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

PRESENT:
ABIGAIL THERNSTROM, VICE CHAIRMAN
JENNIFER C. BRACERAS, COMMISSIONER (via telephone)
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER (via telephone)
ARLAN D. MELENDENZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
KENNETH L. MARCUS, Staff Director

STAFF PRESENT:
MANUEL ALBA
DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
TERESA BROOKS
CHRISTOPHER BYRNES, Attorney Advisor to the OSD and Acting Deputy General Counsel, OGC
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MONICA KIBLER
EMMA MONROIG, Solicitor/Parliamentarian
KARA SILVERSTEIN
AUDREY WRIGHT
MICHELE YORKMAN
COMMISSIONER ASSISTANTS PRESENT:
LISA NEUDER
RICHARD SCHMECHEL
KIMBERLY SCHULD
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VICE CHAIR THERNSTROM: So we turn to the briefing on Multiethnic Placement? Okay. On behalf of the Commission of Civil Rights, I welcome everybody to this briefing on the Multiethnic Placement Act, Minorities in Foster Care and Adoption.

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

MEPA was developed out of concern that many children languished in foster care as prospective parents of a different racial group were not provided the opportunity to adopt them. MEPA's broad goal is to abolish racial discrimination for both children and prospective parents in child welfare. As amended, the statute prohibits states and other entities involved in foster care or adoption placements that receive federal financial assistance from delaying or denying a child's foster care or adoptive placement on the
basis of the child's or the perspective parent's race, color or national origin. It also requires states to
diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state needing foster and adoptive homes in order for the state's child welfare programs to remain eligible for federal assistance.

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

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

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

The record will be open until October 22,
2007. Public comments may be mailed to the U.S. Commission on Civil Rights, Office of Civil Rights Evaluation, Room 740, 624 9th Street, Northwest, Washington, D.C. 20425. And we welcome those comments.

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

PANEL 1

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

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

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

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

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

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

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

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

I welcome you on behalf of the Commission. First, please come up.

(Panelists sworn)

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

COMMISSIONER OHL: Thank you very much. I've been invited here this morning in order to provide the Administration's perspective on the Multiethnic Placement Act, and more generally to the extent to which race should be a factor in both foster care and adoption placement decisions.

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

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

Whether transracial adoption serves the children's best interest or has negative consequences for minority children, families and communities;
How effectively our Department, the U.S. Department of Health and Human Services, is enforcing MEPA;

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

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

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

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

MEPA was enacted after a lot of debate about transracial adoption and same race placement policies. At the heart of the debate is the need to promote the best interest of children by ensuring that they have permanent, safe, stable and loving homes suited to their individual needs. However, placement delays and denials based upon illegal discrimination
increased the risk that a growing number of children, and especially minority children, in the child protective system would never find a permanent home.

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

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

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

Congress took a very significant step in passing MEPA and the amendments in order to bring our
nation's child welfare policies in line with a body of established civil rights law. The law makes clear that race, color and national origin should not and may not preclude or delay any child from being placed into a loving and permanent home.

The debate about transracial adoption and same race placement policies spurred MEPA. However, to date there is no federal definition of transracial adoption. Within the Bureau of Child, Youth and Families, the Children's Bureau, the Data and Technology Division defines transracial adoption as adoptions where the adoptive parents differ in at least one racial or ethnic characteristic from the adopted child. Keeping in mind that definition the research, most of which had been conducted by my colleagues and panelists here today show that transracial adoptees of color are no more likely to engage in negative social behaviors than white in-racial adoptees; are no more likely to engage in criminal activity or drug use. And studies show that transracial adoptees have exhibited academic competence, which is a clear sign of positive well-being. And more importantly transracial adoptees experience speedier adopts than in-racial adoptees of color on the whole reducing the time that those
children are allowed to languish — a term now synonymous with foster care — in care without the benefit of a permanent family.

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

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

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

The first enforcement decision involved Hamilton County, Ohio in 2003. After a 42 year investigation the Office of Civil Rights issued a letter of findings concluding that Hamilton County in
Ohio had violated MEPA as well as Title VI of the 1964 Civil Rights Act and ACF issued a penalty letter imposing a $1.8 million penalty.

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

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

The letters of finding emphasized that strict scrutiny is an appropriate constitutional standard of review and that the law forbids any routine consideration of race, color or national origin allowing its consideration on rare occasions,
and even then to the degree that it can be demonstrated to be absolutely necessary.

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

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

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

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

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

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

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

The Commission has also inquired about
whether MEPA has been effective in reducing the amount
of time children spend in foster care. Let me address that. The MEPA legislation was enacted in part to prevent children from languishing in out-of-home care where foster or adoptive parents of the same race were found. So when we look at whether the enactment of MEPA has reduced the amount of time minority children spend in foster care or wait to be adopted, it is important to keep in mind the law's broader intended focus, which was to eliminate and remove discrimination in child welfare.

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

Our data shows that the percentage of African American non-Hispanic children who are adopted by at least one parent who differed from them in at least one characteristic or ethnic characteristic
increased between fiscal year 2000 and 2005 from 24 to 31 percent. It decreased for Hispanic children from 72 to 63. And decreased for white non-Hispanic children from 11 percent to 8 percent.

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

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

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

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

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

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

VICE CHAIR THERNSTROM: Your time has expired, yes.

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

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

Thank you very much.

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

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

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

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

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

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

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

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

First, it is important to understand the factors that cause African American children to enter foster care in higher proportions than other children. State child welfare directors and researchers reported a complex set of interrelated factors beginning with a higher rate of poverty among African American families. While children of all races live in poverty to some degree, nationally African Americans are nearly four times more likely than others to live in poverty.

Studies have shown that under these circumstances families have difficulty gaining access to social services, counseling and appropriate housing that can help families stay together. However, research suggests that these factors do not fully account for the differing rates of entry into foster care.
care. State child welfare directors we surveyed also responded that bias or cultural misunderstanding and distrust between child welfare decision makers and the families they serve also contribute to the disproportionate removal of children from their homes.

Once African American children are removed from their homes, HHS data show that they remain in foster care about 9 months longer than white children. State officials attributed these longer lengths of stay to similar factors, such as challenges parents have in gaining access to subsidized housing, substance abuse treatment and other services that may be needed before children can be reunified with their families.

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

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

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

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

Linking back to the factors contributing to disproportionality, about half of the child welfare directors we surveyed reported that their ability to use federal social services block grants such as TANF, the Temporary Assistance for Needy Families grant, was helpful. These grants, when used for preventive
services and family supports, can be particularly relevant for African American and other families living in poverty.

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

State officials noted the shortage of willing, appropriate, and qualified parents to adopt African American children and particularly older children. Researchers cited a lack of resources among state and local agencies and a lack of federal guidance to implement new recruiting and training initiatives. Perhaps because of these challenges nine states in our survey reported that the policy requiring diligent recruitment had no effect on the
proportion of African American children in care and 15
states reported that they were unable to tell.

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

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

Conversely, states reported being
constrained by the lack of federal subsidies for legal
guardianship. Legal guardianship is formally
recognized under federal law as a permanent placement
option and is available for relatives who want to
permanently care for children without necessarily
adopting them. As such, it is considered a
particularly important way to help African American children exit foster care. In fact, subsidizing guardianships has demonstrated its value in providing permanent families for children and in reducing the number of African American children in foster care. It may also be cost effective based on the experiences of the states that implemented this strategy in using federal waivers. Because of these factors, it may be appropriate to reconsider the current distinctions that provide subsidies for adoption but not guardianship.

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

An HHS study reported in 2004 that implementation was hindered by confusion about what the law allowed or prohibited. And state officials in states we visited recently said that ongoing confusion
and disagreement continued to hinder implementation.

