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House Judiciary Committee Holds Hearing on Hate Crimes and Race-Related Violence

LIST OF PANEL MEMBERS AND WITNESSES

CONYERS:

Good morning, again, everyone. This is a important hearing -- in my judgment one of the most important that I've had the honor of chairing -- because what this is about is about democracy now and how do we improve it.

We thank, first of all, all the members that are able to join the hearing on the committee.

And then we thank the important and distinguished witnesses that we have before us. And we also thank everyone here who is attending the hearings in person, as our guests.

The Jena 6 and the Role of the Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools is a very timely and important matter. I thank all of you who have come from various parts of the country to help discuss and illuminate this critical issue in terms of how we can resolve and solve it.

Today's hearing addresses a question that has, unfortunately, been historically a stain on our nation's history of race relations, namely racial violence and hate crimes.

Also disturbing is the likelihood that what happened in Jena, Louisiana, might not have garnered any public awareness and would not have inspired one of the largest civil rights protests in recent memory were it not for the activity of so many citizens and even persons in the media who brought this to public national and international consideration.

Clearly, in Jena there were missed numerous opportunities to address some of these incidents in a fair manner.

It could have been treated as a disciplinary problem, to be addressed by the school principal as to all the students involved, of all races, or in a more effective and efficient and fair manner.

CONYERS:

As we all know, it's illegal under the guarantees of our Constitution and our laws to have one standard of justice for white citizens and another, harsher one, for African-American citizens.

And so, I've met with the Department of Justice officials about the matter. And to their credit, they are eager to examine these problems presented in the case and committed to sharing with this committee their findings concerning other incidents.

Racial discrimination in the criminal justice system is not unique to any one place, but is found in cities and towns, north and south, throughout our nation.

Our committee, for example, is examining similar incidents involving the prosecution of African-American juveniles in Georgia, Texas and California.

And, on that note, I point out that some school leaders at Jena High School did attempt to treat this matter with equity and justice. But they were overruled.

There are countless justice-minded individuals in Jena and throughout this country who are disturbed about this. And I quote Dr. Martin Luther King Jr., a great influence in my political development, who wrote, "Injustice anywhere is a threat to justice everywhere."

CONYERS:

And so, we come to this hearing inquiring as to how we can correct this situation in the nation. And I'm looking forward to this discussion.

And I wanted to particularly thank the members of this committee, but especially Lamar Smith, the ranking member from Texas, with whom we have worked continually in this matter.

And it's not like this is the end of the line or anything, this is -- the development of democracy is a continuing activity. It never stops. There will always be problems.

The question in my mind today is whether from the particular experience and incident that brings us here we can move forward, that we can build upon it. And it's in that confidence that I believe that the answer is absolutely yes, that we're all invited to gather here today.

And so, I'd now like to recognize the ranking member of the Judiciary Committee, Lamar Smith.

SMITH:

Thank you, Mr. Chairman. And thank you for those always gracious and always generous words.

Jena, Louisiana, has suffered through a tragic series of racial incidents and subsequent racial strife. I sincerely hope this hearing will focus on productive solutions.

And in that regard, Mr. Chairman, let me say that in reading the testimony of our witnesses today, I was gratified to see so many suggestions for how we might reach those healing solutions.

The title of this hearing uses the term "hate crimes," but the proposed federal hate crimes legislation would only criminalize those incidents that are accompanied by acts of violence.

If current laws are insufficient to cover certain crimes, then we need to consider changing them.

Mr. Chairman, more than anything, though, what we need is an effort to reduce racial tension and discrimination. What we do not need is stoking racial resentment.

Race under the criminal law cannot be allowed to act like the laws of magnetism, inevitably pulling society's compass to point one way or another based on the color of one's skin. If justice is blind, she must be color blind, as well.

Mr. Chairman, this is a historic hearing today, as you've already said. And I think much good can come out of it. And I have great faith in our witnesses today not only to testify as to solutions they think are appropriate, but also to take steps today to begin that healing process, as we all work together toward that goal.

And with that, Mr. Chairman, I will yield back.

CONYERS:

I thank the gentleman very much.

And I'd like now to turn to the chairman of the Subcommittee on Crime, Bobby Scott of Virginia, and recognize him.

SCOTT:

Thank you. Thank you, Mr. Chairman. And thank you for holding today's important hearing.

I'm sure we're all familiar with the alleged facts.

Black students at Jena High School were asked to sit under a tree that was understood by everyone, including school administrators, to be for white students only. Three white students hung nooses from the tree and were ultimately punished with a brief suspension. A fight subsequently occurred between blacks and whites, but only black students have been charged with serious crimes.

The facts in these cases will ultimately be determined in court. But many of the allegations have not been credibly contradicted.

If they are true, I'd like the Department of Justice to comment on the availability of Sections 1983 and 1985 as possible remedies for the injustices.

Unfortunately, whatever the facts of this case may be, we do know that this cycle, the incarceration of African-American males, is something that we see over and over again in this country.

As unfortunate as the Jena case -- Jena 6 cases may be, this is just an example of the misfortune that African-American males are experiencing in the criminal justice system.

Marcus Dixon in Georgia, 18-year-old African-American male, had consensual sex with a 15-year-old, was convicted of statutory rape and aggravated child molestation, served 14 months of a 10-year sentence before the Georgia Supreme Court threw out his conviction.

Genarlow Wilson, 17-year-old African-American male, convicted and sentenced to 10 years for having consensual sex with a 15-year-old. Wilson is now 21, still in prison, and waiting for the Georgia Supreme Court to make a decision in his case.

Cases such as these are unfortunate, but I personally do not know of any case in which a non-minority child was sentenced to a long prison term for engaging in consensual sex with a peer.

SCOTT:

African-American families live with grim realities facing their children. At the present rates, one-third of African-American males born today will end up in prison. African-American males are incarcerated at nearly six times the rate of whites.

And there are racial disparities at every stage of the criminal justice system, especially the juvenile justice system, creating what the Children's Defense Fund calls the "cradle-to-prison pipeline for African-American males."

We have to ask the Department of Justice what can be done from a federal perspective to address local practices which perpetuate the cradle-to-prison pipeline and ask why

programs which have been proven to reduce crime and are cost-effective are not put into practice.

We need to be assured the Department of Justice is working to close the disparities between African-Americans and whites in our criminal justice system. And we also need comments from the department on several pending anti-gang bills and the effect these bills may have on the racial disparity.

It is important for the department to prove to future generations that the term "justice for all" is not simple rhetoric.

I'd like to thank our witnesses for being with us today, and look forward to their testimony.

Thank you, Mr. Chairman. And I yield back.

CONYERS:

Thank you, Chairman Scott.

By previous arrangement and agreement with the ranking member -- and I came to him to ask him that two of our members of this committee have been to Jena, and I now recognize Sheila Jackson Lee of Texas for her comments.

JACKSON-LEE:

Mr. Chairman, first of all, let me acknowledge my appreciation for the Judiciary Committee and your chairmanship. And let me, as well, acknowledge the Congressional Black Caucus, Chairwoman Kilpatrick, and, of course, the main member of Congress or the member of Congress from Louisiana which I know that they will be acknowledged.

All of us as parents have aspirations and dreams for our children. And I might imagine that the Jena, Louisiana, students had parents, grandparents who loved them and had the same dreams.

We're reminded of the history of the civil rights movement, at least from the '50s and the '60s. And I would listen to older African-Americans who took great pain in thanking the federal government for being their refuge.

As Martin King languished in jail, President John F. Kennedy called him. Whatever the politics of it, he called.

As the Little Rock Nine was frustrated, President Eisenhower responded.

The tragedy of this case is that it called out for federal intervention and the protection of children whose parents had enormous hopes and dreams. One young man was on his way to achieving graduation, and then going on to college with a football scholarship.

I hold in my hand the chronicling of the series of events.

The question becomes when community, when civil rights leaders like Reverend Al Sharpton, Reverend Jesse Jackson, Martin Luther King III, begged for federal intervention, where was it? When hanging nooses became a major incident, where was the federal government? Where was the question being asked regarding civil rights?

