focus on that decision only because it's the  
22 good data that's available. But in Virginia at  
23 least, I feel very confident, based on our own  
24 research, that we have addressed the issue of  
25 unwarranted sentencing disparity in Virginia, and we

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1 have very sound evidence that judges are embracing  
2 these sentencing guidelines.

3 Our compliance rate is very high, 75  
4 percent, and the law requires that if a judge departs  
5 from the sentencing guidelines, he must state in  
6 writing why he departs, and the commission then  
7 tracks that information and provides that to the  
8 public in our annual report. Anybody who wants a  
9 copy of our annual report can write to us, and  
10 it's -- the address is on the back of this brochure  
11 entitled 1996 Progress Report.

12 One last thing I'd like to touch on  
13 before taking any questions, if there are some, is  
14 that there was a question earlier about the dramatic  
15 sharp rise in drug arrests around 1986 and 1987, and  
16 of course, around that time we also saw a spike in  
17 the arrest rates for violent crimes. Most  
18 criminologists do put those two factors together and  
19 attribute the great increase in violent crime in the  
20 latter part of the '80s to the explosion, the  
21 widespread explosion and introduction of crack  
22 cocaine in our inner cities throughout America.

23 And there certainly is no question  
24 that the scientific data does reveal some disparity  
25 in terms of the treatment of people who are using

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1 cocaine. Citizen surveys, surveys done of school  
2 children in high schools and in colleges seem to  
3 reveal that use of cocaine is about evenly split  
4 across the racial groups. About fifty percent of  
5 cocaine users are white; about fifty percent are  
6 black.

7           However, when you take a look at the  
8 arrest data, you see that when you focus on cocaine,  
9 about 80 percent of the arrests for cocaine are black  
10 defendants, and about twenty percent are white. And  
11 that particular disproportionate representation of  
12 the racial groups continues on about a parallel all  
13 the way through to conviction and then ultimately  
14 imprisonment.

15           So when you take a look at the  
16 imprisonment statistics for people who are caught  
17 selling cocaine, you see that 80 percent of the  
18 defendants are black and twenty percent are white,  
19 but what that really represents is the fact that  
20 judges are putting almost all of them in prison, a  
21 hundred percent.

22           Our sentencing guidelines call for  
23 them all to go to prison, and what the judge is  
24 seeing, four out of every five people before him for  
25 sentencing are black. But, again, this disparate

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1 proportion of people begins at the point of arrest,  
2 not at the point of sentencing, and it's important to  
3 remember that.

4 One other thing I'd like to get on  
5 the record is that the Virginia Sentencing Commission  
6 is a separate and distinct animal from the U.S.  
7 Sentencing Commission. The U.S. Sentencing  
8 Commission that you may be aware, promulgates  
9 sentencing standards for the federal courts,  
10 offenders who are convicted of federal-level offenses  
11 and sentenced by federal judges.

12 In the past year, there's been a lot  
13 of attention focused on how the U.S. Sentencing  
14 Commission and Congress treats defendants convicted  
15 of cocaine offenses. If you're not aware of it, the  
16 U.S. Sentencing Guidelines call for a treatment of  
17 crack cocaine defendant, which is dramatically  
18 different than defendants who are convicted of powder  
19 cocaine offenses. The guidelines call for a  
20 mandatory five-year prison term for any defendant who  
21 is caught trafficking in five grams or more of crack  
22 cocaine.

23 But to receive the same five-year  
24 sentence recommendation for powder cocaine,  
25 defendants in the U.S. Sentencing Guidelines, the

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1 defendant must be caught with at least 500 grams of  
2 powder cocaine; so essentially there's a 100 to 1  
3 ratio difference between how crack and powder cocaine  
4 are treated in those guidelines.

5 What's the significance of that?

6 Well, the significance of that is that their own data  
7 reveals that the great majority, about 80 percent, of  
8 the defendants convicted of crack cocaine offenses  
9 are black; however, the great majority of defendants  
10 in the federal court system convicted of offenses  
11 involving powder cocaine are white. So it's been  
12 viewed by some as a clear example of how disparity  
13 has been institutionalized into a sentencing system  
14 of guidelines.

15 In Virginia, we do not have that  
16 scenario. We treat powder and crack cocaine exactly  
17 the same in Virginia, so we do not institutionalize  
18 that type of disparity that we may be familiar with  
19 in the federal system, into the state system.

20 And I know you're way over schedule,  
21 so I'm going to confine my remarks to that.

22 MR. DARDEN: You're doing fine, and  
23 thank you very much. You brought it down very  
24 quickly.

25 Questions for the panel?

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1 MS. RATTLEY: Yes. Could you just  
2 help me, please. I understand how the federal law  
3 came into being, the difference between crack and  
4 cocaine. What's behind that, because to me, that is  
5 a good illustration of discrimination, because, you  
6 know, I've heard the whole thing, I guess. Crack is  
7 cheaper. Crack is more attractive to poor people.

8 DR. KERN: Right.

9 MS. RATTLEY: So -- but you can get  
10 pure cocaine, and there is a disparity in the  
11 sentencing, plus you've got to have so much more of  
12 the real cocaine --

13 DR. KERN: Right.

14 MS. RATTLEY: -- than you do of the  
15 crack cocaine. Could you just look into the mind of  
16 those legislators who would pass such a law?

17 DR. KERN: I can tell you that the  
18 U.S. Sentencing Commission itself studied this and  
19 actually issued a report on this last year, and they  
20 did conclude, much as you do, that this was not fair,  
21 that this did institutionalize unwarranted treatment  
22 of African Americans, and they rebutted the  
23 contention.

24 The original contention, Madam  
25 Chairman, for the disparate treatment of crack

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1 cocaine was that crack cocaine trafficking was more  
2 often associated with violent behavior on the part of  
3 those defendants involved in those criminal  
4 conspiracies where you have a drug-trafficking  
5 operation.

6           The argument was that where there is  
7 crack cocaine, there are guns. Where there is crack  
8 cocaine, there is violence and terror. And that  
9 while powdered cocaine is also a danger, powder  
10 cocaine trafficking is practiced in the suburbs, in  
11 office buildings, and doesn't involve weapons,  
12 doesn't involve violence. And through that type of  
13 analogy, the argument was made that we would  
14 indirectly be able to reduce violence by taking  
15 people trafficking in crack cocaine and getting them  
16 off the street; whereas, there would not be that  
17 urgency to get those trafficking in powder cocaine  
18 off the streets because the argument again would be  
19 it would not be averting that much violence.

20           Now, that particular argument was  
21 examined by the U.S. Sentencing Commission, and they  
22 concluded that at least as far as their data went,  
23 they didn't see any differences in the types of  
24 violent records of those who trafficked in powder and  
25 crack. They didn't find any empirical report for

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1 that; but nonetheless, you might recall that when the  
2 U.S. Sentencing Commission publicized their report  
3 and recommended to Congress that this disparity be  
4 eliminated, there was large outcry in Congress, as  
5 well as from Attorney General Reno's office, and the  
6 U.S. Sentencing Commission, as I understand, was  
7 almost threatened with being abolished as a result of  
8 what was viewed as an outrageous recommendation to  
9 equate these, and Congress almost unanimously  
10 rejected the U.S. Sentencing Commission's  
11 recommendations and told them to go back to the  
12 drawing board and come up with better  
13 recommendations.

14 Now, I notice on your agenda tomorrow  
15 you have Congressman Scott appearing before you.  
16 Being that he is a member of Congress and was a  
17 member of Congress when this issue was being debated  
18 before Congress, he would probably be a better person  
19 than I to give you some insight onto what the  
20 thinking was of Congress in rejecting that. All of  
21 the information I'm providing to you here is  
22 basically what I was provided by secondhand.

23 MS. RATTLEY: Well, I guess that  
24 would then conclude that when we talk about  
25 discrimination based on race, color, religion, sex,

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1 age, handicap, or national origin, in the  
2 administration of justice, we should add based on  
3 money, because that's what it's all about, the matter  
4 of crack versus pure cocaine.

5 Maybe the Constitution needs to be  
6 amended, because if the law makers continue to let  
7 that law stand, it's obvious that the whole country  
8 now is judged by how much money you have. You even  
9 get into the problem of money deciding who lives and  
10 who dies.

11 You didn't come for a lecture, but it  
12 just kind of rubs me the wrong way. When we talk  
13 about crack, in Los Angeles charges now currently  
14 that crack was deliberately carried into the  
15 depressed community, or the urban centers, or in  
16 black neighborhoods. So then you say that all black  
17 folks use crack, all whites folks use coke. We all  
18 know that's bull, because at one time they had the  
19 real coke, the crack, the pure coke in black  
20 communities. As the supply and demand, you know,  
21 didn't have enough money to buy the pure, so they can  
22 get a cheaper brand of the same thing, so they take  
23 maybe three times as much to get the same high, and  
24 then they become violent, may become violent to get  
25 the money to get all the crack they need. Maybe they

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1 wouldn't be so violent if they can get the cocaine.  
2 I don't think they should have any of it, just  
3 personally.

4 DR. KERN: Right.

5 MS. RATTLEY: But that, to me, is  
6 just a blatant disregard for justice in this system,  
7 and I don't mean to blow off on you. I know you  
8 didn't do it.

9 MR. DARDEN: Question, and this is a  
10 little bit out of your area, I'm sure, of expertise.  
11 You're a criminologist, and I'm thinking now about  
12 the kind of sociological issue that comes up in terms  
13 of stereotypes. And we have an historical stereotype  
14 of one of them, of black males as being dangerous in  
15 the sense of the stereotype of -- oh, let's see,  
16 there was a book years ago about stereotypes called  
17 "Bucks, Coons, Mulattos," and so there's this system,  
18 apparently, of characterizing black people into  
19 stereotypes.

20 And for young black males, there  
21 seems to be a growing stereotype that they are  
22 dangerous; and I think some of the data that we've  
23 shown, in terms of use of guns and violent crime,  
24 feeds into that. What I'm 'trying to understand here  
25 now is whether this sensitivity -- or whether there

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1 is some sensitivity in the law enforcement community  
2 to stereotype, and whether, you know, what we're  
3 seeing now is feeding that stereotype?

4           And it's important to me -- and I'll  
5 just stop right here, because I want to give an  
6 anecdote. On the way in, I stopped at the Norfolk  
7 airport and my sky cab, a fellow named Juan, and I  
8 were chatting, and he told me he and his buddies  
9 talked together about how things are changing. White  
10 people, in his words, don't even like to accept his  
11 sky cab services anymore. They'd rather get a cart  
12 and push it themselves than to be -- than to have  
13 them in their presence. And it just seemed to me  
14 another example, at least from his point of view,  
15 that there's a sense that young black people, young  
16 black males are threatening, just having them around  
17 can create a sense of menace.

18           So I wanted to get some sense of  
19 whether that is a -- in any way implicated in the  
20 criminal justice system looking at sentencing  
21 disparity.

22           DR. KERN: Well, it perhaps plays  
23 some role in what Congress did, I suppose, in making  
24 their decisions about how to treat cocaine cases, but  
25 I can tell you that that issue does not play a role

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1 as far as the Judicial Sentencing Commission is  
2 concerned in promulgating sentencing guidelines.

3 The commission promulgates these  
4 guidelines with a goal of achieving consistency and  
5 fairness and greater equity on how people are  
6 sanctioned by the courts once they're convicted, and  
7 we make every effort to ensure that we keep an  
8 accurate track of how often judges comply with those  
9 guidelines and the documentation of what they cite  
10 for a reason for departure.

11 So for example, if you have a case  
12 where it's an armed robbery, and the guidelines call  
13 for a particular sentence and the judge goes above  
14 that and gives ten more years, we take a close look  
15 at what is the judge citing as the reason why he  
16 believes this offender should go to prison for ten  
17 more years than the guidelines call for. Again, we  
18 track all these things.

19 So there's a, if you will, a level of  
20 accountability there. And so I think that it is the  
21 only system really that's in place to guide  
22 discretion, when you think about it, in a criminal  
23 justice system. Again, there are many opportunities  
24 for discretionary decisions to be made in the  
25 criminal justice system, starting with the decision

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1 to report an offense, the decision to make an arrest,  
2 the decision to prosecute and how to prosecute, and  
3 so on, and the sentencing guidelines are the only  
4 mechanism in place to provide a device to correct for  
5 the opportunity for disparate practices to take  
6 place. No other decision in the criminal justice  
7 system has guidelines of that sort or accountability  
8 of that nature.

9 MR. DARDEN: Pretty late in the  
10 process, but better late than never, I guess.

11 REVEREND HARRIS: As I understand it,  
12 your -- excuse me -- your responsibility deals with  
13 judges only?

14 DR. KERN: Well, sentencing -- yeah,  
15 judge sentencing. We actually have jury sentencing,  
16 but that makes up a very small percentage, about two  
17 percent of all the felony sentencing.

18 REVEREND HARRIS: What do you find  
19 out with the jury sentencing? What do you find out  
20 with, is there any disparity during sentencing?

21 DR. KERN: Well, jury sentencing is  
22 tremendously inconsistent from jury to jury, and you  
23 might expect that because in most cases, people only  
24 serve on a jury once in their lifetime, and it may be  
25 their only opportunity to punish someone, if you

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1 will, once they have convicted them of a crime; and  
2 they don't have any benchmarks, other than maybe what  
3 they read in the newspaper, as to what a fair  
4 sentence might be in a particular case, so it's not  
5 surprising that from jury to jury across the  
6 Commonwealth, you do find great inconsistencies.

7           We also find when we look at jury  
8 sentencing, that a jury sentence is consistently  
9 harsher than judges. A typical jury sentence will be  
10 three to four times higher than what the judge would  
11 do, and I attribute that again to the fact of the  
12 novelty of serving on a jury and that being your only  
13 opportunity ever to sentence someone.

14           A judge, on the other hand, in a  
15 given year may sentence hundreds of people convicted  
16 of felonies, and he puts that all into a broader  
17 perspective and therefore sentences within that  
18 perspective, and has the guidelines, of course, to  
19 help him in sentencing.

20           Jury, on the other hand, does not get  
21 the sentencing guidelines, does not have that broader  
22 perspective, and therefore, they tend to whack it to  
23 people, if you will, much more so, because again,  
24 that's their only opportunity to ever punish someone  
25 for a particular crime.

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1 REVEREND HARRIS: Do you have any  
2 data on the selection process of juries?

3 DR. KERN: Of --

4 REVEREND HARRIS: Of the juries?

5 DR. KERN: No. I'm sorry. There's  
6 no data kept on the voir dire process in terms of the  
7 background of people who are reviewed to serve on  
8 juries and who are excluded and who are retained.  
9 None of that information is gathered by the courts.

10 MR. GALVIN: We have a gentleman  
11 seated right here.

12 MR. GIBSON: My name is Vaughn  
13 Gibson. I can appreciate the information that's  
14 being given, and as a member of this generation  
15 that's already been counted out, I think we're  
16 missing one fundamental thing here that relates to  
17 disparity that's occurring here. Disparity is being  
18 thrown around by everybody here, and at various  
19 levels.

20 I think one of the main reasons we're  
21 here is because of something very simple and a very  
22 fundamental thing, and it's -- in my mind, it boils  
23 down to a premise and a bias at a very base level.  
24 In order to gather the information this gentleman  
25 from the Sentencing Commission gathered, you looked

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1 at -- this gentleman looked at the arrest information  
2 that was brought in by the State Police. Okay.

3 The State Police paints a very bleak  
4 picture of the state of affairs in regard to young  
5 black men. What I contend is that, of course, the  
6 picture is going to be extremely bleak because these  
7 young black men, as result of this bias and this  
8 prejudice towards young black men, are going to be  
9 the initial targets. The arrest rates are going to  
10 be higher. The conviction rates are going to be  
11 higher. And subsequently we're going to get data  
12 that looks exactly like the data we have there  
13 because of the bias on the very base fundamental  
14 levels.

15 In order to get these men in the  
16 door, you have to address those who deal with them  
17 daily, who target these men.

18 MR. GALVIN: Do you have a question  
19 for Dr. Kern or -- observation about the collection  
20 of the data is what you're making?

21 MR. GIBSON: My question is this:  
22 How does your office -- I understand the federal  
23 level, and I understand that system is already  
24 intact. How does your office address the base level,  
25 the biases and the prejudices on the very fundamental

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1 level, our precincts, our captains, our lieutenants,  
2 our patrol officers, and the ones who walk the  
3 streets? What is the system of checks and balances  
4 for them?

5 DR. KERN: We have -- the Sentencing  
6 Commission is a Judicial Branch agency of the Supreme  
7 Court of Virginia. We have no statutory charge to do  
8 anything other than focus on what judges do in the  
9 courtrooms; so while you point out that there is a  
10 valid need for that type of attention focused earlier  
11 in the system, we're probably not the agency for it  
12 since we're in the Judicial Branch and we deal with  
13 offenders long after they've been arrested.

14 MR. GALVIN: Please.

15 MR. HARRIS: Marcellus Harris again.  
16 As I listened to Dr. Kern, one thing has become clear  
17 to me, and I hope to be cleared up with this little  
18 discussion perhaps. You stand factually by the  
19 system's guidelines, sentencing guidelines of  
20 Virginia, and you say to us that for certain --  
21 whoever gets to a certain status in the system,  
22 they're going to go to jail because your sentencing  
23 guidelines put them in jail whether they're black or  
24 white. To that end, we still have to deal with so  
25 many blacks going into the jail versus whites.

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1           I would submit to you, then, that the  
2 prosecutorial part of this, where the Commonwealth  
3 and others who deal with defendants and accuse, they  
4 know that, too. So perhaps we need to be looking at  
5 the prosecutorial side of this where they have so  
6 much discretion that the black defendants versus  
7 white defendants may not be sized up casewise  
8 prosecutorially, that will get them to the status of  
9 the sentencing; and perhaps in the back of their  
10 mind, they know that, and a juvenile may be tried as  
11 an adult versus being tried as a juvenile make all  
12 the difference in the world in the system, color  
13 regardless, irregardless, because of the fact that  
14 that juvenile being charged with a felony as an  
15 adult.

16           Blacks would certainly fall into the  
17 sentencing guidelines and be engulfed by the  
18 sentencing guidelines; where a similar case of  
19 another color, or another race, may be -- maintain  
20 the juvenile status through that same charge and not  
21 be consequentially locked up in the sentencing  
22 guidelines.

23           So I see where the sentencing  
24 guidelines may be a blessing and a curse, because  
25 those who know the sentencing guidelines know that

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1 the only way to get this guy is to get him charged  
2 where the sentencing guidelines can kick in, vice  
3 versa.

4 So I'm kind of concerned -- I'm  
5 asking you what can we do to check the prosecutorial  
6 side of this, or get some data on the prosecutorial  
7 side of this, which may be the missing part of this  
8 puzzle, at least from my mind?

9 DR. KERN: That's a good question. I  
10 really don't -- I wish I had an answer for you. Plea  
11 bargaining is really the black hole of the criminal  
12 justice system. There really is no good information  
13 on what happens once the case comes to the attention  
14 of the Commonwealth's Attorney's Office, and then  
15 what happens to it when it gets out of there.

16 MR. DARDEN: Let me say in the  
17 interest of time, we will be hearing from both  
18 Commonwealth Attorneys from Hampton and Newport News,  
19 and we'll have a chance to put the question to them.  
20 We are trying to catch up. I want to thank you very  
21 much.

22 MR. GALVIN: Two questions that I  
23 wanted -- and Ms. McCloud had a question, please, if  
24 you would.

25 MS. MCCLOUD: I'll make it as brief

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1 as possible. I wanted to point out my understanding  
2 of the difference in the two studies. The first  
3 study seems to have been one more or less of  
4 quantitative, in other words, as some sociologists  
5 call it, number crunching. And the study that was  
6 conducted on behalf of Governor Robb was qualitative.

7 DR. KERN: No, it was quantitative as  
8 well.

9 MS. MCCLOUD: It was quantitative as  
10 well?

11 DR. KERN: Right. Yes.

12 MS. MCCLOUD: I thought I understood  
13 that you looked at the kinds of information that was  
14 collected, and from that you drew the conclusion as  
15 to whether or not some of those questions should not  
16 have been asked on that? Do you follow what I mean?

17 DR. KERN: No, I really --

18 DR. AL-HIBRI: At this point, I just  
19 want to make a final comment about the two studies,  
20 just to make sure they are not misconstrued. If  
21 taken too simplistically, the studies would show  
22 there are lots of black males who cause a lot of  
23 trouble, whether it is aggravated assault, or simple,  
24 and that our judicial system treats them fairly  
25 because we have guidelines.

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1                   What it doesn't show is that these  
2 numbers and these guidelines you're talking about are  
3 embedded in a very complex system where  
4 discrimination and the bias starts very early on.  
5 For example, if you have a profile of a black male as  
6 being dangerous -- somebody in the audience mentioned  
7 that -- then I think it would affect the policemen,  
8 your approach in determining whether you have  
9 probable cause in one situation or not. And if  
10 you're faced with a black kid, you're more likely to  
11 say I had probable cause than if you're faced with a  
12 white, and therefore, they arrest that person and  
13 statistics will be different.

14                   So I would like to really emphasize  
15 that these numbers and these statements do not tell  
16 us even a significant part of the story, that it  
17 could be -- these studies could be misconstrued if  
18 somebody approached them too simplistically.

19                   I'd like to know which agency do you  
20 think, or which party, again, the same question I  
21 asked Dr. Faggiani, one could turn to and say, Would  
22 you please give us some analysis, embed these facts,  
23 these results in a more complete picture so we know  
24 what is happening and therefore we can treat it.

25                   DR. KERN: It would have to be done

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1 in the Executive Branch of Government, not the  
2 Judicial Branch, because the Executive Branch of  
3 Government, you have the State Police, you have the  
4 Department of Criminal Justice Services, you have the  
5 Department of Corrections, you have the Commonwealth  
6 Attorneys Training Council, which is the umbrella  
7 organization that oversees our state's prosecutors,  
8 and so on.

9 So all the other facets of the  
10 criminal justice system are -- that come before us  
11 are in the Executive Branch of Government under the  
12 Governor and Secretary of Public Safety, so that  
13 would be the appropriate place to focus, to address  
14 the types of issues I think you've raised.

15 MR. GALVIN: Thank you, Dr. Kern, and  
16 thank you for being here. I want to -- just one  
17 thing I want to understand, you said you put a new  
18 system in which has extended the length of sentencing  
19 time to 85 percent?

20 DR. KERN: Right.

21 MR. GALVIN: And I'm going to make  
22 the assumption -- if I'm wrong, I'd ask you to  
23 correct me -- that the thought possibly behind this  
24 was that the goal here, why we want to increase the  
25 sentencing time toward the goal in this is the

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1 deterrent to make our community safer, our streets  
2 safer?

3 DR. KERN: Well, there's two goals  
4 here of this new legislation. One was just to -- for  
5 the purpose of having a truthful system for the  
6 citizens of the Commonwealth so that if a victim of  
7 crime is sitting in the courtroom and they hear a  
8 sentence pronounced by the judge, they know with a  
9 high degree of certainty how long that offender is  
10 going to be locked up in prison.

11 Under the old scheme, a victim of  
12 crime had no idea when their assailant perhaps would  
13 be released from prison, so it was to enhance that  
14 predictability in everybody's mind. The second piece  
15 of this, which is -- which got the most attention in  
16 the media, but actually is the smallest piece, is  
17 longer sentences for violent crime, because we have  
18 found that only one in five felons receive an  
19 enhancement as a violent offender, so four out of  
20 five people are just being sentenced to historical  
21 time served, but under truth in sentencing.

22 So a good example of that -- see,  
23 under the old system, if someone sold one gram of  
24 crack cocaine, they would get a five-year prison  
25 sentence typically. They'd serve ten months of that

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1 five years. Now that crack cocaine offender receives  
2 a one-year sentence and serves ten months, so the  
3 time served has not changed at all, but they're now  
4 serving almost of all of what they get, so everyone  
5 knows he's got a year and he's going to serve most of  
6 it, rather than getting five and only serving ten.

7 If you're a violent offender,  
8 however, that length of stay will be increased, but  
9 that's again only --

10 MR. GALVIN: I understand this, but  
11 what I'm really asking you is whether you have looked  
12 at the consequences of this action, given that  
13 there's a disparity in the prison. Given there's a  
14 disparity in incarceration, this goal has, for  
15 sure -- could have -- this policy could have reached  
16 the goal of incarcerating more blacks in prison.  
17 While I understand the explanation --

18 DR. KERN: Sure. I mean, if the  
19 judge has before him ten armed robbers and eight of  
20 them are black, all ten are going to prison. You  
21 might put a different twist on that and say that  
22 policy institutionalized the disparate treatment of  
23 blacks in terms of imprisonment, but from our  
24 perspective, it results in more consistency and  
25 predictability and fairness because all armed robbers

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1 are going to prison.

2 But on that issue, somebody asked  
3 earlier about community corrections and alternatives  
4 to incarceration, and the commission is the agency  
5 now that does track the use of those options, so we  
6 are the agency that gathers that data, and I can tell  
7 you that effective July 1st, 1997, the commission is  
8 putting in place new sentencing guidelines that will  
9 greatly expand the use of alternatives to  
10 incarceration. Effective July 1st, if someone is  
11 convicted of trafficking in cocaine, whether it's  
12 crack or powder, one gram or less, and they have no  
13 felony record whatsoever, the guideline will now call  
14 for the Detention Center Program placement by a  
15 circuit court judge, and that is a new program  
16 established by the Virginia General Assembly.

17 It's a six-month long program that  
18 has mandated substance abuse treatment as a part of  
19 that program. It's a 20-week mandatory substance  
20 abuse component.

21 Because in the past, none of these  
22 drug offenders were getting any treatment, so as a  
23 result we saw very high recidivism rate. They were  
24 simply going to prison, they'd sit there for about  
25 ten months, or a year, and come right back out with

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1 the same substance abuse problem and show up again in  
2 a few months as a recidivist.

3           So now we are going to put in place a  
4 mechanism to give judges guidelines that say for  
5 these people, we'd like to see these offenders placed  
6 into this treatment program to see if we can have  
7 some impact on recidivism.

8           How does that relate to the problem  
9 you're talking about? We've estimated that 85  
10 percent of those that fit this criteria are African  
11 American, 85 percent; so 85 percent of the people  
12 convicted in our courtrooms of selling one gram or  
13 less of cocaine with no felony record are African  
14 American.

15           So presuming that judges comply with  
16 this recommendation at the rate that they've shown in  
17 our other guidelines, that will affect, in a very  
18 positive way, on the incarceration rate because we  
19 will see a significant core of black defendants who  
20 otherwise would have gone to prison, now going into  
21 this treatment program under our new guidelines.

22           MR. GALVIN: Thank you very much.  
23 Thank you for being here today, as well, with us.

24           Madam Chairman, do you want to take a  
25 break at this time?

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1 MS. RATTLEY: Thank you very much.

2 We want to move right into our next  
3 speaker if we could. It doesn't seem as though we're  
4 going to get any lunch either since I've been told we  
5 have to start the afternoon meeting exactly 1:10.  
6 But we are going to ask Mr. Darden to introduce our  
7 next panel.

8 MR. DARDEN: I'm going to expedite  
9 this and actually turn right over to our panel  
10 moderator, Dr. Azizah al-Hibri.

11 DR. AL-HIBRI: May I ask Ms. Tracey  
12 Watkins to come to the table. Ms. Tracey Watkins is  
13 a student at the University of Richmond Law School,  
14 and she belongs to the Black Law Student Association.  
15 She is going to share with us the results of the  
16 survey that BLSA, the Black Law Student Association,  
17 has conducted.

18 MS. WATKINS: Good afternoon.

19 MS. RATTLEY: Good afternoon.

20 MS. WATKINS: We feel really bad  
21 about speaking to you this afternoon when everyone is  
22 trying to get to lunch, but as Professor al-Hibri  
23 said, we are all students and we have to run back and  
24 get to class, so we're not going to take up a lot of  
25 your time this afternoon. As a matter of fact, we're

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1 going to move fairly quickly.

2 DR. AL-HIBRI: Ms. Watkins, would you  
3 introduce the other people?

4 MS. WATKINS: I have a little  
5 presentation. On my left is the President of the  
6 Black Law Student Association, Ms. Danielle Ferguson,  
7 and she's going to say a few words at this time.

8 MS. FERGUSON: For those of you who  
9 are not familiar with the Black Law Students  
10 Association, it's an association designed to meet the  
11 needs of the black law students, whether or not they  
12 go to a predominantly white law school or not, during  
13 our three-year legal education.

14 And what we have done is prepared a  
15 survey -- kind of pass these out so you can have a  
16 copy -- prepared a survey for -- that was answered by  
17 law students, as well as some of the custodial staff  
18 at the school, and what we did was we tallied out at  
19 the responses and kind of organized information for  
20 everyone.

21 MS. WATKINS: The surveys are being  
22 tallied up by Ms. Kenyatta McCleoud. Kenyatta is  
23 also a member of the Black Law Students Association.  
24 She worked really hard on the survey and will be  
25 talking with you about some of the comments that

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1 we've received from the student body.

2 We apologize if we didn't bring  
3 enough copies. We weren't aware as to the number of  
4 participants by audience members.

5 When Professor al-Hibri approached  
6 the Black Law Students Association to put together a  
7 survey, our initial goal was to be able to come up  
8 with the survey tool that we could use to determine  
9 racial perceptions among people within the State of  
10 Virginia.

11 Now, as you can tell, that sounds  
12 like a very lengthy project and was not one we were  
13 able to completely go about conducting. But this  
14 survey, this tool that we used, will be used to go to  
15 other BLSA Chapters within the State of Virginia  
16 located not only in William and Mary, but George  
17 Mason, Washington and Lee, and University of Virginia  
18 to see about the types of responses they were able to  
19 receive.

20 We took a look at our law school  
21 community, because although we're sort of -- we're  
22 within the school system, we considered the law  
23 school community a good microcosm of the community at  
24 large. We thought it would be interesting to see the  
25 perceptions of students who will actually be

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1 attorneys within the next year, within the next two  
2 to three years, to see what their perceptions were of  
3 the current situation in Virginia, and in a sense,  
4 globally.

5 We had a hundred surveys made  
6 available to the law school population, and we  
7 received a total of 54 responses. I'd like to put a  
8 disclaimer in. You've heard a lot of scientific data  
9 this morning. This is an unofficial survey. This is  
10 a citizen survey. We are not statisticians, we are  
11 not researchers, and we're not analysts. We are  
12 students who were interested in finding out what our  
13 fellow students wanted to know.

14 The survey tool is before you, and in  
15 the interest of time, we will be forwarding to  
16 Professor al-Hibri to give to you the actual  
17 breakdown of the age, the grade level, the race, the  
18 total income, and approximately where everyone was  
19 from so she can forward that to you for your  
20 analysis.

21 If you would take a look at the topic  
22 portion, the topical portions of the survey, you see  
23 that they're broken down into five topics. We have  
24 employment, law enforcement, government, education,  
25 and the judicial and the court system. In coming up

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1 with the questions for each of the topics, we  
2 received some information from the U.S. Civil Rights  
3 Commission, and some information and data that we had  
4 on our own within our law school library system.

5           In compiling the questions, we tried  
6 to come up with questions that depicted either biases  
7 or general stereotypes that were a part of our  
8 community at large; and if you notice, each of the  
9 number six questions are completely and totally  
10 outrageous, as far as coming up with some sort of  
11 racial stereotype and bias. The number six questions  
12 were designed in order to see what types of responses  
13 we can get. And Ms. McCleoud is going to share with  
14 you some of the written comments we got on the  
15 surveys about it.

16           Just to sort of you give you, though,  
17 a racial breakdown on the composition, we had ten  
18 black responses, we had 41 white responses, we had  
19 two Asian and one Arab response. In the employment  
20 section, we were able to analyze from our data -- and  
21 I apologize that you don't have it in front of you --  
22 that there is a general consensus that there are a  
23 lot of inequitable practices still going on in the  
24 workplace, that minorities are not receiving the same  
25 type of treatment as non-minorities.

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1                   We were real interested in looking  
2 at, quote, the other population within the law  
3 school, and that's our Arab response and our Asian  
4 response. And in looking overall, our Arab response  
5 was very close -- was very close to the other  
6 minority responses. They were very close to the  
7 typical black responses. They shared the same  
8 feelings of general discrimination and the practices  
9 that the biases that were inherent in some of the  
10 practices.

11                   With our Asian response that we got,  
12 the two responses that we had, one was closely  
13 aligned with sort of a minority response, and the  
14 other really was very neutral. They simply responded  
15 in general that they did not know and they did not  
16 put any comments, so we thought that was worth  
17 noticing to you.