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

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

This concludes my statement. Thank you.

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

As I'm leafing through the information you provided, I do see some helpful charts giving us some data. But I don't see some numbers that interest me; that is precisely or not precisely, roughly how many children broken down into various racial and ethnic...
groups are put up for adoption on average annually or who have been up in recent years for adoption?

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

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

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

VICE CHAIR THERNSTROM: Ms. Brown, do you?

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

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

COMMISSIONER OHL: This is an '04 number. I gave you 115,000 children who are waiting and ready
to be adopted. Of that, 38,000 would be Black non-Hispanic, 2 percent Alaska Native --

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

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

VICE CHAIR THERNSTROM: 38 percent.

COMMISSIONER OHL: Percent. Two percent--

VICE CHAIR THERNSTROM: Are African American?

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

VICE CHAIR THERNSTROM: What was that number again?

COMMISSIONER OHL: 38 percent white non-Hispanic.

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

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

VICE CHAIR THERNSTROM: So we've got negligible Asian American children in there, I assume, in those numbers?
COMMISSIONER OHL: Yes.

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

COMMISSIONER OHL: 14 percent Hispanic.

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

COMMISSIONER OHL: This was 2004.


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

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

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

VICE CHAIR THERNSTROM: Oh, on a state level? But can we assume that if we've got 38 percent of the children that are available for adoption Black, we do not have 38 equivalent percentage of families who are African American? You probably have many more
families eager for adoption, a disproportionately high number that are white? Would that be correct?

COMMISSIONER OHL: I can't tell you that definitively because I don't have that data in front of me. What I can tell you, and what I was getting ready to tell you in the testimony was we look at this when we do the child and family service reviews. We look at the recruitment and the availability that states have of foster and adoptive homes. And this is something that is an outcome based child and family service review that we're now doing the second round. And where there are difficulties, and for instance I was talking with Commissioner Melendez earlier today because I've been doing a lot of work in Nevada, where we work in states where there are a number of American Indian children. We look carefully in the same way: Are there sufficient adoptive placements that meet the needs of children and reflect the diversity of the children who are both in foster care and ready to adopted.

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

VICE CHAIR THERNSTROM: Yes. And then,
Ms. Brown, I have one quick question or comment for you. You mentioned in terms of a high number of African American children. You mentioned the factor of high poverty among African Americans. But, of course, there is a very closely related fact, and that is the high number of families headed by a single mother in the African American community, which surely has much to do with the number of Black children available for adoption. Family structure has got to be part of this picture?

MS. BROWN: Yes.

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

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

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

MS. BROWN: Yes.

VICE CHAIR THERNSTROM: So, I mean I think that's an important part of that picture.
COMMISSIONER OHL: Can I say one other thing based upon your asking me about particular data?

VICE CHAIR THERNSTROM: Yes.

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

VICE CHAIR THERNSTROM: Right.

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

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

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here.

I think those statistics are really important because it really would tell us whether or not we're recruiting minority parents to be available. Because otherwise if we don't have a handle on that, basically those disproportionate statistics will grow even more wide. So I was just wondering what are we actually doing to recruit minorities to become available for adoption?

COMMISSIONER OHL: We have done, as I mentioned earlier, extensive trainings across the country with states in terms of how it is that they would go about recruiting. We also have a national AdoptUSKids program. And it includes both training and technical assistance. It includes a website which on the website is for people who have gone through home studies that are cleared for both foster care and adoption. They have an opportunity then to see children, profiles on children. And through that website in the last -- we launched that about 32 years ago. Through that website we have now removed the names of 8500 children who were on that website. And we expect to hit 10,000
relatively soon.

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

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

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

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

COMMISSIONER OHL: Yes.

COMMISSIONER MELENDEZ: But what is the minimal training and education you think families adopting transracial children should have? I mean, every state probably has some flexibility to do it differently even though on a national level we're
doing some educational things like you're talking about. But I think instruction to people within each state, what do you think we need to do more to--

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

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

I indicated that we're about ready. We're working right now and we hope within the next quarter
or so to have this webcast training, which we think is going to be very helpful for states and communities.

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

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

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

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

COMMISSIONER OHL: Absolutely.

VICE CHAIR THERNSTROM: -- on the whole question?

COMMISSIONER OHL: There's a lot of material on AdoptUSKids site. We have lots of other
materials, Q&As, a variety of things that are available.

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

VICE CHAIR THERNSTROM: All right.

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

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

COMMISSIONER OHL: We look at it annually in terms of plans that states submit to us as part of their IV B funding. We are looking at it extensively in the child and family service reviews. And just so that you understand, when we do those reviews we pull records, we look extensively at cases and everybody involved in that case. We want to look at child welfare practice on the ground. That's what's got to change in this country. You've got to change the child welfare system. You've got change child welfare practices systemically across this country. And it's
got to be done between that system working in coordination and collaboration with the court system. And that's what the child and family service review is about. And we're in round number two. We are completing the 14th state this year in round number two.

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

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

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

COMMISSIONER OHL: Yes, we have it. And I think this refers directly to one of the points that the GAO made in their study. And that has to do with
the issue of subsidized guardianship. And we have done
that under a waiver. And we have done it in a number
of states in waivers. And some of the results -- Kay
is absolutely correct. Some of the results have been
really, really good. But subsidized guardianship it's
in effect not under -- it's currently not the way the
IV E program is set up. And so we have had a financing
option that we have put out, which in effect would
give states much more flexibility with the use of
their funding, which gets to some of the in community,
in home up front more preventive kinds of things. And
we think that that needs to happen.

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

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

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

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

I noticed during the breakdown that the
Asian cohort is negligible as you mentioned. What is
going on in the Asian communities such that those
numbers are negligible?

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

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

COMMISSIONER OHL: Yes.

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

COMMISSIONER OHL: Yes.

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

COMMISSIONER TAYLOR: Okay.

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

VICE CHAIR THERNSTROM: Well, wait a minute. You do know the answer to that. The answer is
a much higher percentage of intact families.

COMMISSIONER OHL: Right. Absolutely.

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

VICE CHAIR THERNSTROM: Right. Yes.

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

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

COMMISSIONER OHL: Yes.

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

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

COMMISSIONER TAYLOR: Yes.

VICE CHAIR THERNSTROM: -- a minority child --

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

MS. BROWN: Well, states have the ability to determine which factors make it difficult --
VICE CHAIR THERNSTROM: I see. Okay.

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

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

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

COMMISSIONER TAYLOR: That was the case?

COMMISSIONER OHL: -- it was the case.

COMMISSIONER TAYLOR: Okay.

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

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

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

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

COMMISSIONER TAYLOR: Thank you.

Anybody else got any questions? Anybody on teleconference got any questions? Or not
teleconference, coming in by phone.

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

COMMISSIONER OHL: You're very welcome.

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

PANEL 2

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

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

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

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

But we are actually, I had forgotten, we are actually changing the order here so that J. Toni Oliver goes first. This is at the request of those of the panelists. J. Toni Oliver goes first, Joseph
Kroll goes second and Dr. Rita Simon goes last, but not least.

COMMISSIONER BRACERAS: Excuse me.

VICE CHAIR THERNSTROM: Yes.

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

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

COMMISSIONER BRACERAS: Thank you.

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

Currently Roots serves more than a 100 families per month who are actively engaged in the adoption process and has placed nearly 400 children
with permanent adoptive families.

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

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

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

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

Rita J. Simon is a sociologist who earned her doctorate at the University of Chicago in 1956.
Before coming to American University in 1983 to serve as Dean of the School of Justice, she was a member of the faculty at the University of Illinois, at the Hebrew University in Jerusalem, and the University of Chicago.