We do have a hate crimes initiative -- not initiative but law in Louisiana. That could be what you hid behind, because hanging nooses is not listed; obviously a weak law. Burning crosses obviously represent intimidation. So do hanging nooses.

And so, my questions today will be focused, pointedly, about the failure of this government to protect.

JACKSON-LEE:

Let me thank Michael Baisler (ph), Tom Joyner, Steve Harvey and Joe Madison for their work, let me thank Louis G. Scott, Carol Powell Lexing for their work, struggling in the frustration of the inertia of this failed Civil Rights Division of the federal government of the United States.

Shame on you. Because I believe that we have always looked to the federal government for the refuge and saving of those who have been discriminated against, and this time, and times through the past couple of years, there have been no response.

I look forward to your responses, and certainly I look forward to solutions to save Mychal Bell and the Jena 6.

I thank you, and I yield back.

CONYERS:

Thank you so much.

I'd like now to turn to the gentlelady from California and a long-serving member of this committee, Maxine Waters.

WATERS:

Thank you very much, Mr. Chairman.

Let me, first, thank you for holding this hearing. It is unusual that we can get hearings calendared as quickly as this was done. And we were only able to do this because you're the chair of this committee. And if we had to have a hearing at this time about this issue, there could be no better person than you, whose life has been dedicated to civil rights in this country.

So I'm very pleased that you're at the helm and that you're leading this hearing today.

Yes, Mr. Chairman, I did travel to Jena, and I traveled to Jena because this particular Jena 6 case triggered in me a sign of danger. I had the same feeling when this became known, what was going on there, that I had when we experienced the Rodney King beating in Los Angeles, the same feeling when we watched the people outside of the convention center in New Orleans after Katrina, the same feeling as we witnessed what happened in the town of Tulia, Texas, when the whole town practically was indicted on false charges.

There are certain cases that you know must be dealt with because if you do not deal with them, not only is great harm going to come to the individuals involved, but a message is being sent that this is what can happen if the public policy-makers, the civil rights leaders and others are not paying attention.

If you don't move at the particular time that these cases raise their ugly heads, then what you're going to see is a proliferation because prosecutors and D.A.s who abuse their power will think that they can get away with doing that and nothing will happen.

And so I went to Jena to join with all of the thousands -- maybe 50,000 other folks who went there to send a message that we're here, that something wrong has happened here, we're not going to allow it to continue without addressing it. And so today is part of the response to that issue.

I am concerned, Mr. Chairman, about several things related to this case.

Number one, what is the responsibility of the school and the school administrators in handling racial incidents, not only in the South, but anywhere in this country?

I'm concerned about the equal punishment argument. I'm concerned about why it appears in this case young black men were treated more harshly than the whites.

WATERS:

I'm concerned about why many cases that occur in the schools are now ending up in the criminal justice system.

This is not the only one that we're experiencing. More and more, we're hearing about kindergarten children in handcuffs, being taken to jail. We're hearing about teenagers being taken out of school and taken into jail. And we really do have to figure out the responsibility of the school system and why the criminal justice system is getting involved.

We also have to be concerned about the unbridled power of D.A.s and prosecuting attorneys.

And in this case, we must very well be concerned about District Attorney Reed Walters, when he addressed the Jena High School students in assembly last fall, and the reported statement that, "If the protests at the schools do not stop, with the stroke of my pen I can make your lives disappear." And he almost did that. And those lives of those six perhaps would have disappeared had the nation not gotten involved.

I'm concerned about towns where you have total all-white power, where everybody in the town in a power position is white. And you have these young black folks, young black males in particular, who are going up against district attorneys and juries, all-white, without any blacks being involved.

And I'm concerned about hate crimes and the definition of hate crimes and now, not only the nooses that were hung over the tree on the high school campus, but now nooses that are showing up all over the country in some kind of effort to send a message.

We have a response from the U.S. Department of Justice that we have contacted and they say they are investigating cases now in Maryland, New York, North Carolina, Pennsylvania and other places that we're hearing about.

So I suspect that despite the fact that we thought or we had addressed these civil rights issues, we have to start all over again, Mr. Chairman. And I appreciate your leadership.

I yield back.

CONYERS:

I thank you very much.

And I know other members would like to make opening statements, but we're going to incorporate them into the record.

I wanted to make it clear to everyone that the prosecutor of LaSalle Parish, Louisiana, Mr. Reed Walters, was invited, but he declined to be present. And I wanted the record to know that.

And that one of the very important goals of the committee is to determine what is the current state of the law, both in Louisiana and in the federal government. Amazingly enough, this is not a simple, elementary consideration of existing law. It gives us a large

responsibility to determine what the law is and then, of course, what always follows up after you establish what the law is is how is it being enforced?

And so, it's in that spirit that we begin today.

And our first witness, or in a way the first two witnesses, is the counsel to the assistant attorney general for civil rights of the United States Department of Justice, Ms. Lisa Krigsten, a former prosecutor, a former trial attorney in the Criminal Section of the Civil Rights Division.

And we welcome you, Ms. Krigsten.

CONYERS:

Our second witness is the United States attorney for the Western District of Louisiana, Donald Washington, who has served there for seven years. In addition to his significant experience as a practicing attorney, he is a former commissioned officer in the United States Army.

And we welcome you, Mr. Washington. We've met before in preparation for this date.

And we're going to include your statement and everybody else's in the record.

And I understand that you and Ms. Krigsten have a single statement that you will bring forward. But she will be available for questions.

Welcome and please begin.

WASHINGTON:

Mr. Chairman, Mr. Ranking Member and members of the committee, thank you for this opportunity to describe the Justice Department's efforts in addressing recent events in Jena, Louisiana.

I am joined today by Ms. Lisa Krigsten, a prosecutor from the Civil Rights Division, who is currently serving as council to the assistant attorney general in the Civil Rights Division.

We also have with us today Mr. George Henderson, who is behind me here, who is serving as general counsel of the Department of Justice's Community Relations Service; Mr. Henderson is here to answer any questions that you might have about the Community Relations Service.

Like many members of this committee, the department is very concerned about the recent racial tension in Jena. The department has been using, and will continue to use, all tools at our disposal to attempt to ease racial tensions, to ensure that students can attend school free from a racially hostile environment and to address violations of federal criminal law consistent with the principles of federal prosecution.

This past Friday, I travelled to Jena, Louisiana, along with Ondray Harris, the acting director of the Community Relations Service, and Ms. Rena Comisac, the current acting assistant attorney general for the Civil Rights Division.

We met there with several community and religious leaders, including Reverend Brian Moran, who is on our panel today. He's a pastor of the Jena Antioch Baptist Church and president of the local NAACP chapter in Jena.

We had a thoughtful and productive dialogue and we listened to their concerns raised by the recent events in their fair city. The community and church leaders described the tensions that they were experiencing and we described the efforts that the Department of

Justice is taking to ease those tensions and to ensure that students can attend school free from a racially hostile environment.

WASHINGTON:

We also sought to reassure the community leaders that the department is fully -- fully engaged in examining the allegations and in addressing their concerns.

Prior to our meetings on Friday, I had met with many of these community leaders at a public forum at which I spoke earlier this summer, alongside representatives from the Federal Bureau of Investigation and the Community Relations Service.

During that forum, we attempted to ease tensions in the community by answering questions about the role of the department in responding to the situation in Jena.

I want to assure this committee that the Department of Justice and its many components are actively engaged in responding to the situation in Jena.

For example, the department's Community Relations Service has devoted significant resources and time to restoring community stability in Jena.

As a separate agency of the Department of Justice established by the Civil Rights Act of 1964, the function of CRS is to address community conflicts arising from issues of race, color or national origin.

Much of the community has accepted and utilized CRS' services in the past year. CRS' expertise in conciliation and mediation has allowed the agency to address community-wide tensions.

The work of CRS is a critical piece of the leadership that the Department of Justice will continue to provide to the community.

The Jena community itself has extended a great deal of energy in coming together to develop ways to mend the wounds of the past. Toward the same goal, the Community Relations Service will continue to provide services as long as necessary and as requested by the Jena community and the surrounding region.