18                   In the law enforcement section, this  
19 was very -- we weren't surprised by some of the  
20 figures here. There was a general negative  
21 perception among the black responses about the police  
22 protection and police practices in the community.  
23 The white responses were interesting to us because  
24 they were also aware of what they considered unfair  
25 practices and the fact that they may or may not be

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1 afforded more protection. So this made us feel that  
2 our students are aware of the racial problems and the  
3 problems that minorities have in the areas of law  
4 enforcement.

5 In Government -- and I don't know if  
6 this is typical cynical law students, but our  
7 students generally felt that the Government was out  
8 of touch with what was going on, that there was not  
9 diversity within the Government's practices. They  
10 were unsure as to legislative-type issues about  
11 district lines being drawn. I know there's a lot of  
12 stuff going on in Virginia about that. And that  
13 could be simply a reflection of the fact that we're  
14 in the school about 18 hours a day and don't read the  
15 paper.

16 For education, there was a general  
17 positive view across the board between minorities and  
18 non-minority responses. Within our school, we had a  
19 question that we weren't sure about if the responses  
20 reflected University of Richmond or the school system  
21 in which they came from as part of their  
22 undergraduate experience. We weren't able to  
23 quantify that as well. That's something we'll look  
24 at, but as far as the school body being integrated,  
25 there were an equal number of responses of people

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1 feeling that the school body was integrated. They  
2 agreed with that response in that they felt it was  
3 not integrated. We thought that that was pretty  
4 interesting.

5                   The judicial court system, there was  
6 across-the-board negative view of courts in the  
7 treatment of minorities. The white responses were  
8 the same. We have two or three responses that felt  
9 that minorities received equal treatment. There  
10 seemed to be a lot of response concerning the  
11 question on whether or not there was impartiality  
12 among the decisions in the sentencing and whether or  
13 not your case depended on which judge was presiding.

14                   So it was a very interesting survey  
15 for us to conduct. Ms. McCleoud is going to tell you  
16 about some of the comments we received. They were  
17 interesting.

18                   MS. MCCLELOUD: As you can tell --  
19 good afternoon, first of all. As you can see from  
20 looking at the survey that we distributed to the  
21 panel and to the audience participating, the  
22 questions, all you really had to do was circle the  
23 level of agreement with the statements that had been  
24 made.

25                   Typical, I guess, of law students,

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1 there were ample written-in responses. Some of them  
2 used the front and the back. Some of them wrote  
3 boldly across the side of the question that they were  
4 concerned about. Just as a general statement, before  
5 I read you some of the responses that were given to  
6 us, in accord with the survey, we -- I feel that as a  
7 general statement -- and I believe that my fellow  
8 BLSA members will agree with me -- University of  
9 Richmond is a predominantly white institution, and in  
10 this incoming class there were 152 students, and nine  
11 of us were African American. It makes for  
12 interesting classroom discussion, but I have noted,  
13 and I want you to note before I read you the  
14 statements, that as a general-type statement, the  
15 incoming class, the first-year class of law students  
16 are not extremely comfortable discussing racial  
17 issues. So their statements, they attempted to  
18 qualify whatever they had circled.

19                   One response from a white female  
20 says, I find myself troubled by this survey because  
21 it does seem biased and determined. While I do  
22 believe racism exists in our society, I find that  
23 most of the issues raised on this survey are not  
24 really the black-white racist issues that confront  
25 our society. I don't think that these issues come

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1 down to skin color, but urban versus suburban, or  
2 other things. I guess I'm trying to say that there  
3 is more than one type of discrimination and it  
4 manifests itself in many ways, and this surveys tends  
5 to make all forms of discrimination a black-white  
6 issue."

7 In other words, her statement is kind  
8 of a general statement of what our responses were  
9 like. They wanted us to view these statements in  
10 terms of socioeconomic and various other factors so  
11 they wouldn't have to deal with the race issue.  
12 There was a white male response that says, "I feel  
13 race relations are the most pressing topic in our  
14 country."

15 And as I stated earlier, the other  
16 statements tend to try to qualify these issues in  
17 terms other than race. And one final statement that  
18 I'd like to read is from another white male. I have  
19 a hard time making generalizations. I don't really  
20 know what my district looks like. Basically as a  
21 white male, I don't know what the black experience is  
22 like in America. I now suspect it is different from  
23 mine, but to say that blacks have a harder time  
24 getting hired across the board, I don't feel like I  
25 can speak on the subject. I have heard, yes, it's a

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1 lot tougher, and I've heard, well, I got hired  
2 because I was a minority or a woman. I think that  
3 both are true, so I'm not comfortable rating the  
4 above generalizations. To have my perception be  
5 represented by this all too easily qualifies that  
6 race by this all too easily quantifiable media is not  
7 the whole truth in my opinion. Of course, I thought  
8 we ought -- I think that you ought to perceive --  
9 this statement is a little incorrect. Perhaps this  
10 is not the point. Perhaps what we ought to look at  
11 is not simply race but the cultural and socioeconomic  
12 influences and how they affect how we as humans treat  
13 one another.

14 So as a general statement, again I'd  
15 like to point out that there were respondents who  
16 avoided the racial issues at all costs, even though  
17 we specifically stated to them in filling out the  
18 survey that it was to measure racial relations.

19 Thank you.

20 MS. WATKINS: At this time, we'll  
21 quickly take some questions. We know everyone's  
22 hungry, so --

23 MS. MCCLOUD: I just have one quick  
24 question about the comments.

25 MS. MCCLEOD: Yes.

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1 MS. MCCLOUD: The ones you stated  
2 seem to have been made by white students, were there  
3 any made by --

4 MS. MCCLEUD: We received no  
5 statements from our ten black respondents.

6 MS. MCCLOUD: Okay. Thank you.

7 DR. AL-HIBRI: Did I understand you  
8 to say you're going to continue the survey on other  
9 campuses?

10 MS. WATKINS: We have initiated  
11 contact with other BLSA chapters within the law  
12 schools here in the State of Virginia, and we'll be  
13 sending them a copy of the tool and asking that they  
14 utilize it within their law school community to see  
15 the types of responses that they get, and we'll  
16 certainly forward it to you, Professor al-Hibri.

17 DR. AL-HIBRI: I appreciate your  
18 cooperation on such short notice. I'd also like to  
19 suggest that although you're doing a lot of work, at  
20 one point when the Virginia results are put together,  
21 it might not be a bad idea to let other BLSA Chapters  
22 in other states to know about this to get a profile  
23 of Virginia versus other states.

24 MR. PATRICK: One question. Richard  
25 Patrick. Do you find some of the comments you

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1 received bore any correlation to the discussions that  
2 you had among your white law school students? I went  
3 to the University of Virginia Law School, and so I  
4 know somewhat of what you speak.

5 MS. MCCLEOD: Yes. It's interesting  
6 you bring that up because our survey happened to be  
7 distributed on Dred Scott and affirmative action  
8 week. Section one at the law school was dealing with  
9 Dred Scott and had a rather heated discussion about  
10 the way the Dred Scott case had been approached in  
11 the class. And section two had moved on to  
12 affirmative action issues; and in order to elicit  
13 responses and statements, and to spark discussion  
14 among students who were not willing to openly discuss  
15 their racial beliefs, the teachers have had to  
16 distribute questions and actually call on people in  
17 class, as opposed to allowing some type of free  
18 volunteering to go on.

19 So, yeah, I'm quite sure that it has  
20 everything to do with the things that go on in class.

21 MS. WATKINS: The class she's  
22 speaking about is constitutional law, and it involves  
23 a lot of judicial interpretation, and we had a  
24 professor, who will remain nameless, that Professor  
25 al-Hibri, they will remain nameless -- who was

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1 discussing the case in every -- the Dred Scott case  
2 in particular, in every type of legal principle but  
3 the racial issue. We discussed full faith and  
4 credit. We discussed diversity action and subject  
5 matter jurisdiction. We discussed a lot of legal  
6 principles, but we did not discuss the factor that  
7 race played. And for those of you that may be  
8 unfamiliar with Dred Scott, we know it's been  
9 vilified, but it's also a case that decided the  
10 citizenship question for black Americans at the time.

11 MR. HUANG: Two quick questions.  
12 First of all, do you have any report that would be  
13 available soon? I find your study very interesting.

14 MS. WATKINS: We're entering into  
15 spring break starting five o'clock on Friday. We  
16 plan on getting it together for you at that time.

17 MR. HUANG: Can we get a copy?

18 MS. WATKINS: Yes.

19 MR. HUANG: Do you have any plan to  
20 extend the study to other populations in the college;  
21 for example, the other minorities students who are  
22 not studying in the law school? Are you going to  
23 give their opinions as well?

24 MS. FERGUSON: I think one of our  
25 plans for the Black Law Students Association is to

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1 try to go out into the community of Richmond,  
2 primarily, and find people who know nothing about the  
3 law. That way we would get an opinion that's maybe  
4 not so legal based. I think we're going to do that  
5 initially. This was a very short-term project for  
6 us, so we kind of worked with the crowd that we had  
7 initially, but it is our plan to go out into the  
8 community and get -- and have everyone fill out the  
9 survey so we won't just get kind of legal answers.

10 MR. HUANG: I know you don't have any  
11 data available. Do you expect the findings will be  
12 different if you go to the general population?

13 MS. FERGUSON: I do. I've lived in  
14 Richmond all my life, and yeah, it will be a lot  
15 different. I think even with the different areas of  
16 town, west end versus east end, northside versus  
17 southside Richmond, I think the answers will be  
18 greatly skewed, so I'm very interested to find out  
19 the answers as well.

20 DR. GALVIN: I would ask that you --  
21 as you expand and continue in your survey, that you  
22 might look at including a question onto the freedom  
23 of discussion of racial issues so that we have some  
24 basis as well to document that -- the opinions or  
25 feelings, that will be very useful to us.

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1 DR. AL-HIBRI: I thought there was  
2 somebody --

3 MR. WEBS: Hello. My name is Lewis  
4 Webs, and I'm an alumni of Cheyney University, oldest  
5 black college in the United States, and I stand and I  
6 commend you on just what you're doing right now, but  
7 my question is, have you encountered any opposition  
8 to what you're trying to do? And if you have not,  
9 when that does come, will you -- how far are you-all  
10 willing to go and what price are you willing to pay  
11 to bring the results, or bring this to the attention  
12 of the people who need to be addressed? How far are  
13 you willing to go, because most times, even in the  
14 academic community, you have to take into  
15 consideration that taking such a stand as this is  
16 going to bring a lot of attention to your situation,  
17 personal situation. I want to know how far you see  
18 yourself going with this issue.

19 MS. WATKINS: Our president probably  
20 could address that issue a little bit better, but we  
21 have received enough comments that we have found it  
22 necessary to draft a response that will be posted to  
23 our electronic notice board that we have, so that  
24 there's not a misinterpretation of the reasoning  
25 behind the survey.

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1           There have been a lot of comments  
2 about the survey tool being useless, that it was to  
3 set part of the racial divide. There was just a  
4 general misinterpretation overall in some cases about  
5 why the survey was being done. And so as often  
6 happens, we have to explain what our purposes were.

7           But as far as how far we can go, we  
8 defer to our president on that one.

9           MS. FERGUSON: It's been a BLSA  
10 history, and I guess practice, that we pretty much  
11 never succumb to popular opinion. Black Law Students  
12 have been at the University of Richmond since  
13 approximately 1978, and the school is about 175 years  
14 old, so we've been making a lot of strides in the 20  
15 to 25-year history that we've been in existence, and  
16 we would like -- we like the support of our  
17 community, but that's not our main purpose -- as far  
18 as our legal community, I mean -- but that's not our  
19 main purpose. Our purpose is to get this information  
20 out, and we're not -- don't get me wrong -- I don't  
21 want to seem like I'm being abrasive, but it's not  
22 our mission to ask the general public at the law  
23 school whether or not they like the findings, or  
24 we're just simply putting the information out there,  
25 and so far we've received only commentary

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1 repercussions. I don't foresee BLSA receiving any  
2 sort of academic aggressive repercussions at all. I  
3 don't see that happening.

4 But I mean, people have made comments  
5 like, you know, what you're doing is not really  
6 helping the situation. You're just furthering the  
7 racial divide and the black self-segregation, which  
8 to me is an interesting comment, because if I was a  
9 white woman sitting here with my white comrades, if I  
10 looked to my left or right, would that be  
11 segregation, or would it not be? It's just you  
12 notice us because our skin is darker, but I think --  
13 I mean, BLSA is willing to go as far as we need to  
14 put the information out into the community.

15 MS. WATKINS: Also, for the record,  
16 we have received support from our faculty and from  
17 our administration in a tremendous way. They attend  
18 our activities. They support our mission. We have  
19 found them to be much more understanding, and I'm not  
20 going to say it's a benefit of age and wisdom, but  
21 than our own peers. So for the record, the  
22 University of Richmond, our law school, has been very  
23 supportive of BLSA.

24 DR. AL-HIBRI: Mr. Harris.

25 REVEREND HARRIS: You indicated that

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1 you put out a survey and no African Americans  
2 responded.

3 MS. MCCLEOD: The African Americans  
4 filled out the survey. What they did not do was  
5 initiate any written statement in addition to their  
6 circling their agreement -- level of agreement with  
7 the response. There were ten black respondents.  
8 They just did not have additional comments.

9 MR. DARDEN: Just in relation to  
10 those responses, remember about the doctor, he's  
11 always telling me a hit dog will holler, so when  
12 you're talking about racial mindfulness among whites,  
13 and you receive the kind of responses that you get,  
14 you should also remember that it happens very  
15 infrequently that people do test, but when they do  
16 test, they come back with very similar results as  
17 yours.

18 And I encourage you to keep up this  
19 sort of thing. We really need to have an open  
20 dialogue in society about white racism and how to  
21 bring it to the fore in a way that we can recognize  
22 it and hopefully begin to avert some of the effects.  
23 So long as we only talk about one side of the  
24 equation, the minority side, and what problems are  
25 there, without also talking about the majority side,

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1 I don't think we're going to get very far.

2 But I did have a question and it's  
3 this: Earlier when we were hearing from some of the  
4 scientists about the gaps in the data and about their  
5 responses to the questions about the civil rights  
6 thrust in data gathering, one of the questions from,  
7 I think Dr. al-Hibri was if they might, in  
8 partnership with the academic community, use law  
9 students like yourself, for instance, to try and fill  
10 some of those gaps.

11 And I've seen that you've done it for  
12 us. What do you think is the likelihood that as a  
13 group, law students like yourself, or at your campus,  
14 or other campuses, can realistically begin to deliver  
15 themselves to assist in the providing, from a civil  
16 rights perspective, the kind of information that we  
17 all need to know? Can you fit that into your day?

18 MS. WATKINS: We are always open to  
19 collaboration, Mr. Darden, but as law students, time  
20 is crucial, and I cannot begin to tell you what an  
21 18-hour day is. I'm sure you have it at your job,  
22 but the demands of being in law school and also with  
23 demands -- I'm a nontraditional student myself. I'm  
24 a bit older, and I have a child, so my study needs  
25 and habits are going to be very different from my

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1 peers seated here, but we're always open to  
2 collaboration, and we can only hope that when we  
3 graduate, that incoming students will share the same  
4 enthusiasm that we had in putting this type of  
5 project together.

6 I wanted to make a quick comment  
7 about the 54 responses that we received out of the  
8 hundred we made available. I think we have  
9 approximately 350 students per class. No, we have  
10 150 in our class.

11 Okay. Well, we have 35 black  
12 students total, so when you saw the fact that we only  
13 had 10 black responses, we felt that we needed to  
14 tell you -- you know, to tell you what the numbers  
15 were in that area.

16 MR. DARDEN: So if we were to  
17 consider recommendations that would make it easier  
18 for students like you, then we could talk to the  
19 administrations, whoever sets up the curriculum, and  
20 perhaps build into your 18-hour day, a structured way  
21 for you to contribute. Is that what you're  
22 suggesting?

23 DR. AL-HIBRI: Mr. Darden, let me  
24 comment on that. I am their protector around here.  
25 First of all, I think you will find out that as you

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1 move up in the years in law school, you have a little  
2 bit more time on your hands, so hopefully you'll be  
3 able -- don't contest me on that, but hopefully  
4 you'll have more time to do some of this.

5           It's always possible that,  
6 Mr. Darden, if you want to do something like that,  
7 I'd be more than happy, with BLSA's support, to take  
8 it to the faculty and see what we can work out. I  
9 think the idea is we're open, let's work on the  
10 logistics later, and let's see what we can do. But  
11 as students, they do have obligations on their  
12 schedules, but the faculty might also be willing to  
13 work with you.

14           MR. FERGUSON: Mr. Darden, I'd like  
15 to add, I'm in my third-year at University of  
16 Richmond. I only have two more months then I'm done  
17 forever, but they're first-years and the schedule for  
18 them is much more difficult, your first year in law  
19 school. But as a second-year and as a third-year  
20 student, there are what we call clinics available for  
21 credit, so should some fact-finding mission want to  
22 enlist the help of students in a law school, what  
23 would be an appropriate means of doing that would be  
24 to offer such assistance for like credit or something  
25 like that. That would even be more helpful.

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1 MS. MCCLEOD: One additional  
2 comment. Even if you can't get it as far as an  
3 additional law clinic, which is where they will we --  
4 we have two types of law clinics. One is an  
5 in-house. One is a placement law clinic. What you  
6 may be able to do, along the placement law clinic is,  
7 set it up so it's more of an internship-type of  
8 thing, and then we would be designated hours out of  
9 our day to assist in fact-finding missions, and then  
10 we could get credit for it so that our academic side  
11 wouldn't sacrifice for our willingness to help in  
12 whatever the commission may need.

13 MS. RATTLEY: First of all, I should  
14 like to congratulate the young women for an excellent  
15 job in your presentation. But I just thought about  
16 the dichotomy. Earlier this morning, I made a very  
17 blunt statement in reference to our mission here  
18 today. Why are we here? And I shared with you some  
19 of the comments; that is, we should not be discussing  
20 these issues. Everything is all right. We have  
21 everything in place, and I think this is what has  
22 been happening, and I think I could have given you  
23 the results of your survey, because people don't want  
24 to talk about it. And they will deny it and then  
25 they will turn around and use it on you. They call

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1 you crybabies. Are you looking for a reason, or it's  
2 somebody else's fault.

3           So they're saying they're not  
4 responsible simply because we know that it is the  
5 embedded racism over the years that got us to this  
6 point, but if you said, especially the young  
7 middle-class, upper-mobile citizens of our community  
8 today, you're beginning to be embarrassed by people  
9 who will just speak out against it and say it's  
10 there, because then others will try to embarrass you  
11 by saying, All you're doing is looking for an excuse.  
12 I think that's what the survey said. They say, Why  
13 talk about it? That was in the past. Why go back to  
14 Dred Scott? Why go back to the grandfather clause?  
15 Why go back to any of your history? Because you have  
16 all the opportunities now. You can go to the  
17 Richmond Law School and you're doing fine, so why do  
18 you put that on race? Why are you discussing race?  
19 Why would you have it on your survey?

20           Hear it every day. Nothing has  
21 changed. Nobody wants to talk about it. And I made  
22 a personal commitment to myself. I don't try to  
23 convince any person that racism exists in this  
24 country, because if they don't know it, I think it's  
25 something wrong with them. Not that I look for an

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1 excuse, I try to take my own responsibilities.

2 But some people just don't want to  
3 discuss it, and this committee is being criticized as  
4 we speak for holding these fact-finding hearings  
5 because, of course, in this area of Virginia, we have  
6 no problems. We have no race problems in Hampton.  
7 We have no race problems in Newport News. So they  
8 ask why are you here? What do you hope to  
9 accomplish?

10 So I just thought it was a dichotomy  
11 for you to give us the results of your report,  
12 because we're undergoing the same thing right now,  
13 and as the press continues to write about it, if they  
14 do, it will come out as it did in last night's paper,  
15 Why are you here?

16 And when I disappeared and went  
17 outside, I had to speak to three reporters out there,  
18 that was the question. Ed was standing on the side.  
19 He heard me, you know. Isn't everything here? What  
20 are you planning to accomplish? What are you going  
21 to do with the facts you find?

22 So we've already had it today, so I  
23 just wanted to share that with you. And in my  
24 opinion, I say you're right on target.

25 MS. WATKINS: Thank you.

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1 MS. MCCLOUD: I just wanted to make a  
2 comment. I think your efforts have been admirable.  
3 I work at Washington and Lee University, and I do  
4 work with BLSA there, so if I can be of any  
5 assistance to you in making contact with them, I'd be  
6 very happy to.

7 The other thing I wanted to say in  
8 connection with Mr. Darden's request is that I know  
9 how busy law students are. Maybe we should look at  
10 those who have completed law school and try to get  
11 them involved in some of our efforts, because a lot  
12 of times when African Americans, and sometimes other  
13 minorities, have attained their goals, they are not  
14 that interested, for lack of a better word, in trying  
15 to assist those behind them, and I think this is  
16 something that we've lost since, for example, when  
17 some of the rest of us were younger.

18 DR. AL-HIBRI: Perhaps one way of  
19 remedying that is if we can involve our students  
20 early on in such projects, and when they graduate,  
21 like you, Danielle, will want to continue to some  
22 extent.

23 Thank you all very much. It was very  
24 informative, and thank you for all your efforts.

25 MS. RATTLEY: I'm going to assume

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1 that since I have not been given any announcements, I  
2 have no announcements to make, and we'll be at recess  
3 now for lunch until what time, Mr. Darden?

4 MR. DARDEN: One o'clock. Actually  
5 1:10.

6 I just want to remind the committee  
7 we do want to honor our commitment to particularly  
8 David Baugh, who has to get back up to court. That's  
9 one reason we want to start quickly.

10

11 (Lunch break.)

12

13 MS. RATTLEY: Come to order. This is  
14 the second part of our meeting today, Fact-finding  
15 Committee Meeting of the Virginia State Advisory  
16 Committee of the U.S. Commission on Civil Rights.

17 I should like to welcome our  
18 panelists here this afternoon, and we'd ask  
19 Mr. Darden, our staff person from the Commission  
20 office in Washington, to make the introductions.  
21 Mr. Darden.

22 MR. DARDEN: Thank you. As we  
23 begin -- resume in the second session, I'd just like  
24 to reiterate the announcements that were made in the  
25 beginning regarding the coverage of the Privacy Act.

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1 We are prepared to accept individual statements, and  
2 we have Privacy Act statements which give the  
3 details. I'm going to skip over some of that in the  
4 interest of time.

5 Let's see. In addition to that,  
6 we're supposed to make a note -- I'm thinking of our  
7 requirements -- regarding statements about  
8 individuals in a public session. If there should be  
9 any statements that border on defamatory or degrading  
10 characterizations of any individuals, the staff will  
11 actually step in. We are prohibited from going that  
12 far in a public setting.

13 That being the case, I'm going to  
14 dispense with all other formal notices and again  
15 reiterate that our setup here is for advisory  
16 committee members to monitor each one of the panels,  
17 and the moderator for this panel is Dr. Azizah Y.  
18 al-Hibri, and at this point, I'll turn the proceeding  
19 over to her.

20 DR. AL-HIBRI: Thank you. Welcome to  
21 the afternoon session. I would like to start the  
22 session entitled, Perspectives on the Administration  
23 of Justice in Virginia: The minority population  
24 experience.

25 We're very lucky to have some

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1 distinguished speakers with us today, and I'd like to  
2 start by introducing the Honorable Henry Maxwell of  
3 the Virginia Assembly.

4           SENATOR MAXWELL: Thank you. Mayor  
5 Rattley and -- excuse me. Mayor Rattley and members  
6 of the committee, good afternoon.

7           MS. RATTLEY: Good afternoon.

8           SENATOR MAXWELL: Thank you for  
9 inviting me to participate in this forum today. For  
10 those of you who do not know me, I'm State Senator W.  
11 Henry Maxwell, and I represent the second senatorial  
12 district composed of portions of Newport News and  
13 Hampton. I've been asked to participate in this  
14 panel discussion today, not simply because I am a  
15 state legislator, but because I'm also vice chairman  
16 of the State Joint Subcommittee studying the status  
17 and needs of African American males in Virginia. I  
18 deem this a worthwhile study and look forward to the  
19 implementation of its result.

20                   Members of the Commission and  
21 Committee, some of the statements of my presentation  
22 may seem repetitive, but it only shows the importance  
23 of this issue that we are faced with today. At this  
24 point in my presentation, I would like to provide you  
25 with a brief overview of our subcommittee.

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1                   This joint subcommittee was  
2 established by the General Assembly in 1996 for the  
3 express purpose of examining the issues and factors  
4 that contribute to the fight of the African American  
5 male, and to provide appropriate and feasible  
6 alternatives to assist this specific population in  
7 reaching their fullest potential.

8                   There are five delegates and three  
9 senators who serve with me on this committee. We are  
10 all from different parts of our state, thereby  
11 enabling us to examine this situation with many  
12 different perspectives.

13                   Pursuant to the enabling legislation  
14 House Joint Resolution 167, our subcommittee has been  
15 directed to analyze demographic profiles of African  
16 American males in Virginia with regard to their  
17 representation in state and federal correctional  
18 facilities, as well as those under supervision of the  
19 judicial system but not currently incarcerated.

20                   We have been charged to analyze the  
21 demographic profiles of African American males  
22 enrolled as in-state students at public and private  
23 institutions of higher education in the Commonwealth.  
24 Identify the prevailing health problems and issues of  
25 African American males in the Commonwealth. Analyze

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1 African American male high school graduation rate  
2 relative to the total number of the African American  
3 male students enrolled in public and private schools  
4 in Virginia.

5 We have been charged also to analyze  
6 the representation of African American students in  
7 advance preparatory courses, as well as vocational  
8 and technical educational program, or special ed  
9 programs. We've also been directed to analyze the  
10 high school graduation and completion rate in  
11 juvenile and adult correctional facilities in  
12 Virginia. We have been charged with the task of  
13 examining employment statistics for African American  
14 males, including their job security and promotion  
15 rates for considering overall economic independence.

16 Examine the African American male's  
17 representation amid crime and family violence  
18 statistics as perpetrators and victims, and among  
19 substance abuse programs, both voluntary and  
20 involuntary. We've also been charged to recommend  
21 appropriate and feasible alternatives to facilitate,  
22 promote, and assist African American males in  
23 reaching their fullest potential.

24 Members of the committee, as you can  
25 see, this is a mammoth undertaking by our committee.

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1 To date, we have held four meetings, each dealing  
2 with certain and different aspects of our study. At  
3 each meeting, we have received information from the  
4 public and professionals with expertise in particular  
5 areas.

6 Our last meeting for the 1996 portion  
7 of our study was held on January 10, 1997. At that  
8 meeting, we summed up all of the information we had  
9 received thus far and decided on what to report to  
10 the governor and what legislation would be introduced  
11 to the General Assembly.

12 The information that I will share  
13 with you today on the criminal justice aspect is  
14 based on information received in this area thus far.  
15 The information that we have compiled in this area  
16 today is as follows: One in three African American  
17 males between the ages of twenty and twenty-nine is  
18 in prison or under court supervision.

19 Nationally, between 1986 and 1991,  
20 the number of African American men and women in state  
21 prisons for drug offenses increased 828 percent. Law  
22 enforcement practices and prosecutorial policies in  
23 the war on drugs have resulted in disproportional  
24 arrests and conviction among African American males.  
25 Mandatory sentencing policies have contributed to the

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1 disproportionate representation of African Americans,  
2 particularly male, in the correctional system.

3 Here in the Commonwealth of Virginia,  
4 among the conviction rate in fiscal year 1995 for  
5 crack cocaine, African Americans represent 91.6  
6 percent of the convictions, as compared to 7.3  
7 percent for whites.

8 In Virginia, among the conviction  
9 rate of fiscal year 1995, for powder cocaine, African  
10 Americans represent 83.3 percent of convictions, as  
11 compared to 14.7 percent for whites.

12 In Virginia, among the convictions  
13 rates for FY 1995 for other Schedule 1 and Schedule 2  
14 drugs, African Americans represented 53.3 percent of  
15 conviction, as compared to 46.1 percent for whites.

16 Here in the Commonwealth of Virginia,  
17 there is an overrepresentation of African American  
18 males in the juvenile justice system, and such  
19 overrepresentation increases at each stage in the  
20 criminal justice system. Minorities comprise about  
21 27 percent of the youth population in Virginia.  
22 However 77 percent of African Americans are committed  
23 to the correctional system for serious offenses.

24 Factors which contribute to the  
25 overrepresentation of African American youth in the

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1 juvenile justice system include racism, unconscious  
2 biases among the criminal justice and prosecutorial  
3 official, desensitization to cultural difference,  
4 economic and social disadvantages, and differential  
5 enforcement policies.

6 African American youth have a higher  
7 incident of educational deficiencies, health  
8 problems, serious head injury, abuse and neglect.  
9 White youth are more likely to be treated through  
10 court diversion programs, whereas, minorities and  
11 poor youth are dealt with in governmental  
12 institutions. Lack of prevention and early  
13 intervention programs targeted to minority and  
14 low-income youth throughout the Commonwealth.

15 In Virginia, of the 245,000 persons  
16 who lost their right to vote due to a felony  
17 conviction, 145,000 were African American males.  
18 Many disenfranchised persons who were convicted of  
19 lesser felonies, or were convicted and incarcerated  
20 for the crime for more than 25 years ago, have led  
21 productive and crime-free lives since their  
22 conviction. However, individuals do not seek  
23 restoration of their rights, or forsake the efforts  
24 because of the associated cause, delays in processing  
25 the applications, and perceived burdensome

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1 administrative procedures.

2           As I stated earlier, members of the  
3 commission, this subcommittee began its work in 1996.  
4 We were charged to report our findings to the  
5 governor for the 1997 General Assembly session.  
6 Several recommendations in the area of criminal  
7 justice system and violence were made, and also  
8 several legislative initiatives came out of this  
9 committee.

10           The two initiatives that are directly  
11 related to this panel today is House Bill 2761, which  
12 deals with criminal statistics reporting, and House  
13 Joint Resolution 667 that encourages the prevention  
14 and intervention in state programs and service.  
15 House Bill 2761 requires that the Departments of  
16 Corrections, Juvenile Justice, and Correctional  
17 Education to collect data pertaining to the  
18 demographic characteristics of certain prison  
19 population, including race and age and gender of such  
20 person, their educational level, and the learning  
21 disabilities and health-related problems prevalent  
22 among such persons.

23           Beginning in July 1997, the  
24 department must collect this data quarterly and  
25 report their findings annually to the governor and

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1 the General Assembly. House Joint Resolution 667  
2 requires the Departments of Corrections, Education,  
3 Social Service, Health, Juvenile Justice, Mental  
4 Health, Mental Retardation and Substance Abuse  
5 Services, Medical Assistance Services, and  
6 Correctional Education are encouraged to focus on and  
7 emphasize appropriate prevention and intervention in  
8 state programs and in service to their respective  
9 clients to lessen the need for more costly social  
10 programs and services.

11 Other legislation came out of this  
12 first phase of this subcommittee. Other legislation  
13 came out of this first phase of the subcommittee that  
14 dealt with the aspects of our study, namely  
15 education, employment, social welfare and health. We  
16 also introduced a House Joint Resolution 583 which  
17 requested the continuation of joint subcommittee  
18 setting the standards and needs of African American  
19 males in Virginia through 1997.

20 I'm glad to say that these bills and  
21 resolutions have been passed by the 1997 General  
22 Assembly and all are now awaiting the governor's  
23 signature.

24 Members of the committee, in closing,  
25 may I say -- I would like to say that the plight of

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1 the African American male is a grave and serious  
2 problem. There are many variables that affect this  
3 problem. The failings of the criminal justice system  
4 to appropriately address this issue only mirrors the  
5 failings of many other agencies and institutions in  
6 our community, our cities and our state.

7 I personally believe that the  
8 breakdown of the African American family in their  
9 communities are the core of these problems. Also the  
10 failure of the respective support system, such as  
11 religious -- our religious, social, educational,  
12 economic, judicial and legislative institutions have  
13 all aided and abetted in the escalation of this  
14 problem. It will take, and it's going to take, a  
15 massive, collaborative effort on all of the  
16 aforementioned fronts to attack and resolve this  
17 issue. I hope that our joint subcommittee study at  
18 the legislative level will be the catalyst for a  
19 great turnaround and about-face here in the  
20 Commonwealth of Virginia. Thank you kindly for your  
21 diligence.