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

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

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

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

MS. OLIVER: Good morning.

What I'd like to do this morning is to show how racial disparities in all levels of child welfare decision making create a problem that MEPA addresses by ignoring these problems. My intent is to make a case that shows how MEPA does not remove barriers to permanency facing children involved in the
foster care system. In fact, MEPA ignores or even worse, accepts racial disparities on the front end of the child welfare services and jumps to the back end and chooses to focus on one of the resulting outcomes. And has in no way eliminated discrimination in child welfare.

In recognition of disproportionality in child welfare service, a redeeming feature of MEPA is the inclusion of a requirement to recruit prospective foster and adoptive parents reflective of the ethnic and racial communities of the children in foster care. However, enforcement decisions on this requirement have been ignored since the inception of this legislation.

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

The foster care population has doubled in the last two decades from 262,000 in 1982 to 586,000 in 1999. Growth in the 1980s was concentrated in cities with sizeable Black populations. It is important to note that Black families are more likely
than any other ethnic group to have their children
taken from them and placed into foster care.

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

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

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

In large states such as California,
Illinois, New York and Texas the proportion of Black
children ranges from three times to more ten times
that of white children. And the foster care system in
these cities is almost exclusively Black.

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

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

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

In 1997, a U.S. Department of Health and Human Services' national study reported that minority
children, in particular African American offsprings, are more likely to be in foster care placement than receive in-home services when they have the same problems and characteristics as white children.

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

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

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

Dorothy Roberts cites study after study that shows poverty, not maltreatment, is the single most important predictor of placement in foster care, and the amount of time spent there. These studies show that poor children are more likely to be reported to child protective services, more likely to have the
reports substantiated, more likely to be removed from their home, and more likely to remain in substitute care for long periods of time.

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

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

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

A Los Angeles child welfare administrator
conceded before a congressional subcommittee that about half of the children in his system were removed from their home because of poverty. African American families are three times as likely as white families to be poor. In fact, the percentage of African American families whoever lived in poverty while growing up is about the same percentage of white children who never did. Poverty alone subjects African Americans to a form of intensive inspection that few parents must endure.

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

A study in San Diego where 30 percent of African American and 28 percent Latino children live below the poverty line, Latinos were placed identical to their population, however African Americans were placed at a rate six times their Census proportion.
Inadequate housing is cited by several studies as the reason Black children come into foster care and why they are not reunited with their parents. In an article written in 2000 indicate a parental income is a better predictor of the removal from the home than is the severity of the alleged child maltreatment or the parent's psychological makeup.

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

According to the latest National Incidence Study of Child Abuse and Neglect Black parents are no more likely than others to mistreat their children, and the rates of maltreatment are the same for single parent and two parent families when income is held constant. While this report found that strong connection between income and child maltreatment,
poverty alone breeds inspection into the families greater than any other factor. The National Incidence Study findings suggest that different race ethnicities receive differential attention somewhere during the process of referral, investigation and service allocation. And that the differential representation of minorities in the child welfare population does not derive from inherent difference in the rates at which they are abused or neglected.

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

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

Racial discrimination is not just poverty, and not just poverty plays an independent role in decisions about drug affected infants. In 1991 a study in the New England Journal of Medicine found
little difference between drug use along either racial or economic lines, yet African American women were ten times more likely than their white counterparts to be reported to government authorities.

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

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

VICE CHAIR THERNSTROM: Sure. One closing comment.

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

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

MR. KROLL: Thank you, Madam Chair.

I noticed I have typo on the first thing. I thought the Chairman was going to be the Mr. so,
Madam, now I'll get that correct.

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

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

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

I would prefer --

VICE CHAIR THERNSTROM: Congratulations, by the way.

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

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

VICE CHAIR THERNSTROM: What was over attached mean?

MR. KROLL: Over attached, she's 31 and she pretty much calls home a couple of times a week,
both before being married, after being married.

VICE CHAIR THERNSTROM: I think that's lovely.

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

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

I have seen in too many cases when
children who look just like my daughter, when they get to the age of 20/21 and do an identity search and identify back with their culture of origin, either are rejected by their families or a rejection occurs. And what we really believe in is that we need to prepare the families so that they can give the children all the options so that when they make their identity choices, which are their identity choices, that we support those identity choices.

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

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

As the legislation evolved it was interesting that I think Senator Metzenbaum acquired an understanding of the other side, which was families
of color really are systematically denied access to children in their communities. And that we had documented, particularly in the private sector, where the vast number of children, 50 percent of the Black and two-thirds of Latino children, were adopted by families transracially. That Black families couldn't even get in the door. That still goes on today, that in the private sector vast majorities of the children are adopted transracially. I'm talking about the younger, the infants.

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

The second thing that was in the record from the co-sponsors of the bill was acknowledging the importance of the second half of MEPA, which focused on increasing the pool of appropriate and available
perspective families for the children from their communities.

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

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

VICE CHAIR THERNSTROM: My --

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

There were discussions in the community, but there were no discussions or any record in Congress. And I think that's important as I look at some of the questions that you had asked me.
And the question that I wanted to turn to was question 2 on page 5 of my testimony. In 2005 the Hague regulations from the State Department were promulgated. And these were regulations. And those regulations say that perspective adoptive parents are as fully prepared as possible for the adoption of a particular child, and those who train parents focus on the child's cultural, racial, religious, ethnic and linguistic background. That's in the State Department regulations related to implementation of international adoptions.

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

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

At the beginning of my testimony I make an illusion to nooses hung from a tree. Six weeks ago not many people knew about that. This morning
everybody knows that that occurred because of the
demonstration yesterday in Louisiana. But racism is
alive and well. And if we do not prepare families for
what their children will face, we are not serving
those children and we are not serving those families.

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

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

When you look at the recruitment portion
of MEPA and the fact that nearly half of the states on
the child welfare service reviews don't get a passing
mark, why haven't we had enforcement? And if you look
at the regulations and the Child Welfare Policy
Manual, there are no means to enforce that portion of
law. We only enforce the delay or deny section. And I
think that that is a big mistake. That we need to be looking at the recruitment of the families like the second part of MEPA said we were supposed to do.

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

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

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

So if we were arguing that MEPA would cause the adoption of children across age groups through the vehicle of transracial adoption, it hasn't occurred. And I think this is a very important chart.
The final point I want to make is NACAC has a series of recommendations, which I'm not going to be able to read because the lights already yellow. There they're detailed. But it focuses first on the child's best interest on keeping the child as close to their family as possible, to their community as possible, to people who can meet their needs as possible. And I believe that the last thing we should be talking about is the delay or deny provisions. That we should be looking for community resources that serve the best interest of the child.

And one of the things that I have perceived over time is that we have created a law and we use the Civil Rights Law of 1962 to support the case for the access of folks like myself who are of Polish and scent, to have access to all the children in the system so that the Civil Rights Act is being used to enable white families to access all children, but it is not looking at the best interests of minority children. And I think that until we acknowledge that the Civil Rights Act is being used more to protect the interests of white adults than it is of minority children, that we're missing the point. And if the Act really does do that, then maybe we need to re-review the Civil Rights Act of 1964 because
the best interests of minority children need to be considered first.

Thank you very much.

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

(Panelists sworn)

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

PROFESSOR SIMON: All right. Thank you.

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

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

The studies that I'm talking about include following 204 families in the midwest over a 20 year period and interviewing the parents, the adopted children and the birth children from the time the
children were 3 or 4 years old until they were adults. Altogether we interviewed 366 children, 199 adopted and 67 birth children.