In addition to the work of CRS, the Civil Rights Division's Educational Opportunities Section has been actively engaged in addressing concerns regarding racial tension in the LaSalle Parish School District, including Jena High School.

The school district currently is under a federal desegregation order. Department attorneys have interviewed officials at the high school, have reviewed the discipline information for the school district, and have initiated a comprehensive review of the LaSalle Parish School District with respect to its desegregation obligations.

Moreover, the Civil Rights Division's Criminal Section is aggressively investigating numerous allegations of racially motivated criminal activity related to Jena.

WASHINGTON:

Shortly after the September 20th civil rights march, the FBI, the Civil Rights Division and the United States attorney's office opened investigations into allegations that threats had been directed at individuals involved in the Jena 6 case, along with their families.

If those threats continue -- or, pardon me, if those threats constitute prosecutable violations of federal criminal law, the department will take appropriate action.

A hanging noose is a powerful symbol of hate and racially motivated violence, and it can, in many circumstances, constitute the basis for a prosecution under federal criminal civil rights laws, including the hate crimes statute.

The department has opened investigations into reports of noose- hanging incidents in Louisiana, Maryland, New York, North Carolina, Pennsylvania and elsewhere. Public concerns have been expressed about the situation in Jena, stemming from a number of different incidents, including a noose-hanging at the local high school last year.

The FBI investigated the matter in September 2006, and my office, along with the Criminal Section of the Civil Rights Division, reviewed the FBI's reports to determine whether federal criminal charges were appropriate.

Although the conduct is deeply disturbing and offensive, we declined to pursue charges after learning that the nooses had been hung by juveniles -- by juveniles who had been promptly sanctioned by the school.

The school superintendent recently announced publicly that the punishment of the responsible students included a nine-day suspension, during which time they attended an alternative school, an additional two weeks of in-school suspension, several Saturday detentions, an order to attend a discipline court, and a referral to a family counseling program.

The decision to decline the case was in accordance with longstanding policy and principles of the federal prosecution of juveniles. As a general matter, federal juvenile prosecutions, which are referred to as delinquency proceedings, are pursued very infrequently and only when the attorney general certifies that certain statutory conditions have been met.

When they are pursued, the law mandates that the proceedings are nonpublic. A finding of delinquency in such a juvenile proceeding does not result in a criminal conviction and cannot be publicized.

The United States attorneys office and the Civil Rights Division have always been, and remain, deeply committed to the vigorous enforcement of our nation's civil rights laws. In recent years, the Department of Justice has brought a number of high-profile hate crime cases. As permitted by federal criminal law, we continue to aggressively prosecute those within our society who attack others because of the victim's race, color, national origin or religious beliefs.

While we are deeply concerned about the recent events in Jena, we also are very proud of the response we have seen from the dedicated Justice Department employees who worked diligently on this matter. It is our sincere hope that through the process of, first, responding to community concerns, second, ensuring compliance with a federal desegregation order, and, third, investigating criminal allegations, we will find ways for the community to address the many important issues raised by the recent events in Jena, Louisiana.

Thank you, Mr. Chairman.

CONYERS:

Thank you very much, Mr. Washington.

The chair notes that the Department of Education has in the room the Office of Legislation and Congressional Affairs person, Mr. James Kuhl, and the attorney who is in

the Office of the General Counsel of the Department of Education, Mr. Brandon Sherman (ph).

We now turn to the Southern Poverty Law Center and the witness for them, Mr. Richard Cohen, who is no stranger to the Judiciary Committee. Morris Dees and he have worked with this committee across the years. And we have had a great deal of success in many of the projects that the committee and the Southern Poverty Law Center have engaged in together.

Welcome, again, to this hearing.

COHEN:

Thank you, Mr. Conyers. Thank you very, very much for those kind remarks.

I appreciate the opportunity to be here and to speak to the members of the committee.

I want to note at the start that we are deeply involved in the affairs at Jena -- in Jena, because it appears to us that the Jena 6 were overcharged. And because we were quite concerned about the adequacy of the legal representation that they were receiving, we are providing legal counsel to some of the teens.

In doing so, let me quickly note that we don't excuse, condone violence in any way. Our heart goes out to Justin Barker and his family. We know he has suffered terribly.

Nevertheless, we think it's important that the scales be balanced in this case.

COHEN:

We're also monitoring the white supremacist reaction to the events in Jena. Unfortunately, white supremacists around the country are trying to exploit the situation.

We had indications, for example, that white supremacists were going to bring weapons to the rally that was held on September 20th, and immediately passed that information on to authorities.

We've also been advising schools about how they can avoid situations like Jena in their own locales.

We've published a booklet, "Six Lessons from Jena." I hope that all the members of the committee have it. We've made it available to 50,000 teachers so far. And we'll make it available to 400,000 teachers in January.

The federal government, of course, has a very, very strong interest in promoting racial harmony in our schools. A racially hostile atmosphere violates the Constitution of the United States in any public school. And it violates the Constitution in -- it violates Title VI of the Civil Rights Act of 1964 in any school that receives federal financial assistance.

Unfortunately, the problem of racial violence continues to plague our schools. FBI statistics reflect that schools and colleges are the third most common venue for hate crimes.

And unfortunately, the number of hate crimes that the FBI reports is really but a fraction of the hate crimes that occur. A study by the Bureau of Justice Statistics two years ago demonstrated that hate crimes are probably -- the FBI figures are probably -- understate the nature of the problem by a factor of 20 or 30.

As Ms. Waters indicated in her opening remarks, the problem of hate crime is not confined to the South. One sees it all over the nation, in our schools, in very, very unfortunate incidents.

Also, I want to say that it's not confined to disputes between black and white students. There have been a number of unfortunate incidents, in California, for example, of, you know, terrific tensions between black and Latino students that is really quite unfortunate.

Now, you know, there is no sure-fire formula for dealing with the racial tensions at any school. But what happened in Jena is probably a textbook example of what shouldn't occur.

As Mr. Scott indicated, a question was asked, "May we sit under a particular tree?"

And the principal said, "Well, of course. You can anywhere that you want."

What the principal didn't do was, of course, say, "Why do you ask that question? What makes you think you shouldn't be able to sit there?"

The question itself reveals so much about the climate at the school.

After the nooses were hung, the school system hesitated. It was one penalty, then another. And I think that confused the community.

Understandably, when the penalty was reduced from expulsion to suspension, a number of children -- a number of black children were quite upset.

There was no public apology. There was no component in the suspension that was designed to promote empathy or understanding.

Black students staged a protest under the proverbial white tree. Instead of it opening a dialogue with the black students, the administration attempted to shut the dialogue down.

Of course, Mr. Walters added fuel to fire with his famous statement, "With a stroke of my pen, I can make your lives disappear"; not the kind of thing, I think, that a public official should say in this situation.

Unfortunately, things got from bad to worse.

Black parents went to the school board to try to address it. At first, they were completely rebuffed. They weren't allowed. They weren't on the agenda.

I know that this committee and this body has its rules. The Robert's Rules of Order are very important. But sometimes common sense has to prevail. And when the community is hurting, they ought to be heard and a dialogue ought to be opened with them.

COHEN:

The district attorney's decision to charge the Jena 6 with attempted murder further exacerbated the situation.

We can trust the police in our country to usually bring the harshest charge that they can think of, and in this case, they brought aggravated battery charges, which themselves were quite harsh and probably not called for by the facts.

The district attorney, on his own initiative, upped the ante almost as if he was trying to say, "Look what I can do with a stroke of my pen."

What he did seemed to the community, and it seems pretty obvious to most of the country, stands in stark contrast to what he did in the case of the white students.

In an ideal world, we know that justice should be blind. In the real world, it is not. Prosecutors see race. And in Jena, it seems as if the black children were hammered and white children were given a pass or a slap on the wrists.

The noose-hanging, itself, could have been prosecuted under Louisiana law. It also could have been prosecuted under 18 USC Section 245. I think if we look at the face of the statute Section B, there are numerous sections that could have been invoked there.