22 DR. AL-HIBRI: Thank you, Senator  
23 Maxwell. I think in the interest of efficiency, what  
24 we'd like to do is have all three of you give your  
25 statements, and then the panel will ask questions,

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1 and the audience, from all three at once.

2 The next person I'd like to introduce  
3 is Mr. David Baugh, attorney at law from Richmond.

4 MR. BAUGH: Madam Chair, members of  
5 the committee, I am a criminal defense attorney, and  
6 I practice in the Virginia area across the state.  
7 Prior to my becoming a defense attorney, I was  
8 Assistant United States Attorney for the Eastern  
9 District of Texas, and an Assistant United States  
10 Attorney for the Eastern District of Virginia. I am  
11 also a parent. I have two teen-aged daughters.

12 The issues that bring this committee  
13 together are issues that are of significance to me,  
14 both as an attorney and as a parent and as an African  
15 American. The topic I was told we were going to  
16 discuss today was the perceptions of the criminal  
17 justice system.

18 I want to tell you that first, it is  
19 important that you start with perceptions. There is  
20 an old Buddhist expression that truth is but a  
21 perception. Whatever people believe to be the truth,  
22 they see; and because of that, many people see many  
23 different things. By analogy, I will tell you a  
24 story I tell to students. During the Simpson trial,  
25 which everyone watched, no one in the United States

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1 sincerely believed that the police officers went over  
2 the wall in Mr. Simpson's house out of concern for  
3 his safety, but all the police officers said that.  
4 Everyone in the United States believed they were  
5 lying. Not only did the officers make false  
6 statements, but they said the same false statement.  
7 The judge acted as though it was the truth. Now, we  
8 know it wasn't. Most people do.

9           Many people perceive that as a  
10 manifestation of bigotry. Actually, it could be  
11 construed as a manifestation of this judge feeling  
12 that this person is so important that we ought to  
13 bend the rules in order to get a conviction, but his  
14 action would be perceived as racially bigoted because  
15 of to whom they were directed.

16           It is important when discussing  
17 perceptions of the criminal justice system that you  
18 understand that, first, bigotry is alive, but it  
19 comes in different forms. If you read McClesky  
20 versus Kemp -- that's M-c-C-l-e-s-k-y -- Justice  
21 Powell's opinion -- there was a case in Georgia  
22 wherein the application of the death penalty was  
23 tested on statistical reasons, it was more often  
24 given to African American males.

25           In that opinion, Justice Powell, who

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1 has since said maybe he was wrong on this, said that  
2 unless we could prove -- unless the defense bar could  
3 prove that the discrimination that was arising, or  
4 gave rise to these statistics was intentional, then  
5 there was no Constitutional wrong; that unless you  
6 could prove that the legislatures when they were  
7 writing this statute, sat back and said we're going  
8 to zap some African American males, that nothing  
9 could be done.

10           It has always been my opinion that  
11 the failing of that opinion by Justice Powell is a  
12 failure to recognize the bigotry that is born of  
13 ignorance, which is a greater impact than all other  
14 types. There are very few people who wake up and  
15 say, I'm going to do racially bigoted acts today.  
16 More often, bigotry and discrimination arises from  
17 ignorance, or ignorance of the facts, or ignorance  
18 about how people are perceived.

19           And probably the most graphic example  
20 of that -- and I talk about this with the enthusiasm  
21 of the more recently converted. In February of 1995,  
22 the United States Sentencing Commission prepared a  
23 special report to Congress on the disparity between  
24 the sentencing practices for crack cocaine and  
25 powdered cocaine. And it can be obtained from the

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1 Sentencing Commission. I could not get enough  
2 copies. Just call the Sentencing Commission in  
3 Washington and say, We'd like a copy.

4 But when you read the report, you  
5 should not just read the racial aspect of it. One  
6 thing you will determine, if you really get into this  
7 report and read it, is that another perception  
8 problem we're having in this country, which manifests  
9 itself unfairly on African American males, deals with  
10 drugs. I was shocked to learn -- and have read it  
11 and have studied it -- what crack cocaine is. And I  
12 was amazed to find out more people do not know what  
13 it is.

14 I was also amazed to find out the  
15 disparity, not only in the number of people being  
16 convicted, broken down by race, but according to the  
17 United States Sentencing Commission, 52 percent of  
18 all crack users are white, while only four percent of  
19 those people being prosecuted are white. Now, where  
20 the police are going, I don't know, but I found it  
21 amazing because crack is perceived to be a drug that  
22 is peculiarly strong in African American  
23 neighborhoods, and according to the United States  
24 Sentencing Commission, that is not true.  
25 Additionally, I find most frightening is that crack

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1 is viewed as the most dangerous scourge to our  
2 neighborhoods. It is a plague.

3 Well, when reading the United States  
4 Sentencing Commission report -- I don't know how many  
5 of you have read it or not -- I was shocked to find  
6 out that, one -- well, first, crack cocaine is  
7 perceived to be one of the most addictive substances  
8 there is. It is generally perceived to be targeted  
9 towards youth by its low cost. It is generally  
10 perceived to be pure cocaine, thereby justifying  
11 greater punishment and greater allocation of law  
12 enforcement resources. And, of course, there is the  
13 manifestation of crack babies.

14 When you read the Sentencing  
15 Commission report, you will find that, amazed to find  
16 out there are, one, six addictive substances,  
17 physically addictive substances. Now, a physically  
18 addictive substance is a substance which, over a  
19 period of time, the body gets used to, it creates a  
20 chemical imbalance, and then when the substance is  
21 withdrawn, you have withdrawal symptoms, cramping,  
22 headaches, diarrhea.

23 Cocaine, in any form, is not  
24 physically addictive according to the United States  
25 Sentencing Commission report. It cannot be

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1 physically addictive. According to the United States  
2 Sentencing Commission report, no one can go through  
3 withdrawal from denial of cocaine in any form.

4 Additionally, if you analyze the report, and you'll  
5 notice it's obvious, the price of crack cocaine per  
6 dose to powder cocaine is slightly greater.

7           While powdered cocaine is normally  
8 sold on the street in one-gram packages, that  
9 one-gram package represents ten to -- five to ten  
10 dosage units. It sells for -- the bottom line, it's  
11 about a hundred dollars a gram, which means it's  
12 about \$10 to \$20 per dose unit. Crack cocaine is  
13 sold in increments of a tenth to a fifth of a gram.  
14 It sells for about \$10 per dose unit, which is \$10  
15 for a tenth of gram, or \$100 for a full gram.

16           Actually, what the Sentencing  
17 Commission report says, the average price for  
18 cocaine -- crack cocaine on the streets in the United  
19 States is \$113, and the average price of powder  
20 cocaine is \$100. Crack costs more. Now, how these  
21 perceptions are allowed to go on, I don't know.

22           And I also find this interesting. If  
23 no mammal is capable of going through withdrawal from  
24 denial of cocaine in any form, even crack, then the  
25 story of the crack babies is a myth. If the only --

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1 if no form of cocaine is physically addictive, then  
2 no one can go through withdrawal.

3 Now, of course, there is  
4 psychological addiction. But I think you'd have a  
5 hard time explaining how a newborn child could be  
6 psychologically addicted to something. And, of  
7 course, there are many people who say, Well, the  
8 reason we have to do this is because that  
9 psychological addiction is a horrible addiction.

10 There are many different types of  
11 psychological addiction. I mean, many noncontrolled  
12 substances are psychologically addictive. What I'm  
13 saying here is that it would appear, upon reading  
14 what the Sentencing Commission has written, that  
15 cocaine in its form is not as deadly as we would lead  
16 you to believe. It's not a good thing by any stretch  
17 of the imagination.

18 In fact, if you really want to get,  
19 for want of a better word, nerdy -- and I am --  
20 cocaine is probably the most -- it is the scapegoat  
21 of all scapegoats. We have a tendency to believe  
22 that our neighborhoods were not in trouble before  
23 cocaine came along, and they were. We seem to  
24 believe that our schools were not deteriorating  
25 before cocaine came along, and they were.

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1 Cocaine, as it comes out, according  
2 to the Sentencing Commission report -- believe me,  
3 I'm just telling you what I read, and it was a test,  
4 and really nerdy -- cocaine leaf, which has been  
5 chewed by indigenous South American people for 3,000  
6 years, contains a cocaine alkaloid which carries the  
7 chemical makeup of C17H21NO4. That's it.

8 All right. And when people chew  
9 it -- and this is really tempting, and I hate to  
10 tempt you with it -- chewing cocaine leaf will  
11 provide a long-lasting, low-grade sense of euphoria.  
12 It increases a person's physical stamina. It  
13 increases the body's ability to efficiently utilize  
14 oxygen, and it's an appetite suppressant. Well, when  
15 you read that, the makers of Geritol are going to get  
16 scared because it certainly appears to do everything  
17 they say it will do.

18 What's difficult -- what's unique  
19 about the leaf -- and also in South America, they  
20 also converted it into a paste by removing the plant  
21 fiber from it and it leaves it like a putty. The  
22 active ingredient, the alkaloid in the leaf and the  
23 paste is the same, C17H21NO4. That's it. That's  
24 what gets you high.

25 In 1860, American scientists wanted

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1 to make cocaine so they could use it as an anesthetic  
2 for eye surgery, but cocaine, as it comes out of the  
3 leaf, and cocaine paste, is not water-soluble. It  
4 will just sit there. It will just sit there as a  
5 little glob and not dissolve. So what American  
6 scientists came up with, and if you ever see a  
7 picture of a South American lab, you will find this.  
8 They take the cocaine alkaloid, C<sub>17</sub>H<sub>21</sub>NO<sub>4</sub>, and they  
9 treat it in a hydrochloric acid bath, and they mush  
10 it up and make this soup out of it, and with a little  
11 potassium formalganate and some other things, they  
12 strip all that off and the residue left is no longer  
13 C<sub>17</sub>H<sub>21</sub>NO<sub>4</sub>. It is C<sub>17</sub>H<sub>21</sub>NO<sub>4</sub>HCL, hydrochloride.

14 By adding that hydrochloride  
15 molecule -- by the way, I didn't do that well in  
16 chemistry at school. I find this amusing. By adding  
17 that hydrochloride molecule, you have, one, made the  
18 cocaine alkaloid water-soluble. It can now dissolve.  
19 You can also -- can't smoke it in that form. Cocaine  
20 leaf is smoked. Cocaine paste is smoked. Powdered  
21 cocaine will not, because cocaine hydrochloride, as  
22 you get it hot enough to vaporize, it will decompose  
23 and have no pharmacological effect.

24 Powdered cocaine is C<sub>17</sub>H<sub>21</sub>NO<sub>4</sub>HCL.  
25 That's what people used in this country for years.

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1 Up until 1916, it was legal.

2 Crack cocaine, and also free-basing  
3 cocaine, all you do is you take the C17H21NO4HCL, the  
4 hydrochloride, you treat it with a base and you strip  
5 the hydrochloride molecule off of it and put it back  
6 in its original form, and now it can be smoked. And  
7 why smoke? Well, another advantage of it being  
8 cocaine hydrochloride is you can dissolve it. You  
9 can shoot it in your arms if you want to, or you can  
10 sniff it up your nose.

11 Cocaine, what we call crack, which is  
12 really -- has no definition. The word "crack" cannot  
13 be found in any drug schedule, neither can "cocaine  
14 base". They don't exist in science. Cocaine base,  
15 or "crack" as we call it, is smoked. The reason it  
16 is smoked is, one, you don't have to stick yourself  
17 in the arm, but number two, the intensity of the high  
18 is determined by how fast the drug can get into your  
19 system.

20 If you snort cocaine in your nose,  
21 according to the Sentencing Commission report, how  
22 fast it gets in your system is determined by how big  
23 your nasal passages are, which we'll say -- and I  
24 don't know 21, 22 square inches. If you smoke it  
25 into your lungs -- if you take the average set of

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1 human lungs and you cut off all the little alveoli  
2 and you stretch it out, it's approximately 36,000  
3 square feet. It is amazing. Needless to say, the  
4 cocaine goes in faster through a 36,000-square-foot  
5 hole than it does through a 24-square-inch hole.

6 We have stopped addressing the  
7 problems of bigotry and racism in this country  
8 because we are now fighting a war on drugs. A war  
9 that we are using as a scapegoat to deprive ourselves  
10 of our Constitutional rights, and I believe, to avert  
11 attention from the real problem.

12 In 1984 when -- in 1986 when the  
13 limited hearings were being held on crack cocaine in  
14 Washington, there was a letter to the editor of the  
15 Washington Post -- it was printed in the  
16 Congressional record -- where a writer wrote in and  
17 said, If it were not for crack cocaine, we as  
18 citizens would probably realize the ineffectiveness  
19 of our government. If we didn't have crack cocaine  
20 to blame for our deteriorating cities and our  
21 deteriorating schools, Congress would probably have  
22 had to invent it to justify their reelection.

23 The ignorance, the most frightening  
24 thing about the Sentencing Commission report is that  
25 I realized at that time that I was ignorant, and I

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1 was bigoted. I perceived things about people who  
2 used this substance that were not true; and as most  
3 people who are recently converted, I am now a fan. I  
4 believe that we are denying ourselves the truth.  
5 Because of the war on drugs, in 1984 there were  
6 approximately 880,000 people in United States prisons  
7 and jails. We now have 1.6 million. We now have  
8 more than Russia and South Africa. They used to be  
9 number one and two. We were three. We've now  
10 outstripped them.

11 We have spent billions of dollars  
12 trying to keep the street clean of drugs, and all  
13 we've done is jail an additional one million people  
14 at the cost of somewhere between \$20,000 and \$50,000  
15 per year per person.

16 And if you were to go out -- I don't  
17 know what it is in Hampton, but I know in Richmond --  
18 in Richmond about 1984, a gram of cocaine cost a  
19 hundred dollars. Right now a gram of cocaine cost a  
20 hundred dollars. The price of heroine has dropped a  
21 little bit, and the purity has increased. We have  
22 done nothing with our war on drugs, except take a  
23 significant percentage of a disenfranchised  
24 population and further disenfranchise them by taking  
25 from them their right to vote and their right ever to

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1 participate in our government in any way, shape, or  
2 form.

3 Virginia is one of the thirteen  
4 states that when a person finishes their jail  
5 commitment, their rights are not restored. You have  
6 to go through the governor's office, and actually it  
7 is so complex, very few of them actually go through.  
8 I have participated -- I've had people who did that.  
9 I know how involved it is.

10 So I want to end by saying what I  
11 started off with earlier. We must realize that we're  
12 dealing with a perception. Whenever things occur  
13 that don't look right, whether it is a racist thing,  
14 or a thing of ignorance, is determined by how we view  
15 it. I think we ought to come to the realization that  
16 the problems that our children are having, the  
17 problems that our neighborhoods are having are caused  
18 by other factors that I believe you should  
19 investigate.

20 I would hope that you would not fall  
21 for this ploy that the war on drugs is the problem.  
22 That drugs are the problem. The drugs are the  
23 symptom of deeper problems, and for that reason, I  
24 want to thank you for inviting a lawyer to come down  
25 here and talk to you. Thank you.

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1 DR. AL-HIBRI: Thank you. I'd like  
2 to introduce the last participant on this panel,  
3 Professor Robert Shepherd, my colleague from the T.  
4 C. Williams Law School.

5 MR. SHEPHERD: Thank you very much.  
6 Madam Chair, Members of the Advisory Committee, it's  
7 always difficult following David. Unlike my  
8 colleague, Ron Basagle, who has the courage to invite  
9 David to be a guest lecturer from time to time, thus  
10 messing up the rest of the semester by embarrassment,  
11 I avoid that in the courses that I teach on juvenile  
12 law, and David has just given you a good example of  
13 why I do that.

14 But it is a pleasure to be here with  
15 you today, and to be on such a distinguished panel  
16 with Senator Maxwell and David Baugh. As my  
17 colleague, Dr. al-Hibri, has pointed out, I am a  
18 professor at the T. C. Williams School of Law, the  
19 University of Richmond. I am a former chair of the  
20 Virginia Juvenile Justice and Delinquency Prevention  
21 Advisory Committee appointed by the governor. I'm a  
22 former member of the Virginia Commission on Youth.  
23 I'm a past chair of the Juvenile Justice Committee of  
24 the American Bar Association, and I currently chair  
25 the Commission on the Needs of Children of the

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1 Virginia Bar Association.

2 I am here really to focus briefly on  
3 the specific and significant issues presented by the  
4 handling of children of color in the juvenile justice  
5 system in Virginia. I have provided for you some  
6 written testimony, along with a couple of  
7 attachments, one of which is kind of a statistical  
8 flow chart of what has been happening with youth of  
9 color in the juvenile justice system over the past --  
10 past nine years, and a copy of a column that I  
11 regularly write for Criminal Justice Magazine that  
12 the American Bar Association publishes that I did a  
13 couple of years ago about children of color in the  
14 juvenile justice system that addresses some of these  
15 issues in general.

16 But I would like to focus on  
17 Virginia, and I'll try to avoid being repetitive of  
18 the figures that Senator Maxwell has given you,  
19 because I did testify before that joint subcommittee  
20 earlier as well, and much of the data he has given  
21 you is derived from data that I gave to that body.

22 Those of us that have been involved  
23 in the juvenile justice system in Virginia as  
24 lawyers, or other participants, over the years -- and  
25 for me it's been more than 35 years -- we have always

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1 had a perception that minority kids -- and in  
2 Virginia, we're talking primarily about African  
3 American youth, although in Northern Virginia and  
4 other parts of the state, there are problems dealing  
5 with Hispanic and Southeast Asian youth.

6 There has been a perception that  
7 children of color are dealt with more severely within  
8 the juvenile justice system than majority youth are.  
9 And there has been a perception that that severe  
10 treatment tends to increase as the youth penetrates  
11 more deeply into the system. However, for most of  
12 us, that perception -- and as David has said,  
13 perceptions are very important -- has been largely  
14 anecdotal.

15 In 1988, what was then the National  
16 Coalition of State Juvenile Justice Advisory Groups  
17 met in Jackson, Mississippi, for their Spring  
18 conference. The focus of that conference was the  
19 overrepresentation of minorities in the juvenile  
20 justice system. The organization is kind of an  
21 umbrella group that has been established by Congress,  
22 comprised of the various state advisory groups, and  
23 as I mentioned, at the time I was chairing the  
24 Virginia Advisory Group on Juvenile Justice and  
25 Delinquency Prevention. And these state groups

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1 decided for the first time to look at the issue of  
2 minority youth.

3           Out of that conference and the  
4 presentations made, a recommendation was made by the  
5 National Coalition to Congress that the Federal  
6 Juvenile Justice and Delinquency Prevention Act be  
7 amended to require the states to focus on the  
8 problems of minority youth in the juvenile justice  
9 system.

10           Now, there's a lot of debate going on  
11 right now about the reauthorization of that act.  
12 It's reauthorized essentially every four years, 1988  
13 and 1992, and it was to be reauthorized last year,  
14 but Congress really couldn't reach any closure, and  
15 the issue is still on the table. One of the issues  
16 that is being presented is that this is another  
17 example of the federal government telling the states  
18 how they ought to deal with state problems.

19           Well, let me point out to you that  
20 the issue of minority representation, which in my  
21 judgment is the most vulnerable aspect of that act,  
22 the one that is receiving the most attack from  
23 members of Congress, that minority overrepresentation  
24 mandate, or focus, came from the states to the  
25 federal government. It was essentially a grassroots

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1 movement among many of us in the states that said  
2 that this is a problem that needs to be addressed,  
3 and the federal government has some of the resources  
4 to help us to address it.

5           So that in 1988, the act was amended  
6 to tell the states, as we had asked them to tell us,  
7 to start looking at the development of some  
8 statistics, some data about this overrepresentation.  
9 Is it more than anecdotal? Can we actually look at  
10 the population of kids within juvenile detention  
11 facilities, within juvenile correctional facilities,  
12 those juveniles that are transferred from the  
13 juvenile court to the adult court to be tried as  
14 adults, and do the data, in fact, manifest what many  
15 of us had known anecdotally, and can we then use some  
16 of the federal money that comes into Virginia through  
17 this act and the other states, to try and start  
18 addressing the problem if our anecdotal perceptions  
19 are accurate?

20           Well, Congress did that. Four years  
21 later in 1992, they, in fact, made it a mandate so  
22 that if a state is not addressing the problem, it  
23 would lose some of the federal funds under the act.  
24 You got the carrot of getting some money to help you  
25 address the problems, and there was the stick that

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1 you would lose part of that money if you weren't  
2 addressing them.

3 Out of that 1988 amendment, five  
4 states were really designated to be pilot projects.  
5 Well, we didn't wait in Virginia to see what the  
6 pilot projects showed. The Juvenile Justice and  
7 Delinquency Prevention Advisory Committee in Virginia  
8 resolved that we were going to use some of the money  
9 that we were already getting and start looking at  
10 what Virginia's experience was; and if there was a  
11 problem, that we would start addressing it, not wait  
12 to see what the pilot project showed.

13 So we began in 1988 to start  
14 collecting data. And I think you heard maybe this  
15 morning from Bruce Morris with the Department of  
16 Criminal Justice Services, and Dr. Rick Kern, for  
17 many years accurate data about what goes on in the  
18 criminal justice system was sadly lacking. Those of  
19 us in academy, as opposed to David, like to have data  
20 to work with -- obviously David does as well with  
21 some of his comments regarding the Sentencing  
22 Commission and the war on drugs -- and we got our  
23 staff, we spent some money to commission institutions  
24 in the state, as well as the Department of Criminal  
25 Justice Services, to start looking at what the

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1 experience was in Virginia.

2           And let me give you the raw  
3 percentages first, and then I will refer to this  
4 chart that you have that shows kind of an index, the  
5 indices of the representation of minority youth at  
6 each stage of the process, and data have not changed  
7 significantly since this was concerned, is that about  
8 27 percent of the population under 18 in Virginia was  
9 comprised of minority youth, and that's  
10 overwhelmingly African American. The other states,  
11 the problem may be more Hispanic or Oriental, but in  
12 Virginia, it is primarily African American -- that  
13 these youths comprise 27 percent of the population.  
14 They constituted about 40 percent of the arrests for  
15 all acts of delinquency, and about 50 percent of all  
16 arrests for Part I offenses, the more serious  
17 offenses against the person.

18           Although somewhat paradoxically, the  
19 FBI uniform crime reports include car theft within  
20 Part I, and they do not include drug offenses, so the  
21 data is a little bit curious from the perception of  
22 policy makers at the state level that car thefts are  
23 in there and drug offenses are not, with all of the  
24 focus, as David has pointed out, on drug offenses.

25           What we also discovered is that

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1 minority youth constituted forty-five percent of all  
2 of the youth placed in juvenile detention homes  
3 awaiting trial. Fifty-four percent of those youths  
4 committed to the then Department of Youth and Family  
5 Services, now Department of Juvenile Justice, for  
6 placement in a juvenile correctional center, and 60  
7 percent of the juveniles transferred to circuit court  
8 for trial as adults, so our anecdotal perceptions  
9 were really reinforced by the data, that at each  
10 stage of the process, as the consequences became more  
11 severe and as the placement became more secure,  
12 minority youths were appearing at a higher  
13 representation rate.

14 . By 1991, arrests of children of color  
15 represented 46 percent of all juvenile arrests, 53  
16 percent of the Part I offenses. The detention of  
17 minority youth had risen from 45 percent to 57  
18 percent. The Department of Youth and Family Service  
19 commitments had risen to 66 percent. In other words,  
20 two-thirds of all the kids at Beaumont, Bon Air,  
21 Hanover, Jenny Porter Barrett, Natural Bridge, Oak  
22 Ridge were minority youths. And transfers to adult  
23 courts had increased to 75 percent. Three-quarters  
24 of all of the youths across the Commonwealth that  
25 were transferred to be tried as adults, were minority

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1 youths.

2           Now, around 1991 was when we  
3 started -- we said, you know, the data gathering  
4 is -- that system is well in place. We need to start  
5 assessing the problem. We did it in a variety of  
6 ways. We put together some focus groups and brought  
7 together public defenders and prosecutors and police  
8 officers and representatives of the various civil  
9 rights groups and all, and we started talking about  
10 why is this occurring.

11           We discovered that it was a mix of  
12 things, and I don't think there's any question but  
13 that racism plays a part, whether it's unconscious or  
14 conscious, but there were other reasons as well. One  
15 was, where are our resources focused? As David has  
16 pointed out, a lot of the enforcement is really  
17 focused on our large central cities. The crack data  
18 is even worse when it comes to other drugs.

19           The University of Michigan annual  
20 studies of self-report data by young people shows  
21 that far more white youths use drugs than African  
22 American or other minorities, and yet most of the  
23 arrests for drug offenses are of African American  
24 youths. That's because it's basically more efficient.  
25 You get more bang for your buck if you're picking up

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1 people on the street corners than putting undercover  
2 cops in your suburban high school, so that the  
3 arrests are in a sense distorted by the way that  
4 enforcement takes place.

5           Secondly, we discovered that in a lot  
6 of these localities, there were fewer alternative  
7 resources, alternatives to detention, alternatives to  
8 commitment. Quite often, the jurisdiction that's had  
9 the wider range of resources and alternatives were  
10 places like Virginia Beach and Fairfax County,  
11 Henrico County, and Chesterfield County and the like.  
12 People are always shocked when I tell them that  
13 there's a higher rate of Part I arrests in  
14 Chesterfield County, where I live, than there are in  
15 the City of Richmond.

16           What happens in the City of Richmond  
17 is that you have more arrests for homicide, and the  
18 public attention for juvenile crime is driven largely  
19 by homicide. And a lot higher rate in Virginia Beach  
20 and Chesterfield County for Part I offenses than  
21 there are in the City of Norfolk and the City of  
22 Richmond, and yet we would not know that from reading  
23 the news media.

24           I heard a reporter once say if it  
25 bleeds, it leads, so that our stories, our television

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1 news are largely driven by things like homicide. We  
2 also discovered that, as Tip O'Neal once said, all  
3 politics is local. There's a wide disparity in the  
4 way these issues are dealt with. The highest  
5 overrepresentation of minority youth and detention  
6 facilities we found was along the Interstate 81  
7 corridor where there were really fewer minorities,  
8 and there were no alternative services in many of  
9 those counties. So the black kids, primarily, are  
10 the ones that were getting locked up.

11 We also discovered -- and Senator  
12 Maxwell has alluded to this, that a lot of the  
13 nonjustice risk factors were higher among minority  
14 groups, problems like learning disabilities, health  
15 problems, abuse and neglect. Other issues were  
16 concentrated. These kids were far more at risk, and  
17 the police were there when the risk became  
18 manifested.

19 Now, let me jump ahead to say that we  
20 had the data, we had engaged in some analysis of why  
21 this was true, and we decided that we needed to put  
22 some resources and attention to try to correct it.  
23 And Virginia has a long ways to go. But if you look  
24 at this data, these data as they are recorded here,  
25 you will see that these data are really stated by

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1 indices, and let me explain briefly what that means.

2 Each of the numbers here is basically  
3 the factor of minority youth at that stage in the  
4 system, opposed to the percentage of minority youth  
5 in the population. So if you see, for example, in  
6 1991, 2.45 for commitment to a juvenile correctional  
7 facility, that means that a minority youth is 2.45  
8 times more likely to be found in a juvenile  
9 correctional center than in the population. So it's  
10 2.45 times 27 percent, and you've got that 66 percent  
11 figure that I talked about.

12 Now, if you look at this, you will  
13 see that there indeed have been some reductions. If  
14 you look at secured detention, it went from 2.22  
15 index to 1.96 between 1992 and 1994. There was a  
16 reduction of 2.25 in other types of secure youth  
17 facilities to 2.02. From 2.49 commitment to the  
18 Department of Juvenile Justice to 2.32.

19 Some of the other areas we don't have  
20 data yet for '95 and '96, the Part I arrests, but  
21 there was even a bit of a reduction in the percentage  
22 of arrests of minority youth. Now, that's minor  
23 changes, but it is a reflection of the fact that some  
24 conscious effort has been made to address that.

25 The Virginia Supreme Court has

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1 recently gotten a state justice institute grant to  
2 continue training judges, clerks, and magistrates in  
3 cultural competency, and in trying to deal in race  
4 neutral decision-making. There's a lot of discretion  
5 in the juvenile justice system, and that's one of the  
6 problems.

7           And ironically, even when you try to  
8 eliminate the discretion -- we don't have the data  
9 yet -- the one area I'm really concerned about is  
10 transfer to adult court, because we enacted a statute  
11 last year where basically the offense drives whether  
12 the kid is going to be transferred to adult court  
13 rather than a hearing before the judge.

14           In the City of Richmond, for example,  
15 I'm aware that since July 1, 1996, the Commonwealth  
16 Attorney's Office is automatically giving notice of  
17 transfer for any kid who has committed an offense  
18 that is listed in 16.1-269.1(c) of the code, which  
19 are the serious offenses. Now, remember a kid may be  
20 charged with a serious offense and not be found  
21 guilty of that serious offense.

22           I mean, a kid who commits a homicide,  
23 for example, could be guilty of capital murder, but  
24 they could be guilty of involuntary manslaughter.  
25 Also kids tend to commit offenses in groups more than

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1 adults. Let me give you an example. About  
2 twenty-four percent of all the arrests for robbery in  
3 the United States are of juveniles, and yet juveniles  
4 are responsible for only 14 percent of those  
5 robberies that are cleared by an arrest. The  
6 disparity is that juveniles tend to do things in  
7 groups, more than adults do. An adult will commit a  
8 robbery perhaps as a lone wolf. Juveniles do that  
9 very rarely. So juveniles are overrepresented in  
10 arrest data vis-a-vis adults.

11 We've got a lot more we have to do.  
12 And I'm proud that during the time that I was on the  
13 Juvenile Justice and Delinquency Prevention Advisory  
14 Committee, and during the time that I was on the  
15 Virginia Commission on Youth, and with the help of  
16 Senator Maxwell and others in the General Assembly,  
17 we were able to get enacted the Virginia Juvenile  
18 Community Crime Control Act, which now, after this  
19 session of the General Assembly, will result in about  
20 26 million dollars statewide to develop alternative  
21 community-based resources to keep kids out of  
22 detention homes and keep them out of the Department  
23 of Juvenile Justice. That's going to have a real  
24 impact in places like Richmond and Hampton and  
25 Newport News and Norfolk where the local resources

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1 may not have been great enough in the past to develop  
2 these alternatives, as opposed to some of the more  
3 affluent communities.

4           Where I think we are falling short is  
5 on prevention. There are some excellent programs  
6 that are being piloted in Virginia and elsewhere. In  
7 fact, the City of Hampton was one of the pilots for  
8 Healthy Family Virginia, which shows tremendous  
9 promise in trying to prevent juvenile crime before it  
10 happens.

11           And as far as I'm concerned, it's  
12 like the old purilator in the television commercial,  
13 you can pay me now or pay me later. It's much more  
14 cost-effective to put the money into prevention, than  
15 it is to put this \$25,000 to \$50,000 a year into  
16 correctional facilities.

17           I'll conclude by saying we've got to  
18 keep working at this. I remember a Peanuts cartoon a  
19 number of years ago that showed Charlie Brown walking  
20 off the baseball field, and in the background the  
21 scoreboard says, Visitors 99, Home 0. And Charlie  
22 Brown is saying, How could it have happened when we  
23 were so sincere? It takes more than sincerity. It  
24 takes action. And I look forward to the  
25 récommendations that this body may be able to make,

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1 and the attention you can bring to bear on some of  
2 these problems for our youth and our young African  
3 American males in particular across the Commonwealth.

4 MS. RATTLEY: Quite interesting  
5 panel. Mr. Baugh, have you written that book yet?

6 I need that information.

7 MR. BAUGH: On the book?

8 MS. RATTLEY: No, on your  
9 presentation, on the perception of crack and pure  
10 cocaine.

11 MR. BAUGH: I do have extra copies of  
12 the Sentencing Commission Report, but I will take it  
13 upon myself to call the United States Sentencing  
14 Commission and get enough extra reports for the whole  
15 panel if you'd like them. I can give them to Dr.  
16 al-Hibri.

17 MS. RATTLEY: Yes. That kind of  
18 blows your mind. We talk about perceptions, and some  
19 other thoughts we have through history, of plans that  
20 are out there that we never recognized.

21 Senator Maxwell, may we have a copy  
22 of your report, please? I was very concerned about  
23 the restoration of voting rights. I think you said  
24 in the State of Virginia, we have 245,000 people who  
25 have been denied their voting rights, and of that

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1 number, 145,000 are black males basically.