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

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

Another study that I’ve done involved conducting in depth interviews with 24 adult male and female transracial adoptees. My co-author on that book and others, is Rhonda Roorda, who is herself a transracial adoptee. And that’s *In Their Own Voices*. Columbia University Press put that out a little while ago.

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

And right now Rhonda and I are doing a
study in which we're interviewing the white siblings in those families. And we're saying "What was it like to have a Black brother or a Black sister?"

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

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

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

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

The one exception, it's not a complete exception, is the interviews that we did with the Native Americans. There we did find that some of the Native American adults said our parents adopted us because they considered Native American savages and they wanted to make human beings out of us. And some of them said our parents adopted us because they wanted to make good Christians out of us.
Let me briefly describe what I did in the 20 year study. Beginning in 1970 we followed 213 families in Illinois, Missouri, Wisconsin, Minnesota and Michigan from the time the children, both the birth and the adopted, were three or four years old until they were adults. We obtained the names of these families from The Open Door Society. And every family that we contacted that met our criteria of the age of the children and so forth agreed to participate. Two did not because there were recent deaths in the family. It had nothing to do with their unwillingness because of experiences concerning adoption.

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

And what we did the first time was give the children the famous doll test, the Kenneth Clark doll test where you had a Black doll and a white doll.
And in this case we also had what I thought was an Asian looking doll. And we gave them the standard questions which doll is prettier, which doll is smarter, which doll would you like to have as your friend, et cetera, and which doll looks like you.

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

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

In terms of the interviews with the parents, we asked them the demographics, age, occupation, religious ethnic background, what they did for a living and why; why they wanted to adopt the
child of a different race. Okay. Most of these families at the time could not have either a birth child or a second birth child and they very much wanted children, which was the reason most often given.

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

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

By the time we came back and the children were adolescents, all that had disappeared. There was no more of that. And we interviewed separately the children again and separately the parents. And what we found among the children, yes, there was some drinking problems, there was some drug problems, but there was no difference between the adopted children
and the birth children on these problems.

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

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

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

By the time we interviewed the parents to see what the parent's view was on what their children were doing, and it's very interesting. The parents knew very much about their children's lives. They knew, for example, that when Johnny who was adopted and Black went to pick up what he thought was going to be his date that evening and the date was a young white girl in the community, and the father came to the door and said "Who are you?" And he said "I'm
here to pick Mary up. We have a date." And he said
"Oh, no, you don't," threw him out. That the parents
knew that that had happened, and very often they would
then contact the girl's parents. Or if there had been
trouble in school, the parents knew about it and would
talk to the teachers. So there's a great deal of
openness in those families. And we knew that because
we interviewed the children and the parents
independently and separately.

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

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

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

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

PROFESSOR SIMON: The National Association
of Black Social Workers had often referred to them as
Oreos, black on the outside but white on the inside. As young adults the Black adoptees stressed their comfort with their Black identity, their awareness that while they may speak, dress and have different tastes, say, in music than innercity Blacks, but the Black experience is a varied one in this society and they're no less Black as far as they were concerned then our children of the ghetto.

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

All the participants believed that transracial adoption served them well. All of them felt connected to their adopted parents and all of them had strong recommendations that agencies and perspective parents recognize the importance of learning about their children's racial history and culture, and making that history and culture part of their child's life and their family life. Love is not
enough. The parents who adopted across racial lines had to change their lifestyle: Move into more integrated neighborhoods, be sure their children were going to integrated schools; some joined Black churches; had friends who were African American, and so on.

Thank you.

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

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

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

MS. OLIVER: Yes.

VICE CHAIR THERNSTROM: Now I'm going back to my question for the previous panel. It does not seem to me that you can separate family structure from poverty. After all, a lot of that poverty is explained by the fact that the family structure consists of one single parent, single earner or no earner and a very young parent. And so what you're really seeing here when you're seeing poverty is you're seeing a family structure picture. And that
with Latinos poverty is less associated with that family structure. You've got a much higher incidence of intact families, although very low earners. They're often recent immigrants with no skills that would earn them a middle class living.

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

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

And so, you know, poverty continues in the research to stand alone. And the types of things that we typically considered earlier, definitely in my
career in child welfare that would in some ways explains the disproportionality, are just being struck down.

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

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

VICE CHAIR THERNSTROM: That would be very nice.

MR. KROLL: But to summarize, we had the opportunity in Minnesota from her very early age to provide her with access to her community through the support groups, but also we were one of those lucky families that in our neighborhood her day care provider was a Korean woman. So that she had language, smells, food; that kind of interaction. We
learned from that woman about what it is to be Korean. We were very, very fortunate. And then within the larger support structure we could provide that for her.

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

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

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

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

    MR. KROLL: Okay.

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

    MR. KROLL: Sure.

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

    MR. KROLL: Yes.

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

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

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

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

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

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

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

MR. KROLL: Yes.

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

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

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

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

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

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

Every time he came to visit her and was walking on the street, a big Black guy during the day he was stopped by the police and said "What are you doing here?" And he said "I'm visiting my girlfriend." And the police would say "There are no
Blacks in this neighborhood." "My girlfriend is white." "Prove it." And he'd have to go to Judith's house.

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

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

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

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

PROFESSOR SIMON: Yes.

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

But my question was really broader than preparing children to be stopped in a completely arbitrary way to be stopped by police. I mean, it is complicated how you describe -- it wouldn't have been complicated in 1964, but it is complicated today. How you describe the status of African Americans, what they're like to experience, how to think about race in the society, you know it's an altered America. And I
think these message from, you know I'm just speaking for myself here, are extremely important exactly how they're stated and what kind of nuisance form they're stated. That's an open and shut case.

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

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

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

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

MS. OLIVER: Yes.

VICE CHAIR THERNSTROM: I'm sure.

MS. OLIVER: And I think --

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

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

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

MS. OLIVER: So I would say one of the issues in how do you describe it is to imagine a life
experience where for the majority of your waking hours you are aware that it is not unlikely that today you will encounter an experience where someone assumes just because of how you look that you've done something wrong. And you're scrutinized differently.

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

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

I mean, these are the kinds of things that
from a white experience you don't have everyday.

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

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

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

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

MR. KROLL: Absolutely. I think that what we have seen as a result of these numbers, and I've not been able to get statistics since 2002, but everywhere you turn you see that it's the younger children, whether it's the private sector or in the public sector, who are adopted transracially. And the
data suggests that the older children are not adopted transracially. And those are the children who we define as waiting. Over nine are the ones that really need families and based on this data, it's the single aunties, grandmothers who are adopting the older kids. The kinship care providers who move from foster care to adoption. That's what that data suggests, and I think that we need to look at the needs of the child in relationship whose waiting the longest. And it's not the little kids.

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

COMMISSIONER MELENDEZ: The other question: Wouldn't it be bold to say that most races if they found out that young children one through five
were being adopted by, say, Caucasians and whether it's an Hispanic or Native Americans under Indian Child Welfare, they'd want to know well what can we do about that statistic? Because they would look at it as we're losing a lot of our children. And that's why the issue of having available minority children has to be something that is either there or make improvements on that. You know, it just seems like you can't get away from that concern.

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

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

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

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

COMMISSIONER MELENDEZ: So even if we were to some way make African American parents available or Native Americans, or any minority group and you didn't hold up the system, they were ready to go as a first
priority and a second priority was to either go not to that race of people, we'd have a problem? So it's not solely just the issue of delaying the system. It has to do who has access to those children.

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

COMMISSIONER MELENDEZ: Right.

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

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

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

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

I guess my question is your point of shouldn't we be focused on what's in the best interest
of the minority children in the system, and are you saying that expanding the pool for the white parents does not achieve that goal, does achieve the goal or misses the point?