But we want to be real clear: We're not contending that the noose-hangers should have been prosecuted under the criminal law. We point it out only to contrast it with the way the prosecutor exercised his enormous prosecutorial discretion in this case.

Although we believe that the Jena 6 were terrifically overcharged, we don't think it's going to help matters by prosecuting the noose-hangers and sending them to jail. Two wrongs don't make a right, it seems to us.

A far wiser course than invoking the criminal law, it seems to us, would be to devote federal resources to efforts to smooth racial tensions at the school. Ms. Jackson Lee made a good point: The Department of Education has regulations on its book that allow it to investigate cases of racially hostile atmosphere outside of the context of school desegregation cases.

And when those nooses were hung and when there were news reports about it, the Office for Civil Rights in Dallas should have been on the scene.

Unfortunately, despite the fact that these incidents are very common, the resources devoted to them by the federal government have shrunk in recent years.

Fifteen years ago, the Community Relations Service, a very, very fine organization, had more than 100 authorized positions. Today, their staff is below 50.

There have also been a number of federal programs that provided grants to many good non-profit organizations -- the Southern Poverty Law Center doesn't accept federal money, so I'm not talking about us -- has received grants from many non-profit organizations and they did a lot of good work.

COHEN:

Unfortunately, that money has seemed to dry up.

There have also, of course, been technical problems with the data collection, and I don't think that we really have a true picture of what's going on in our nation's schools.

CONYERS:

Gentleman's time is running out.

COHEN:

If I could close by saying that we have been critical of the public officials in Jena, but we're confident that they are well-meaning professionals who simply weren't prepared to deal with the problem at their schools. The federal government, working with experts, can help them.

I can think of no better ending for the unfortunate events in Jena than a renewed federal effort toward that goal.

Thank you for the extra time, Mr. Chairman.

CONYERS:

Thank you so much.

We now turn to Reverend Brian Moran, pastor of the Jena Antioch Baptist Church, acting president of the NAACP Jena chapter.

And we note that the reverend has provided a great deal of local leadership, as well as spiritual guidance, in the wake of the events that bring us here today.

We welcome you here to the committee.

MORAN:

Thank you.

First, I want to express my gratitude for this opportunity to serve as a witness, to shed light on the issues surrounding the Jena 6 controversy.

I am here to share my expressions of the tensions that existed in our tiny community leading up to the unfortunate incidences which resulted in six black students being arrested for a, quote/unquote, "school yard fight."

In Jena, everyone knows everyone. Unfortunately, there is a great deal of racial indifference that seems to have festered for many years.

This indifference has caused a good many of our citizens, both black and white, to have harsh and mixed emotions toward each other.

The noose-hangings did not help things at all. But Jena has a strong sense to get past this episode in our history.

However, I believe as a minister and a citizen that will alone will not suffice. The injustice dealt by Judge J.P. Mauffrey and District (sic) Reed Walters over the past year must be atoned. Justice must be done for our community to heal.

Even our school board has a double standard for blacks. And this whirlwind of events merely touched the surface.

I know the facts of Jena have been retold a thousand times over, and there are those who question whether or not these things actually happened.

MORAN:

I'm here to tell you they did.

But there are people in this room who probably don't know that before sitting under the white-only tree, one of the black students actually went to the principal and asked if he could sit under the tree. He was told that he could.

We all know that soon after the nooses were hung from the tree as a sign of threat and hate. More than that, many white students began screaming "nigger" across the schoolyard whenever black students would pass.

These students felt verbally abused but did not know that they could do anything about it.

Most of you know that District (sic) Reed Walters said, "With the stroke of the pen, I can erase your lives." But what you don't know is how helpless the families of these children felt at that or how hurt they were that someone would use his job to take away a child's life when all he was trying to do was get an education.

Throughout Jena's history, there has always been two systems of justice, one for blacks and one for whites.

The stories have been passed down in my family of individuals like Bobby Ray Smith, who was killed and thrown into an oil pit by a group of white men. But there were no investigations. No matter how loudly the blacks in the community protested.

And even Billy Hunter (ph), who was thumped to death by a white man who received only two years in prison.

Can you imagine the outrage, the hurt, the shame our families felt when we think about these six boys and the incident that took place last year in Jena at Jena High School?

These stories always will remain in the back of our minds.

Lastly, and most recently, the incident where two white males ran over a church sign shortly after an NAACP meeting at the Antioch Baptist Church where I pastor, which was ruled out by many not a hate crime.

We know that justice can be done. But the question is, why hasn't it been done?

I am grateful for the opportunity to tell my brief story, which actually is a much larger and longer story. I am hoping you will get the point today that Jena can be a great town, but right now it is a town where two systems of justice exist, and that is simply un-American. And we believe it is no longer acceptable.

Thank you for your time.

CONYERS:

Thank you very much, sir.

And now, we turn to Professor Charles Ogletree, director of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, and who has been most recently before this committee, in terms of hearings, on the Tulsa race riots of 1921, and has participated with the Congressional Black Caucus' criminal justice hearings across the years.

CONYERS:

He is a noted author, lecturer, and has been in the courts for many decades.

We're happy to have you here again, Professor Ogletree.

OGLETREE:

Thank you, Congressman Conyers, and also the ranking member, Congressman Smith. I'm very happy to be here before this committee, and other members of Congress who are here today. And I thank you for giving me the chance to speak briefly.

I have prepared an extensive report, that I hope will be made part of the record, that has data as well as some suggestions for future directions, as Congressman Smith mentioned. And I hope that that will be considered by this Congress.

In the short time I have today, I wanted to say a few things.

There is a sign over the courthouse in Florida that has a useful epitaph. It says, "The court is where the injured flock for justice."

And it reminds me of how the people in Jena today are wondering, where do they go? Where can they find a sense of justice? Where can they be treated, not better, not differently, but just fairly?

This incident that we have been talking about is a microcosm of a larger set of incidents that have occurred in Jena. And yet what occurred in Jena in 2006 is not isolated. It's not different than what happened to Genarlow Wilson in Georgia or what's happened in West Virginia, at the University of Maryland and Hempstead, New York, at Columbia University.

And the irony is that, just a year ago, I wrote a book with Professor Austin Sarat called "From the Lynch Mobs to the Killing State: Race and the Death Penalty in America,"

looking back at the history of these incidents, with the idea that, thank God, we're not there anymore.

And it's ironic that, one year after this book is published, looking at issues of lynchings and disparities in our criminal justice system, we find them writ large, not just in Louisiana but across the country.

At that time, we talked about the fact that, while lynching seemed historic, we can't forget what happened to James Byrd in Texas in 1998 or Emmett Till in Mississippi in 1955.

OGLETREE:

As much as we want to put these instances in the back of our minds, it reminds us what happened with that tree is symbolic of the fact that we have yet to come to grips with the fact that every citizen in America should be treated the same.

And it's not just about the young man who hung those nooses. I think that while that's an important fact, the fact is that there's a cancer in Jena. And we tried to treat it with aspirin and good wishes and hope.

But the reality is that it requires a radical solution.

And I hope the committee today will not just look at what we can do, in terms of the federal, which I'll talk about with the time I have remaining, but also what can we do locally-wide within the community of Jena?

When any public official or parent tells a child, a teenager, that hanging a noose is a prank or practical joke, an America that has been created as a result of violence and the Civil War and other issues of slavery and Jim Crow segregation, they're not really addressing the underlying issue of the tensions in our community. And the parents need that.

What is the legislative response? The number of ways that this Congress can look into this issue is numerous.

I adopt and embrace all of the remarks you heard by Richard Cohen, in terms of some options. But not only the Title VI of the 1964 Civil Rights Act put one important issue, educationally, is No Child Behind.

As this Congress is examining what it shall do going forward, the one thing we need to understand is that this is a failing school system. It's not just this incident, but who's graduating, who's been expelled, who's been suspended.

The data we have that is dated, just for Jena, Louisiana, tells us that there is a great disparity between black and white children in terms of suspensions and expulsions. That shouldn't happen in Jena and shouldn't happen anywhere else in America today.