2 SENATOR MAXWELL: That's a lot of  
3 votes.

4 MS. RATTLEY: That's a lot of votes.  
5 And that could be connected to what Mr. Baugh said as  
6 to the motive, in a sense, for having three out of  
7 four. Now you said we had one out of three.

8 SENATOR MAXWELL: One out of three.

9 MS. RATTLEY: Wasn't it kind of a  
10 national thing that we had one out of four, and now  
11 it's one out of three?

12 SENATOR MAXWELL: One out of three.  
13 That's right.

14 MS. RATTLEY: What is the national  
15 average, the same, or is it --

16 SENATOR MAXWELL: National average --  
17 what is the national average? It's the same, one out  
18 of three. National average is one out of four. Here  
19 in the Commonwealth, we found out it was one out of  
20 three.

21 MS. RATTLEY: I think that is a point  
22 that must be made and emphasized. I was shocked when  
23 you said that. We really need a copy, if you will,  
24 of your presentation, because you're getting into the  
25 specifics of how we stack up in the State of

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1 Virginia.

2 And I want to thank you, all of you,  
3 for being here, and we have just a few minutes now  
4 left for questions. I know Mr. Baugh has to get back  
5 to Richmond.

6 MR. BAUGH: I canceled that  
7 appointment.

8 MS. RATTLEY: Very good. You're  
9 going to stay with us through the night?

10 MR. BAUGH: As my wife always tells  
11 me, even love has its limits.

12 DR. AL-HIBRI: Let's take a few  
13 questions from the panelists and the audience.

14 MS. MCCLOUD: I don't know, maybe I  
15 haven't been listening very well, or maybe I'm  
16 missing the point here, but we've heard a lot of data  
17 today. We've heard a lot of statistics. We have  
18 heard about a lot of different groups, et cetera, who  
19 are trying to address the problem. I have not heard  
20 any reference to the people who are really  
21 responsible for bringing these youth in, for example,  
22 the police officers, the people who are on the  
23 streets with them.

24 Can you tell me, can you expect there  
25 to be change unless there is some work done with

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1 those people as well?

2 MR. BAUGH: Ma'am, if I might,  
3 Mrs. McCloud, I'll start off from my perspective.  
4 The problem is not just there. Actually, the thing  
5 that scares me the most about it is that in order to  
6 really address this problem, we have to have almost a  
7 societal change in our perceptions.

8 I understand from my perspective as a  
9 criminal defense attorney that there is entirely too  
10 much testosterone involved in law enforcement, and  
11 that everyone seems to be thrilled with the idea of  
12 getting tough on crime, but no one seems to be  
13 really -- they don't seem to like the attitude of  
14 let's get intelligent about the resolution of crime.  
15 We are willing -- if a person's dog bites, you know  
16 that you don't beat the dog into stopping that  
17 behavior; only by caring and attention will that dog  
18 learn. We'll do the same thing to humans.

19 Our entire law enforcement  
20 perspective, from the president down, is if something  
21 is wrong, if you use enough force and we punish  
22 enough people, it will be fixed, and that is not  
23 true. We demand that our police make arrests. We  
24 demand that our police do undercover operations that  
25 get, as Robert said, the biggest bang for the buck,

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1 but as we look at those numbers, no success.

2           It is so bad -- we have to change our  
3 entire attitude. When I say "we," I mean the entire  
4 nation. I believe we can do it. I believe Americans  
5 can do it. If we can put a man on the moon; we can  
6 cure disease; we can do anything if we put our mind  
7 to it. But I think right now we're going with the  
8 quick fix, and I don't know what it's going to take  
9 to make people serious about resolving this problem.

10           DR. AL-HIBRI: If I may interject  
11 here, once in a while I do give lectures to policemen  
12 and women, and part of the discussion at times  
13 revolves around this kind of issue, and what  
14 surprises me -- I didn't expect it -- is that some of  
15 these policemen have just told me that they're really  
16 afraid of teenage males when they meet them in the  
17 school yards, et cetera, and so they fall to the  
18 stereotype, for the stereototype we were talking about  
19 this morning, so when they approach the problem, they  
20 try to use the force that they think will make them  
21 safe.

22           I think we have to recognize that  
23 someone, as society, has these stereotypes. The  
24 police will be victims of them, as well as other  
25 members of society, and we really need an overhaul in

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1 that particular area.

2 MR. SHEPHERD: I might mention,  
3 Ms. McCloud, that one of the focus groups that we  
4 held, the director of the police academy in Virginia  
5 Beach very openly said that he thought one of the  
6 biggest mistakes was this idea of the war on drugs,  
7 that characterizing something as a war, made it an  
8 "us versus them", a "good versus bad" sort of thing,  
9 and that the idea of the war on drugs as a war, led  
10 to more problems than it actually solved.

11 Coupled with that, I would mention  
12 that I think one of the most powerful advocates for  
13 prevention in the Commonwealth that I have met is  
14 Chief Melvin High of the Norfolk City Police  
15 Department. He served on the Commission on Youth  
16 Juvenile Justice System Task Force with me, and I  
17 kind of felt like he and I sat at two different ends  
18 of that group and kept saying prevention, prevention,  
19 prevention into the microphone; whereas, others were  
20 saying transfer, lockup.

21 And I think you'd find the police  
22 officers of the Commonwealth will be some of the  
23 strongest advocates for prevention. They just as  
24 soon not have to confront that angry male in the  
25 school yard; but if that angry male is given

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1 something else to do with his testosterone, as well  
2 as the police officers.

3 MR. BAUGH: I will make one  
4 suggestion, and I hate to say this because my living  
5 depends upon police doing excessive things, but if  
6 you really wanted to stop crime in the United States,  
7 and you wanted to do one thing in this Commonwealth,  
8 I would say that urban areas you should start off,  
9 one, every child above the age of three should be in  
10 some structured educational program; and number two,  
11 in those urban environments, no child should be in a  
12 class with more than nine classmates for the first  
13 three years of their education, and then and only  
14 then -- I'll never forget this. The reason I don't  
15 steal is not because I have a fear of getting caught.  
16 The reason I don't steal is not because I have fear  
17 of going to jail. The reason I don't steal is that  
18 Mrs. Freeman, my teacher, and my mother taught me it  
19 was wrong, and that's what prevents me from  
20 committing crime.

21 SENATOR MAXWELL: If I understand  
22 your question correctly, Mrs. McCloud, you know that  
23 there is a perception in our society today whereby  
24 that -- let me retract and come back to this point.  
25 When I was graduated from high school and people of

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1 my generation, there was an attitude, say the less  
2 college, college, college was the main thrust of my  
3 attitude, and what have you.

4 Now, many times when kids graduate  
5 from high school or from school, they say money,  
6 money, money, money, money. And the attitudes have  
7 changed, so the thing about it is, what is out there  
8 in the environment that is more profitable and more  
9 acceptable than drugs?

10 The reason that police officers in  
11 certain areas have easier time and higher  
12 incarceration rate among blacks is because in certain  
13 areas of our city, they do it openly on the streets,  
14 and what have you; while in other areas, it's a  
15 little tougher because they go behind closed doors.  
16 There's more going on behind closed doors, but the  
17 street's what we concentrate on this effort here down  
18 in another section of our society.

19 I look at the crime, look at the  
20 violence. I look at the homicides, but I don't  
21 believe -- it may be in contradiction to what has  
22 been said. I still don't believe they are our main  
23 problem. Educational deficiencies and all these  
24 things, not our main -- our main problem is still  
25 drugs, whether we will admit to it or not, because

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1 drugs are just like a thread that has rolled itself  
2 into the very fabric of everything we do; and if we  
3 don't get a handle on our drugs, we're about to lose  
4 a generation of young males, young people. We may  
5 have already lost them.

6 We've declared war, but we haven't  
7 engaged the act. We haven't commenced anything. We  
8 say that we're going to declare war, but we really  
9 haven't moved from lift feet to doing something about  
10 our problem.

11 That's what I find existing today.

12 REVEREND HARRIS: Mr -- Reverend  
13 Maxwell?

14 SENATOR MAXWELL: Yes, sir. Senator.

15 REVEREND HARRIS: Brother Maxwell,  
16 you talked about your subcommittee, and I'm familiar  
17 with subcommittees, and committees in the General  
18 Assembly --

19 SENATOR MAXWELL: Yes, sir.

20 REVEREND HARRIS: -- that finally go  
21 to the governor and so forth with the veto the bill  
22 and so forth.

23 SENATOR MAXWELL: That's right.

24 REVEREND HARRIS: And based on  
25 what -- your analysis and what you have discovered

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1 with your subcommittee, how long do you think that  
2 before we can realize some relief from the kinds of  
3 things that you have shared with us today? How long  
4 is it going to take?

5                   SENATOR MAXWELL: It's hard for me to  
6 have a measuring rod to say exactly how long, but we  
7 do hope in the immediate future. We are continuing  
8 our subcommittee, and in the continuation of our  
9 subcommittee, we are hopeful that many of the things,  
10 the resolution and resolve that come about in our  
11 subcommittee will be enacted into law and signed by  
12 our -- and signed by the governor. This is the --  
13 how long that would take, it is up to our legislative  
14 black caucus. We are going to police to see  
15 immediate implementation of these resolutions have  
16 been made, but how long it will take, after he signs  
17 it to maybe have a fiscal impact statement may be  
18 prohibitive if we do -- most of the changes we see is  
19 a matter of just attitude changes and what have you.

20                   REVEREND HARRIS: How can the  
21 citizens assist in this process? Is it now left to  
22 the hands of the committee or the subcommittee? Are  
23 we supposed to just sit and wait until we get a  
24 report? How -- what do you suggest that the general  
25 population --

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1                   SENATOR MAXWELL: We're in the same  
2 process you are, in the fact-finding position. We're  
3 trying to put all the facts together to see what type  
4 of pictures are going to develop from those facts we  
5 receive. We would be glad to afford to the committee  
6 the facts, and the report that we have received, and  
7 we're going to legislate -- whatever we can do  
8 legislatively, that is what we will move forward to  
9 do.

10                   MR. GALVIN: Just two questions for  
11 you. One, do you have any study or survey on those  
12 that are granted voting rights back that were  
13 disenfranchised? Do we have any breakdown or  
14 statistics on the racial bias in those grantings?

15                   SENATOR MAXWELL: The only thing we  
16 have to go by is the stats involved. I did have the  
17 resource person here who may have some of that data  
18 here for us today, but we're only going to talk about  
19 the conviction of felons and the restoration of their  
20 rights, back to their rights. It is -- right now, we  
21 don't know exactly -- we just made an amendment to  
22 our study to seek information as it relates to the  
23 very thing that you're talking about, so we will do  
24 that during our study meeting this year.

25                   MR. GALVIN: Will you provide that to

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1 us?

2 SENATOR MAXWELL: Yes, sir. I'll be  
3 glad to.

4 MR. GALVIN: My second question, I  
5 think for Mr. Baugh or Mr. Shepherd, while I  
6 understand prevention and some people talk about  
7 treatment in there, and it's a little contradictory  
8 with your statements of not having an addiction.

9 MR. BAUGH: Physical addiction.

10 MR. GALVIN: By treatment,  
11 psychological treatment. But given that, and given  
12 that that's one direction or possibility, I'd also  
13 like to ask you in your opinion, how do you see the  
14 disparity in judgment in the prosecutors? We have  
15 heard testimony, or comments today in having  
16 sentencing guidelines, and how sentencing has the  
17 consequences of what's that produced.

18 Is there, though, a huge disparity in  
19 the judgment that is issued by prosecutors in  
20 deciding who goes to trial, how they're charged and  
21 that what would your opinion be if there were  
22 guidelines in this direction towards moving the  
23 disparity imbalance further down the line?

24 MR. SHEPHERD: Well, I certainly see  
25 that as being a major problem in the juvenile justice

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1 system, because the legislation that we adopted in  
2 1996 governing transfers to adult court, we basically  
3 moved the discretion away from judges, whose  
4 judgments are subject to appeal, to prosecutors,  
5 whose decision making is basically totally immune.

6 I mean, we've got some recent cases  
7 before the United States Supreme Court and the U.S.  
8 Court of Appeals for the Fourth Circuit, the case  
9 that came out of Norfolk in looking at prosecutorial  
10 decision-making. I think there's a significant  
11 disparity across the state and how prosecutors are  
12 using this new transfer statute.

13 In most of the state it's made no  
14 difference. Prosecutors are exercising their  
15 judgment essentially on the same criteria that judges  
16 did previously, and they're selecting the cases where  
17 a motion for transfer is to be made. You know, you  
18 can have four or five kids involved in a single  
19 offense, and the level of culpability is quite  
20 different, the previous record, the age.

21 But in some Commonwealth Attorneys'  
22 offices, all of these kids are being moved for  
23 transfer if they're 14 years of age or older. And as  
24 far as I'm concerned, if you're familiar with Charles  
25 Dickens' Oliver Twist, that means you're treating

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1 Oliver Twist the same way you are the Artful Dodger  
2 and Fagan and Bill Sykes, and the degree of  
3 culpability is quite different among those.

4 MR. BAUGH: Before I answer, I think  
5 your court reporter wants to change her paper.

6 Mr. Galvin, I did want to answer. I  
7 am opposed to -- I'm opposed to sentencing  
8 guidelines. I think the sentencing guidelines are a  
9 violation of separation of powers, and I am one of  
10 the people who believe the Constitution is a great  
11 idea and you shouldn't mess with it.

12 The idea of trying to limit  
13 prosecutorial discretion, I believe is a  
14 Constitutional infraction of justice as well. I  
15 believe that we should be about the business of  
16 educating prosecutors and judges, and I think one  
17 simple thing -- I know Dr. Kerns was here this  
18 morning -- on the sentencing reporting documents that  
19 they use, if they were to include race as a data  
20 field, then much of the question we have today could  
21 be resolved. All they have to do is include a  
22 one-digit spot on their reporting documentation, and  
23 their computer can sort it. I happen to know what  
24 computer program they use for data sorting. I have a  
25 pending lawsuit against Dr. Kerns for some

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1 information, but all you have to do is add that and  
2 it would resolve the problem.

3 MR. GALVIN: Would you want to, for  
4 the record, say -- we have his report -- where you  
5 suggest that would be added since he has --

6 MR. BAUGH: There's a little blue  
7 form they use that's prepared by the sentencing judge  
8 that is a reporting form that is sent to the  
9 Sentencing Commission, has the defendant's name, the  
10 judge code, circuit code. If they were to add on  
11 there a box for the race of the defendant, that would  
12 give us -- and same for juveniles -- give us a  
13 tremendous amount of information. You could use it  
14 to objectively determine whether or not there is a  
15 perception of problem.

16 MR. GALVIN: So let me see if I  
17 understand then. Then do you believe the collection  
18 of the data in the middle channel is relatively easy  
19 to get by the addition of this box and it's not  
20 difficult to obtain?

21 MR. BAUGH: If Dr. -- I think I  
22 missed something. No, it is not easy -- it is not  
23 difficult at all. All it is, is put down, you know,  
24 one, or two, or three for whatever race you are, and  
25 believe me, and once that is declared a field, a

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1 field for purpose of being sorted in the program, it  
2 is not difficult at all.

3 MR. GALVIN: Let me ask you this.  
4 What would you speculate could be a basis of why this  
5 hasn't been added, given that it's this easy and it  
6 doesn't look like it adds any additional cost?

7 MS. RATTLEY: Perception.

8 MR. BAUGH: No additional cost.

9 MR. GALVIN: What is your speculation  
10 of why this hasn't been added?

11 MR. BAUGH: It is my birthday. I  
12 don't think -- I think that everyone in the system  
13 knows that it's skewed, but I believe that there is  
14 some solace that discrimination is tolerable as long  
15 as it's unintentional. I was -- this may impact on  
16 my credibility. I am not an Assistant United States  
17 Attorney any longer. As I once asked the federal  
18 judge while I was prosecutor, Why is it when I  
19 convict white people, they get probation, and when I  
20 convict black people, you put them in jail? That's  
21 why I'm no longer Assistant United States Attorney.  
22 In one of the discussions he and I had, he said,  
23 Well, Mr. Baugh, do you think I'm an intentional  
24 bigot? I don't care whether you're an intentional  
25 bigot or not. He said, Mr. Baugh, intention is

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1 everything. Intention is the difference between  
2 manslaughter and murder. And I said, Not to a dead  
3 man. You are just as dead whether it was a whoopsie  
4 or by intention.

5 I think that a lot of people in the  
6 system -- I think everybody in the system knows it's  
7 skewed and nobody wants to see it because you're  
8 going to ask them why, and that's -- and you knew  
9 that answer was coming.

10 MR. GALVIN: Yes, sir. Thank you.

11 MS. RATTLEY: Mr. Baugh or Senator  
12 Maxwell, either one. I get so many questions about  
13 restoration of rights. Would you briefly give me the  
14 procedure to have rights restored to convicted  
15 felons.

16 MR. BAUGH: Well, the procedure --  
17 believe me, I only know it from some employees  
18 actually I did this with. Normally when people call  
19 me, I say call the governor's office, tell them when  
20 your conviction might have been. The governor's  
21 office, I understand, does a pretty good job of  
22 screening.

23 Namely, say for instance you received  
24 a twenty-year sentence with all but five years  
25 suspended. Well, that means you have five years in

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1 jail, then you have 15 years of probation. At the  
2 end of the twenty years, you have to wait until all  
3 of your debt has been paid, either active  
4 incarceration or the probationary period.

5 At the end of all that, I believe  
6 it's three to five years after that, you can apply.  
7 The governor's office will screen -- at first, When  
8 were you convicted, what was your sentence, how  
9 much -- and if you don't qualify, they won't even  
10 send you the paperwork; but if you tell them -- I  
11 mean, because it doesn't make sense to fill out the  
12 paperwork if you haven't been off probation long  
13 enough -- if you tell know you do qualify and you  
14 show them, then they'll send you the paperwork.

15 The forms are pretty involved, and  
16 then also you have to fill out the form, Where were  
17 you convicted, what offense, what have you been  
18 doing, a lot of historical information, letters of  
19 recommendation, background information, and then go  
20 and turn it into the governor's office, get it  
21 investigated.

22 I have never seen one of these -- I  
23 think the quickest I've ever seen was ten months.  
24 And that was pretty fast.

25 And then the governor -- it takes a

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1 while, you have to fill out all these forms, have the  
2 background check done, and then get a phone call, and  
3 they tell you the paperwork is coming and you're  
4 restored.

5 MS. RATTLEY: That's if you're in a  
6 state prison, right?

7 MR. BAUGH: Yes.

8 MS. RATTLEY: How about federal, what  
9 do you do?

10 MR. BAUGH: There is a federal  
11 procedure for restoration. No, I think you have to  
12 get a pardon from the president. That's about it.

13 SENATOR MAXWELL: A pardon from the  
14 president, a pardon from the governor, in the State  
15 of -- Commonwealth of Virginia, I've written three  
16 times on behalf of citizens for restoration. The  
17 Governor has denied all three of them. One thing  
18 that I found out is that many of the minorities have  
19 been charged instead of being -- especially for the  
20 first offender, that does not go on the record, but  
21 by them not being charged under First Offender Act,  
22 they had to wait ten years. It was ten years before  
23 their restoration -- before the rights will be  
24 restored. I found that out in dealing with the  
25 government.

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1                   MR. BAUGH: I do want to point out  
2 that recently Richmond Times Dispatch, which I don't  
3 quote very often, had an interesting article  
4 indicating that only thirteen states in the United  
5 States do not have an automatic restoration of  
6 rights. I did not know that.

7                   MR. DARDEN: Just a quick one. I had  
8 a several other questions, but back to Professor  
9 Shepherd, when you talk about the automatic transfer,  
10 and I understand that to mean into handling a  
11 juvenile as an adult in adult court and adult  
12 penalties, I've seen some studies in another state,  
13 in Delaware, indicating a correlation between that  
14 first incarceration and continuation in the criminal  
15 justice system, either in another incident or from  
16 the same one.

17                   The gist of it was that if you can  
18 avoid, in a juvenile case, that first incarceration,  
19 it greatly enhances the likelihood of avoiding a  
20 long-time involvement with the criminal justice  
21 system; but conversely, that after that first  
22 incarceration, it greatly enhances it and we tend to  
23 see a lot of return.

24                   So it makes that particular aspect  
25 very crucial because of its long-term impact. Now

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1 you're telling me there's an automatic, almost  
2 mindless handling that sends these juveniles into  
3 what might be a life of involvement with the criminal  
4 justice system. And I'm trying to understand that if  
5 any -- does anybody else see this as a problem?

6 MR. SHEPHERD: Well, yes, I did, and  
7 I spent a good deal of time at the General Assembly  
8 last year arguing against the changes in the Virginia  
9 Code that would make it more or less automatic,  
10 partly for the reasons I stated, that you've got kids  
11 with different levels of culpability, with different  
12 backgrounds, with a different prior history, and the  
13 judges could make that determination with lawyers,  
14 like David Baugh, representing these kids in court,  
15 and frequently convincing the judge that transfer was  
16 not appropriate in this case.

17 The other part of it is that even  
18 from the standpoint --

19 MR. DARDEN: What happened there,  
20 when you were making this case in the General  
21 Assembly?

22 MR. SHEPHERD: They want to get  
23 tough. They wanted to prove how hard they were  
24 coming down on juvenile crime.

25 MR. DARDEN: That means black youth?

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1                   MR. SHEPHERD: Well, that's the  
2 effect. I mean, there are some that say if you have  
3 an automatic system, you take the discretion out,  
4 there will be less racial disparity, but you never  
5 take out discretion because the prosecutors are  
6 making charging decisions.

7                   MR. DARDEN: And they're in the  
8 same --

9                   MR. BAUGH: And the police officers.

10                  MR. SHEPHERD: And the police  
11 officers are making arrest decisions and charging  
12 decisions.

13                   The thing that's so crazy about all  
14 of this, is that we do know in the states where  
15 studies have been made, that a juvenile who is sent  
16 to the adult system and tried and convicted as an  
17 adult, is five times more likely to be assaulted in  
18 the adult correctional system than in the juvenile  
19 system, either physically or sexually; that a  
20 juvenile who is tried and convicted as an adult and  
21 serving an adult sentence is more likely to  
22 recidivate upon release, recidivates earlier, and  
23 recidivates with a more serious offense, than the  
24 same youth who commits the same offense and is dealt  
25 with as a juvenile.

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1           In addition, ironically, unless  
2 you're dealing with the really serious offenses like  
3 homicide, and maybe armed robbery and the like, the  
4 juvenile who's kept in the juvenile system ends up  
5 serving more time than the juvenile who is put into  
6 the adult system. Because you've got adult judges  
7 now, and they may look at a fourteen-year-old kid  
8 who's five-foot-two and weighs 130 pounds, and they  
9 say, I am not going to send that young man to an  
10 adult penitentiary because I know what's going to  
11 happen to him. I'm going to put him on probation.  
12 But if he were still in the juvenile system, he may  
13 very well go into a treatment program. He may very  
14 well be held accountable by being put in a juvenile  
15 facility because the risk of physical harm and the  
16 like is much less.

17           MR. DARDEN: So does this automatic  
18 action come from the Commonwealth Attorneys represent  
19 some sort of depersonalization? Do they just not see  
20 these cases now as individual cases that have to be  
21 considered, or --

22           MR. SHEPHERD: Well, again this gets  
23 back a little to Mr. Galvin's question is that it  
24 depends on what the practice is in a particular  
25 Commonwealth's Attorney's Office. I know there are

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1 localities in Virginia where it's made no change  
2 whatsoever. The Commonwealth's Attorneys are still  
3 using criteria for determining whether to  
4 automatically file that are comparable to what the  
5 judges would have used previously. So you're not  
6 seeing any real change in transfers.

7           There are other jurisdictions where  
8 the Commonwealth's Attorneys are saying, or at least  
9 implicitly, saying, We're going to prove how tough we  
10 are on crime; we're going to send more of these kids  
11 into the adult system.

12           MR. DARDEN: So where is the standard  
13 of professional practice among the Commonwealth  
14 Attorneys that would bring about some sort of  
15 uniform --

16           MR. SHEPHERD: I have had, in fact,  
17 some conversations with the Commonwealth Attorneys  
18 Training Council, and I have provided them with some  
19 information from Florida, which unfortunately was  
20 kind of the originator and exporter of this approach,  
21 where they have -- they are mandated by law in  
22 Florida to develop written criteria, guidelines,  
23 protocols that are going to be used in the  
24 prosecutors' offices for making these decisions.

25           And I have secured from Florida these

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1 criteria, these guidelines that have been developed,  
2 and have provided them to Professor Walter Felton at  
3 William and Mary, who staffs the Commonwealth  
4 Attorneys Association and their training council, and  
5 he's indicated that they really do want to do some  
6 training about what sort of screening process they  
7 should do.

8 In some instances, they're not really  
9 exercising discretion, they're just automatically  
10 saying that if it's a Part II or Part I felony.

11 MR. DARDEN: And then finally, do you  
12 know whether that practice is the case in either  
13 Hampton or Newport News?

14 MR. SHEPHERD: I have no idea. I do  
15 know some of the localities, but I won't mention at  
16 this point.

17 MR. BAUGH: We have a Newport News or  
18 Hampton attorney present?

19 MR. ELLENSON: About 15 years. What  
20 specifically were you asking?

21 MR. BAUGH: The question whether or  
22 not in Norfolk or Newport News do they automatically  
23 transfer certain offenses.

24 MR. ELLENSON: No, they use the old  
25 criteria.

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1 DR. AL-HIBRI: He's on the next  
2 panel, and his questions will be answered.

3 I want to thank all the participants  
4 in this panel. We learned a lot. Thank you very  
5 much.

6 MS. RATTLEY: We'll take a  
7 five-minute break. We're still running behind time,  
8 so will the next panel come forward.

9  
10 (Break)

11  
12 MS. RATTLEY: We're coming back now  
13 to discuss the topic of the Hampton Four, which is an  
14 update on a continuing problem facing African  
15 Americans under the Virginia criminal justice system.  
16 And I wanted to now turn it over to Mr. Darden, to  
17 introduce the moderator and the panelists.

18 MR. DARDEN: I'm going to turn it  
19 immediately to the moderator, Mr. Patrick.

20 MR. PATRICK: Good evening. Thank  
21 you, Chairman. Good evening. Welcome to this  
22 afternoon session, which is titled, The Hampton Four  
23 Update, and Continuing Problems Facing African  
24 American Under Virginia's Criminal Justice System.

25 We will go in this order. We'll have

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1 Mr. James Ellenson, who's an attorney at law and the  
2 former S.W.I.S. legal counsel, and S.W.I.S. is an  
3 acronym for the Hampton Four defendants. After  
4 Mr. Ellenson, we'll have Ms. Shaun Brown, then  
5 Ms. Pat Fromal, Director of We The People, then  
6 Mr. Murray Steinberg, Director of Children First and  
7 Family Resolution Council, and then we had Mr. Walter  
8 Bingham, but he's having a problem with his voice, so  
9 sitting in for him will be Mr. Andrew Shannon, and we  
10 will hear all the panelists first and then we will  
11 take questions, so we'll now hear from Mr. James  
12 Ellenson.

13 MR. ELLENSON: My name is Jim  
14 Ellenson. I'm an attorney and --

15 MS. RATTLEY: Mr. Ellenson, take the  
16 mike, please.

17 MR. ELLENSON: Okay. I'll stand.  
18 I'm used to speaking to juries and courts, so I think  
19 everybody should be able to hear me. My name is Jim  
20 Ellenson. I'm an attorney and I practice in Newport  
21 News. My office is in Newport News, and I've been  
22 practicing since 1981. One brief correction. I  
23 wasn't S.W.I.S.'s attorney, I was -- S.W.I.S. paid  
24 the fee for both Melvin Stephens and Allen Iverson.  
25 Those are two of the four that I actually represented

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1 in the case. They paid the fee, but I was not their,  
2 S.W.I.S.'s, lawyer. I was Mr. Stephens' lawyer at  
3 first, and then Mr. Iverson retained me.

4 So sort of to get a background so  
5 you'll understand how it all came to pass, I'll try  
6 to be brief and run through it. Melvin Stephens and  
7 his mother come to my office. Melvin Stephens is 17.  
8 This ties in nicely with your last topic with David  
9 Baugh and a transfer which shouldn't have been  
10 automatic, but -- I'm getting ahead of myself.

11 Stephens comes in the office. He's  
12 17 years old. He knows who I am. I practice a lot  
13 in this area, so I'm sort of halfway decently known  
14 as a criminal defense lawyer in this area. They come  
15 in. Melvin says, Last Saturday night, I went with a  
16 couple of my friends to a bowling alley and we got  
17 into a fight.

18 Melvin, what happened?

19 Well, I was on one end of the alley  
20 with some of my friends, and on the other end of the  
21 alley, Allen Iverson -- who I didn't know, who was a  
22 classmate and a friend of Melvin's -- Allen and  
23 another fellow went down to the other end of the  
24 bowling alley to get a hamburger, and down there,  
25 there was just a whole lot of talking and commotion.

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1 I don't really know what was going on, but they  
2 started fighting down there, so I went down there to  
3 be with my buddy. I went down there to help out.

4 Everyone was throwing chairs. There  
5 were guys breaking glass. It was awful. We all ran  
6 out. We left. And now the police are after me.  
7 They're going to arrest me.

8 I said, All right, Melvin. Well, let  
9 me ask you something. Did anybody get hurt?

10 He said, I don't really know. I  
11 understand that there was one guy who had a broken  
12 arm, and I think a girl got some stitches.

13 Okay. Have you ever been in trouble  
14 before, Melvin?

15 Nope, I've never been in trouble a  
16 day in my life.

17 How old are you?

18 I'm 17.

19 And you're in 12th grade at Bethel  
20 High School?

21 Yes.

22 And you're all set to graduate?

23 Yes.

24 And you'll graduate on time?

25 Yes.

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1 Do you have any plans afterwards?

2 Yeah, I'm supposed to be going to a  
3 junior college out in Missouri.

4 I said, Well, no, Melvin, it doesn't  
5 sound like this is going to be a real serious case,  
6 so, you know, I'll quote you a fee and I'll come with  
7 you, and we'll go turn yourself in; and I would  
8 predict that you're looking at probation, maybe a  
9 male mentoring program, some community service, if  
10 there's any restitution involved. I would predict  
11 that's what's going to happen to you.

12 And I said this on the basis of about  
13 15 years of experience.

14 Imagine my surprise when I get a  
15 transfer motion from the Commonwealth's Attorneys  
16 office. What is this? Why are you trying to  
17 transfer this kid? He's never been in trouble.  
18 We've got the report from the juvenile probation  
19 officer who says there were no guns involved in the  
20 fight, no knives. The kids didn't go there to fight.  
21 The kids went there to bowl. Of all the people that  
22 were involved in the fight, four black kids were the  
23 ones that got arrested. Nobody else got arrested.  
24 Nobody else has been charged.

25 Judge, the juvenile probation officer

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1 says, this case should not be certified to be tried  
2 as an adult. My recommendation is forty hours of  
3 community service work, pay restitution, and put the  
4 kid on probation. He's supposed to go to college in  
5 the Fall, and if everything works out, then, you  
6 know, he'll come back next summer, and we'll see if  
7 he's done well in school, then the case should be  
8 dropped and that will be the end of it.

9           The judge said, No, I'm not going to  
10 do that. This is a very serious case. The  
11 Commonwealth Attorney is in there ranting and raving.  
12 Send this case across the street to circuit court.

13           Our preliminary hearing for Melvin  
14 Stephens was along with -- we had the same  
15 preliminary hearing as Allen Iverson's case. The  
16 exact same argument -- I was not Mr. Iverson's  
17 attorney at the time. Herb Kelly was his lawyer at  
18 the time. The same arguments were made on behalf of  
19 Mr. Iverson, the same juvenile probation officer had  
20 made the same recommendations for Mr. Iverson.

21           Nevertheless, the cases were both  
22 certified and sent over to circuit court. My  
23 immediate reaction when a juvenile's case is  
24 transferred over to circuit court, the juvenile's  
25 case can be had -- you can have a trial by jury.

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1 When you have a trial by jury, the judge will  
2 sentence, but the jury decides if you're guilty or  
3 innocent.

4 This is a very important point  
5 because with adults it's different. In adults, the  
6 jury also sentences, so because of that, you're  
7 rather loath to take a jury trial if you have an  
8 adult as a defendant.

9 If I have a criminal defendant, and  
10 let's say he's guilty of possession of cocaine, a  
11 judge who has seen that case a hundred times is  
12 probably going to follow the guidelines, and if  
13 guidelines call for six months or a year, he'll  
14 probably do that. However, if it's a jury and you've  
15 got the prosecuting attorney saying, Drug people  
16 should be locked up, lock them away, you're looking  
17 at ten years, so you don't tend to take juries.  
18 You're gambling a lot.