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

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

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

So I think that for the younger children, it really is the adults rights that are playing out here. For the older children what we haven't done is
explore all the options for those kids. And there, I think we need to go to families wherever they may be to parent the older kids, whether they're Black families, Latino, white families. And also there are a lot of white older kids waiting, too. We need to make that very clear.

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

COMMISSIONER TAYLOR: One more step.

Stick with me, if you would?

MR. KROLL: Sure. I'll try.

COMMISSIONER TAYLOR: The pool of young minority kids --

MR. KROLL: Yes.

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

MR. KROLL: Yes.

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

MR. KROLL: Children are always better off
in families.

COMMISSIONER TAYLOR: Okay.

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

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

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

COMMISSIONER TAYLOR: Right. Okay.

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

COMMISSIONER TAYLOR: Okay.

MR. KROLL: Thank you for asking.

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

MS. OLIVER: Yes.

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

MS. OLIVER: Yes.

COMMISSIONER TAYLOR: Is that fair?

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

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

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

COMMISSIONER TAYLOR: Okay. Okay.

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

Front end services, which have to do with
prevention or reunification, are much more cost
effective and are much less traumatic to children.

However, we put the money on the back end. And so
we're not addressing the fact that there are
discriminatory practices that are causing children to come in too fast. And I really do believe that if the carrot was in a different place, that we would be able to provide services within communities to be able to help families keep their children rather than take their children, to provide the kinds of resources that are necessary when we look at these artificial measures about the fact that children are coming in more so for neglect than abuse. And the neglect looks exactly poverty.

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

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

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

MS. OLIVER: Very much so.

COMMISSIONER TAYLOR: And that type of support?
MS. OLIVER: Very much so.

COMMISSIONER TAYLOR: Okay.

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

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

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

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

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

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

VICE CHAIR THERNSTROM: Unless there are
people who have urgent questions still, I would like to move on to the third panel. And then thank these panels.

COMMISSIONER KIRSANOW: One short question.

VICE CHAIR THERNSTROM: Yes, sure. Sure.

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

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

PROFESSOR SIMON: In my study when we interviewed the adult transracial adoptees, they were on their own Black, they felt that they could live in both communities. They could live in the Black community, they could live in the white community.
Many of them were in college or had received university degrees. They felt very comfortable with their Black identity and with their acceptance and participation in both the Black and white community.

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

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

VICE CHAIR THERNSTROM: Yes.

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

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


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

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

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

But in the meantime, thank you very, very
much. This is a wonderful panel, once again. And all three of you have made your contributions. And I, again, invite you to supplement -- I mean now that you've heard our questions, to supplement anything that you have to say in response to what you have heard here so that we enrich this conversation.

    MR. KROLL: Thank you for the opportunity.
    PROFESSOR SIMON: Excuse me. Some of us would love a cup of coffee. Could we have a five minute break, do you think.
    VICE CHAIR THERNSTROM: Sure. I don't know where in five minutes you can get a cup of coffee.
    PROFESSOR SIMON: Across the street.
    VICE CHAIR THERNSTROM: Across the street.
    Yes.
    PROFESSOR SIMON: Is that okay?
    VICE CHAIR THERNSTROM: Sure. That's going to be a longer than five minutes. But we'll start in five minutes.
    PROFESSOR SIMON: All right. Thank you.
    COMMISSIONER KIRSANOW: Commissioner Thernstrom?
    VICE CHAIR THERNSTROM: Yes.
    COMMISSIONER KIRSANOW: I may have to jump off for about 20 minutes.
VICE CHAIR THERNSTROM: Okay. We would like to have you back if you can come back.

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

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

PANEL 3

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

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

Before I forget, before I even introduce you.

(Panelists sworn)

VICE CHAIR THERNSTROM: For the court record I head an "I do" from all four.
Thomas Atwood serves as President and Chief Executive Officer of the National Council for Adoption, NCFA, an adoption research, education and advocacy nonprofit organization whose mission is to promote the well-being of children, birth parents and adoptive families by advocating for the positive option of adoption.

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

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

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

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

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

He has a master's in public policy and a master's in business administration from Regent University.
Dr. Ruth McRoy is Ruby Lee Piester Centennial Professor Emerita and a Research Professor at the University of Texas at Austin. She has served as the Director of the Center for Social Work Research, Director of the Diversity Institute and Associate Dean for Research in the U.T. School of Social Work.

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

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

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

Before joining Harvard she was engaged in
civil rights and public interest work with the NAAC Legal Defense Fund.

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

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

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

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

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

MR. ATWOOD: My name is Thomas Atwood. And as I serve as President and CEO of the National
Council for Adoption, NCFA. Founded in 1980 NCFA is an adoption research education and advocacy organization. NCFA has advanced adoption and child welfare policies that promote the adoption of children out of foster care, present adoption as a positive option for women with unplanned pregnancies, reduce obstacles to transracial and inter-count adoption and make adoption more affordable for families.

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

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

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

Growing Up Adopted, a massive Search...
Institute survey of 715 adoptive families found that transracially adopted youth are no more at risk in terms of identity, attachment and mental health than are their counterparts in same race families.

Yes, transracial adoption is good for children. But adoption professionals agree that it can present additional changes to an adoptive family. These challenges arise from a surrounding culture that finds transracial adoption curious and that still contains strains of racism.

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

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

It is difficult to assess how much MEPA has by itself affected transracial placements.
However, we do know that since 1997 when the Adoption and Safe Families Act and MEPA's Interethnic Adoption Provisions went into effect that adoptions out of foster care have increased from 31,000 a year to more than 50,000 and have remained at more than 50,000 per year for six years straight. Because HHS does not count transracial adoptions, it may be impossible to prove conclusively that MEPA and IEAP contributed to those increases, but it can be reasonably inferred. However, African American children continue to be disproportionately represented in foster care.

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

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

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

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

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

It is further clarified in HHS' questions and answers on MEPA which state: "Agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and
preferences regarding caring for a child of a particular race or ethnicity." HHS is quite clear on this point.

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

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

Fourth, MEPA allows, according to HHS, for
exceptions in "circumstances where the child has a
specific and demonstrable need for a same race
placement." The most common example is the case of an
older child who would prefer an in-racial placement.

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

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

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

Some child welfare advocates assert that
"all things being equal" between prospective
placements case workers in agencies should choose in-
racial placement over transracial placement. This is
a somewhat appealing argument in theory -- in theory. However, there are virtually always differences between placement options. "Things" are rarely if ever, equal.

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

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

HHS should make greater efforts to clarify
these issues and states should reform their policies and guidelines to follow the actual meaning of MEPA rather than the mistaken notion that MEPA prohibits any discussion or consideration of race.

Thank you.

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

All right. Dr. Ruth McRoy.

DR. McROY: Good morning.

VICE CHAIR THERNSTROM: Good morning.

Thank you for coming.

DR. McROY: Thank you for this opportunity.

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

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

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

3) A large number of minority children will not achieve permanency unless race matching
policies are prohibited and transracial adoptions are
promoted broadly.

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

MEPA-IEP has created a different status
for African American children who are adopted from the
foster care system with regard to
racial/ethnic/cultural identity—a status that diverges
significantly from that recognized in law for American
Indian/Alaskan Native children, children adopted
internationally and children who are adopted through
private adoption agencies that do not receive federal
funds. MEPA-IEP prohibits an agency receiving federal
funding from considering race and ethnicity in the
foster or adoptive placement of a child except, as has
been interpreted by DHHS, when a compelling government
interest is at stake. The Indian Child Welfare Act of
1978 places strong value on racial/ethnic heritage by
giving statutory preference to the placement of Native
American children with members of their own tribes or
other Indian tribes. Similarly, the Hague convention
and the Intercountry Adoption Act of 2000 require that attention be paid to children’s cultural, racial, religious, ethnic and linguistic background needs and the preparation of parents to meet those needs.