Moreover, there is a report that was just released by Marian Wright Edelman called "America's Cradle-to-Prison Pipeline" by the Children's Defense Fund. It is a powerful reminder that our children are being criminalized from the ages of 5, 6, 7 and 8. Here's a kid sitting on a crate because he can't even stand up to be fingerprinted for an alleged crime in his community.

OGLETREE:

And this is what we're dealing with today in a very powerful and graphic way.

The other point about Jena is this -- and I'll talk about it more in the questions in terms of the remedies -- one of the important things is that, Mr. Washington mentioned, there's a 1971 school desegregation order. So we have a history in Jena, Louisiana, and we need to examine not just the legal issues in terms of education, but also the criminal justice system in a very powerful and thorough way.

Finally, I would ask that this committee think about what Mr. Washington said about the punishment of the two -- the young people who were held responsible for the nooses: nine-day suspension, two weeks' in-school suspension, and family counseling.

But have these young men ever been told or understood that what they did was not just a slight against the young people in Jena, Louisiana, but a slight on America, when the world looks here and sees nooses hung and understands that we are still, in the year 2007, dealing with a history that we thought we left a decade ago and certainly a century ago?

I implore this committee to use all of its authority to look at federal power to look at the prosecutor and the judge, look at federal powers to look at the educational system through No Child Left Behind, and also look at its federal power to see what can we do on the ground to improve race relations in Jena, Louisiana, and to do it with dispatch.

Thank you.

CONYERS:

Thank you so much.

Let's look at the situation like this. Schools don't exist in a vacuum. The tensions in them are generally a reflection of the community that they're in.

How can we eliminate a racially hostile environment in the Jena schools in the light of concerns about a racially hostile environment in the larger surroundings in which they exist?

Could I seek response from you, Professor Ogletree, in that regard?

OGLETREE:

Absolutely, Congressman Conyers.

The first thing is that CRS, to their credit, has been going to Jena. That's an important step, but not enough.

We have to be there on the ground because people in Jena today think there isn't a problem, that race isn't a factor, that these are all isolated incidents that have no bearing. And that's part of the unconscious bias that we have to address.

OGLETREE:

So I think congressional hearings there to hear how people may not even understand the racial implications.

The second is a broader implication. Most of these young men, as Mr. Scott will tell you, are not in school. And, in fact, in order for them to continue their education, they're going to have to travel outside Jena to get an education somewhere else.

And even if we solve the criminal justice problems, if these young men don't get a high school diploma, if they're not on a path toward education and college and professional pursuits, we fail them in that respect.

And one final context: The data that I have in the report makes clear that those who don't finish high school are more likely to end up in jail and prisons, who are less likely to have a job and be employable. And so, the problem has to be at the root.

And the second part is this, is that we got to look at the fact that a judge who is able to try a case as an adult case and get reversed by the Third Court of Appeals of Louisiana, then tries the same case in the juvenile cases, at least it raises conflicts of interest.

A prosecutor who's the head and lawyer for the school board, who talks about school policy and should be punished, is the same prosecutor who decides the charges in the criminal context.

Those are areas where some federal oversight is important because the state has failed to address these issues in a meaningful way.

CONYERS:

U.S. Attorney Donald Washington, do you have a thought about this?

WASHINGTON:

Yes, Mr. Chairman.

Generally, you know, when we had conversations last week with the ministers in the community and some other folks, we talked about the very question that you raise.

And what we have encouraged them to do, A, is they have to act amongst themselves. This concept of unconscious bias does exist, I believe, in the Jena community. They have to establish relationships among themselves.

So, we are assisting and encouraging them to engage in a number of social interactions. The Community Relations Service has come up with a plan of action which they have executed over the last several months and which we're in the middle of, in fact, to get to the very question that you asked: How do we move forward from here?

CONYERS:

It's a difficult one. I don't throw this out that -- get a pop response. I mean, this is the core of the problem, really. What's reflected in the school isn't something different that's reflected probably outside the school.

Richard Cohen, would you give a comment?

COHEN:

Well, I think the chair is right, that the school exists within the community.

COHEN:

But oftentimes, tensions within a school are much worse than in a community.

What happens is, people in a community have a stylized way of dealing with one another. But in a school, there's a much more -- a greater degree of intimate contact. We're in gym class together. We're eating together. There are raging hormones.

And so I think that oftentimes the situation in a school can be much worse.

But it also gives us an opportunity to do something that we can't often do, kind of, with adults. You know, we have a captive audience in school. And we can, kind of, bring people together and educate them. That's, kind of, the whole idea behind it.

I must say, I think, that in Jena, you know, they missed many opportunities to open a dialogue with the community. I think the way the black parents were treated at the school board really shut down dialogue rather than opened it up.

And the last thing I'd note, Mr. Chairman, is I think it's going to be very difficult in Jena to resolve the larger community problems until there is justice in these cases, until these cases are resolved.

So I think they now are a symbol of the larger injustices that are going on in Jena.

CONYERS:

Reverend Moran and Ms. Krigsten, do you have a comment?

My time is almost out.

MORAN:

Primarily, yes, I do agree with him. The injustice that has taken place in the school systems must be resolved before anything will take place in the community, because the eyes of the community are upon the rulings of those citizens in the school system. And until that's done, I don't believe we'll be in a healing process, no.

KRIGSTEN:

Mr. Chairman, I want to take this opportunity to echo the statements of my colleague, Mr. Washington, and indicate that the Department of Justice has committed its resources to a holistic approach to what's occurring in Jena.

At this time, I do want to note that one of the steps the community relations service is taking is to start a particular school program, called the Spirit program, inside the Jena school, to address these very issues that you and other members of the committee are concerned about.

CONYERS:

Thank you very much.

Ranking Member Lamar Smith?

SMITH:

Thank you, Mr. Chairman.

Mr. Washington, Mr. Krigsten, thank you for your testimony, and particularly the more extensive written testimony that you submitted.

And I certainly hope that any member of Congress who questions how much the federal government is doing will take advantage of reading your testimony and also, perhaps, talk, as I understand it, to the director of the Community Relations Service, who is sitting behind you.

SMITH:

I know much is being done on the ground, and there's no substitute for -- frankly, for the footsteps of those in the federal government to reassure people.

At the same time, while everything you're doing I think is worthwhile and needed, we need to remember to respond to some of the suggestions by Professor Ogletree that it's not just enough to be there; some policies have to change as well.

Anyway, thank you for your testimony.

What I wanted to ask you is, do you think the environment is changing? Do you think there's an improvement in the way people see racial injustice in Jena now as a result of your efforts?

WASHINGTON:

I will start by -- I'll start and answer that question.

My gut tells me yes. And the reason I say that is because a number of them have indicated that they never thought that their fair city would be held up to the world as an example of a racist city, and they never thought that they would have somewhere between 12,000 and 60,000 people show up in their city at one time.

Having said that, they are struggling with coming up with ideas as to how to move forward.

We are working with them, as I said before, through the Community Relations Service, through my office, and through the Civil Rights Division to help them come up with ways to move forward. We are considering how do we get, for example, different types of funding perhaps for programs that they might come up with to assist with the kind of interactions that simply need to occur in that city.

SMITH:

Thank you, Mr. Washington.

Ms. Krigsten, do you have anything to add to that?

KRIGSTEN:

I do want to add that there is a healthy dialogue taking place in Jena at this time. Mr. Washington was joined by the head of the Civil Rights Division and the director of the Community Relations Service in Jena just last Friday, and they had a dialogue with members of the clergy and other leaders in the community.

And based on reports of those meetings, the dialogue continues and things are slowly getting better, much with the assistance and guidance of the Community Relations Service, which continues to provide active support in that community.

SMITH:

OK. Thank you.

Mr. Cohen, thank you for your testimony. I really thought it was balanced. And I thought you had a couple of solutions that I want to read in a minute, because you did not get to them, I don't think, in your oral testimony.

But I also appreciated your saying something today that, frankly, I think maybe needs to be said a little bit more often. You said, "We do not excuse violence of any kind or minimize Justin's injuries in any way. Our hearts go out to him and his family."