19 I'm sure Mr. Shepherd and Mr. Baugh,  
20 if they're still in the audience, know that. The law  
21 is crystal clear. You're entitled to a jury trial  
22 and the jury will not sentence you if you're a  
23 juvenile.

24 We get over to circuit court. I  
25 demand a jury trial. The case is set before Judge

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1 Overton. Overton calls me the day before the trial  
2 and he says, Mr. Ellenson, if you insist on taking a  
3 jury trial, I'm going to let the jury sentence.

4 I say, Judge, you can't do that. The  
5 law is plain.

6 I'm sorry. That's what I'm going to  
7 do.

8 There were four kids that were  
9 ultimately charged. I was the only one that took a  
10 jury trial. The other three, Iverson, Simmons, and  
11 Wynn, opted for a judge trial. They did not take a  
12 jury. Despite Judge Overton's warnings to me, I  
13 nevertheless took the jury trial. That first jury,  
14 which consisted of six whites and six blacks, heard  
15 the evidence, which I essentially have said to you  
16 today. Who started the fight? That's a good  
17 question. If you listen to the whites, the fight  
18 started because Allen Iverson went over there and he  
19 was running off at the mouth.

20 If you listen to the blacks, the  
21 fight started because the white protagonist, who is a  
22 convicted felon -- he has a cocaine felony conviction  
23 at the time. He was 23 -- he and his brother started  
24 the fight. That's what the black kids say.

25 You know, that's -- I guess that's

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1 why you have a jury case. That's why you go to  
2 court. You know, I wasn't there. None of you-all  
3 were there. Sort of who knows? But I've got all my  
4 kids and my witnesses who are saying it happened one  
5 way, and you have other folks that say it happened  
6 the other way. Well, the first jury trial ends up in  
7 a hung jury. They can't decide what to do.

8           They just -- Judge Overton wants to  
9 lock them in the jury room until ten o'clock. I'm  
10 not serving you guys dinner. I want a decision.

11           Judge, we can't.

12           You can hear them in the back  
13 screaming and yelling and carrying on, and they just  
14 couldn't make a decision. Jury ends up hung. The  
15 case is then reset for another jury trial.

16           In the interim, Judge Overton heard  
17 the evidence for the other three young men, and he's  
18 found all of them guilty. He's had no problem  
19 disbelieving every black kid and believing every  
20 white kid; and I suppose if you want to talk about  
21 what Mr. Baugh or the Professor Shepherd talked  
22 about, well, you have different kids who have  
23 different levels of culpability in any one sort of a  
24 crime.

25           Well, if you were going to say who

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1 was the most culpable, I think the argument could  
2 very well be that my client, Melvin Stephens, was the  
3 most culpable, because here on the other side of the  
4 bowling alley is Allen Iverson engaged in a fight,  
5 and there's about two black kids, and there's about  
6 five white kids on the other end of the bowling alley  
7 fighting, and what does Melvin Stephens do? He sort  
8 of leads the charge and takes about three or four or  
9 five other kids with him down to the other end of the  
10 bowling alley. To use the basketball analogy, it's  
11 sort of the fight's going on at center court and  
12 Melvin Stephens jumps off the bench and runs down  
13 there and gets into it. That is essentially the  
14 evidence. Yet, a racially mixed jury the first time  
15 hearing that evidence, found Melvin -- they couldn't  
16 decide at all.

17           The second time the jury consisted of  
18 eight whites and four blacks, and they convicted him  
19 of an assault and battery. That's it. Simple  
20 assault and battery.

21           We appealed the case, and the Court  
22 of Appeals, by the way, ruled that Judge Overton was  
23 completely wrong, that it wasn't even close, that the  
24 jury should not have been allowed to sentence, and  
25 they sent the case back down for sentencing. That

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1 sentencing finally occurred in January of this year.  
2 That's how long the case took to sort of wind its way  
3 all around.

4           And the ultimate sentence for Melvin  
5 Stephens was six months, all suspended. And he's  
6 gone on and he's in college down in Shaw University,  
7 and he's doing just fine. He went out to Missouri to  
8 the junior college, and now he's over at Shaw. He's  
9 also got a bill of about \$9,000 because he took two  
10 jury trials; and even though he was, in the end, a  
11 simple assault and battery, the Commonwealth Attorney  
12 has decided that he nevertheless needs to pay all  
13 these court costs, and he's got \$8,997 that he's got  
14 to pay.

15           What happened in the meantime with  
16 the other three cases is that they all went up to the  
17 Court of Appeals, and the Court of Appeals threw out  
18 the convictions because they said you couldn't be  
19 found guilty of maiming by mob, because essentially  
20 the boys didn't go there to get into a fight. They  
21 went there to bowl, so there wasn't any sort of  
22 shared intent for a mob action. But what they said  
23 is that Hampton Commonwealth Attorney, you can feel  
24 free to go off, and if you want to prosecute for a  
25 simple maiming, for simple assault and battery, if

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1 you feel strongly that you can prove beyond a  
2 reasonable doubt Allen Iverson hit this person, then  
3 go for it. You're allowed to do that.

4           The Commonwealth Attorney chose not  
5 to reinstitute any litigation against those three  
6 and -- but Melvin was sort of stuck. On the other  
7 hand, Melvin didn't have to spend about four to five  
8 months in jail, which the other three guys did before  
9 Wilder gave -- let them out early basically. He  
10 didn't pardon them or anything. So I think that's  
11 pretty much the story now. That's the update.

12           I've got these -- I guess Shaun wants  
13 me to give the -- these are the actual -- this is the  
14 final sentencing order on Melvin Stephens, and he's  
15 got to pay the \$8,997.

16           I guess my involvement, just briefly  
17 how the thing with Iverson is, after he got -- how I  
18 got involved with Iverson, after he got the 15 years  
19 with ten suspended, then that's when he retained me  
20 for the appeal, and there was a rather tumultuous few  
21 months there in trying to get him out and everything  
22 else.

23           I would like to take this as a public  
24 opportunity to thank one attorney who did a great  
25 deal, and I think throughout the whole -- while this

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1 thing was going on, he did it -- he was kind of  
2 behind the scenes. His name is Theophlise Twitty.  
3 He's a former Director of Peninsula Legal Aid. He  
4 was in Richmond at the time. He was doing something  
5 with Wilder. I think he was the Director of Public  
6 Safety, or something, and he was absolutely  
7 instrumental in hooking up a lot of these things, as  
8 far as how Allen actually got out of city farm.

9 I think that's about where I'm at. I  
10 have to leave fairly soon, so I don't know if you  
11 want to have more presentations.

12 MS. RATTLEY: We wanted to hear from  
13 everyone, Mr. Ellenson, and then we would have  
14 questions to the panel. We're operating on a very  
15 tight schedule.

16 MR. PATRICK: Thank you, Chairman.  
17 We're being -- fighting an ever-losing battle with  
18 time all day long. Being cognizant of that, Ms.  
19 Shaun Brown.

20 MS. BROWN: I'm going to try to make  
21 my remarks brief as well, because I think it's very  
22 important we get through the panel and ask questions  
23 because there are lots of details that I know you  
24 want to understand.

25 This morning we had an opportunity to

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1 listen to the information regarding the sentencing,  
2 and I think one of your commissioners commented on  
3 the amount of information that you were given this  
4 morning; but I think beyond focusing on the questions  
5 about the inequality of the sentencing, if I can  
6 follow up on something that Reverend Marcellus Harris  
7 said earlier this morning, and that is, some of our  
8 concerns in tracking the policies of the Commonwealth  
9 Attorney's Office, and the concerns that we have in  
10 terms of addressing the Judicial Review Commission.

11 Attorney Ellenson gave a very brief  
12 version of a long ordeal that pretty much could have  
13 resulted in a major race riot in the City of Hampton  
14 and on the Peninsula. If it were not for many of the  
15 people sitting at this table, and some of the people  
16 in the audience, and thousands of people here in the  
17 City of Hampton, there would have been a race riot  
18 that would not even begin to address what happened in  
19 the '60's.

20 So I think it's important that you  
21 understand that your staff members came three years  
22 ago in 1993, and we were glad to see them, and we  
23 very much believe that that had a lot to do with  
24 Allen Iverson staying in the city farm and not going  
25 to the penitentiary, as daily calls were made to send

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1 him there, as well as the other young men who were in  
2 the Hampton City Jail.

3           There is an inherent problem in the  
4 judicial system in Virginia, and the ability of the  
5 judiciary to remain impartial. In 1985, the law in  
6 Virginia changed to revoke the rights of the people  
7 of Virginia, and to establish instead a judicial  
8 inquiry and review commission. There are only seven  
9 members of the Judicial Review Commission, all of  
10 whom are political appointees.

11           Currently B. M. Milner of the  
12 Judicial Review Commission is a member of the law  
13 firm of Jones, Blechman, Woltz & Kelly. If you might  
14 recall, Attorney Ellenson mentioned that Attorney  
15 Kelly was Allen Iverson's first attorney; so as you  
16 can see, we felt that we really had no recourse in  
17 terms of the decision that Judge Overton had made.  
18 There was no place to go. Here sitting on the  
19 Judicial Review Commission in Richmond was a member  
20 of the law partner who represented Allen Iverson, and  
21 later that representation by Attorney Kelly lead to a  
22 malpractice suit by Iverson, which was dropped.

23           One might say there was some  
24 intimidation there, but that is yet to be seen, and  
25 that's a discussion at another date. But the point

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1 is, we had no place to go.

2 Our recourse, as I said, is and  
3 still -- still is and was limited at the time. It is  
4 the usual course of business for lawyers on the  
5 Peninsula to look to the community for help in  
6 keeping the playing ground and the court fair,  
7 especially if their clients are black, male, and  
8 young. Here on the Peninsula, lawyers will quickly  
9 say that all they want is a fair chance for their  
10 clients in court.

11 In this community, we found that the  
12 Hampton Four was no exception. Not only was it no  
13 exception, but many of the tactics and strategies to  
14 keep the playing ground fair were used and can be  
15 reflected in the cases of Stephens, Wynn, Iverson,  
16 and Simmons.

17 The influence of legal variables and  
18 the extra legal variables we heard the gentleman,  
19 Dr. Kern, talk about this morning, and the political  
20 motivation, determine the environment in which the  
21 lawyers and all of us as supporters had to operate  
22 in.

23 Before drawing any further  
24 conclusion, or even beginning to make some  
25 suggestions that some of us on the panel would like

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1 to make, I think it's important to note in the  
2 community we found three types of views of the  
3 criminal justice system. They can be quickly  
4 summarized as follows: The legal system here  
5 reflects the authority, control, and interest of  
6 those holding political power. Efforts are made to  
7 create a perception that those in authority represent  
8 the will of the masses.

9 As a result of this, extra legal  
10 variables, such as your level of poverty, the color  
11 of your skin, your age, your sex, your education,  
12 your ability to find a lawyer that will not be  
13 threatened, who is willing to go to court for you,  
14 are all attributes of offenders that may increase the  
15 severity of sentencing directly or indirectly here on  
16 the Peninsula.

17 The legal -- and those, of course,  
18 influence the legal variables and whether you take a  
19 plea, or trial, or prior record of criminal history.  
20 I would suggest that black American males on the  
21 Peninsula are viewed as terrorists. I would go far  
22 beyond the description of stereotypes that you talked  
23 about, Mr. Darden, this morning, or even some of the  
24 descriptions that Dr. Kern talked about the impact of  
25 the stereotypes on the legal system.

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1                   As one of many who sat in the  
2 courtroom with Judge Overton, the concern of the  
3 public safety and the issues of whether or not  
4 Iverson and Simmons and Wynn should be released for  
5 bond, were major issues and major points of  
6 discussion. They were a threat to society. And we  
7 heard that time and time again.

8                   One of the ways that the terrorists,  
9 as I say, in terms of perception are controlled and  
10 somewhat subdued is that efforts are made, I think,  
11 by the Commonwealth Attorney's Office to politicize  
12 the crime of the offenders in a way to try to openly  
13 publicize their motives.

14                  There's another tactic that we saw --  
15 we see even in some of the cases today, and what we  
16 saw back in '93, in terms of trying to use  
17 traditional offenses to charge, in this case, the  
18 students. The maiming by mob charge which Attorney  
19 Ellenson talked about before is very interesting and  
20 applies very much to your conversations this morning  
21 about the Virginia sentencing guidelines.

22                  Because as was discussed this  
23 morning, if the Commonwealth offers -- if they know  
24 what the sentences are going to be and what the  
25 guidelines are for judges, then they can maneuver and

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1 manipulate the various sentences to make sure that  
2 the judges have no option but to sentence and to use  
3 certain sentencing procedures.

4 In the second view, the legal system  
5 here, it's reflected in terms of a shared society  
6 values and a consensus of moral solidarity. The  
7 prior -- the variables of prior record and criminal  
8 history are indicators of an offender's unwillingness  
9 to conform to society's moral standard. Where racism  
10 is ingrained, and of course we believe that truly is  
11 the case here, the sentencing is even more severe.

12 This is an important point in terms  
13 of the role of the Commonwealth Attorney's Office  
14 again, because just as we were involved in raising  
15 the level of consciousness and raising money to pay  
16 the legal fees, there was an opposing, and just as  
17 vigorous, campaign by people who could be seen as  
18 associated with the Commonwealth's office that they  
19 had to persuade the community that these fellows, in  
20 fact, had prior records, that they were a menace to  
21 society, and there was a constant effort to justify  
22 the public -- to justify the maiming by mob charge.  
23 It's as if the Commonwealth's office would say,  
24 Charge them with maiming by mob and then go out in  
25 the court of public opinion to try to convince the

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1 community that that is the case, and because of their  
2 prior records, which they had none, because of their  
3 criminal history, because of where they live, because  
4 of their parents, then they deserve to go to jail, in  
5 particular they deserve to go to the penitentiary.

6 Here it's important in this third  
7 view of what you see on the Peninsula, I believe it's  
8 a combination of all of these legal variables, and  
9 what I call the extra legal variables: The color of  
10 your skin; the level of your income; most  
11 importantly, as I mentioned to one of your  
12 Commissioners earlier this morning, we have a  
13 tremendous problem here in finding lawyers to go to  
14 court.

15 It is a problem where we can find  
16 attorneys, and given if they are white attorneys  
17 representing black people, we soon expect that the  
18 white attorneys are sanctioned or criticized in some  
19 form or fashion because they have black clients. I'm  
20 not a lawyer so I can say things that some of the  
21 legal minds at this table can't say, but I run into  
22 that all the time, and I see that it's not just a  
23 case of not being able to find a lawyer; but when you  
24 find a lawyer and if the lawyer is white and you are  
25 black, and if they defend you and they do a good job,

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1 then the lawyers have problems for some time going  
2 before other judges.

3 I think that this last view of all of  
4 these kinds of variables coupled together best  
5 explains the environment that all of us had to  
6 operate. With little or no means of legal redress,  
7 meetings, marches, and rallies in a normal show of  
8 support and concern. In the 24-hour watchful eye of  
9 Lyn Simmons, who represented the other young men, and  
10 Ellenson, and a number of other legal minds, and I  
11 have to say these people will forever remain nameless  
12 because of fear of retaliation, these people were  
13 very much involved in creating an environment to keep  
14 track of things on an hourly and on a daily basis.

15 They did so in order to give some  
16 assistance and some hope again that Allen Iverson  
17 would not be moved from the city farm to the  
18 penitentiary, and Xavier Wynn and Michael Simmons  
19 would remain at the Hampton City Jail; and, of  
20 course, Melvin Stephens would remain in school.

21 With little or no legal redress, we  
22 were forced to come together, and as one of our  
23 flyers would point out, stay together. We have some  
24 of the various flyers. What we have here, the  
25 articles, newspaper articles that were in the various

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1 newspapers, the magazines, as you might well imagine,  
2 with little or no legal redress, we had to resort to  
3 the environment on -- outside of the courtroom to try  
4 to keep, as we say, the playing ground in the  
5 courtroom fair. Tremendous amount of public support  
6 nationwide in order to try to keep an eye on what was  
7 going on here with these cases.

8 I think you're here because you  
9 understand, like us, that this is the tip of the  
10 iceberg. There are other people who will come later  
11 today. They had to be convinced to come because,  
12 again, of a concern of threats of what would happen  
13 if they came to all places, City Hall, City Council  
14 Chambers, to talk about their concerns. They are  
15 coming this evening and they are coming with more  
16 details on their situations.

17 This community had to put together a  
18 tremendous fight, raise a lot of money in order to  
19 get the results that we did get. Unfortunately,  
20 Melvin has a bill close to \$9,000, and that's  
21 something this community will have to help him  
22 address; but I think what's important for you to  
23 understand is that there are a number of people who  
24 are coming, and it is our hope that you will not come  
25 back three years from now, but you came three years

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1 ago, and your staff, and took notes and had  
2 discussions, and there were some -- yes, as a result  
3 of your coming, that played a tremendous impact.

4 We're hoping now that your role will  
5 be one of seeking -- helping us to seek some justice  
6 in an environment in which we had to result to  
7 thousands of articles and flyers, and what have you,  
8 to keep things even to the point of being somewhat  
9 even.

10 The rest of the people of the panel  
11 are going to talk about the environment and some of  
12 their experiences. As Mr. Ellenson said, he has to  
13 leave, and we will try to make this short, but I  
14 think, again, it's important to understand we're only  
15 here because we seriously believe that you're going  
16 to try to do something to assist us in bringing in  
17 the right agencies in order to take a look at what's  
18 going on here on the Peninsula.

19 MR. PATRICK: Thank you, Ms. Brown.  
20 And that's a reminder that is scheduled for 6:15 p.m.  
21 this evening, we'll have an open session, so we'll  
22 have time at that time for the questions.

23 We next go to Ms. Pat Fromal.

24 MR. DARDEN: Mr. Moderator, just one  
25 quick question. I wanted to find out is Mr. Ellenson

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1 going to be able to stay for questions?

2 MS. RATTLEY: Yeah, we'll be finished  
3 and come right back --

4 MR. ELLENSON: I kind of had to leave  
5 around -- like real soon.

6 MR. PATRICK: Do you want to go ahead  
7 and ask him some questions?

8 MR. DARDEN: Well, it's up to you.  
9 You're moderating, but I think it's important --

10 MR. PATRICK: Yeah, I think it's  
11 important then that since he has to leave, that we  
12 ought to ask any questions now.

13 MR. ELLENSON: I know more specifics,  
14 I think. I can just give you facts and maybe they  
15 can give you more opinions as to how things played  
16 off.

17 MR. PATRICK: Well, does anybody else  
18 have a question for him?

19 MR. DARDEN: Mine was not really that  
20 specific, but in terms of Ms. Brown's point a moment  
21 ago that they've had difficulty -- "they" being the  
22 community of people -- getting legal counsel to carry  
23 on with the issues that they're concerned with, and  
24 from the perspective of a lawyer, I just wanted to  
25 get some insight into why that should be? What's the

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1 problem?

2 MR. ELLENSON: I'll give you a quick,  
3 easy example. After the Iverson case -- I mean, I  
4 have a wife and three kids. I've got to earn a  
5 living. I do court-appointed work. I had a judge  
6 call me in his office and say, You're not getting any  
7 more cases. I can't officially remove you from the  
8 list, but I'm not going to give you any more cases.

9 MR. DARDEN: And that's because you  
10 represented --

11 MR. ELLENSON: Yeah, he straight-up  
12 said, Because you raised so much hell over there in  
13 Hampton with the circuit court judges, I'm not going  
14 to let you come over here and raise hell with our  
15 judges, and that was it.

16 MR. DARDEN: And that's generally  
17 understood through the bar, and people have decided  
18 not to --

19 MR. ELLENSON: Unless you know --  
20 there's David Baugh, and there's a few other lawyers  
21 that really can make a living simply on retained  
22 cases, and if you're doing a lot of criminal defense  
23 work, but if you're going to keep your hand in it and  
24 you want to go to court every day, you're going to  
25 have some court-appointed cases; and if you get out

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1 here and do some of these more controversial cases,  
2 you're not going to get that kind of work.

3 And then also, on the retained cases,  
4 you're going to get people telling -- saying now, you  
5 know, that lawyer over there, he's no good, don't go  
6 to him. And sort of the word gets out like that.

7 MS. BROWN: I have been in court. He  
8 has been threatened in court by the judges.

9 MR. DARDEN: Well, does that kind of  
10 action coming from the bench constitute grounds for a  
11 complaint?

12 MS. BROWN: To who?

13 MR. DARDEN: The Judicial --  
14 Commission of Judicial Review.

15 MS. BROWN: No. They're controlled.

16 MR. DARDEN: I want Mr. Ellenson --

17 MR. ELLENSON: What good is it going  
18 to do you? It's not going to do any good.

19 MR. DARDEN: So you could complain,  
20 but you don't think it would do any good?

21 MR. ELLENSON: Correct.

22 MR. STEINBERG: The Judicial Inquiry  
23 and Review Commission in the last 26 years has only  
24 sanctioned five judges and taken two off the bench.  
25 It's a system of foxes guarding the fox house.

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1                   MR. DARDEN: I want to be really  
2 clear about this, but it does seem there's a whole  
3 string of problems that emanate from the people who  
4 want counsel not being able to get it, through the  
5 attorneys who want to give it to them being barred  
6 from doing so, to the judges introducing bias to make  
7 sure that certain kinds of issues don't come to  
8 court. Is that what you're saying?

9                   MR. ELLENSON: Yeah, I think that's  
10 what we're all saying.

11                  MS. RATTLEY: I think traditionally  
12 it's known throughout the community that if you get  
13 into trouble, and your best bet is to go out of the  
14 city to have a lawyer, and if they can reach those  
15 lawyers outside of the city before you can get there,  
16 or if they're a little weak, they will not take the  
17 case either. We've lived with that for many years.

18                  I think in the Iverson case, it all  
19 came to the surface. Embarrassment, one after the  
20 other, and they know that they will not be considered  
21 part of the game after taking a case in defiance of a  
22 particular judge or law firm, if you understand what  
23 I'm saying.

24                  MR. DARDEN: I understand.

25                  MS. RATTLEY: If I needed a lawyer, I

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1 would probably leave the city to go outside to get  
2 someone to represent me if the case involved a touchy  
3 political segment or issue.

4 MR. DARDEN: Yes. I have a follow-up  
5 that has just occurred to me in terms of what our  
6 procedures usually ask a staff. Considering the  
7 nature of your statement, could you give us a little  
8 more specific information so that we might be better  
9 able to track these actions even down to -- to where  
10 we might find the individuals who were involved in  
11 blocking you?

12 MR. ELLENSON: What do you mean,  
13 names of judges or cases or --

14 MR. DARDEN: I'm not asking you to do  
15 that, because we don't want that kind of individual  
16 identification, but we do need to at least be, I  
17 think, specific enough so that for our purposes we  
18 can try to pinpoint where the problem is. If you can  
19 do that, maybe the courts, the cities. Which city  
20 are you talking about?

21 MR. ELLENSON: I agree with them. I  
22 think it's pretty -- I think it's fairly widespread.  
23 I think the more that the judicial nominating and  
24 appointment process opens up, where you've got --  
25 where you get more of a rainbow-type of judiciary,

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1 that makes a difference, because you might have an  
2 old segregationist who's been on the bench for thirty  
3 years, who was on the bench prior to, you know,  
4 integration -- I mean, Overton, he went on the bench  
5 in 1965, and we all know Loving versus Virginia  
6 didn't happen until '67. So when he started  
7 practicing, when he started sitting on the bench,  
8 segregation was legal.

9           But once you get judges -- you know,  
10 because judges kind of all hang around, too, and once  
11 the judges get other judges and then they sit and can  
12 talk with an African American judge, for example, or  
13 a woman judge, or -- and then they get sort of a  
14 different idea, and you started breaking up -- trying  
15 to break up places like James River Country Club and  
16 those kinds of things so that these old white males  
17 don't constantly just see other old white males that  
18 they're hanging around, so I think the answer sort of  
19 lies with opening up the judicial appointment  
20 process. You get more spectrum of judges. I think  
21 that opens it up. If I go in front of a judge who's  
22 not a certain -- then you've got more of a level  
23 playing field.

24           MR. DARDEN: Let me explain my line  
25 of questioning, and then I'll be done. I hear very

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1 loud and clearly, as all of us do, the perception  
2 that you had and want us to get of the problems and  
3 the conditions that you have to operate under. For  
4 us to really move forward as an agency, and coming  
5 out of this meeting into even conclusions and  
6 recommendations that the committee, this committee  
7 might wish to forward to the appropriate authorities,  
8 the more information that you can give us, which will  
9 be specific, will give us the basis for firm  
10 conclusions. The more diffuse your statement is,  
11 then the less likely it is that it will be able to  
12 draw the conclusion that you're suggesting.

13 MR. ELLENSON: My example about  
14 Overton with the threats -- the only way you can get  
15 a fair trial in a lot of places is to take a jury,  
16 but if you take a jury and you lose, you're going to  
17 get hammered on sentencing, so that's -- so the only  
18 way -- a recommendation, if you really want to level  
19 out the playing field, don't let juries sentence in  
20 Virginia. We're one of the very few states that  
21 allow that. There's only a couple of states in the  
22 country that do that, and what that does is, as a  
23 practitioner, you don't want to take a jury because  
24 you're scared, but even though you think you got a  
25 pretty decent shot of getting the person off, and the

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1 person's truly not guilty, you can't take a jury  
2 because you can't risk it because the jury is also  
3 going to sentence.

4 MR. GALVIN: I want to ask you one  
5 more question before you leave, please. You made a  
6 general statement in terms of this, in terms of it's  
7 everywhere. What I'm looking for, and I believe  
8 Mr. Darden is looking for, is if you could be a  
9 little more specific of what you're calling  
10 everywhere. Are we talking about the entire State of  
11 Virginia, or are we talking about Hampton, Newport  
12 News? Could you be a little more specific in a  
13 geographic location?

14 MR. ELLENSON: The major places that  
15 I practice are Hampton, Norfolk, and Newport News.  
16 If I was going to rank them, I'd rank Hampton the  
17 worst, Norfolk after that, and then Newport News --  
18 Newport News is all right. It's getting there. It's  
19 getting there because --

20 MS. RATTLEY: That's good to know.

21 MR. ELLENSON: You asked me -- that's  
22 my perception.

23 MR. GALVIN: That's what we're asking  
24 is a little bit more in specific for us to be able to  
25 take some action. I'm not asking specifically in

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1 terms of what court and what judge.

2 MR. ELLENSON: Hampton certainly  
3 improved, though, because you don't have Judge Gray  
4 and you don't have Judge Overton, because Gray killed  
5 himself and Overton got promoted to the Court of  
6 Appeals. So then Chris Hutton gets his position  
7 because he gets promoted there.

8 REVEREND HARRIS: Let me ask a  
9 question before you leave. My name is Curtis Harris.  
10 In your opinion, will it be better for the majority  
11 of the citizens in this area, and for the State of  
12 Virginia, would it be better to have judges elected,  
13 or would you go for the -- keep it as it is, even  
14 though it's flawed?

15 MR. ELLENSON: Elected, because there  
16 would be more accountability. I think it would even  
17 things out.

18 MR. GALVIN: Would you like it  
19 recorded that there was a lot of sentiment from the  
20 audience on elected?

21 MS. RATTLEY: Mr. Ellenson, if you  
22 have anything in writing you wish to leave, I  
23 would --

24 MR. ELLENSON: I think Shaun's got  
25 them.

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1 MS. BROWN: We have copies.

2 MR. ELLENSON: Thank you.

3 MR. PATRICK: Thank you,

4 Mr. Ellenson.

5 Next we hear from Ms. Pat Fromal. Am  
6 I pronouncing your name correctly?

7 MS. FROMAL: Fromal.

8 I'm one of the ones that Shaun had to  
9 coerce into coming here today.

10 MS. RATTLEY: They can't hear you.

11 MS. FROMAL: I'm one of the ones that  
12 Shaun had to coerce into coming here today. My life  
13 has not been pleasant over the last five years, six  
14 years, because I stood up to a judge in Hampton. I  
15 stood up to him for several reasons. For one thing,  
16 he called me in his chamber and asked me what I was  
17 doing bringing these black people into his courtroom.

18 The reason I was bringing him into  
19 his courtroom is because I filed a civil action to  
20 prevent the illegal foreclose of a young black  
21 couple's property.

22 Now, we wouldn't be here today if it  
23 wasn't for the visibility of Allen Iverson. And  
24 bless this young man's heart, because I think the  
25 Lord gave him a mission that he didn't know about,

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1 because what's going on in Hampton and what went on  
2 in Hampton with the Iverson case, has been going on  
3 in Hampton for twenty years, maybe longer than that,  
4 but, you know, my age is only a certain span of  
5 memory.

6 Now, I grew up here. I practiced as  
7 a CPA here for twenty years before my son was killed  
8 in a Hampton street and I began to question the role  
9 of the Commonwealth Attorney's Office, so I read law  
10 and I passed the bar exam the first time I took it.  
11 I'm not very popular, maybe because I did that; maybe  
12 because I spoke out against police and judicial  
13 conspiracy in covering up the death of a six-year-old  
14 child; maybe because I objected to them building the  
15 Coliseum on private property instead of using  
16 government financing. Whatever the reason, it all  
17 culminated when I stood up to Judge Nelson Overton  
18 over Brenda Jones' property here in Hampton.

19 The bottom line is, if you want to  
20 start any place, just look at a few of the cases  
21 handled in Hampton.

22 You could almost start with any  
23 judge, but since we're here because of the Iverson  
24 case, why not start with Judge Overton? Why not ask  
25 the questions as to what his involvement was in the

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1 David Murray case, because 400 people would have  
2 saved 42 million dollars if he had acted on what he  
3 knew was going on 15 years before the public knew it.

4 Ask why a six-year-old child was  
5 struck by a probable drunk driver, someone with a  
6 forty-year history, on his way to a court-ordered AA  
7 meeting on Kecoughtan Road in Hampton, Virginia, and  
8 the Commonwealth Attorney and Assistant Commonwealth  
9 Attorney came to the scene of the crime, sent the  
10 67-year-old cataract, glass-eyed man home without a  
11 sobriety test, told the public the story the child  
12 came off the curb, and twenty years later when asked  
13 under oath, Mr. Boester said, Oh, he came from behind  
14 a parked car. I said, Mr. Boester, I lived on that  
15 street for thirty years. That's been a no-parking  
16 zone for thirty years. Did the car -- did the driver  
17 that parked the car there get a ticket? He himself  
18 looked at the accident report that's on file in  
19 Hampton Police Department -- and if it's not anymore,  
20 I still have a copy of it -- and said no decent  
21 prosecutor would have dismissed a case on this. I  
22 said, Mr. Boester, you did.

23 And then he went to work for the  
24 insurance company that was our carrier, that had the  
25 major liability, and they never let that insurance

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1 company into court. Nelson Overton saw that case, for  
2 15 years and finally demanded a twenty-five  
3 thousand-dollar settlement that's sitting in the  
4 Hampton courthouse, except for the money he gave the  
5 attorneys. He was determined we would not even get  
6 the money to bury our son.

7 Just look at a couple of those kinds  
8 of cases and ask why. Why would a judge, an  
9 impartial judicial leader, do such a thing? A  
10 judge's wife told me about ten years ago to back off.  
11 They weren't going to let me in.

12 Let me tell you a secret, ladies and  
13 gentlemen, I don't want in. I want the law to work  
14 for everybody. I want Brenda Lee Jones to be able to  
15 enjoy her property just like you and I sometimes can  
16 enjoy our property if we're not under judicial  
17 tyranny. And I want a six-year-old child, when a  
18 six-year-old child dies, I want to know why. I want  
19 an investigation of that accident.

20 When a lawyer in this town is  
21 stealing 42 million dollars from people, I want the  
22 legal community in this town to be held accountable  
23 when they know it and they're getting checks out of  
24 his trust account. I want those questions answered.

25 I want to know why a young man who's

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1 never been in trouble, doesn't have a history -- and  
2 I worked in the juvenile courts in Newport News for  
3 three years every day. I represented hundreds of  
4 juvenile defendants.

5 I had one little boy steal 36 cars.  
6 He was 12 years old, couldn't reach the accelerator.  
7 I'm giving him a lecture in my office, and he said,  
8 Ms. Fromal, now you know they ain't going to do  
9 nothing to me. I'll go up there and get a pink shirt  
10 or a red shirt. I didn't even know about pink shirts  
11 and red shirts until that day.