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

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

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

The children who have been awaiting adoption were an average of 5 years old when they were removed from their parents. They have been in care an average of 27 months since parental rights were terminated. These children are now an average of 8.6 years of age. The recent 2007 GAO report on disproportionality noted that, “according to Health and Human Services' adoption data over the last five
years, African American children as well as Native American children have consistently experienced lower rates of adoption than children of other races and ethnicities.”

It is also important to examine the reasons these children are in care in the first place. The majority of children enter care because of parental neglect. Some have experienced abuse, either physical or sexual abuse, some of these have experienced prenatal exposure to drug and alcohol. All of these are factors that have to be considered in looking at who are the children and what are the family resources for these children.

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

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

It's important to recognize that the children that are most in need of placement are older, have been waiting in care for some time and we need to be identifying who is currently adopting those children.
Penny Maza of the Children's Bureau has indicated that in the year 2000, older African American children were more than three times as likely to be adopted by a single female than were older white children. She found that half of the adoptive mothers of African American children adopted from foster care are 50 years of age or older. Many of those have been kinship adoptions. We need to look at all the data in terms of who is adopting, not just the young children but the older children as well.

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

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

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

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

The study also noted that since the
majority of federal funding through Title IV E is for
foster care maintenance payments, states do not have
the flexibility to use these funds for support of
prevention services for birth families. Moreover,
it's important that we recognize that when African
American children in foster care cannot be safely
reunified with their parents or with extended family
members, they need the security, stability and love of adoptive families.

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

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

2) All foster and adoptive families should receive some level of training in parenting children of culturally diverse backgrounds. When
families adopt transracially or transculturally, they should receive additional training and other support services to ensure that they are prepared to meet their children's racial, ethnic, cultural, and linguistic needs.

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

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

4) In addition, we need to address the barriers to in-racial placements. We know from a number of studies that African American agencies have been successful in recruiting and placing African
American children in foster care and adoptive placements. But many state agencies do not contract with them, or only call them for help in placing the oldest children and those who are the most difficult to place for adoption.

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

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

We also recognize as Hill studied and reported in 2004 that African American controlled...
organizations have success in finding African American families and NACAC recently released a report of 24 such agencies located throughout the United States that can help states become compliant with the MEPA recruitment requirement.

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

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

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

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

PROFESSOR BARTHOLET: Thank you. I'm Elizabeth Bartholet, and I am on the faculty at Harvard Law School. And for the last two decades plus
at Harvard Law School I have specialized in issues involving child welfare and adoption. It's out of that work that I founded Harvard Law School's Child Advocacy Program and the commitment of that program is to try to advance children's interests. I see myself as a children's advocate, among other things.

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

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

The basic dilemma, or part of it, is that the number of minority race kids in the child welfare system is grossly disproportionate to their number in the population. If you look at prospective adopters,
they are overwhelmingly a white group, not entirely
but overwhelmingly because those are the people who
are more in a position of privilege and thus able to
step forward to parent additional kids. It's not what
you do if you're desperately poor often.

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

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

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

But Metzenbaum, with whom I also had many,
many talks over the years, we talked for a long time
before passage of the '94 Act. And I tried to argue to
him, along with some others, that the '94 Act wouldn't
work, couldn't work because it allowed race to be used
as a factor in placement. And the fact is -- and
everything I say is, you know, documented in
infinitely greater and probably boring length in
various articles and books that I've cited to you --
but the fact is for two decades prior to the passage
of MEPA we had a constitutional rule that said to child welfare agencies you can use race a little, but you just can't use it systematically. It will be unconstitutional if you use it in a categorical way. And under that rule in 50 states of the nation child welfare agencies used race systematically.

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

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

So I believe this for two reasons. First, it knocks down barriers to the placement of Black kids and it expedites the placement of Black kids. Now can we prove definitively how much faster Black kids are being placed today because of MEPA? It's very
complicated to try to prove that. But we used to have barriers, we used to have child agency officials throughout the country saying I will hold these kids for six months, for 12 months, there were laws, there were regulations on paper and there were even more powerful unwritten policies saying we will hold kids for six months, 12 months, and often their entire childhood rather than place them across racial lines.

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

The second reason I think this law is tremendously important is that it sends the message that the state cannot/should not say to people we as a state prefer same race families. Same race matching policies were direct descendants of white supremacy and Black separatism. And I think that is not the path our country has chosen to take for very good reasons. And I see MEPA as directly in line with the interracial marriage case Loving v. Virginia.
I want to say a couple of things about why I think this briefing is important. Because I think we have to ensure that this law is being appropriately enforced. And for the first six or eight years after MEPA passed I was running around the country saying "Congress just passed a law designed to radically change the practices of child welfare agencies in 50 states and there's no noise. Nothing appears to be happening." And I think HHS was deeply delinquent during the early years.

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

And what these two HHS decisions say
extraordinarily clearly is that is not the case. And I think that's extraordinarily important, unlike many of the people who have spoken today who think that we should change those rules and basically go back to MEPA '94.

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

I do want to make one distinction, and some others have made it. There's a huge difference between screening based on special questions about which church are you going to go to, what neighborhood will you live in, what art will you have on your wall and who will be your friends. That's the racial sensitivity screening that was outlawed, for example, in the Ohio case that HHS decided. And that is outlawed clearly by MEPA, and that should be outlawed for the reason I think Vice Chair Thernstrom may have been alluding to, without putting words in your mouth, so I'll put them in mine. I think it's deeply wrong for the state through the mouth of a social worker to say we know how black kids should be raised and here's the orthodoxy, and we want to know if you're going to toe the line. Because if you aren't, you won't get
the kid. That is very different from saying we want to provide education -- It has nothing to do with a pass/fail test, but we would like to sensitize you.

I think it's great to sensitize the parents. Nobody I know, and certainly not I on the pro-MEPA side, believes we should be assuming a race-blind world. I think that would be silly. It's a world in which race is tremendously important. Of course transracial adoptive parents should be conscious of a whole lot of things, but having the state impose an orthodoxy by saying you won't pass the test unless you move, unless you promise you're going to this Black church, that is wrong. If you look at the record of the Ohio case, just the opinion which is extraordinarily detailed and very impressive, what you see is that racial sensitivity screening was used, first of all, to hold disabled, seriously disabled foster care kids in foster care because the social worker didn't want to give that kid to the willing, eager, waiting white parent. And so that kid waited another six or eight months, or year or two for a placement. And they waited because the answers to how are you going to raise your kid in an appropriate racial way were thought to be wrong by the social worker.
So, in conclusion, these are wonderful decisions. $1.8 million is a signal that should go out loud and clear.

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

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

I will point out to the Commission that some of the regulations the U.S. Government has just issued under the Hague Convention are in direct violation of MEPA. They require that kids be held for
two months before they can leave this country to go to
other countries for adoption, which is a form of
matching on the basis of national origin that is
forbidden by MEPA. And I would love this Commission
to look into that.

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

Thank you.

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

And again, last but not least, Linda
Spears.

MS. SPEARS: Thank you, Madam Chair.

It's a pleasure to be here this afternoon.
I am Linda Spears, and I am the Senior Vice President
of Child Welfare League of America. We are an 86 year
old organization and our focus is the development of
best practice and best practice guidelines and their application and implementation around the country in all areas of child welfare.

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

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

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

I think it's important to understand that the number of kids and the nature of the kids in our
system have changed over the years, and that that does have a direct impact on what are the strategies we use to fund permanency for children in this country.