SMITH:

In point of fact, and it's often overlooked, a brutal and unprovoked attack occurred, and apparently it was perpetrated by an individual with a long criminal history. I don't think we ought to make light of that in looking at the bigger picture, but I appreciate your mentioning that.

I also appreciate your making two suggestions on solutions. You said, "We should increase federal investment in services designed to soothe the racial and ethnic tension simmering in our nation's schools and to respond promptly when hate crimes occur."

You also said, "The federal government, working with experts in the field, can help officials like those in Jena work toward the goal of creating schools where all students feel physically and emotionally safe."

Those are wonderful goals. It's a challenge for members of Congress to implement policies and for the American people, wherever they're located, to try to achieve those.

I don't have time for a question because I want to make a comment to Professor Ogletree.

First of all, Professor, in your bio that we have before us, it says that you began your career at Harvard Law School in 1919. Now, I know you're...

(LAUGHTER)

OGLETREE:

That's Charles Hamilton Houston, not me. That's the other Charles.

(LAUGHTER)

SMITH:

I know you're a wise man. I didn't know you were that experienced, is my point.

(LAUGHTER)

Professor, what I wanted to say to you all -- I actually want to read something from your written testimony that you did not, I don't think, mention in your oral testimony.

"With more than 3,000 people lynched from the late 1800s through the early 1900s, children often attended such events as if they were carnivals. A noose today is a powerful symbol of American white supremacy and pure barbarism.

"Given the context, a noose, particularly to an African-American who knows his history, is nothing less than an expression of hatred.

"Moreover, if the students responsible for hanging the now- infamous nooses in Jena are unable to appreciate the significant brutality of such an act, that lack of understanding should be addressed for the good of the collective community."

Professor Ogletree, it is not easy for us to put ourselves in the shoes of others, but I believe you have crystallized it as well as it can be written, not necessarily felt.

And your comments there, I think, need to be taught in the classrooms. They need to be views exchanged among parents. And they need to be remembered by members of Congress when we get to the point of creating additional policy.

SMITH:

So I wanted to thank you for your testimony.

And, Mr. Chairman, my time is over.

CONYERS:

Thank you so much.

The chair recognizes a senior member of the Judiciary Committee, the gentleman from California, Howard Berman.

BERMAN:

Thank you, Mr. Chairman.

I was wondering if, though -- there's a discordant two themes that, sort of, run against each other in this. I'm wondering if you could, Mr. Washington, perhaps, or Professor Ogletree or Mr. Cohen, Reverend Moran, just resolve this for me.

On the one hand, we hear about all the efforts going on now for dialogue and reconciliation, the work of the Community Relations Service. And at the same time, we hear that the people of Jena and the leadership of Jena thinks of this as childish pranks, not something fundamentally indicative of racist views and feelings.

Professor Ogletree talks about the benefit of people learning the symbol of this noose, the history of lynchings in the South, the full implications of what that meant.

Are these efforts at dialogue dealing with that? And if these dialogues are taking place, why is this view held that the people of Jena don't -- and the leadership of Jena -- don't fundamentally feel there's anything wrong?

But I'd also like to hear from the people involved in coordinating this effort.

OGLETREE:

I'll make just a brief comment.

And it reminds me of Harriet Tubman, who was responsible for freeing so many slaves from the South to the North. And her famous statement was, "I could have freed a lot more if they realized they were slaves."

And I think that tells us something about what's going on here. There is the unconscious bias that people don't realize there is a problem.

And I think that what's going on is good, but I would actually look for this committee's support to joining Mr. Washington in Jena and other places to have a dialogue and talk about the history of lynchings.

That's not the children; it's the families, the community. And if you don't recognize you have a problem, you can't begin to address it, which is one of the major aspects.

And the second part is that I agree that there was a victim in this case who was brutally beaten, that the individuals who have been charged aren't saints or martyrs; they're young kids who were involved in conduct that needs to be addressed.

I think the fact that we have ignored the community's problems is what created this opportunity for disagreement. And I think what Richard Cohen and others are doing, I think that we can do something that we have expertise in to teach people how to think about race in ways that they probably have never thought was necessary.

It's not just Mychal Bell scoring the touchdown on the football what they all applaud, but seeing him as a young man who is more than the sum of the crime with which he's been charged.

BERMAN:

Mr. Washington?

WASHINGTON:

Yes, sir, the conflict of which you speak is, of course, not new. It exists all over the country, in my humble opinion.

What we told the Jena folks in our first education forum, earlier this year, was that in these kinds of things good people have to stand up and do the right thing and articulate very clearly what is right and what is wrong.

What didn't happen in the Jena community when the nooses were hung was just that.

And so now we move forward with this idea of, how do we solve this problem? How do we go back in time -- which we can't, but how do we, if this happens again, get people to say, "These kinds of things are wrong"?

So I think Professor Ogletree is exactly right: that we have to keep talking about it, keep pushing with it. We can use the criminal justice system to a degree, but at the end of the day, it is the blunt instrument which is really appropriate for a long-term resolution in communities like Jena.

And so this is going to be a little bit of an experiment for us, at least in my office and in the Civil Rights Division, but not in the CRS, I don't think.

BERMAN:

Let me just ask you -- to interrupt -- just, I only have another few seconds.

WASHINGTON:

I understand.

BERMAN:

Put aside the issue of juveniles. In your view, is the act -- is this act of hanging the noose a hate crime?

WASHINGTON:

Yes. It is a hate crime.

BERMAN:

Under existing federal law?

WASHINGTON:

Under existing federal law.

We have -- I think we've stated that publicly. Now, we've not all been in agreement as to how strong the evidence is to support the elements to move forward. But, yes, hanging a noose, under these circumstances, is a hate crime.

BERMAN:

Thank you.

CONYERS:

The gentleman's time has expired.

The chair is now pleased to recognize Howard Coble, who's been on the committee quite a while. And he's from North Carolina, and we welcome him for his questions.

COBLE:

But not as long as you've been on the committee, Mr. Chairman.

(LAUGHTER)

Thank you, Mr. Chairman.

COBLE:

Thank you all for being with us, the witnesses.

Racial disharmony serves no good purpose.

And, Mr. Chairman, I'm going to make a personal statement here. If I were compiling a group of witnesses to encourage the diminishing of racial disharmony, I don't know that Mr. Sharpton would have made my cut. But that's a personal opinion, Mr. Conyers.

Good to have you all with us.

CONYERS:

He may be here shortly, sir.

COBLE:

Maybe. He may be looking for me.

Americans of good will prevail in both communities: the African- American community and the Caucasian community. Unfortunately, there are trouble makers, enticers of tension, Americans of bad will in both communities. But, Mr. Chairman, I believe the latter group does not constitute the majority.

Ms. Krigsten, are there any suggested potential regulations the Department of Education might issue to help address some of the problems discussed today or to prevent future such problems from occurring?

KRIGSTEN:

At this time, I'm not able to speak directly to the Department of Education. My expertise is with the Justice Department, where I've been employed for the last seven years.

What I can tell you, Congressman, is that the Civil Rights Division's Educational Opportunity Section is actively involved in this case.

There is a federal desegregation order in place in LaSalle Parish and the Educational Opportunity Section has taken it upon itself to initiate a review of that desegregation order. That review will be comprehensive. It will look at all parts of the school. And at that time, it will determine whether appropriate relief is needed.

COBLE:

I thank you for that.

Mr. Washington, how many students were involved in hanging the noose?

WASHINGTON:

There were two students who hung the nooses and one who assisted by driving them there, so three.

COBLE:

Was the student who was the victim of the battery or the schoolyard fight, was he one of the ones who hung the noose?

WASHINGTON:

No, sir.

COBLE:

Now, one of the members of the Jena 6 was tried, initially, as an adult. Is that not correct?

WASHINGTON:

That's correct.

COBLE:

And that's ongoing now as a juvenile matter.

WASHINGTON:

As far as I understand, that's correct.

COBLE:

Thank you, sir.