12 If you stay three months, you get a  
13 pink shirt. If you stay six months, you're a bad boy  
14 and you get a red shirt and you stay six months. And  
15 he was kind of looking forward to it. They had a  
16 pool table.

17 Now, that's what normally happens in  
18 the juvenile court. It's very frustrating. You do  
19 not want to see these children go to jail, but you do  
20 want to see them rehabilitated. You do want to see  
21 them taken care of. You do want to see the system do  
22 a little better than giving them a pink shirt and a  
23 red shirt.

24 But what happened to Allen Iverson  
25 and these young men in that bowling alley was

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1 disgraceful. But let me tell you something, I'll  
2 give you a group of papers, and I've been writing to  
3 Congressmen, to the Judicial Review Committee, since  
4 1990. That was three years before Allen Iverson. It  
5 was probably '89 because it was two years before I  
6 represented Brenda Jones.

7 To what response? I got one letter  
8 from a subhead of a Civil Rights Commission in  
9 Washington saying that it was really a state matter.  
10 Well, I believe in state rights. My hero is Thomas  
11 Jefferson. I liked the fact he had red hair. But  
12 state rights does not give any state the right to  
13 ignore the Constitution of the United States. It  
14 doesn't give any state the right to take away human  
15 rights. That's what we're all about.

16 You know, we want to stop talking  
17 about black, white, and purple. We want to start  
18 talking about people and what's right for people.  
19 And let me tell you what's happening in Virginia.  
20 I've got a white Jewish friend of mine here today,  
21 and there's a young lady that you're not going to  
22 believe her story when you hear it tonight I brought  
23 in from Richmond.

24 It's not just happening here in  
25 Hampton, and it's not just happening to blacks; but

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1 let me tell you something, when one of us, any one of  
2 us -- and I don't care how bad we are, how good we  
3 are -- when any one loses our Constitutional rights  
4 in any courtroom, whether it's the district court,  
5 whether it's the circuit court, whether it's the  
6 Supreme Court of the United States, when we start  
7 losing our rights in that courtroom, it affects  
8 everybody in this country. It doesn't just affect  
9 the person in that courtroom that day -- and whether  
10 white America believes it -- in every decision made  
11 by every judge in every court affects them  
12 personally. Personally.

13 Now, if white people can't get a fair  
14 hearing in this Good Old Boy state, what do you think  
15 is happening to black people? And I promised I  
16 wouldn't even go that far, so I'm going to stop  
17 there, and I'm going to give you lots of reading  
18 material.

19 MS. RATTLEY: Thank you. The staff  
20 will come and pick that up.

21 MR. PATRICK: Next we'll hear from  
22 Ms. Joyce Hobson.

23 MS. HOBSON: Members of the Civil  
24 Rights Commission, first permit me to thank you for  
25 giving the people of this community an opportunity to

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1 share some of their judicial system experiences.

2 Secondly, permit me to ask, number  
3 one, what is your mission? Number two, what are your  
4 standard operating procedures? And, number three,  
5 when will you publish your findings? And, number  
6 four, how will the commission implement or effect  
7 changes that help people to have just, equitable, and  
8 fair treatment as they utilize the judicial system?  
9 Not that I want you to answer it today, but perhaps  
10 in writing in the near future.

11 In terms of the case of the Hampton  
12 Four, let me say for the record, that the S.W.I.S.  
13 Legal Defense Fund, which is now defunct, sent  
14 letters ascertaining the support of local, state, and  
15 national civil rights organizations and groups that  
16 should have lent their support; namely, the Southern  
17 Poverty Law Center, the Virginia Legislative Black  
18 Caucus, the NAACP Legal Defense Fund, the Southern  
19 Christian Leadership Conference, let me note and say  
20 that this conference, this group -- it's a state  
21 group -- did lend its support throughout. Had it not  
22 been for that group, I don't think we could have had  
23 the success we had with the Hampton Four case.

24 In addition to that, we notified and  
25 wrote to the National Association for the Advancement

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1 of Colored People, the National Urban League, the  
2 Martin Luther King, Jr. Center for Social Change,  
3 Virginia State NAACP, the Hampton branch NAACP, and  
4 the Newport News branch NAACP.

5 I will submit to you letters of  
6 response at a later date, most of which denied  
7 involvement and/or seeked not to follow the S.W.I.S.  
8 legal defense fund, which was a local community  
9 support group, so that they could control the outcome  
10 that would best serve their organization with little  
11 regard about the outcome of the cases of these four  
12 young boys. They saw this as a golden opportunity to  
13 increase membership and increase PR visibility  
14 nationally.

15 As for my personal harassment as  
16 spokesperson of the S.W.I.S. legal defense fund, it  
17 came in the following forms: Verbal, written, wire  
18 tapping of my home telephone, searching of my school  
19 records in this chamber, being followed by officers  
20 of the law, a death threat. Mind you, that these  
21 tactics have not stopped. Just this week I was  
22 followed by a policeman.

23 The documentation of these instances  
24 of harassment will be filed with this commission, and  
25 again, I thank you.

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1 MR. PATRICK: Thank you, Ms. Hobson.

2 We next hear from Mr. Steinberg,  
3 Director of Children First and Family Resolution  
4 Council.

5 MR. STEINBERG: Thank you for this  
6 opportunity. I am a legal analyst, a family  
7 counselor, and a mediator. I'd say seven years ago I  
8 didn't know to spell "mediator" and now I am one. I  
9 do counsel about a thousand people a year. About  
10 half of those are African Americans. About  
11 two-thirds are fathers. I will share with you some  
12 of the experiences that I've had, plus those I've  
13 gained from talking with other people.

14 It's easy to follow what has already  
15 been said. I'll get into the juvenile justice system  
16 in a minute, but primarily we're talking about the  
17 whole system of legal, what I call injustice. It is  
18 a court system and a legal system out of control.  
19 Judges don't have to answer to anybody on this earth.  
20 We've already indicated that. And if you try to get  
21 a grievance filed against a judge, they normally get  
22 dismissed summarily by the head of the Judicial  
23 Inquiry Review and it never gets to the commission.

24 If you file a grievance against a  
25 lawyer, it gets dismissed by the Director of the

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1 Virginia State Bar, and there is no appellate  
2 process. You can't go any further than that. Most  
3 of these records are sealed, and I guess you have to  
4 get some act of Congress to break through that  
5 privacy. They cite confidentiality, and even when we  
6 cite freedom of information, they say they're exempt.

7           When you walk in any courthouse in  
8 this land, it is filled by most of the people that I  
9 counsel, and the decision's already made before we  
10 get there. If you walk into a courthouse in this  
11 state -- and it is over throughout the state. You  
12 asked what areas of the state, it's wholesale  
13 throughout. I deal with people all over the State of  
14 Virginia, and I don't see any entity that doesn't  
15 discriminate.

16           If it happens to be a black male,  
17 then he's hit twice. If you walk into a courthouse,  
18 it's like you're walking outside of the United  
19 States. The Constitution doesn't exist. We have no  
20 freedom. Freedom to raise our children free from  
21 interference from the state doesn't exist. In this  
22 state, there are over 400 court orders a day either  
23 restricting or terminating a father's rights.  
24 Instead of telling these fathers that they should be  
25 fathers and be responsible fathers, they're telling

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1 them stay out of the lives of the children, but don't  
2 forget to keep sending those paychecks.

3           There is no due process. I've said  
4 the "due" now is "do as I say" and "do you have any  
5 money?" Freedom and liberties has been replaced with  
6 injunctions, sanctions, and incarceration. And  
7 believe me, we still have debtor's prison. All you  
8 have to do is talk to any of the sheriffs. I have  
9 talked to two of the entities in Henrico County and  
10 Chesterfield County, and they told me that between 25  
11 percent to a third of the people in their jails are  
12 in there for civil domestic matters largely related  
13 to child support. If a person's in jail for child  
14 support, they can't pay child support. They can't  
15 earn the money, they get further behind.

16           Courts now don't interpret law as the  
17 Constitution says. They make law. The legislature  
18 has now given discretion to the courts, and when you  
19 give discretion to the court, you say, Make the law  
20 and do what you want to with it. We don't go to  
21 court to get our rights anymore. We go to court to  
22 lose them. Courts restrict us.

23           And now the color associated with  
24 civil rights has widened to green. We have the best  
25 legal system that money can buy with liberty and

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1 justice for all, those who can afford it. And in  
2 domestic law, a lawyer told me there were three P's  
3 in domestic law, politics, personality and perjury.  
4 I added one more, profit.

5 As far as the Constitution goes,  
6 again, it doesn't exist. Beyond due process, how  
7 many people have you ever heard in domestic law  
8 getting a trial by jury? Doesn't happen.

9 If you think you're entitled to an  
10 arraignment, or an indictment, it doesn't exist  
11 either. Judges have said, I don't know if this is  
12 right or wrong. This is what I'm going to do. If  
13 you don't like it, you can appeal it.

14 The appellate process not only costs  
15 money, but it takes from one to three years, and even  
16 if you win at the Court of Appeals level, you have  
17 three circuit court judges, or used to be circuit  
18 court judges, ruling on another circuit court judge.  
19 Even if you win, you don't win the decision to be  
20 overturned. It's simply sent right back to the same  
21 judge, and they tell that judge, Do it again.

22 Most of the decisions that I've been  
23 familiar with and have had contact with, practically  
24 90 percent, the appellate court simply says lower  
25 court judge has not abused his discretion. Lower

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1 court decision affirmed. And this is true not only  
2 at the state level but the federal level.

3 I have known of federal cases that  
4 have been filed. Some didn't even make it to the  
5 clerk's hands so that they put a case number on it.  
6 The judges dismiss them summarily. No evidentiary  
7 hearing, no finding of facts, and on top of that, the  
8 judges, in order for you not to come back with this  
9 lawsuit, civil rights claim, under 42 USC 1983, they  
10 simply sanction you. I've been sanctioned \$2,500  
11 just for bringing the case, and the judge in my case  
12 says, And I am thinking about telling you -- or  
13 having you come to me first before you file any more.  
14 I'm giving serious consideration to an injunction  
15 barring you from filing any more matters in this  
16 court without securing the advance permission of this  
17 court.

18 If you try to represent your own  
19 child, as I did -- I put my own daughter as next  
20 friend and natural father on one of my petitions. I  
21 was accused of practicing law, and I've now been  
22 enjoined from the continuation of practicing law.  
23 I'm having to fight that in the Supreme Court of  
24 Virginia, but I've been told that last year there  
25 were 3,300 cases -- petitions before the Supreme

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1 Court of Virginia, and only 11 were heard. So my  
2 chances of even getting heard are slim to none.

3 I was also told that in civil  
4 matters, the Assistant Attorney General says, Claims  
5 for civil relief need not be supported by the  
6 specific statutory provision. They don't even need  
7 laws.

8 There is a tie-in to all of this and  
9 the matter before you today. When fathers are taken  
10 out of the lives of their children -- and the  
11 previous panel talked about juvenile justice and  
12 building bigger programs. We don't need to build  
13 bigger programs, we need to get government and courts  
14 out of our lives when they're not wanted and needed.

15 There is no compelling state interest  
16 involved in most of these cases unless there is abuse  
17 or neglect. And what happens is that when fathers  
18 are out of the lives of their children, they are more  
19 susceptible to emotional health problems, physical  
20 health problems, making poor grades in school,  
21 teenage suicide, teenage drugs, crime, and the list  
22 goes on. We don't need to necessarily build bigger  
23 prisons if we just do the opposite, make sure that  
24 parents parent their children.

25 In short, I guess in closing, the

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1 system we now have is a system out of control, and I  
2 call it a system of the lawyers, by the lawyers, for  
3 the lawyers for profit. Judges become -- judges were  
4 lawyers, and it is a system full of cronyism. I hope  
5 that you can help us before it's too late.

6 I have people that come to me that  
7 are talking about overthrowing the government, and I  
8 don't believe in that. I don't believe in violence.  
9 But I surely understand it when I hear of someone  
10 walking in shooting up a courtroom or doing something  
11 bizarre. I can never condone it, but I can  
12 understand it. I hope you help correct the situation  
13 before it gets out of control even more.

14 MR. PATRICK: Mr. Steinberg, thank  
15 you.

16 Our final panelist is Mr. Andrew  
17 Shannon, who is a member of the neighborhood council  
18 24-34 A, Inc, which is a civic organization.  
19 Mr. Shannon.

20 MR. SHANNON: Thank you. I'll use  
21 the podium. Good afternoon to the Chairperson,  
22 members of the committee, staff, panelists, and, of  
23 course, the audience.

24 Unfortunately the chairperson of  
25 24-34 A, Mr. Walter Bingham -- he's present in the

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1 audience -- he's unable to speak, but I'll try to do  
2 my best to speak on his behalf, but I certainly  
3 appreciate him giving me this opportunity to speak  
4 and represent --

5 MS. RATTLEY: Could you ask him to  
6 stand?

7 MR. SHANNON: Would you stand,  
8 Mr. Bingham. Thank you.

9 I certainly appreciate Mr. Bingham  
10 giving me this opportunity to speak on behalf of the  
11 council. I'd like to continue on the theme, and  
12 update a continuing problem as a topic, subtopic, The  
13 Commerce of Justice when there is Wealth, or the  
14 Blindness of Justice.

15 Several years ago, I was asked, Are  
16 you a slave? This question was presented to me by a  
17 very prominent leader of civil rights in Newport  
18 News, a person who I admired greatly and has inspired  
19 me to fight for what is right. I observed conditions  
20 of inequality in the City of Newport News, towards  
21 the citizens of the southeast community. I observed  
22 public officials use public funds for their own  
23 personal gain. I observed, in the same community  
24 Allen Iverson grew up in, a community center that did  
25 not have adequate heat in the wintertime and no

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1 air-conditioning in the summertime when other  
2 recreational facilities had these resources.

3 But I was able to ascertain the  
4 reason the facility did not have the resources. I  
5 did not have the adequate funds because the funds in  
6 the African American community were only on paper.  
7 In reality, it was a slush fund for city manager.

8 When I began to speak out on these  
9 issues, there was silence among the elected officials  
10 chosen to represent the people, silence from the  
11 local branch of the nation's oldest civil rights  
12 group, but, you know, I found encouragement through  
13 the community. In the midst of the hostile  
14 retaliatory environment that I was subjected to as an  
15 employee of the City of Newport News, because I cared  
16 about our youth and having resources for them, I  
17 found peace. I found support and encouragement. I  
18 found peace from a former African American female,  
19 mayor of Newport News, who lived in the City of  
20 Newport News, who is Mrs. Jessie Rattley.

21 I found peace from an active vocal  
22 Baptist minister involved in civil rights in midtown  
23 Newport News, Reverend Marcellus Harris. I found  
24 hope from the president of the state chapter of the  
25 Southern Christian Leadership Council all the way in

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1 Hopewell, Virginia, Reverend Curtis Harris; and I  
2 found special guidance from my home church, First  
3 Baptist Church of Denbigh, and members.

4 But I also found encouragement from a  
5 local neighborhood council, 24-34 A, whose president  
6 I'm speaking on behalf of today, Mr. Walter Bingham.  
7 One of the faithful members of 24-34 A is Mr. O'Neil,  
8 who is the grandfather of Allen Iverson, one of the,  
9 quote, Hampton Four, and I've heard Mr. Bingham and  
10 others speak earlier today while you-all were in  
11 discussions, and he mentioned to me that Mr. O'Neil,  
12 said -- that's Allen's grandfather -- said all his  
13 grandson wanted to do was play basketball. That was  
14 his goal. Yet he had to endure all these obstacles.  
15 If you would like an update on the continuing  
16 problems, I am not here to sugar-coat the issue.

17 Before you complete your fact-finding  
18 meeting and community forum, you'll be presented with  
19 a well-oiled machine of money makers and justice  
20 takers. They are the members of an elitist  
21 organization, whoever the print media loves to quote.  
22 They tell you there is no problem. Everything is  
23 fine, always has been and always will be.

24 Justice is blind without grass-root  
25 organizations, and people who stand up and take a

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1 stand when there is a need for street lights,  
2 neighborhood police precincts, and services available  
3 for the disenfranchised. So I submit to you today,  
4 yes, the problems are increasing because the  
5 suppression of people are continuing, and the climate  
6 is fertile for more problems unless we take a stand  
7 against the money makers and justice takers.

8 We must take a stand when we know we  
9 are right and not succumb to the pressure of a  
10 \$20,000 to \$30,000 job, or be invited to socials or  
11 being labeled a troublemaker. So I say no, I am not  
12 a slave to injustice because of economic threats or  
13 social status. Presently I serve as the Director of  
14 Youth Services working on prevention and early  
15 intervention programs in cooperation with the  
16 Virginia Community Crime Control Act and with the  
17 Department of Juvenile Justice working to reduce  
18 recidivism in our courts.

19 Also, I'm a co-owner of the Cultural  
20 Arts Center and Davis Performing Arts, which is  
21 located in Hampton at New Market Mall, and I also  
22 serve as the Executive Director of Project Reachful,  
23 which is a Peninsula district, not a Methodist  
24 outreach ministry.

25 We have money makers and justice

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1 takers on some of our city councils, particularly in  
2 Newport News. We have influence peddlers where --  
3 Hampton as well, but I have to speak on what I know,  
4 and I have others who can attest to what is going on  
5 in Hampton.

6 We have influence peddlers where a  
7 prominent CPA who was routinely -- who routinely  
8 conducts business with the City, also served on the  
9 council. As long as the needs of our youth go  
10 unserved, as long as the voices of members of 24-34  
11 A, and other groups, are met with a deaf ear by City  
12 officials, because we have people who have crowned  
13 themselves the kings and queens of the people, and  
14 everything must go through them, justice will  
15 continue to be injustice in Hampton and Newport News.

16 I request your assistance to take an  
17 inventory, a comprehensive assessment of civil  
18 rights, particularly in Hampton and Newport News.  
19 When attorney Ellenson spoke about retainers, I'm  
20 presently involved in a Title VII case that involves  
21 the City of Newport News, and I am concerned about  
22 the close connection of agencies, such as EEOC, with  
23 local officials involving cases.

24 Primarily they rule the cases  
25 inconclusive, which gives the plaintiffs the added

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1 financial burden against a municipality when their  
2 resources are already limited. That results in the  
3 commerce of justice.

4 I endured three years of retaliatory  
5 threats and coercion during my tenure as a center  
6 director for Newport News, which was a lower-level  
7 City position, because I spoke out about conditions.  
8 I asked you if you are looking for the truth, please  
9 come to the grassroots organizations and people who  
10 are sincere. I was betrayed by the chairman of the  
11 Legal Redress Committee of a local NAACP branch for  
12 \$40,000 and a Lincoln Continental. I was followed,  
13 put under surveillance, and a case manufactured  
14 against me. Money makers and justice takers. Thank  
15 you.

16 MR. PATRICK: Thank you.

17 MS. RATTLEY: Thank you, Mr. Shannon.  
18 Let me please add that Mr. Shannon is a prolific  
19 poet, and I think that was reflected in his  
20 presentation.

21 MR. SHANNON: Thank you.

22 MR. PATRICK: I'm looking at the  
23 clock on the wall. Are there any questions for the  
24 panelists?

25 MS. RATTLEY: May I go back here? As

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1 this morning I explained, when we come back tonight,  
2 you will be given the right to speak. If you didn't  
3 say everything you wanted to say, you can have  
4 another shot, but please let the staff person know  
5 who you are. He's keeping a list of those who would  
6 like to speak tonight.

7 Yes, sir.

8 MR. GALVIN: I have just one  
9 question. Ms. Hobson, maybe you could be, as we  
10 asked the other panelists, a little bit more specific  
11 as far as when you spoke about being followed by  
12 policemen this week.

13 MS. HOBSON: Yes.

14 MR. GALVIN: How do you make this  
15 assessment that it was a policeman who followed you?  
16 Do you have an identification, or do you have a  
17 license number? Do you have something that would aid  
18 us in this matter?

19 MS. HOBSON: Oh, yes. Yes, I do. I  
20 have a police car number. I have the route that it  
21 took. I had the time. I have all of the details  
22 that I believe are necessary to prove that I was  
23 being followed.

24 MR. GALVIN: And would you make that  
25 available to us, please?

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1 MS. HOBSON: Oh, sure. Yes.

2 MS. RATTLEY: Thank you. All right.

3 Thank you very much.

4 MR. DARDEN: Can I have a question?

5 MS. RATTLEY: Yes. One.

6 MR. DARDEN: Actually, I have two.

7 MS. RATTLEY: We're going to stop  
8 here. I invited them to dinner tonight at my home  
9 thinking that I would have an hour for lunch, I would  
10 run home and put some food in the oven. I had no  
11 lunch. Later they decided they would give me tuna  
12 fish salad, and I had to go in the back, chew it, and  
13 turn my back here to try to eat the rest of it. I  
14 was getting sick.

15 Now, if you don't let me go home  
16 during the dinner hour to cook your dinner, you're  
17 not going to get any dinner at eight o'clock.

18 REVEREND HARRIS: I make a motion to  
19 go to dinner.

20 MR. DARDEN: All right.

21 MR. GALVIN: They use a lot of  
22 authority --

23 MS. FROMAL: We're used to it.

24 MR. DARDEN: I just actually have two  
25 quick questions, maybe getting -- real, real quick.

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1 One for Ms. Hobson. I know you will give us the  
2 details about this harassment that you've had, and I  
3 just wondered if you could briefly tell us why you  
4 think you are being harassed this way?

5 MS. HOBSON: Quite frankly, I have  
6 been a political activist in the community for some  
7 twenty years. I have engineered a number of historic  
8 political firsts in terms of the African American  
9 community, so it's nothing new for me quite frankly.  
10 It just intensified during the Allen Iverson case.  
11 So it's been really a twenty-year ongoing situation  
12 for me. Now, go back to your question.

13 MR. DARDEN: Now, what is it now --  
14 you say even as late as last week?

15 MS. HOBSON: This week.

16 MR. DARDEN: This week. So I'm  
17 trying to get some sense of what's happening now that  
18 would continue --

19 MS. BROWN: The article in the paper.

20 MS. HOBSON: The announcement of your  
21 arrival.

22 MR. DARDEN: In connection with this  
23 meeting?

24 MS. HOBSON: The announcement of your  
25 arrival. The very day that the article hit the

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1 newspaper, I was followed.

2 MR. DARDEN: I'm sorry. My second  
3 question I have goes back to Ms. Brown. You  
4 mentioned something about an attorney named Kelly and  
5 malpractice.

6 MS. BROWN: I have a copy of the  
7 malpractice suit here for you.

8 MR. DARDEN: I didn't understand what  
9 that was. Could you just briefly explain what that  
10 was.

11 MS. BROWN: Attorney Ellenson  
12 explained earlier that there were a number of  
13 questions about how Attorney Kelly handled the Allen  
14 Iverson case when he was a juvenile in court, and the  
15 transfer over to circuit court, and the various  
16 procedures that Attorney Kelly did not follow to  
17 question that decision-making process to transfer him  
18 to circuit court. That was the basis of a  
19 malpractice suit for, I believe it was over a  
20 hundred-million-dollar malpractice suit against  
21 Attorney Kelly.

22 The reason why that is important is  
23 because Attorney Kelly's law partner served on the  
24 Judicial Review Commission.

25 MR. HARRIS: Hello.

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1 MS. BROWN: Therefore, we felt that  
2 we had, yes, answered the question we can send our  
3 paperwork to Richmond, but you know, it's going to  
4 fall in a black hole.

5 MR. HARRIS: Hello.

6 MR. DARDEN: Thank you.

7 MR. GALVIN: No paperwork was sent  
8 in?

9 MS. BROWN: None was sent.

10 MS. MCCLOUD: This question is for  
11 Mr. Steinberg. I think you were the one who made the  
12 most comments about the extensiveness of what I would  
13 consider, or what I would categorize as corruption in  
14 the judicial system. Are you seeing that per -- you  
15 said throughout Virginia?

16 MR. STEINBERG: Yes, ma'am.

17 MS. MCCLOUD: How do you think that  
18 compares with other states?

19 MR. STEINBERG: I network with people  
20 all around the country, and it's pretty much epidemic  
21 everywhere, but I'm more familiar with what's  
22 happening in Virginia, and the statistics show -- I  
23 mean, it's open record that Judicial Inquiry Review,  
24 as I indicated earlier, has only sanctioned five  
25 judges in 26 years and removed, or been responsible

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1 for the removal of two.

2 Either we've got a heck of a good  
3 judiciary, or we got a heck of bad check and balance  
4 system.

5 MS. BROWN: I'd like to comment to  
6 that. Several years ago my family hired F. Lee  
7 Bailey as an attorney, and one of the reasons why he  
8 took the case in Virginia is because he was willing  
9 very much to state on the record that he believed of  
10 all the states in the United States, Virginia had the  
11 most corrupt system in terms of lawyers, and that is  
12 something that led to him getting involved in our  
13 case and led to him several years ago coming to a  
14 number of the law schools in the state to speak on  
15 behalf of the system here, particularly the type of  
16 review of judges and attorneys.

17 MR. STEINBERG: If one of them gets  
18 out of line, they're penalized. We know of certain  
19 attorneys who have lost their license when they tried  
20 to report corruption. We know of certain judges that  
21 have been forced off the bench when they try to do  
22 what's right.

23 MS. FROMAL: They use the  
24 disciplinary system in Virginia to hold attorneys in  
25 line.

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1 MR. GALVIN: What do you think makes  
2 the difference that makes this area unique, or what  
3 system are they using outside of this area that  
4 doesn't have this happening?

5 MS. FROMAL: We have probably less  
6 public input than most other places. I'm not saying  
7 there's not other places that could be as bad. I  
8 can't imagine any place being worse than this, but we  
9 have no public input into either the lawyer  
10 disciplinary system, or into the review committee for  
11 judges, and what gives them such power is, our  
12 Supreme Court are not administrators of the law, they  
13 are the makers of the law, so if something doesn't go  
14 through the legislature, the Supreme Court simply  
15 writes a rule to say what they want it to.

16 Murray is a prime example in that he  
17 was practicing law without a license. Now, back to  
18 the Jones case, the judge's clerk closed a loan in  
19 the courthouse not giving information on a second  
20 mortgage. With no notice, they were doing a  
21 foreclosure sale. The judge's clerk in the  
22 courthouse, with the assistance of an attorney  
23 preparing a deed for a nonowner of a property. They  
24 do it every day. They do it so much they don't even  
25 know it's not right.

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1           Well, Murray -- last year they went  
2 after real estate agents, and it's almost a  
3 necessity. Mortgage companies have gone to real  
4 estate agents to do loan closings, because real  
5 estate agents were doing them anyway, and lawyers  
6 were getting paid for them. So they've by-stepped  
7 that and said, Okay, you're doing all the paperwork;  
8 we're going to send you the paperwork, fill in the  
9 blanks.

10           Well, they went to the legislators  
11 and said -- the lawyers went to the legislators. The  
12 judiciary, the legal community started up the  
13 legislature and you have to look at what's the  
14 percentage of lawyers in the legislature now?

15           MR. STEINBERG: Certain key  
16 committees in the courts of justice committee, out of  
17 20 it's 19.

18           MS. FROMAL: Well, they went through  
19 the legislature. They said, Okay, we're going to  
20 stop real estate people from closing loans. And it  
21 didn't pass because the bank got involved. The banks  
22 had an innate interest. That's our money. We want  
23 to know the loans are closed right. We want them  
24 done expediently. The lawyers aren't doing a good  
25 job. The legislature wouldn't touch it.

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1                   So what did the Virginia State Bar  
2 do? They had a secret meeting in Roanoke in August  
3 and went through the back door, and what they've come  
4 out with is, Okay, real estate agents can close  
5 loans, but they're now going to be under the  
6 discipline of the Virginia State Bar. What gives  
7 them that right? When those people have licensed as  
8 real estate agents, they didn't make any commitment  
9 to the Virginia State Bar. They don't pay dues to  
10 the Virginia State Bar. The Virginia State Bar is  
11 not even supposed to be a state agency. It's  
12 supposed to be financed by them. But what gives them  
13 the right to put in a little law that, Okay, we're  
14 just going to move this agency and we're going to  
15 make you disciplined. Because that's the way they  
16 control the pockets. That's the way they control who  
17 does the loan. That's the way they can tell people  
18 what to do, because if you don't do it, you're not  
19 going to do anything.

20                   And most people when they confront  
21 them like that are not like me, and run and hide  
22 their head under a rock.

23                   MR. STEINBERG: I was told they don't  
24 need law. I was told the Constitution doesn't  
25 matter. I raised the Constitution issues, and they

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1 said, No, you didn't raise them within 21 days. They  
2 said, You don't have Constitutional rights 21 days.

3 MS. MCCLLOUD: Who told you that?

4 MR. STEINBERG: Assistant  
5 Commonwealth Attorney, and the judge backed it up.

6 MS. FROMAL: When Christian Compton  
7 of the Supreme Court was questioned on Nelson Overton  
8 forcing a \$25,000 settlement, his remark in the  
9 Supreme Court building on the bench, from the bench,  
10 said, Do you mean to tell me that my judge does not  
11 have the right to use his discretion in his  
12 courtroom? And I want you to know that it is not his  
13 courtroom. The courtroom belongs to the people, and  
14 that is not Christian Compton's judge. And it's time  
15 somebody told him that besides me.

16 MS. RATTLEY: Panel, thank you very  
17 much.

18 MR. GALVIN: Thank you for not having  
19 much passion.

20 MS. FROMAL: My greatest point is  
21 that. That's exactly my point, that controlling  
22 lawyers by using the disciplinary system and  
23 particularly passionate lawyers, particularly  
24 passionate about human rights.

25 MS. RATTLEY: This session is ended.

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1 I should like to know if there's Attorney Linda  
2 Curtis in the room, Commonwealth's Attorney.

3 I want all of you to know Attorney  
4 Linda Curtis, the Commonwealth Attorney, is to speak  
5 in about five or ten minutes. She's out of sequence.  
6 She was scheduled for tomorrow, but she wants to make  
7 her presentation this afternoon. So those of you who  
8 would like to hear her -- is that Linda?

9 Come right in. This is the  
10 Commonwealth Attorney, the Honorable Linda D. Curtis.

11 We're ready to begin. Thank you,  
12 Mrs. Curtis.

13 MS. CURTIS: I'm a panelist without a  
14 panel. Thank you.

15 I'm very glad to have an opportunity  
16 to be here. I apologize for not being able to be  
17 part of the panel that you had planned for tomorrow.  
18 Unfortunately I have a case in court and I'm probably  
19 going to be tied up all day, so it's been scheduled  
20 for some time.

21 MS. RATTLEY: Would you please hold  
22 the mike closer to your mouth?

23 MS. CURTIS: I'm definitely low-tech.  
24 I apologize.

25 So as I say, I'm very glad that you

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1 can hear me out of order, and I do apologize for not  
2 being able to be part of the panel tomorrow. I want  
3 to, I guess start by telling you that you may not be  
4 aware that last -- well, actually a couple years ago,  
5 our City Council appointed a unity commission, and  
6 the unity commission worked for a year on some other  
7 issues and then reconvened to look at the issues  
8 dealing with race relations in the city.

9 MS. RATTLEY: May I correct your  
10 program. Attorney Curtis is not from the City of  
11 Newport News. She's Commonwealth Attorney in the  
12 City of Hampton.

13 MS. CURTIS: That's correct.

14 MS. RATTLEY: You have that incorrect  
15 on that sheet for today, but it is correct on the  
16 sheet for tomorrow.

17 MS. CURTIS: When I won't be here.

18 The Unity Commission, among their  
19 functions, commissioned a study to look at how the  
20 folks in Hampton perceive the delivery of services in  
21 the city, including the justice system, the school  
22 system, and other kinds of city services.

23 When they came back with their  
24 report, a copy of that was shared with me, and I  
25 thought it was very interesting to see that while

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1 citizens of Hampton across the board were satisfied  
2 with, for example, the school board and the way they  
3 dealt with racial issues, that the justice system  
4 came out in that study very poorly, and that, I'm  
5 sure doesn't surprise any of you; but what might have  
6 surprised you, and some others, was that that was  
7 across racial lines. That was not -- the sampling  
8 that they used was random and covered both African  
9 Americans and non African American community.

10 MS. RATTLEY: Is that the report  
11 Mr. Wallace gave us this morning? This was  
12 instituted by the City of Hampton?

13 MS. CURTIS: Yes. So I think that  
14 it's clearly -- clearly from my perspective, if the  
15 public doesn't have confidence in our justice system,  
16 then it doesn't work. If people don't feel that they  
17 will get a fair shake in the system, then crimes go  
18 unreported, then witnesses refuse to come to court  
19 and participate in that process, and the whole system  
20 doesn't work.