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

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

Children have been typically exposed to a range of challenging needs, in addition to the fact that they are special needs by virtue of being hard to place. Prenatal exposure to drugs and alcohol have been referred to already. Medical fragility has been referred to already. History of physical and sexual abuse, being members of large sibling groups and having other complicated needs which make it difficult
for them to be placed without regard to which race the children are from. These kids have been typically difficult for us to find placements for in the child welfare system around the country.

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

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

I've done quite a bit of work, and this is not in my testimony although the essence of it is in my testimony. I've done quite a bit of work in communities to help them to analyze where they're
getting kids from and whether or not those children are disproportionately represented across the systems. And then to talk to those reporters about what they are reporting and why.

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

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

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

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

This says to me that it is very complicated picture for us to really unpack this
question of what is it that children need and how do we solve the problem.

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

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

   I think for me and for the Child Welfare

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

I think that we also need to understand the treatment needs of children who are in the child welfare system, and to understand what it is and how it is those treatment needs are met for kids. There is in the Third National Incident Study, and I'm very interested in the fourth when it comes out. There was a lot of evidence that there's disproportionate access.
to service for kids by race, both over service and
under service for children in the child welfare system
and approaching the child welfare system. The kids
didn't have the same access to the range of services
that they needed to meet their treatment needs. That
has to be addressed.

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

I think that the third area that I would
talk about is also not just prevention, not just
placement, but research and skill building. And I've
already talked about skill building. The importance of
research and beginning to build a knowledge base about
what the outcomes for children are across the service
areas is critical for us, and for us to pay attention
to the needs of children based in race and outcome is
really important.
And I will say several folks have said that prevention is critically important and that the funding needs to be restructured in this child welfare system in order to address that. I would say my final point is the structure of this versus the needs to be restructured in order to pay attention to more up front services to solve this problem. And we may all disagree about how that gets restructured, but I think we would agree that it needs to be restructured. And I'll leave it at that.

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

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

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

I am, and I guess I'll address this to Professor Bartholet, what is your view of the assertion made by a number of witnesses today that...
there is discriminatory reporting that accounts for
the disproportionately high number of African American
children that are adoption eligible? So, I mean
you've got Black children in this children matched to
the Black population about 12 to 13 percent. I don't
know what the population of children is, it's going to
be higher than that because of larger family size. But
in any case, if we've got up to 40 percent of the
children who are adoption eligible being African
American children, you have got a very
disproportionate number here. To what degree in your
view, because you didn't mention it but many other
people did, are we talking here about discriminatory
reporting?

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

So, anyway, two questions on the table.
PROFESSOR BARTHOLET: I would like to actually just as a preliminary matter just say very briefly on the race a little, which you didn't exactly ask me about but you commented, I don't want to be misunderstood. Because I actually am somebody who believes in some context including benign affirmative action that race can and should be used in that context. And since I am not a race-lined advocate, my argument is that keeping kids in foster care and denying placement is not a form of affirmative action. You know, even if one agrees in affirmative action--

VICE CHAIR THERNSTROM: Right.

PROFESSOR BARTHOLET: -- one could be against this.

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

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

VICE CHAIR THERNSTROM: Right. Right.

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

VICE CHAIR THERNSTROM: Right.

PROFESSOR BARTHOLET: And I just wanted to
clarify that that's not where I'm coming from.

VICE CHAIR THERNSTROM: Right. Fair enough.

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

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

I think I'm not persuaded, although I can't deny the possibility, that there's some current actual what you might call discrimination that helps
explains, but I'm not persuaded that's it. I think overwhelming abuse and neglect is a poverty related problem. Now it's only poverty related. Most poor people don't abuse and neglect kids, don't lose their kids. So it's that if you grow up poor and you never had a chance in life, the likelihood is going to be greater that you're also doing drugs. 70 to 90 percent of the kids in foster care have parents who are seriously involved in substance abuse.

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

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

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

PROFESSOR BARTHOLET: Yes. David Olds has
brilliant, I think, both a model and research demonstrating that his model of early home visitation both reduces abuse and neglect, reduces second and third pregnancies, gets people more likely more likely and to educate mothers into education and employment, which again reduced the likelihood of abuse and neglect. And actually his home visitation model when directed at relatively poor populations, his research shows it's cost effective within five years because of the savings in welfare costs.

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

VICE CHAIR THERNSTROM: And is this model very expensive?

PROFESSOR BARTHOLET: It's cost effective in five years. So it's expensive. He uses paraprofessionals. But within five years -- he's now trying to take this to scales throughout the country by going to the public entities, states and saying if you adopt this, you will save money within five years because I can show you it works. It will get people into employment, off of welfare. And this isn't even taking in account the reduction in abuse, neglect,
juvenile justice, adult criminal system, long term costs. This is within five years basically welfare cost savings.

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

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

I'm a real skeptic, though, about saying I think what Linda Spears and some others have been alluding to, that we should just do more family preservation now. That if you look at the family preservation research, meaning the late stage, we have certain families we're about to or we might consider removing the kids because they've been seriously abused and neglected, but shall we keep them at home because we can provide services. If you look at even the model programs doing that type of -- and even the intensive family preservation research, there's a social worker on your door step sort of 24/7, the research doesn't show it works. The research shows that the kids continue to be abused and neglected at home at essentially the same rates they were before these services were poured in.
So I don't think if you wait until families fall into very serious dysfunction, which is I think what's happened with most of the kids we're now removing, I think it's significantly too late. And that what we should be doing, what Congress' Adoption and Safe Families Act pushes in the direction of, which is a fairly short window of time; 12 months to get the act together, 15 out of the prior 22 months child welfare agencies are mandated to move to termination unless the kid's in kinship care.

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

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

PROFESSOR BARTHOLET: And what should we do with them?

VICE CHAIR THERNSTROM: And what should we do them?
PROFESSOR BARTHOLET: Yes.

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

PROFESSOR BARTHOLET: Yes.

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

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

VICE CHAIR THERNSTROM: Well run?

PROFESSOR BARTHOLET: You know, I just had Chuck Nelson, a brilliant Harvard medical person who does early brain development who said what I think most good experts have said for years, that there is not an institution that works well for kids. Now, is it what we have to do if we have failed so horribly that we have kids who are so damaged that they can't function in families? It may well be the best thing for some of these kids. But my answer would be for the future we ought to take ASFA seriously, Adoption and
Safe Families Act. We ought to be moving sooner to
get kids out of abuse and neglect households into
foster care. We ought to be saying to the families
we'll put you priority access into substance abuse
treatment programs, but if you're not off drugs in a
year, you lose the kid. We move those kids on faster.
You wouldn't have this problem of the older damaged
kids.

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

VICE CHAIR THERNSTROM: Yes.

Linda?

MS. SPEARS: Yes. My point actually
wasn't about family preservation services at all. My
point was that in fact many of the families that are
identified at that front door and do get into the
child welfare system, that if you count back several
service point attempts at access over the course of a
child's lifetime, that by the time they've gotten to
the child welfare you may in fact have sustainable
abuse and neglect and real serious harm. But that if
you look back and interview informers and reporters
when they first identified a need for service to the family, that need often went unmet or undermet.

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

VICE CHAIR THERNSTROM: Yes.

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

If a lot more is done on the front end,
particularly identifying family members as resources, these children would not end up coming into the system and then moving from place to place.

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

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

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

VICE CHAIR THERNSTROM: Yes.

DR. McROY: If we could do more on the front end to try to prevent kids from coming in and then more rapidly connect them with families, using all the strategies, implementing the requirement of MEPA to recruit families, and then to encourage
agencies to reach out to those programs that have been extremely successful, and in fact have waiting lists, of minority families wanting and waiting to adopt. We need to also continue to examine what happens to children who come into the system and to examine what we do to prevent children from ever making that entry into our troubled child welfare system.