Reverend Moran, let me ask you this: Has the federal government helped local officials who are trying to, for want of a better way, of keeping this thing from spinning out of control?

MORAN:

From my understanding, partially.

But there's a cry for peace, love and harmony but there is not a cry for justice. It's not justice.

COBLE:

Yes.

MORAN:

We talk about getting dialogue, we talk about us meeting one another -- black ministers and white ministers -- but we don't talk about the justice and the injustice taking place now.

COBLE:

Mr. Cohen, do you want to add -- do you or the professor want to add anything to this before my time expires?

COHEN:

No. I think that Mr. Moran -- Reverend Moran I know is much closer to the situation there, and, you know, I'm sure he has an accurate view of it.

COBLE:

Professor, I'll give you -- professors always get the last word.

OGLETREE:

I doubt it.

But I will say that your question raises an important issue, and that is part of our suggestions here is to not simply have dialogues, but to use those dialogues to think about some ways to modify our federal law.

One thing I mentioned in my written testimony is look at the Gun- Free Schools Act, which was designed to look at weapons used in school and keep data. The reality is that there are a lot of people who were suspended for crimes not involving weapons, and the question is whether or not the laws that you've passed are being used in ways that show inequal application to blacks and whites.

So I would say get the data.

And I think even the idea that you're going to change the law to look at who's getting suspended, I bet it'll change. I bet there will be a remarkable change when they realize someone's paying attention to why a child is removed from school rather than dealt with inside the school.

And I think that's a very good thing that you could do and others could do in this committee.

COBLE:

Thank you, Professor.

Mr. Chairman, I want you to take note that I'm yielding back prior to the illumination of the red light.

(LAUGHTER)

CONYERS:

The chair takes note.

Without objection, the testimony of Reverend Jesse Jackson of Rainbow/PUSH will be entered into the record.

And the chair recognizes the chairman of the Constitution Committee (sic) of the Judiciary Committee, Jerry Nadler of New York.

NADLER:

Thank you.

My first question will go to Ms. Krigsten.

NADLER:

You've testified, and we have plenty of reports that federal officials examined how Jena High School administrators administer discipline.

These officials did not find it unusual that the students responsible for hanging the nooses were disciplined only with suspensions, punishments that were awarded by the school superintendent to overrule the principal's original expulsion recommendations.

Did federal officials find that the decision to expel the Jena 6 for a school fight was a proper and equitable punishment?

KRIGSTEN:

As you mentioned, there was immediate discipline in this case after the students who hung the noose were identified.

One of the things that the department is doing is reviewing that discipline in light of other discipline that has been meted out in other situations.

So the first part of my answer is that the Educational Opportunity Section, in their review of the federal desegregation order, will be looking at this very issue.

The second thing that I want to point out is that the federal -- the decision not to pursue charges in this case was not based on a decision whether expulsion versus suspension was the appropriate penalty. The judicial system did not ever reach that particular issue.

NADLER:

Thank you.

Now, Title IV of the Civil Rights Act prohibits discrimination by public, elementary and secondary schools and public institutions of higher learning.

In a meeting with members of Congress, several Jena parents complained that the LaSalle Parish School Board did not respond to their complaints about the racial climate at the high school.

Has the Civil Rights Division opened a Title IV investigation to determine whether there's a statutory federal role in calming the racial climate at the school?

KRIGSTEN:

At this time, the Civil Rights Division is using all of the tools at its disposal to address issues in Jena. One of those tools, as I've mentioned, is a review of the federal desegregation order.

KRIGSTEN:

At this time, that is the step that the department is taking to review all of the issues surrounding the school.

If it is discovered that there are violations of that order or additional violations of law, the department will take appropriate action.

NADLER:

Thank you.

Mr. Washington, in your testimony, you stated that the department declined to pursue charges in the Jena High School noose incident after learning that the nooses had been hung by juveniles.

Early reports indicated that the department did not bring hate crimes charges because the incident failed to meet the, quote, "threat of violence" requirement.

For the record, can you please state -- well, did the noose incident meet the federal hate crime requirements and, but for the offenders being juveniles, might hate crimes charges have been pursued?

WASHINGTON:

Yes. I think you might be reading an old media report where some misunderstanding occurred.

There was discussion about the elements of a hate crime, given this particular circumstance, and we had, let's say, disagreements over the strength of the evidence to support various elements of the crime.

But to answer your question directly, if this -- if these acts had been committed by others who were not juveniles, this would have been a federal hate crime. We would have moved forward. And at the end of the day, we still would have had our -- made the disagreement over the strength of the evidence, but nevertheless, it would have moved forward.

NADLER:

Well, thank you. I have two other questions for you.

The Jena situation has spawned a series of other incidents. A truck driven on the roads trailing nooses, for instance, was reported. Are there other federal statutes other than 18 USC Section 245 that we referred to a moment ago that could be used to prosecute hate violence?

WASHINGTON:

Yes.

There's a series of statutes under the United States Code. Among them include 18 USC 241, 242, 245, 247 for church property and things of that sort. So, yes, there are, sir.

NADLER:

And finally, do you think that there's anything that we could do in strengthening those? In light of your investigation, everything -- should Congress amend or strengthen these existing statutes?

WASHINGTON:

I think two things would have to occur there.

First, what's occurring inside the Civil Rights Division is that, you know, we're asking ourselves those same kinds of questions. And so, we will -- I'm sure the Department of Justice will bring those ideas to Congress as they blossom.

And secondly, of course, any ideas that this committee might have, we would certainly entertain them and take them back and review and discuss them for further.

NADLER:

Thank you, Mr. Chairman.

Just before my time expires, I simply want to note that we've been joined by someone from my city, a very distinguished citizen and witness, the Reverend Al Sharpton.

CONYERS:

Thank you very much, Mr. Nadler.

We do have Reverend Sharpton here.

I suppose you have an excuse for your tardiness and that you are present because you do wish to make a statement.

And because of that, and because of your work and the fact that you have been to Jena and have been working not only with the federal government, but the state and local government, but, more importantly, the people of Jena and the children at the school, we're delighted to have you here today. And we would ask that, as this point, you give us your statement.

SHARPTON:

Thank you, Mr. Chairman.

First let me apologize. I have been on the tarmac in New York for the last two hours. So it was the airlines, not me, that is responsible. But I realize that this committee doesn't have oversight over the airlines, so I won't belabor the point.

First let me say that I wanted to come today, along with Martin Luther King III and the lawyers for Mychal Bell, because we had, among other groups, asked this committee to hear, because we think this is serious problem that goes beyond demagoguery and profiling.

I was called in the summer by the parents of Mychal Bell, who asked me to come to Jena because they felt their son had been treated unjustly. And we responded to their call.

They felt that the government in Jena, the state government in Louisiana, as well as the national government, did not hear their cry.

Any time we are in a situation where young people of the same age face different levels of justice, then we are experiencing, in our opinion, the undermining of the Constitution and certainly, the draw-back of the dream that many of us fought for and continue to fight for.

SHARPTON:

It seemed inconceivable to us that young people could be charged as adults, but other young people could not be charged at all.

When you have a system set up where you are too young to be charged with a bias crime, but you're the same age and can be charged as an adult for attempted murder, that speaks to some level of the justice system having to address that.

And when they were given a court-appointed attorney that did not raise that, they were able later to get Attorney Scott, who sits behind me, and Attorney Lexing Powell (sic),

who sits behind me, and able to successfully bring that into the Third Circuit and overturn the adult conviction of Mychal Bell, after serving 10 months in jail.

But I would beseech this committee to look into the fact there are Jenas all over this country. It's hangman nooses at Columbia University in New York. It's even a hangman noose at the site of 9/11. It's in North Carolina. It's in California. All kinds of reports.

And what has been most troubling is the silence of the federal government in the face of this.

Now, this is bipartisan. In the Republican administration of Dwight Eisenhower, Dwight Eisenhower sent the federal government into Little Rock. John Kennedy sent in the federal government and the Justice Department was involved. So did Lyndon Johnson.