21 So when I got that report, I  
22 contacted the folks on the Unity Commission and told  
23 them that I was very interested in being a part of  
24 whatever solutions they felt they were going to be  
25 able to come up with, and continue to be very

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1 interested.

2 MS. RATTLEY: Do you have a copy of  
3 that report?

4 MS. CURTIS: No, I didn't bring it  
5 with me.

6 MR. DARDEN: Do you know the title --  
7 we have something here. We want to see if it's the  
8 same.

9 MS. CURTIS: It was a study that was  
10 commissioned by the Unity Commission. It was a  
11 survey.

12 MS. RATTLEY: Unity Commission?

13 MS. CURTIS: Yes, the Hampton  
14 Citizens' Unity Commission.

15 MR. DARDEN: Would that be the  
16 Citizens' Perception Study?

17 MS. CURTIS: I believe so.

18 MR. DARDEN: Prepared by Jeanine  
19 Perry?

20 MS. CURTIS: Yes.

21 MR. DARDEN: Okay.

22 MS. CURTIS: Mr. Darden, when he  
23 called me, asked me to talk for a few minutes about  
24 the charging process, so I have come prepared to talk  
25 to you about that part of our system.

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1                   When we talk about adult defendants,  
2 there are essentially four ways that charges can be  
3 initiated. The first way is that a citizen can go to  
4 a magistrate and make a complaint. And the  
5 magistrate has the job of determining whether there  
6 is probable cause to issue that warrant and whether  
7 the matter is, in fact, a criminal one; and the  
8 magistrate makes a determination of probable cause  
9 and then issues a warrant. That happens in many,  
10 many misdemeanor cases. It also happens in some  
11 types of felony cases, but that's fairly unusual.

12                   The second way that a charge can be  
13 initiated is that a citizen can make a complaint to  
14 the police department. The police department then,  
15 either through a uniformed officer or through an  
16 investigator, makes a determination that a charge, or  
17 charges, are appropriate and then goes to the  
18 magistrate and again presents probable cause and gets  
19 warrants.

20                   The third way would be  
21 police-initiated. That would be the sort of  
22 situation where a police officer is driving down the  
23 road and sees a car crossing the lines and pulls the  
24 car over and eventually goes to the magistrate and  
25 gets a DUI, or other kind of appropriate warrants,

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1 where the police see some criminal activity and then  
2 initiates that warrant.

3           The fourth way is the initiation of  
4 the charge through the grand jury. In Hampton -- and  
5 that does involve directly the Commonwealth's  
6 Attorney's office. In Hampton, I would say less than  
7 five percent of our indictments are initiated that  
8 way. Normally, that sort of situation arises when  
9 the police department does some sort of undercover  
10 drug operation and they have an undercover operative  
11 who's out on the street, perhaps making drug buys.  
12 The police department obviously doesn't want to make  
13 an arrest right then and there because then the  
14 undercover operative wouldn't be able to continue to  
15 work, so they wait until the operation is finished  
16 and then they will compare police reports and bring  
17 those reports to the Commonwealth Attorney's Office  
18 where they will be reviewed and charges will be  
19 determined and indictments will be prepared. And  
20 then we take those charges to the grand jury, which  
21 also serves to establish that there's probable cause,  
22 and then they issue an indictment, which in this  
23 instance, takes the place of a warrant.

24           In Hampton, the Commonwealth  
25 Attorney's Office is -- as I say, less than five

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1 percent of what we do involves initiating the charges  
2 through the grand jury. The vast majority of the  
3 charges that we get are initiated largely through  
4 police investigation, and secondarily, and much less,  
5 through citizen warrants, and our first knowledge of  
6 those charges is when the defendant has been arrested  
7 and has an initial appearance in the general district  
8 court.

9 At that point, we generally know only  
10 the defendant's name and what the charges are, and  
11 it's probably a week or ten days later that a police  
12 report comes over that gives us substantive  
13 information about the events as to how the offenses  
14 came about, what the investigation revealed, witness  
15 statements and all that sort of thing.

16 So the charging decision in Hampton  
17 largely is made at the police department level. Once  
18 it comes to our office, or if it comes to our office  
19 with a request to present indictments directly to the  
20 grand jury, then we obviously screen them and make  
21 some determination as to what charges should be, and  
22 obviously, as the case progresses along through the  
23 system, we will make determinations as to whether the  
24 evidence supports the charges that have been brought.

25 For example, the police officer may

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1 charge based on an investigation, a possession of  
2 cocaine with intent to distribute charge, which is a  
3 more serious charge. Upon looking at the evidence in  
4 the case, we may make a determination that the best  
5 we can prove is possession, as opposed to the  
6 possession with intent. Then we'll make that  
7 adjustment and continue on through the life of the  
8 case. That determination will only be made, though,  
9 after we have received the reports and that sort of  
10 thing.

11 In terms of juveniles, the process is  
12 very similar, except that we don't have the ability  
13 to initiate charges at the grand jury level with  
14 juveniles.

15 When a charge against a juvenile is  
16 sought, whether it be from -- initiated by a citizen  
17 or being initiated by a police officer, then rather  
18 than going to the magistrates office and getting a  
19 warrant, as you would do with an adult, you would go  
20 to the juvenile court service unit and get a  
21 petition, which is the juvenile equivalent of a  
22 warrant. It's a charging document that tells the  
23 individual what they're charged with, what code  
24 sections, describes the offense, that sort of thing.

25 Again, the person at the in-take

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1 office makes that same sort of probable cause  
2 determination; and again in juvenile court, you  
3 normally get the charges -- the first information  
4 that we have about charges is when they come in at  
5 that arraignment hearing. And again, we get a report  
6 on the -- and the same process takes place. And as I  
7 mentioned, we do not have the option with juveniles  
8 to initiate the charges at the grand jury level.

9           So that's largely how that process  
10 works. It is -- from my office's point of view, each  
11 case is looked at individually. The concern of this  
12 committee, and the concerns that I have heard  
13 expressed before from people in the Unity Commission  
14 study and elsewhere, involves the idea that charging  
15 is largely race-based, or that the fact there are  
16 many, many African Americans in the criminal justice  
17 system as it functions, somehow, either charging  
18 decisions, or that some other kind of racially based  
19 issue.

20           And I can only tell you that we  
21 review the cases on an individual basis, not on a  
22 class basis, not as a class of African American  
23 defendants versus non-African American defendants.  
24 We don't make decisions based on the ethnicity, the  
25 national origin, the gender, the religion, or any of

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1 the other Constitutionally protected classes.

2 The decisions that we make in  
3 individual cases as we're preparing them for trial  
4 are based on our view of whether the evidence meets  
5 the Constitutional requirements, meets the statutory  
6 requirements, and all of the other considerations  
7 that go in that vein, as opposed to other  
8 considerations which clearly do not pass any kind of  
9 muster and certainly are not proper.

10 MS. RATTLEY: You don't use  
11 perceptions when you get a young black, baggy  
12 pants --

13 MS. CURTIS: When that person comes  
14 to court, that person's -- whether that charge goes  
15 forward is based on what the evidence is against that  
16 person.

17 MS. RATTLEY: No, I'm talking about  
18 the process you just explained. You initiated a  
19 comment that you do it based on the information you  
20 have and nothing else.

21 MS. CURTIS: Right.

22 MS. RATTLEY: And since we had a  
23 panel earlier today talk about perceptions -- it was  
24 fascinating, and I just wondered if you had paid  
25 attention to that as far as images that we talked so

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1 much about today. Here's a young kid. He's in your  
2 office, and you're looking at the evidence given to  
3 you, proposed evidence, and you say all you base your  
4 decision on as to whether or not he would be  
5 prosecuted --

6 MS. CURTIS: I don't see the  
7 defendant.

8 MS. RATTLEY: Oh, okay.

9 MS. CURTIS: I don't make the  
10 decision based --

11 MS. RATTLEY: You're talking about  
12 those who do make it when you were saying that they  
13 were charged based on the evidence?

14 MS. CURTIS: Well, I guess what I'm  
15 trying to convey is that the charging decision is  
16 made either by a magistrate, who the defendant is not  
17 present at that point, based on a citizen's  
18 complaint; or based on a police officer's  
19 investigation.

20 When we assess the evidence, we'll  
21 have a warrant that says, Black male, five-eleven,  
22 date of birth, Social Security number, or white male,  
23 or whatever, but we don't have anything else. We may  
24 have a criminal background history, but that doesn't  
25 change what the evidence is in a case.

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1                   And our assessment of it in the  
2 Commonwealth Attorney's Office is not based on seeing  
3 somebody who doesn't look like me and making a  
4 determination, because I don't see anybody who  
5 doesn't look like me. I'm looking at papers. I'm  
6 looking at reports, and I may be talking to  
7 witnesses, but I've never seen the defendant. I  
8 don't know the defendant, and I don't have the  
9 opportunity to make a determination one way or the  
10 other, based on anything like that, because I don't  
11 have any contact with the defendant.

12                   MR. DARDEN: I'm sorry. I just  
13 wanted to follow up on the Chairman's point, to  
14 clarify. I think you might not have understood what  
15 she was trying to get at.

16                   We heard earlier on, as she was  
17 saying, about a number of things, but one of them, in  
18 terms of the common behavior in the Commonwealth  
19 Attorneys office was that there is a varying  
20 practice, particularly with regard to juvenile cases  
21 and transfer into the adult -- charging them as  
22 adults.

23                   And the statement was that in some  
24 cases, some places, Commonwealth Attorneys are  
25 routinely, without very much individual

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1 consideration, transferring 14-year-olds depending on  
2 the level of the crime -- I think the more serious  
3 crimes -- into adult charges. That seemed to suggest  
4 a very significant impact on African American  
5 population, and the juveniles certainly, but then  
6 also the introduction of them into the adult system  
7 at an early age has a long-term impact for them, both  
8 in terms of what might happen to them actually in  
9 incarceration at that age, as well as recidivism  
10 throughout their life.

11 So we're trying to get some sense of  
12 what you do in this charge -- the charging process.

13 MS. CURTIS: In terms of transfer.

14 MR. DARDEN: What kind of  
15 considerations come into play, and also whether in  
16 that process -- this is what the Chairman was getting  
17 at -- you have some awareness of racial factor since  
18 it seems to be a really inordinate impact for African  
19 American males?

20 MS. RATTLEY: May I add that I asked  
21 the question because it was from your own remarks  
22 when you made a point to say that these people then  
23 charge on one thing only, and that is the evidence  
24 that they have. That was the reason why I asked the  
25 question.

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1 MS. CURTIS: Okay. Let me address  
2 the juvenile transfer issue, if I can. Let me also  
3 say that I hope at some point in the process of your  
4 inquiry, that you also will be taking a look at the  
5 disproportionate number of African American victims  
6 of crime, because they are certainly victimized at a  
7 rate that is significantly higher than their  
8 proportion of the population. That's also a fact.  
9 And it is in many cases largely African American  
10 crime with African American victims.

11 MS. RATTLEY: Do you have those  
12 statistics?

13 MS. CURTIS: For Hampton?

14 MS. RATTLEY: Because we have had  
15 some interesting panels on a lot of perceptions are  
16 not necessarily true, so do you have proof of that  
17 fact?

18 MS. CURTIS: I've seen police  
19 department statistics. We don't keep statistics by  
20 race. We keep them by numbers of crimes and felonies  
21 versus misdemeanors and that sort of thing. But I've  
22 seen the police department have those statistics, and  
23 I've seen those. That's where I make that statement  
24 from. That's not only true for Hampton. That's true  
25 nationwide.

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1 DR. AL-HIBRI: Can I interject here?  
2 I'm a little bit frustrated by the conversation back  
3 and forth in the last two times because I feel that  
4 the comment -- the question is being raised and the  
5 answer is a non sequitur, and let me tell you what I  
6 mean. For example, in the first sentence when you  
7 were asked about the perceptions and whether the race  
8 does not influence the judgment of the person looking  
9 at the evidence. And you said, No, we do it on the  
10 evidence. I don't see the person. I don't see  
11 somebody and I don't say, therefore, that he is not  
12 like me, and yet you said it's in the record. I  
13 mean, the distinction -- you said it says in the  
14 record he's a black male. You don't need to see him  
15 to know he's not like you, so the distinction you're  
16 drawing is a little too subtle for me in this case.

17 MS. CURTIS: Well, the question was  
18 asked, baggy pants, plaited hair, and I don't have  
19 that information.

20 DR. AL-HIBRI: We can work with  
21 stereotypes, and if you see black males and drugs,  
22 your reaction to the question, it is not going to be  
23 different if you had a stereotype from seeing a white  
24 male. Not you personally, but --

25 MS. CURTIS: I understand.

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1 DR. AL-HIBRI: Because you are the  
2 person here, but you know, generally there are  
3 stereotypes, and all you need to trigger a stereotype  
4 is a symbolic word, black male, or you know, young  
5 black male is even more indicative, it seems from  
6 some of the things I have heard this morning.

7 MS. CURTIS: Every case in my office  
8 that is nolle prossed, or dropped, or where a plea  
9 agreement is entered into, or if there is a trial and  
10 the defendant is found not guilty, I have to have a  
11 written explanation for the action that was taken on  
12 that file. And if you want to ask about specific  
13 cases, or if you want to ask about cases in general,  
14 there are -- the answers that are given, the  
15 explanations that I am given by my staff, which is  
16 diverse, those explanations are that the evidence was  
17 not sufficient, and I can review the file then and  
18 say yes, I agree, this was a bad stop; or I can see  
19 from the record that these witnesses did not appear  
20 in this case, which made it impossible to go forward,  
21 or some other reason which is not race-based.

22 DR. AL-HIBRI: I don't disagree with  
23 you at all, but in that extreme, there are very easy  
24 calls to make about certain judgments. I think the  
25 question has to be in this area that are the gray

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1 areas, and whether a certain predisposition on the  
2 part of the person looking at the evidence is not  
3 going to predispose them to come down one way or the  
4 other.

5 Now, I mean -- I can ask you that  
6 question, but I also know the answer, because I have  
7 said -- I've seen the literature about what  
8 perceptions do in terms of formulating judgment.  
9 We've also heard this morning these perceptions are  
10 not necessarily conscious. We've seen this in very  
11 famous criminal cases in the U.S. The perception  
12 does not have to be conscious, you just have a  
13 certain presumption, which might be an unconscious or  
14 subconscious presumption, and it acts as your  
15 perception, and therefore things are clearly one way  
16 or the other, when for somebody else it doesn't.

17 I think these are sort of the things  
18 we're worried about, because if the stereotype is  
19 very prevalent in society where it becomes an  
20 everyday model, then you don't know the damage  
21 anymore. It's happening, and we think that it is the  
22 way things ought to be, or the way things are.

23 The other thing on the statistics,  
24 the question that Ms. Rattley asked, and we were  
25 concerned about impressions or perceptions about

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1 statistics, as opposed to their reality. I was very  
2 surprised this morning when we were faced with a lot  
3 of statistics, but none of these broke down the data  
4 in terms of intra versus interracial crimes, and I'm  
5 wondering why. I've asked, and hopefully we will get  
6 those figures. But then when we came back to you,  
7 you spoke about lack of evidence, hardly enough to  
8 generalize from it when you are such a careful  
9 thinker in terms of the evidence, police reports I  
10 think you said it.

11 MS. CURTIS: No, I didn't say police  
12 reports. I believe the police department keeps data  
13 on not only the race of offenders who get arrested,  
14 but also on the race of the victims.

15 DR. AL-HIBRI: But it has not been  
16 compiled, has it?

17 MS. CURTIS: I believe so, because  
18 I've seen --

19 DR. AL-HIBRI: I'm asking can we have  
20 access to this data?

21 MS. CURTIS: It's not my data. I  
22 believe the police department keeps it. And I'm sure  
23 that --

24 MR. DARDEN: Do you know what it's  
25 called, what the data set is called?

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1 MS. CURTIS: No, I don't. I assume  
2 it's victims, because the police department can  
3 access --

4 MR. DARDEN: Let me be clear then.  
5 Is this something you think ought to exist, or is  
6 this something you know does exist?

7 MS. CURTIS: I believe this is  
8 something that exists. I believe these are  
9 statistics that I've seen, and I've seen them both on  
10 a local level and I've seen them on a national level.

11 DR. AL-HIBRI: Raw data or --

12 MS. CURTIS: It's just number -- I  
13 mean, it's numbers.

14 MR. DARDEN: I guess what I'm trying  
15 to do here is to nail down some points of reference.  
16 If you have seen data, then I'd like to know what  
17 that is. We'll ask the police department what they  
18 have. They may not give the same data.

19 MS. CURTIS: I would be happy to go  
20 back and look.

21 MR. DARDEN: Very well. And as a  
22 point of reference, I want to know if they're not the  
23 same data, if you are getting what the police have.

24 MS. CURTIS: I would be glad to go  
25 back and find what I have and provide that for you.

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1 MR. DARDEN: Thank you.

2 MS. MCCLOUD: I have a question  
3 concerning the data. Even if the data from the  
4 police department does show that there are more  
5 African American victims than say Caucasian, or white  
6 victims, could there not be some fallacy in the  
7 reporting? I mean, for example, all cases involving  
8 whites reported to the same extent that cases  
9 involving blacks are?

10 MS. CURTIS: I can't tell you that.

11 MS. MCCLOUD: Isn't that somewhat up  
12 to -- you mentioned the police doing the reporting or  
13 another citizen, et cetera, so it could have some  
14 impact?

15 MS. CURTIS: Well, clearly citizen  
16 complaints that go, for example, directly to a  
17 magistrate where a warrant is issued, that don't go  
18 through the police department, those statistics  
19 aren't gathered because those people don't call the  
20 police department to get into the database, so that's  
21 absolutely correct.

22 MR. DARDEN: You didn't answer the  
23 question about the transfer.

24 MS. CURTIS: I haven't had a chance  
25 to.

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1 MR. GALVIN: I won't let that go, but  
2 I did want to ask this one. Are we talking about  
3 what class of crimes, because we heard data presented  
4 today that in violent crimes, the victims turned out  
5 to be 75 percent, I believe, were either  
6 acquaintances or family members with 25 percent  
7 without.

8 MR. CURTIS: Right.

9 MR. GALVIN: Then if, in fact, the  
10 proportion of those committing those crimes are from  
11 the black community, then you would expect the  
12 victims to also be in the black community if they're  
13 acquaintances and family. So are you speaking in  
14 drug-related now?

15 MS. CURTIS: I'm just speaking in  
16 general terms. The African American population in  
17 the criminal justice system on both sides of the  
18 equation is disproportionate to the general  
19 population. That's my only point. It's not just one  
20 side of the equation. It's both sides of the  
21 equation.

22 MR. GALVIN: But it's also the  
23 incarceration is disproportionate.

24 MS. CURTIS: Undoubtedly. I don't  
25 dispute that.

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1 MR. GALVIN: And those people are  
2 committing crimes against their own family, or  
3 acquaintances, you would expect that?

4 MS. CURTIS: That's right.

5 MR. GALVIN: I just wanted to make  
6 sure I understood that.

7 DR. AL-HIBRI: Can I just clarify  
8 something? I don't want to make the -- correct me if  
9 I'm wrong -- the wrong assumptions, unwarranted  
10 assumptions unnecessarily. Even if the number of  
11 victims in the African American population is large,  
12 we don't know the perpetrator until we see the  
13 evidence, correct?

14 MS. CURTIS: Right.

15 MR. PATRICK: Couple of just nuts and  
16 bolts questions, because it seems as though  
17 statistics are looming large here, and from this  
18 morning's panel, we begin to get a filter that the  
19 issue lies in the charging process. As I listen to  
20 you, what you're saying doesn't match those  
21 statistics that we heard. But my nuts and bolts  
22 questions are these: One, were you elected and when,  
23 and what is the racial makeup of your staff?

24 MS. CURTIS: I was elected last year  
25 in a special election.

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1 MR. PATRICK: What's your term?

2 MS. CURTIS: I have to run again this  
3 year, and this will be a normal election that will be  
4 for a four-year term.

5 The racial makeup of my staff -- I  
6 became Commonwealth Attorney in 1995 -- late 1995. I  
7 have -- the racial makeup of my attorney staff is at  
8 this point twenty-five percent minority. I have  
9 filled eight attorney positions since I have been  
10 Commonwealth's Attorney. Three of them are  
11 minorities and two of the positions that were filled  
12 by non-minority applicants were offered to minority  
13 applicants, but they received better offers  
14 elsewhere.

15 MR. PATRICK: How large is your  
16 staff?

17 MS. CURTIS: I have 16 assistants.

18 MR. PATRICK: Sixteen. So four of  
19 those, you're saying are minority?

20 MS. CURTIS: Minority and black or --  
21 three African American and one Filipino American.

22 MR. PATRICK: Thank you.

23 MS. CURTIS: Do you want me to answer  
24 the transfer question?

25 MR. DARDEN: Yeah, then I have

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1 another question after that.

2 MS. CURTIS: Maybe you can help me  
3 get back to where --

4 MR. DARDEN: We understand that  
5 transfer from juvenile into adult sometimes happens  
6 automatically and without individual consideration  
7 given the individual cases.

8 MS. CURTIS: No. I would say that  
9 our request to transfer is based on two things. One  
10 is the individual's record, prior record, whether  
11 this person is going to be amenable to treatment  
12 within the criminal justice system and/or the  
13 severity of the offense.

14 Now, we went through massive change  
15 last year in the Virginia juvenile justice system.  
16 The transfer provisions that you're talking about  
17 went through a very radical change as an  
18 acknowledgement of the fact that there were more and  
19 more juveniles committing more and more serious  
20 crimes.

21 MR. DARDEN: This is just here in the  
22 district?

23 MS. CURTIS: This is here in  
24 Virginia.

25 MR. DARDEN: Statewide.

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1 MS. CURTIS: Statewide. Up until  
2 July 1st of '96, transfers could be based on either  
3 amenability -- transfers could only be held in  
4 certain kinds of cases, and the procedure was that  
5 the Commonwealth would request transfer in a case, a  
6 report would be prepared, and then the judge would  
7 make a decision as to whether it was appropriate to  
8 transfer or not to transfer.

9 In 1996, the statutes changed giving  
10 prosecutors significantly more latitude. There are  
11 one or two offenses for which transfer is automatic.  
12 That would be capital murder and aggravated malicious  
13 wounding, which is an injury that causes serious and  
14 permanent disability.

15 MR. DARDEN: That's one of the new  
16 provisions?

17 MS. CURTIS: That's one of the new  
18 provisions. Then there is a second classification of  
19 crimes, which are generally violent felonies, where  
20 the prosecutor has the discretion to make that  
21 decision; and if the prosecutor makes that decision  
22 to request transfer, then the case will be  
23 transferred. Then there is the third category which  
24 is treated as all previous cases were, which is it is  
25 at the discretion of the Court.

1           Since that change occurred, we -- I  
2 mean, I have looked at -- because we now have a full  
3 calendar year's worth of cases to look at, we have  
4 not in Hampton transferred any more cases than we did  
5 before. We still look at the severity of the  
6 offense, and the age of the offender would be another  
7 circumstance to look at. If someone is very close to  
8 their 18th birthday and it's a serious offense, even  
9 though they may not have any prior record, that may  
10 be a case where we might decide to transfer.

11           On the other hand, if a person has  
12 been -- has a significant juvenile record, then that  
13 may also be a circumstance under which we transfer;  
14 but each case is looked at individually, and after,  
15 you know, looking at the background of the individual  
16 that's involved.

17           There's no -- I mean, other than  
18 capital murder and aggravated maimings, which we  
19 don't have many of those things very much, we're not  
20 transferring at any higher rate than we were when we  
21 had to go before the Court and request the Court's  
22 permission to transfer.

23           MR. DARDEN: That's just  
24 happenstance, or is that the result of some --

25           MS. CURTIS: No, I think it's because

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1 we are continuing to look at these cases in the same  
2 way that we did prior to the statutory change, which  
3 is looking at the individual, looking at the  
4 individual offense, noting the degree of injury to  
5 the victim, those other factors, criminal records, so  
6 on and so forth.

7 MR. DARDEN: Well, do you consider  
8 any of the societal factors in your decision-making?

9 MS. CURTIS: No.

10 MR. DARDEN: So the data that we saw  
11 earlier about the sky-rocketing involvement of  
12 African American males in various kinds of crimes,  
13 you have a blind eye to that in terms of your  
14 approach to the discretionary area?

15 MS. CURTIS: Race is not a factor in  
16 making that decision, no.

17 MR. DARDEN: Okay. I had one more  
18 question. This goes to -- this is sort of a peculiar  
19 question, even for me. If harassment by a police  
20 officer, such as keeping an individual under  
21 surveillance who's not engaged in any criminal  
22 activity, if that were to occur, what is your -- what  
23 would be the remedy? What would the individual who  
24 is being so harassed -- what should they do in order  
25 to alleviate the problem and even initiate some

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1 corrective action?

2 MS. CURTIS: Well, two things come  
3 immediately to mind, and one would be to make a  
4 complaint to the police department. There is a  
5 mechanism within the police department -- and please  
6 be clear, I don't run the police department. That is  
7 a city agency, and I'm not a city employee. And the  
8 other I would suggest would be to retain an attorney  
9 to -- because that would clearly be some sort of,  
10 either a civil rights violation, or some other kind  
11 of violation which would have some civil remedy.

12 My office does not have any  
13 investigatory powers, staff. Frequently I get calls  
14 from citizens who are unhappy about something,  
15 whether -- not necessarily a racial issue, but  
16 sometimes it is, and I have no ability to prosecute  
17 or to take any action without an investigative  
18 report, which comes through a law enforcement agency.

19 MR. DARDEN: Just a moment. I  
20 thought earlier you said that of the four ways in  
21 which a complaint can be brought, one of them is  
22 through a grand jury?

23 MS. CURTIS: Right, but that's --

24 MR. DARDEN: Would you initiate the  
25 process that would bring information before the grand

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1 jury?

2 MS. CURTIS: Well, my office is  
3 involved in preparing the documents that go to the  
4 grand jury.

5 MR. DARDEN: Correct.

6 MS. CURTIS: But our grand jury is  
7 very different from a federal grand jury. The state  
8 grand jury is -- makes a probable cause determination  
9 on whether to send a case to the circuit court for  
10 trial. It's not an investigative body in the same  
11 way that the federal grand jury works.

12 MR. DARDEN: I see.

13 MS. CURTIS: If we initiate a case at  
14 the grand jury, it's because the police department  
15 has brought us a police report, as they would in a  
16 case that was initiated by warrant.

17 MR. DARDEN: I see.

18 MS. CURTIS: I don't have an  
19 investigative staff. I simply have lawyers who go to  
20 court.

21 MR. DARDEN: So it would be very  
22 unlikely that if a case involved a police officer,  
23 that you would receive any charges from the police  
24 department?

25 MS. CURTIS: Well, if someone were

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1 complaining to me about the police department, I  
2 would refer them to the state police, which is the  
3 other law enforcement agency which could then --

4 MR. DARDEN: Do the investigation.

5 MS. CURTIS: Right. Then if they  
6 brought me something back, then I would prosecute  
7 that.

8 MR. DARDEN: Would you be available  
9 for that kind of referral? You would be available to  
10 receive the complaint --

11 MS. CURTIS: Yes.

12 MR. DARDEN: -- and make sure it got  
13 processed properly?

14 MS. CURTIS: I would refer it to the  
15 State Police, and that would be only other law  
16 enforcement agency I'd have access to. If I got some  
17 kind of complaint that the police department was  
18 unable to handle, for whatever reason, that's where I  
19 would send it.

20 MS. MCCLOUD: I have a question. You  
21 started out by talking about a group, which I don't  
22 really -- I'm not really asking you to go into  
23 details about that, the Unity Commission --

24 MS. CURTIS: Yes.

25 MS. MCCLOUD: -- however, you did say

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1 that the justice system came out rather poorly?

2 MS. CURTIS: That's correct.

3 MS. MCCLOUD: What is your impression  
4 of -- your personal impression of the Virginia  
5 judicial system, and where do you see that the  
6 problems lie, if you do see there are any?

7 MS. CURTIS: Well, the question  
8 always comes down to the selection of judges and the  
9 method for selection of judges, and our system is a  
10 political appointment. It is an appointment. It  
11 doesn't really make any claims to be anything other  
12 than that. The General Assembly has a caucus that  
13 meets and makes some decisions with regard to that.  
14 Since the political makeup of the General Assembly  
15 has changed, that's changed the process somewhat, but  
16 it essentially is still a political appointment.  
17 There is no real ability for citizen input. There is  
18 no real process for -- there's no real input into the  
19 process, and in some situations -- I mean, I think  
20 it's probably fairly remarkable that we've done as  
21 well as we have. And clearly the perception is we  
22 haven't done well at all. There would certainly be  
23 instances I would agree with that. But it is a  
24 political process.

25 When you talk about electing judges,

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1 that's also a political process. It's one where  
2 there is citizen input, but it's one that involves --  
3 and having just gone through one election, as someone  
4 who certainly never perceived myself to be  
5 particularly political, you know, the notion of  
6 raising money and from whom and how, is troublesome,  
7 so I don't have the answer there. I think if I  
8 had -- if I had my way, I would look at some process  
9 that was inclusive within a community that allowed  
10 people from -- you know, without regard to any of the  
11 things we've been talking about, political  
12 persuasion, economic status, all of those things,  
13 that would let people have a voice, but I'm not sure  
14 that -- I've been driven through states. My parents  
15 live in Florida, and I've driven through Florida and  
16 seen the billboards for "Elect John Jones Judge," and  
17 I can tell you that that makes my skin crawl because  
18 that's -- you know, that's just a process. That's  
19 really -- I mean, popular election of judges makes  
20 people do things for popular reasons, and sometimes  
21 judges have to make unpopular decisions that are  
22 consistent with the law and the evidence, but that  
23 doesn't fly with the public, so I don't think that's  
24 a very good idea either. That's just my personal  
25 opinion.

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1 MS. MCCLOUD: Thank you very much.

2 REVEREND HARRIS: In your opinion,  
3 when the police department asks the Commonwealth  
4 Attorney's opinion before a charge is filed, does  
5 that ever happen in your case?

6 MS. CURTIS: Occasionally.

7 REVEREND HARRIS: And if it happens,  
8 you have to talk about the individual that's going to  
9 be charged, right? Is that true?

10 MS. CURTIS: Sometimes. Usually,  
11 again, these are phone calls, these are the facts, is  
12 there a charge, and if so, what is it? So -- but  
13 there's not usually at that point. You don't have a  
14 document in front of you that gives you information  
15 about the individual.

16 REVEREND HARRIS: You have to respond  
17 to the police officer?

18 MS. CURTIS: Right.

19 REVEREND HARRIS: And based on your  
20 response, the police officer moves on to make the  
21 arrest?

22 MS. CURTIS: Right.

23 REVEREND HARRIS: So you've been  
24 involved with it from the beginning?

25 MS. CURTIS: I would say that happens

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1 in a very small percentage of cases. The only cases  
2 where the police department has to call me and ask me  
3 are in homicide cases. And then the question is  
4 whether it's going to be capital, or first-degree, or  
5 second-degree, or whatever. And that, again, is  
6 going to be based on what the evidence is with regard  
7 to the crime, as opposed to who the person is.

8 The vast majority of cases -- and I  
9 would say probably over 99 percent of the cases --  
10 our first knowledge of the case is when that  
11 individual comes into General District Courtroom B  
12 for arraignments, and we have the person's name and  
13 the warrant and the charges. I mean, that's all the  
14 information that we have. We are not routinely  
15 consulted prior to the placing of charges.

16 REVEREND HARRIS: In Richmond, there  
17 is a case, police claiming that they had the evidence  
18 before they made the arrest, a drug case. Are you  
19 suggesting, then, that the Commonwealth Attorney's  
20 Office didn't know anything about it?

21 MS. CURTIS: I don't know the case  
22 that you're referring to.

23 REVEREND HARRIS: It's Iverson.

24 MS. CURTIS: Probably not. Most  
25 jurisdictions that I'm familiar with how they

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1 operate -- I mean every city and county can operate  
2 somewhat differently, but most of the jurisdictions  
3 with which I'm familiar that's generally how it  
4 occurs. We are not -- the Commonwealth's Attorney's  
5 Office is not a part of routinely making decisions  
6 before warrants are obtained.

7 REVEREND HARRIS: When you say  
8 routinely, but it can happen?

9 MS. CURTIS: Certainly. We get calls  
10 about is this a civil case, is this a criminal case,  
11 should I charge under this statute, should I charge  
12 under that statute. Obviously we're there to give  
13 that kind of advice, but that happens, as I say, in  
14 probably less than one percent of thousands of cases  
15 that pass through my office in a year.