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

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

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

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

VICE CHAIR THERNSTROM: I see.

DR. McROY: And then they meet with the family and begin to identify resources within the
family or within the community. Often that child
never enters the system.

VICE CHAIR THERNSTROM: I see. Okay.

That's good.

PROFESSOR BARTHOLET: Two comments. One
on the neglect. Because there are a lot of people who
say oh the majority of the cases are neglect. By
definition that shows over intervention and we're
removing kids for poverty. The majority of the cases
are neglect, but my contention is that overwhelming
the neglect category is a serious neglect category.
That this is not, you know, dirty houses and social
workers with white gloves. Overwhelmingly this is
serious substance abuse and kids who are not being
raised. And I believe. Now that is a contended fact.
But I don't want you all to just accept without
realizing it's highly contended that neglect means
they shouldn't be removed.

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

The other comment I want to quickly make
is family group conferencing, the idea that well we
should accept that it's working because it might
reduce the number of kids removed from their families, family preservation people are constantly saying let's make the criterion for success do the kids stay in the family. Well that in my view isn't success if the kids continue to be abused and neglected. Intents of Family Preservation Services research, that's the claim they tried to make in the beginning; look how successful we are, we're keeping the kids in the family. The research showed the kids were continuing to be abused and neglected at the same rate.

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

VICE CHAIR THERNSTROM: Right. Right.

Other questions, not about this.

PROFESSOR BARTHOLET: We go on all afternoon. But we won't.
DR. McROY: I thought we should just clarify that we were not all in agreement.

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

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

Yes, Mr. Atwood and then Commissioner Taylor.

MR. ATWOOD: I'd just like to comment on everything that everybody just said -- just kidding. Not much to add except one thing I will highlight for you. That the emphasis on restructuring the foster care financing system for purposes of providing better for early intervention services, that is a common agreement. I'm not sure that it's something that you were expecting or needed to hear on the Commission on Civil Rights, but it is --

VICE CHAIR THERNSTROM: No, it's important.

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

This pertains to the front door to this comment, I want to pick up something that my good
friend and colleague Joe Kroll said about community. And I thought that I want to agree with part of it and I want to maybe distinguish myself a little bit on another part of it. But the part that I agree with is that in determining the best placement at the front door for a child, community is a great question to ask. I mean, trying to find a placement within the community, it's familiar to the child. So that is clearly a factor that should be highly considered in making the placement.

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

But the other point I wanted to make is that considering community in your placement is not considering race. Those are two different things. I mean, the community may have a preponderance of a certain race within it or it may not. So what we're talking about when we're saying consider a community placement, we're saying consider a placement that is within a familiar place. We're talking about physical place there really. We're not talking about race.
VICE CHAIR THERNSTROM: Fair enough.

Commissioner Taylor?

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

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

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

MS. SPEARS: I can tell you I don't believe it's that simple. That I believe that all of the above exists. That there may be active
discrimination. There may be ignorance and inability. There may be institutional and long term and cultural legacies that we're dealing with. In my view all of the above exists at some level. And the degree to which any one of them exists, I'm not sure we know the answer to.

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

COMMISSIONER TAYLOR: And what's interesting to me on that point, though, is going back to what Ms. Spears said on the post-entry interview when you interview the Black social worker and the
white social worker, I thought I heard you say and I've heard this before, that you didn't see a difference on those questions. You couldn't track a trend line so when the white social worker walked in you saw that cultural incompetence. So what I'm wondering what explains it? If it's cultural incompetence and you can't directly relate it to a Black social worker and a white social worker, they end up with the same trend lines, what does that say? If it really --

MS. SPEARS: To many people there's a stereotypes of Black or white. Whether they're Black or white. That a lot of workers, for example, if you look at physical discipline for example. You will find in many communities workers extremely challenged to understand how to make decisions about the use of physical discipline in communities of color. They are extremely challenged by it, both Black and white. And some of that is about Black, about the interaction of Black of race in class, some of that is a training issue. But workers will both in the same system use the same stereotype to make opposing decisions. That a Black worker or a white worker will screen a case in this physical discipline because the person is Black and/or the child is Black or vice versa. That they'll
excuse the behavior because their perception that it's acceptable in the community.

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

PROFESSOR BARTHOLET: And I'd agree with that. But I just want to take a stab at the question. I mean, I believe that conscious and unconscious racism exists throughout our society. So I can't say but not in this area.

DR. McROY: That's exactly right.

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

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

Secondly, I think it may looked at from the child's point of view be an example of pro-Black child discrimination. I think we're under intervening. so, you know, if people tell me that in some drug situations we're more tolerate of the white substance abusing parent and we're not testing, which is true, we're not testing in the wealthier hospitals.
And now is that discrimination, is that impact? What do you want to call it. But we're disproportionately testing Black substance abusing mothers because they're in the poor hospitals where we're doing the testing.

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

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

DR. McROY: One thing that's important is that this issue of disparities is not unique to child welfare. The same kind of issue comes up in terms of the criminal justice system, it comes up in health care, it comes up mental health. The Surgeon
General's report that specifically looked at disparities in mental health included the provision of case scenarios to physicians all over the country, the same case description, the only thing different was the race of the client. And this, along with many other studies, have proven that often we make decisions based upon a descriptor, often that descriptor being the race of the client.

The other issue has to do with underutilization. You mentioned earlier you were asking about Asian community and why there's Asian underrepresentation. And that, too, has been raised as an issue in terms of the stereotypes sometimes that is leading one group to come in disproportionally and one group not to come in at the same level. So that's another issue.

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

VICE CHAIR THERNSTROM: We need to wrap up here unless other people have urgent questions.
COMMISSIONER MELENDEZ: I just have one final question for anyone. How can race and ethnicity be talked about perspective families for adoption? And then secondly, are there examples you know where a state social service provider is both complying with MEPA and doing a great job with educating family about the race and ethnicity issues?

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

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

So, yes, agencies are now pushed to kind of put everybody together for this racial training rather than separate the transracial parents out. And I actually think that's good. You know, if we think people need this kind of racial education, why do we
think only the transracial parents need it? Why not have everybody have it.

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

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

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

The way I would summarize the types of discussions that can occur between agencies and prospective adoptive parents on the subject of race would be summed up in two concepts. One is parent education, which is regarding the additional
challenges that can present themselves in the case of transracial adoptions. And the other is parent self-assessment. Asking questions of the parents that they are expected to consider themselves as to whether they are suited for a transracial placement. And both of those things are covered explicitly in the HHS comments on what parents can do.

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

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

DR. McROY: And many agencies are reluctant to offer that for fear that they will be in violation of the law, just as they often are not complying with the legislation which requires agencies
to recruit families that reflect the diversity of children in care for fear that they will be seen as taking race into consideration. So therefore, they opt just not to do it. But think for a minute about the significance of considering race. Let’s say an 8 year old African American child who comes from an African American birth family, then is placed in four or five ethnically different foster homes. Now the child is soon to be placed in a White adoptive family. Will that child have any adjustment issues related to race of family? Might that family have some concerns about how to address the child's issues of racial identity, as well as loss from moving from one place to another to another. Should the family be prepared for that? Should the child as well?

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

MS. SPEARS: And I would just want to add one really quick thing, and that is that in that context I think it's important for us to remember that
skill required to take care of the children in the child welfare system is not shallow, it's deep in all areas. And that these kids need -- they need the baseline training. Every family needs baseline training around mental health issues, around separation and loss, around cultural issues, et cetera. And the families who are dealing with intensively needy kids in any area need the specialized and additional skills to support that child's needs. And that's, I think, the way we should drive the way we look at this.

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

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

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