16 MR. DARDEN: I have one more  
17 question. The Commonwealth Attorney, I guess in one  
18 sense is the victim's advocate, if you want to put it  
19 that way?

20 MS. CURTIS: Well --

21 MR. DARDEN: No?

22 MS. CURTIS: Well, in -- we are  
23 usually, hopefully, pretty in sync with that side of  
24 the case, but not always.

25 MR. DARDEN: Not always.

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1 MS. CURTIS: Our role is to take a  
2 step back. We do not represent victims. We have to  
3 make an independent assessment of evidence, and in  
4 most cases, as I say, that -- we're all working on  
5 the same side, but there are victims who want to drop  
6 charges, and we will sometimes tell them that they  
7 cannot do that.

8 And there are victims who want the  
9 death penalty in cases where it is not appropriate.  
10 I just tried one in a situation where the death  
11 penalty was not an appropriate sentence, and the  
12 victim's family wanted it very badly. I understood  
13 that, but I am bound by the law and the evidence, and  
14 I made the decision that it was not appropriate and  
15 didn't ask for it.

16 MR. DARDEN: Thank you for that  
17 clarification. I'm thinking back to your earlier  
18 comment that many of the -- well, vast majority of  
19 the victims of crime are also disproportionately from  
20 the African American community, and I'm also assuming  
21 that gives you some insight into the kind of -- the  
22 perspective of those victims, and so by extension,  
23 perspective African Americans?

24 MS. CURTIS: Right.

25 MR. DARDEN: And the community that's

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1 being victimized primarily by crime. I wanted to get  
2 some sense of your experience there, of just what is  
3 it that the community wants. You know, what do you  
4 see? And I'm putting this in the context of a number  
5 of things we've heard in the past, the war on drugs  
6 as one of the influences, or one of the factors in  
7 this skyrocketing involvement of the young men in the  
8 system. Do you think that the community wants that  
9 outcome? Do you think -- did the community ask for  
10 the war on drugs? Who asked for the war on drugs?  
11 And now that we see what the outcome is, as a result  
12 of it, is it what the community wanted to see happen?

13 MS. CURTIS: I have spent -- I have  
14 gone to neighborhoods all over the city and my sense  
15 is that people from neighborhoods, regardless of  
16 whether they're predominantly African American, or  
17 predominantly white, or whatever, want the same  
18 thing. They want their children to be able to play  
19 in their yards. They want their kids to be able to  
20 walk home from school safely. They want to be able  
21 to enjoy their homes and their neighborhoods without  
22 being afraid.

23 The poorest neighborhoods in the city  
24 are the ones that are the most riddled by crime, and  
25 the decent hardworking people who live there have no

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1 resources with which to move. And they are absolute  
2 prisoners, and they are frequently the ones who  
3 initiate the kinds of undercover operations that go  
4 into a neighborhood and try to clean it up, so that  
5 because those are -- I know that those folks want to  
6 be able to live in their neighborhood, and the drug  
7 dealers and the drug users and the vandalism and the  
8 violence most affects those people who have not got  
9 the resources to move to another block or another  
10 neighborhood where it's a little safer.

11 I honestly don't have a sense that  
12 the people that live in this community, regardless of  
13 the neighborhood, have a problem with significant and  
14 strong enforcement of drug laws, because those are  
15 the people who are making the neighborhoods unsafe.  
16 I went to a meeting right after I took office, in  
17 maybe October of '95, in the old Northampton  
18 neighborhood in our city. It is -- I believe it is  
19 now, or certainly did at that time, had the highest  
20 crime rate. It is a predominantly African American.  
21 It is predominantly economically depressed  
22 neighborhood with very few resources.

23 I don't know what I expected. I was  
24 new to being Commonwealth Attorney and I was a little  
25 nervous, but I had been invited to talk with their

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1 civic association. I was there with a major from the  
2 police department, and the folks at this meeting  
3 didn't want less police involvement in their  
4 neighborhood, they wanted more. The police  
5 department had recently assigned a community police  
6 officer on a bicycle to patrol their neighborhood and  
7 they gave him an award that night but wanted to know  
8 when they were going to get another one.

9 I expected that I would be questioned  
10 about, you know, why do you enforce things this way.  
11 Why are you victimizing our community; and instead I  
12 got, Why are you letting those drug dealers out? Why  
13 are those people coming back? We get them out of our  
14 community, and five minutes later, they're back in  
15 the neighborhood, and what's the matter with you?  
16 Why can't you keep those people in? I understand  
17 that's not hard evidence, but I did not get any sense  
18 from the people from that community that they  
19 wanted -- that they had a problem with the strict  
20 enforcement approach to drugs, which is what my  
21 office uses.

22 MR. DARDEN: Just to round that out,  
23 one of our earlier panelists described the war on  
24 drugs and this hard enforcement as a kind of  
25 scapegoating so that the more fundamental and

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1 long-term problems affecting neighborhoods like the  
2 one you described somehow get washed into the  
3 background as much more attention almost inordinately  
4 goes towards dealing with the drug trafficking.

5 MS. CURTIS: Well, there's no one  
6 solution, and if all of the effort is focused on  
7 drugs -- and truthfully, if all the attention is  
8 focused on enforcement, we're not going to get  
9 anywhere. This is a much larger problem and the  
10 government, or the criminal justice system, or the  
11 criminal justice community, can't solve it. This is  
12 a problem that goes much deeper than that. There are  
13 lots of implications, and certainly we have to spend  
14 a lot of time worrying about getting young kids,  
15 keeping them safe, keeping them in school so they can  
16 learn, and all the things that we talk about so much  
17 in trying to make sure that those kids don't end up  
18 on a street corner with a needle in their arm, or  
19 worse, because those kids very often end up dead, and  
20 none of us wants that to happen.

21 I don't know -- we don't have -- my  
22 office has not -- we have a policy of not making any  
23 plea agreements in drug cases. We have not done that  
24 in probably ten years. Obviously that precedes my  
25 tenure in office. But you have to start somewhere,

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1 and if we can get a person into a drug treatment  
2 program and they're ready -- and that's not -- that  
3 doesn't always happen, then we make a little bit of  
4 progress.

5 I don't think that's the answer.  
6 Drugs are not -- drugs are only a part of the  
7 problem, and dealing with drugs is only a part of the  
8 solution.

9 MR. DARDEN: Just on that last point,  
10 you said that you don't -- you haven't made any plea  
11 agreements in drug cases, but then you talked about  
12 getting people into treatment programs. What is the  
13 connection there?

14 MS. CURTIS: Well, most -- if a  
15 person has no prior drug record in Virginia, then  
16 they qualify for a program called first offender  
17 status. We will tell the Court this person has no  
18 prior drug record, and they would qualify, and the  
19 Court will then put them into -- onto a status which  
20 gives them the opportunity and access to possibly  
21 making some progress with their problem. They may be  
22 placed on probation. They may then be put into the  
23 drug treatment program. We don't put them there.  
24 The Courts put them there. Probation officers put  
25 them there.

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1 MR. DARDEN: You're required for  
2 first offenders to give that information so that they  
3 can qualify?

4 MS. CURTIS: To give --

5 MR. DARDEN: Their status as first  
6 offenders. In other words, is it at all  
7 discretionary on your part to provide the Court, so  
8 the Court will know --

9 MS. CURTIS: We provide it -- if a  
10 person qualifies for first offender, we'll tell them  
11 that because we have that information.

12 MR. DARDEN: Yeah. Are you required  
13 to give it, or is it something you can decide to  
14 withhold? If you thought this was a case where this  
15 guy needs to go to jail, even though he's a first  
16 offender, could you decide to --

17 MS. CURTIS: We would always tell the  
18 Court they didn't have a record. We're going to give  
19 the Court that information. We may then say, but we  
20 think in this case there are circumstances you  
21 shouldn't put him in, and tell the Court what we  
22 think it is. And the defendant and his attorney will  
23 also have that information presumably.

24 MR. DARDEN: Yeah.

25 MS. CURTIS: But we do the record

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1 check, so we have that information at our disposal.

2 MR. DARDEN: If there were a case  
3 where that information would not come out in court,  
4 that would be a mistake?

5 MS. CURTIS: I would say yes.

6 DR. AL-HIBRI: I don't want to go  
7 home without asking you one more transfer question,  
8 if you don't mind. When we were asking you about  
9 the -- essentially there are two kinds of things here  
10 we're concerned about, procedural justice and  
11 substantive justice, and we do have quite a few  
12 procedures in place to ensure at least procedural  
13 justice. When we asked you about transfers, you said  
14 you have certain criteria and you started by speaking  
15 about prior record, which absence, I guess, would  
16 lean against a transfer, and then you said and/or,  
17 and you went through another two sets of criteria. I  
18 think both of them remain in the discretion of the  
19 person making the judgment.

20 MS. CURTIS: Yes.

21 DR. AL-HIBRI: I would like to take  
22 the end of the "or" part.

23 MS. CURTIS: Okay.

24 DR. AL-HIBRI: And that means,  
25 regardless of whether there is a prior record or

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1 not -- and let's assume there was not, then it's  
2 within the discretion of the person making the  
3 decision to go ahead and order a transfer.

4 Now, I want to first of all make it  
5 very clear that I think any system of procedural  
6 justice ought to have some flexibility, and the idea  
7 worked because when you have flexibility, then you  
8 can deal with things that might unfortunately get  
9 caught into the web that ought not to be.

10 But given the world we live in, which  
11 is not the ideal world, and what we've been hearing  
12 all day, issues of substantive justice, in other  
13 words where people's discretion is relied upon, we're  
14 not really so sure that judgment is not tainted by  
15 biases and prejudices. I'd like to ask you, how  
16 would you feel if we were to develop a set of  
17 criteria for transfers which leaves no discretion at  
18 all?

19 MS. CURTIS: I think that -- you sort  
20 of answered your own question, I think, when you  
21 started your question to me.

22 DR. AL-HIBRI: In the ideal --

23 MS. CURTIS: I have policies in my  
24 office, not with regard to transfer, but I have  
25 policies in my office that say this is what we will

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1 do in this case, but I always have to leave open the  
2 person who doesn't fit the mold, the extraordinary  
3 case, and I think whenever you develop a system which  
4 leaves no discretion, then you are going to find  
5 examples of people who you never meant to catch in  
6 the web.

7 DR. AL-HIBRI: I guess I'm asking you  
8 to balance the evils. On the one hand, there is that  
9 point. On the other hand, there is the argument that  
10 discretion always ends up hitting one segment of the  
11 population. On the other hand, if you make it  
12 automatic, everybody in the population will bear an  
13 equal burden. Where do you come down on this?

14 MS. CURTIS: Well, you have to have  
15 confidence in the people who exercise discretion, and  
16 if you don't, then you have to replace them. I  
17 don't -- I think any system -- I mean, to say, for  
18 example, that for every person who commits murder, we  
19 will execute that person, comes down in a way that  
20 does not discriminate against anyone, but it  
21 discriminates against everyone because that's not the  
22 appropriate punishment in every case.

23 I don't think it's possible, given a  
24 human system, to ever -- to ever eliminate people who  
25 make bad decisions. But I think to take away the

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1 ability to make decisions is perhaps worse. I don't  
2 think that's the right solution. I understand -- I  
3 think I understand what you're asking me, but I think  
4 that you would be less satisfied with the results in  
5 that case, generally, than you are now.

6 DR. AL-HIBRI: Actually, I'm not  
7 sure, but I also know what you're getting at.  
8 Suppose I propose a third middle ground. I'm not  
9 sure it is a middle ground at all. I'm just  
10 entertaining a hypotheses. I think one sentence you  
11 said, which was very important, is that where you  
12 have discretion, and you'd like to have discretion,  
13 it really depends on the people who are given the  
14 discretion. If they're doing it wrong, you replace  
15 them.

16 Well, I think this is the issue we're  
17 really trying to discuss here. What sort of people  
18 misuse their discretion; and is it just some bad  
19 people, or is it some good people who are not aware  
20 of the misuse of their discretion, and if that is --  
21 is there a filter that you propose that you can  
22 filter these kinds of people who use their discretion  
23 in matters of life and death for a significant part  
24 of this population -- is there a filter you propose  
25 to be put in place?

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1                   Certainly we've heard enough today  
2 that the results are not what they ought to be in  
3 terms of substantive justice.

4                   MS. CURTIS: I don't know what the  
5 filter is, but the answer to your question is yes, I  
6 think it's both. I think there are people who make  
7 decisions who shouldn't be in a position to make  
8 those decisions; and I think there are people who are  
9 the right people, who may make decisions based on  
10 perhaps unconscious factors, the kinds of things  
11 you're talking about, who meanwhile -- who might need  
12 additional information, education.

13                  DR. AL-HIBRI: Can you think of such  
14 a program that you would recommend?

15                  MS. CURTIS: I'm sitting in the  
16 council chamber right now. No. I would like to try.  
17 I think it's -- I think when we talk about judges,  
18 clearly the practice, for example, has been that  
19 judges have six-year or eight-year terms, but it has  
20 been essentially the process where that has been  
21 continued on by a rubber stamp. There has been no  
22 real assessment of a person's performance done.

23                         Should there be? Yes. I would say  
24 yes. And I would say that that probably should be  
25 done by a cross-section of the community who feels

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1 the results of what that person does. But can I  
2 devise something right here, right now? I don't  
3 think so.

4 DR. AL-HIBRI: Let me ask you one  
5 last thing. As you know, as a lawyer, when we start  
6 talking about appointments to the Supreme Court by  
7 the Executive Branch, the Bar Association gives its  
8 own opinion, and it is not an official opinion, but  
9 it carries some weight. I'm wondering, if the judges  
10 of this state are appointed through political  
11 appointments, don't you think there ought to be  
12 somebody, which represents a cross-section of the  
13 population, which can give an opinion --

14 MS. CURTIS: Yes.

15 DR. AL-HIBRI: -- before the  
16 appointment as to whether this person would be  
17 acceptable from the kind of perspective you're  
18 discussing?

19 MS. CURTIS: Yes, I do. I think bar  
20 associations now typically have them put into that  
21 process. I believe without exception, I've been in  
22 Hampton for 15 years, and the Bar Association has  
23 always endorsed a candidate, and our legislative  
24 delegation has always gone along with the Bar  
25 Association's recommendation. But I'm not sure that

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1 the Bar Association is necessarily the filter that  
2 you're looking at.

3 DR. AL-HIBRI: That's right.

4 MS. CURTIS: I would suggest it would  
5 need to go further than that.

6 DR. AL-HIBRI: Thank you.

7 MR. DARDEN: I would like to follow  
8 up just a little bit on that. The Commonwealth  
9 Attorneys Association, I understand, is the one body  
10 that deals with all Commonwealth Attorneys in the  
11 state --

12 MS. CURTIS: Right.

13 MR. DARDEN: -- and trains them?

14 MS. CURTIS: Right.

15 MR. DARDEN: I don't think there's  
16 any other professional -- or any other group that  
17 looks at professional standards or common practices  
18 by Commonwealth Attorneys around the state; is that  
19 correct?

20 MS. CURTIS: Well, the Commonwealth  
21 Attorneys Association is in terms of training. I  
22 would say that yes, that's accurate. Although, for  
23 example, I often send my attorneys to other kinds of  
24 training besides that.

25 MR. DARDEN: Other kinds of training.

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1 As a body, do you look to the Commonwealth Attorneys  
2 Association to be a monitor or a watch dog in any way  
3 over the profession?

4 MS. CURTIS: I'm not sure that I  
5 would call that organization a monitor or a watch  
6 dog.

7 MR. DARDEN: Is there any  
8 organization that has that kind of role, sort of  
9 role?

10 MS. CURTIS: The State Bar.

11 MR. DARDEN: Just the State Bar. So  
12 if individuals were not pleased with a Commonwealth  
13 Attorney's performance and wanted to make a  
14 complaint, either about an individual case or about a  
15 pattern, would they file a complaint with the State  
16 Bar about the Commonwealth Attorney; and if that is  
17 the place that receives the complaints, how would  
18 they dispose of them?

19 MS. CURTIS: The State Bar deals  
20 with -- the State Bar certainly gets all sorts of  
21 complaints about all sorts of lawyers. I'm sure  
22 prosecutors are included in that. Their focus is on  
23 ethical. We have the canons that -- the canons of  
24 ethics and the disciplinary rules that go along with  
25 that. And there are special ones for prosecutors,

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1 and the State Bar is responsible for enforcing that.

2 There has been a lot of controversy  
3 in this part of the state recently with regard to  
4 efficacy of the State Bar handling those complaints.

5 MR. DARDEN: You're saying that they  
6 don't handle them well?

7 MS. CURTIS: I will say there's a  
8 general public perception, that is to say, a  
9 nonlawyer perception, that the State Bar is not  
10 terribly responsive in that area.

11 MR. DARDEN: What's your lawyer's  
12 perception?

13 MS. CURTIS: I've never been involved  
14 in that process, so I really don't have any firsthand  
15 knowledge. I've been a lawyer for almost twenty  
16 years.

17 MR. DARDEN: I'm unclear then. What  
18 would a person do --

19 MS. CURTIS: If a person wants to  
20 make a complaint, they'll go to the State Bar. What  
21 happens to the complaints when it goes to the State  
22 Bar, I can tell you theoretically how it's set up to  
23 work.

24 MR. DARDEN: Yes, okay.

25 MS. CURTIS: The complaint goes to a

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1 bar investigator. The bar investigator does an  
2 initial determination to see if it's a matter that is  
3 within the purview of the bar; and if it is, then a  
4 more formal investigation is initiated. The bar has  
5 on its staff, investigators who handle those kinds of  
6 things.

7 And then a report is developed as a  
8 result of that investigation, and it goes to a local  
9 committee within the State Bar. Every district has a  
10 representative on the State Bar, and they're divided  
11 up into sections of the state to hear the complaints.  
12 And then I mean, the State Bar has the ability to  
13 revoke someone's license, and as well as many --

14 MR. DARDEN: License to practice law?

15 MS. CURTIS: License to practice law.

16 MR. DARDEN: Of course, you'd have to  
17 be a lawyer to be the Commonwealth Attorney.

18 MS. CURTIS: Right.

19 MR. DARDEN: Go ahead.

20 MS. CURTIS: I think I know what  
21 you're asking, and in terms of --

22 MR. DARDEN: We're trying to get  
23 accountability here.

24 MS. CURTIS: If you had a complaint  
25 about a pattern of behavior that did not necessarily

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1 involve an ethical violation, or a disciplinary rule  
2 violation --

3 MR. DARDEN: Yes. For instance,  
4 Mr. Patrick has explained that overall we have a lot  
5 of the analysis about what's wrong with the system  
6 seems to rest on complaints about actions in the  
7 Commonwealth Attorney's Office, whether it's  
8 automatic transfers, or other kinds of discretionary  
9 actions. The question that I'm asking here is, from  
10 the perspective of the public who may want to insist  
11 on some sort of accountability from the Commonwealth  
12 Attorney, where does that -- where does the public go  
13 to make a complaint?

14 MS. CURTIS: Because of the structure  
15 of independent Constitutional officers, which is what  
16 all Commonwealth Attorneys are, if the complaint is  
17 not an ethical discipline rule violation, which the  
18 State Bar might handle, I think the answer is that  
19 there is nowhere.

20 MR. DARDEN: There would be nowhere.  
21 Now, that being the case, do you see that as --

22 MS. CURTIS: There is no one over the  
23 Commonwealth Attorney's head.

24 MR. DARDEN: Correct. That's what  
25 you're saying. So the Commonwealth Attorney is

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1 almost invulnerable, except to election?

2 MS. CURTIS: I certainly don't feel  
3 invulnerable.

4 MR. DARDEN: But that's the point I'm  
5 trying to get to. From the perspective of the public  
6 --

7 MS. CURTIS: Right. There is no boss  
8 to complain to.

9 MR. DARDEN: No boss to complain to,  
10 right. Do you think that situation really serves the  
11 public well?

12 MS. CURTIS: I'm not a fan of the  
13 political process, but I think that -- and I would  
14 hope that the political process would work. A  
15 Commonwealth Attorney, as every other elected  
16 official, is a servant of the public and has to be  
17 conscious of the public's perception of how he or she  
18 is doing their job. The only mechanism that exists  
19 for that displeasure or pleasure to be, you know,  
20 enunciated is through the election process, but I  
21 certainly -- certainly public perception of how all  
22 of us do our jobs is right on the table all of the  
23 time. So I -- I don't know how else I can answer  
24 that question.

25 I mean, I think that having a

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1 four-year term, I mean you could suggest a shorter  
2 term if that were something that would satisfy -- you  
3 know, have a quicker ability to resolve a particular  
4 displeasure if that's what you're suggesting, but  
5 other than that, I can't think of any other mechanism  
6 to do that, because they're all independently -- all  
7 of the Constitutional offices, the Sheriff, the  
8 Commonwealth Attorney, they're all independently  
9 elected officials. I mean, we're answerable to the  
10 public. I certainly consider myself to be answerable  
11 to the public. I certainly hear from the public and  
12 make myself accessible to the public on these issues,  
13 and I'm always interested to hear what people have to  
14 say. I will answer and explain to any citizen  
15 anywhere at any time what has occurred in my office.  
16 I am happy, and if the person is not satisfied with  
17 it, then -- but at least I will give an explanation  
18 and hope that that satisfies their concern.

19 MR. DARDEN: Thank you.

20 REVEREND HARRIS: Excuse me. You  
21 later -- you had earlier indicated you have been to  
22 Florida and saw some billboards about election of  
23 judges.

24 MS. CURTIS: Right.

25 REVEREND HARRIS: And you indicated

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1 that you didn't think that a selection -- or the  
2 election of judges would help us any regarding what  
3 we are discussing. Now, you say it would be so quick  
4 if judges were elected. Well, what about the  
5 Commonwealth Attorneys, are they political animals  
6 also --

7 MS. CURTIS: Certainly.

8 REVEREND HARRIS: -- or do they have  
9 already so much discretion, and so forth?

10 MS. CURTIS: (Witness nods head.)

11 REVEREND HARRIS: So would you --  
12 when you assess the impact of the selection of --  
13 election of judges versus elections of Commonwealth  
14 Attorneys.

15 MS. CURTIS: Well, my concern about  
16 that is that, as I said, having just gone through one  
17 political campaign, my first, you know, it's real  
18 difficult in a justice system type of job to, you  
19 know, raise money in a way that is not compromising  
20 to what you do. And anybody who doesn't think that  
21 elections cost a lot of money, I mean they do.  
22 That's political reality, and to -- and my concern  
23 was not only the aspect of judges going out and  
24 raising money, and that being an issue that I was  
25 concerned with, it's also the notion that judges

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1 sometimes have to make unpopular decisions, unpopular  
2 with the people in a community, that are based on  
3 proper law and evidence, and I guess my concern is  
4 that a popular election could lead to judges making  
5 decisions that are contrary to law and evidence  
6 because it was a popular decision, and I would have  
7 some concerns about that.

8 REVEREND HARRIS: Could that happen  
9 to the Commonwealth's Attorney?

10 MS. CURTIS: Well, the Commonwealth  
11 Attorney doesn't ultimately -- certainly makes some  
12 decisions in cases, but doesn't ultimately make the  
13 final decision, and I mean, there are a lot of  
14 Constitutional protections that are very unpopular  
15 with certain parts of the population.

16 REVEREND HARRIS: As relates to the  
17 transfer --

18 MS. CURTIS: Okay.

19 REVEREND HARRIS: -- law, the  
20 Commonwealth Attorney has the discretion --

21 MS. CURTIS: Right.

22 REVEREND HARRIS: -- to either put  
23 somebody into the juvenile system or in the adult  
24 system?

25 MS. CURTIS: Well, in every case

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1 where a juvenile is tried as an adult, in every case,  
2 the Court, in sentencing, still has the option of  
3 sentencing that individual as a juvenile, so  
4 transferring a juvenile to the adult -- to be tried  
5 as an adult, does not guarantee that that person, if  
6 incarcerated, will end up in an adult facility. The  
7 judge can still choose to find the person guilty as  
8 an adult but sentence that person to a juvenile  
9 detention center, or sentence him as that person  
10 would be sentenced as a juvenile.

11 REVEREND HARRIS: Can you give me an  
12 illustration of -- you are the Commonwealth Attorney,  
13 you recommend that this child, this youth will be  
14 sentenced as an adult, and the judge says, No, I'm  
15 going to sentence him as a juvenile. Can you give me  
16 a scenario that could happen in Hampton?

17 MS. CURTIS: Well, we've had it  
18 happen in Hampton. We had an individual -- I can't  
19 remember. I'm sorry. I can't recall the  
20 circumstances of, or what the charges were, but the  
21 young man was tried in Judge Taylor's court, and  
22 Judge Taylor sentenced him as a juvenile. He was  
23 tried and convicted as an adult, so he has an assault  
24 criminal conviction, but it was a young man, was  
25 sentenced to one of the learning centers, was given a

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1 disposition as though he had been tried in juvenile  
2 court. I can certainly find the name of the case for  
3 you if you want me to do that, but it has occurred.

4 DR. AL-HIBRI: Can I elaborate on  
5 your point a little bit? I'm a little concerned. My  
6 colleague here is concerned about the fact that  
7 Commonwealth Attorneys might also be subject to the  
8 same kinds of pressures that you were mentioning in  
9 terms of a judge running a campaign for election.  
10 Then you mentioned, in response to that, that not to  
11 worry, the judge has an option of sentencing the  
12 juvenile as a juvenile, even if the Commonwealth  
13 Attorney has sent the case to the court as an adult  
14 transfer case.

15 But now when we delve through the  
16 details, we find out even if the judge sentences the  
17 person, the juvenile, as a juvenile, on the record of  
18 that person is an adult conviction --

19 MS. CURTIS: That's correct.

20 DR. AL-HIBRI: -- and all that goes  
21 with it. So the back-up solution that you're  
22 pointing out is hardly a solution because we already  
23 know it's part of something, and I'm not going to  
24 deny it's not something, but the kid, his or her  
25 records have been ruined, right?

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1 MS. CURTIS: Well, juvenile  
2 convictions are no longer confidential.

3 DR. AL-HIBRI: I know that.

4 MS. CURTIS: Well, but even if a  
5 juvenile is convicted as a juvenile in juvenile court  
6 of a felony, if that person is more than 15 years  
7 old, that remains on his or her record. That is not  
8 expunged anymore as it used to be, so I don't see  
9 there's a distinction.

10 DR. AL-HIBRI: Let me ask you what's  
11 the difference between the two convictions as an  
12 adult?

13 MS. CURTIS: It doesn't show on the  
14 record any different. It shows a burglary  
15 conviction, for example. It's not going to say  
16 juvenile court or adult court. It's just going to  
17 say burglary.

18 DR. AL-HIBRI: Up to 15.

19 MS. CURTIS: Over 15 -- I mean, 15  
20 and over.

21 DR. AL-HIBRI: So if you're talking  
22 about a 14-year-old, it does make a difference for  
23 that person?

24 MS. CURTIS: I'm sorry. I misspoke.  
25 14 and over --

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1 DR. AL-HIBRI: 13-year-olds --

2 MS. CURTIS: 13-year-olds can't be  
3 tried as adults.

4 DR. AL-HIBRI: All right. As far as  
5 this conviction charge showing on the record, I  
6 already know that in some professions, if you have a  
7 record like that, it's harder or impossible to get  
8 into that profession. Is there a difference in this  
9 case between a juvenile conviction and an adult one?

10 MS. CURTIS: It won't show up any  
11 differently.

12 DR. AL-HIBRI: Would it be given the  
13 same consideration?

14 MS. CURTIS: I can't answer that. I  
15 don't know that anyone would ever be able to tell  
16 which it was. In other words, if a prospective  
17 employer was running a record check on an individual,  
18 the record is simply going to reveal 1997, Hampton,  
19 Virginia, burglary. It's not going to say, you know,  
20 slash juvenile or slash adult.

21 DR. AL-HIBRI: In other words, you're  
22 saying there's absolutely no consequence to what the  
23 Commonwealth Attorney does, in terms of these  
24 choices, because it shows the same way on the record;  
25 but as far sentencing, which is significant, the

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1 judge can switch that. Is that a correct statement?

2 MS. CURTIS: Yes. Well, I'm not  
3 saying it's of no consequence. I'm simply saying  
4 that if -- that in this massive juvenile justice  
5 reform that our General Assembly did in 1996, one of  
6 the things that they removed was the confidentiality  
7 that existed that had held to juvenile records; and  
8 now if a juvenile is convicted of a felony, that  
9 information is on the record and is accessible as an  
10 adult.

11 The Commonwealth Attorney can ask for  
12 transfer and can get transfer in certain cases  
13 automatically, but the judge always has the option of  
14 sentencing that juvenile as a juvenile.

15 DR. AL-HIBRI: Let me try to simplify  
16 my question to pinpoint something. We might not be  
17 able to pinpoint it. I just want to know if there is  
18 a difference in terms of consequences between having  
19 it on your record as a juvenile or adult conviction?

20 MS. CURTIS: I don't know that I can  
21 answer that. I can only tell you as far as I know,  
22 when a prospective employer, who is the person I  
23 assume would be looking at that information, gets it,  
24 it is not going to distinguish the record between an  
25 adult conviction or a juvenile conviction. What

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1 impact that has on the employer, I can't answer.

2 MR. GALVIN: Just a follow-up. Would  
3 you say that it's the exception that a judge  
4 sentences onto the juvenile side?

5 MS. CURTIS: Yes.

6 MR. GALVIN: That's an exception, so  
7 that once it is tried as an adult, it appears, at  
8 least by the -- that there's more of a propensity for  
9 the sentence to be an adult sentencing?

10 MS. CURTIS: Right. But the judge,  
11 again, has the ability to look at all those factors  
12 and make an independent decision.

13 MR. GALVIN: And do I understand,  
14 though, if it's tried as an adult, there also could  
15 be a jury, which the jury does sentencing, which is  
16 not the case in --

17 MS. CURTIS: Juries don't sentence  
18 juveniles.

19 MR. GALVIN: Right, but when a  
20 juvenile is sentenced as an adult --

21 MS. CURTIS: They don't sentence  
22 those young people. Judges sentence juveniles who  
23 are tried as adults.

24 MR. DARDEN: With Mrs. Rattley not  
25 being here, I'm going to try to step in and thank you

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1 Mrs. Curtis for being with us. It's a fascinating  
2 presentation. If there was any burning question from  
3 the committee before she goes, she can answer in  
4 thirty seconds.

5 MS. MCCLOUD: I have one.

6 MR. DARDEN: Yes.

7 MS. MCCLOUD: With regard to the  
8 record, you know, the offense being entered on the  
9 record, whether it's as a juvenile or whether it's as  
10 an adult, if it remains there, if, for example, the  
11 person elected to go to law school and is asked --  
12 usually they ask that question, you know, have you  
13 been convicted of a felony, then it is going to have  
14 an impact on that, is it not?

15 MS. CURTIS: Yes. Mr. Gwynn -- I  
16 want to also tell you that Howard Gwynn, the  
17 Commonwealth Attorney from Newport News, I think he's  
18 scheduled to be here tomorrow.

19 MR. DARDEN: Yes.

20 MS. CURTIS: He will also be able to  
21 answer the same type of procedure questions because  
22 he obviously does the same thing I do.

23 MR. DARDEN: Thank you very much for  
24 being with us.

25 Now, at this time, I'd like to ask

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1 the treasurer of the group if we take just a very  
2 short break and then come right back and start with  
3 our community forum, I think we can conclude by 7:00,  
4 but it's going to mean just moving ahead, if that's  
5 all right with you.

6                   So for the audience, I think we're  
7 going to take just five minutes, really, and come  
8 back; and the committee will come back at 6:10 and we  
9 will begin at 6:15 as we had scheduled for the  
10 community forum.

11                   As I said, we have eight people  
12 signed up. We're going to try to get every one of  
13 you in that 45-minute period, so please be prepared  
14 to be brief. All right.

15                   Thank you very much..

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I, Anna M. Fox, Notary Public, certify the foregoing pages 1 through 346, constitute a true and correct copy of the original transcript of the Factfinding Advisory Committee on the U. S. Commission on Civil Rights meeting, commencing on March 6, 1997.

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I declare under the penalty of perjury under the laws of the State of Virginia that the foregoing is true and correct.

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Dated this 23rd day of March, 1997.

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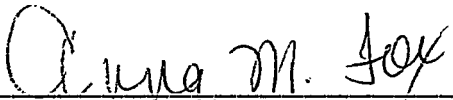
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Anna M. Fox, Court Reporter

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