What has happened in Jena and what has happened all over this country, we have not heard one federal response. It is almost like the national government is not in the country while we're watching nooses on the news every night, while we're watching hate crimes.

And if we can't appeal to the federal government, where can we go?

It has been rationalized by those in Jena, some, that these nooses was a prank. A prank to who? Grandchildren of people who saw their grandparents hang on nooses?

If there is a prank, if there is a joke, the joke is, if we can represent to the world that we're the land of the free and the home of the brave, but we can't protect youngsters in Jena, Louisiana, and we can't stop people from hanging nooses, and our federal government, after 50 years of bipartisan tradition of protecting people from states' rights, has now decided it can no longer protect people from states that decide they can prosecute some 16-year-olds if they're black as adults but can't prosecute other 16-year-olds if they're white; same age, but they qualify as juveniles.

Do we want harmony? Absolutely. Do we want the races to come together? Absolutely. But you cannot achieve racial justice by getting a premature racial quiet.

There's a difference between peace and quiet, Mr. Chairman. Quiet means shut up and allow a two-tier justice system to continue to exist. Justice means we must have an even playing field.

And the Justice Department, at the behest of this committee, needs to step into Jena and the Jenas of this country and establish that the federal government is still in charge and the states did not win the Civil War.

Thank you.

CONYERS:

Well, I thank the gentleman.

And I remind him that he is in the federal government right now before the Judiciary Committee, who I think has responded in quite a timely manner.

CONYERS:

And it's toward the end that the gentleman seeks to have happen is what we are here today to develop, to develop responses...

SHARPTON:

Well, I thank you for that timely response, Mr. Chairman, and I note this is the first response from the federal government. And I think all of us are appreciative for the entire committee.

And I note Mr. Coble's welcoming of my presence.

CONYERS:

And let us begin to reexamine -- and I'm not sure if you had the benefit of what I thought was some excellent discussion, but let us begin to reexamine what precisely it is - - and I'm sure this will come out in further questioning and discussion with you -- what is it that the federal government is supposed to and is going to do.

And now, going back into the regular order -- let me just ask a question. Could I seek the indulgence of my colleagues here? Mel Watt is going to be replacing me on the floor because we have judiciary legislation and I wonder if my colleagues would agree to him go next.

SMITH (?):

Mr. Chairman, I'm not sure we would say he can replace you, but he will be standing in your stead.

CONYERS:

Oh, OK. All right. Very good.

(LAUGHTER)

The chair recognizes the gentleman from North Carolina, Mr. Mel Watt.

WATT:

I thank my colleagues on the other side and I thank the chair. I guess the lesson to be learned from that is no good deed goes either unpunished or unrewarded. So, I'm going to go shortly and substitute for the chair on the floor in connection with another bill.

It seems to me that we have danced around a question quite a lot this morning that Reverend Moran seems to have put his finger directly on, and that is the fact that there's been a lot of discussion about reconciliation and very little discussion about justice.

WATT:

And until this pending dispute is resolved in some way, it's going to be difficult, hard, if not impossible, for the Jena community to move forward in any kind of constructive way.

So I guess the question I want to focus on is, what, if anything, can we do, given the recognition that everybody on this panel seems to have that there were two standards being applied, there still seems to be two standards being applied, the prosecutor is still out there charging on a different standard the black kids, not having charged anything against the white kids?

Is there anything in the current posture of the case that the Justice Department can do, or do we have to just wait on an irresponsible, insensitive prosecutor that continue to play this out for his own political benefit I'm told? While the nation is trying to reconcile, he's trying to be a hero.

Is there anything that we can do in this context, in this case, to get this prosecution resolved so that we can start to try to reconcile?

And I would address that question first to the representatives from the Department of Justice and then to the learned counsel on the panel.

KRIGSTEN:

One of the things that I want to make sure our testimony does here today...

WATT:

I..

KRIGSTEN:

Yes?

WATT:

I want to make sure that we answered the question.

KRIGSTEN:

Yes.

WATT:

I got your testimony. I don't see an answer to this question in your testimony. So...

KRIGSTEN:

The answer to the question is this.

The Department of Justice has been active in the Jena community. There has been an immediate response by the Department of Justice and a continued response to address all of the issues in the community.

When looking at the issue that you bring to the table at this time, the Department of Justice is aware that there are requests to investigate the judicial system in Jena. Just last Friday, Mr. Washington was joined by the head of the Civil Rights Division in discussions with community leaders, and that is one of the topics that was brought to our attention.

KRIGSTEN:

At this time, the Justice Department is gathering information and reviewing that information. And it is taking that request about whether there needs to be an investigation into the justice system very seriously.

At this time, there is an ongoing criminal prosecution. And it would be premature for the Justice Department to say, at this time, whether there will be the investigation.

WATT:

Mr. Cohen, Mr. Ogletree, in our criminal context, in our justice system, are we just stopped at this moment, until some "irresponsible," quote/unquote, prosecutor plays out his own political agenda?

COHEN:

Well, we hope, at some point, that cooler heads do prevail.

Unfortunately, we live in a federal system. And it's very difficult to bring a selective prosecution case and stop a prosecution in its tracks.

I know that Mr. Scott and Mr. Bell's lawyer, and many of the other lawyers, are trying to file motions to recuse the district attorney. They've been unsuccessful so far.

I think there will be motions filed to change the venue and get the case out of Jena. I can't imagine that those won't be granted.

You know, ultimately, the wheels of justice grind slowly, unfortunately. They're going to go through the Louisiana appellate courts. And if there's not justice there, there will be federal habeas actions brought.

I just hope that the kids, in the meantime, can bear up.

But I think it's not an obvious thing that we can short-circuit that by some sort of federal intervention, unfortunately.

WATT:

Thank you, Mr. Chairman.

And I thank the gentlemen on the other side for allowing me to go out of order.

And I'll go handle the chairman's business now.

CONYERS:

And I thank the gentleman from North Carolina.

The chair now recognizes Dan Lungren...

(UNKNOWN)

(OFF-MIKE)

CONYERS:

Oh, I'm sorry -- Bob Goodlatte of Virginia, a distinguished member of the Judiciary Committee.

GOODLATTE:

Well, thank you, Mr. Chairman. And I'll be following Mr. Watt to the floor momentarily, on the same issue, which you well know.

And I also want to thank you for holding this hearing.

And I also want to say -- and I think I can say this on behalf of everybody on this committee, on both sides of the aisle -- that we all stand for equal justice under the law.

And I think this is an appropriate hearing to determine the facts behind what occurred in Jena and what can be done to avoid similar circumstances in the future.

GOODLATTE:

So, in that regard, I'd like to follow up on the questions that were addressed by Mr. Watt, and just to Ms. Krigsten and Mr. Washington, perhaps get you to be a little more precise with us if you can.

And that is to ask each of you, in your opinion, what do you think were the appropriate charges to be brought against the Jena 6 members with regard to the assault on Justin Barker?

WASHINGTON:

Congressman, we have done what we can, as hard as we can, not to come up with opinions regarding prosecutorial discretion and things of that sort in this particular case.

What we can say...

GOODLATTE:

I'd like to give the other members of the panel an opportunity to answer, too. So I wanted you, as a representative of the Justice Department, to have the first crack at that.

WASHINGTON:

I understand.

What we can say is that there has been a loud outcry in the community that these charges are overboard. And we'd take that into consideration and we will continue to take that into consideration as we move forward with our processes.

GOODLATTE:

Ms. Krigsten?

KRIGSTEN:

At this time, I simply can echo what Mr. Washington has said.

There has been an outcry. We have received the message from members of this committee and from the American public that people are not pleased with the charging decisions.

But at this time, the Justice Department is not going to express an opinion about whether those charges were appropriate or not appropriate, because it is an ongoing prosecution and because we are considering a request of whether to investigate the district attorney.

GOODLATTE:

All right.

Now let me ask you a second question, and then I'm going to give the other members of the panel an opportunity to respond.

Based on your knowledge of the facts and circumstances surrounding the racial tensions and actions that occurred in the Jena community, do you believe that any additional charges could have and should have been brought against any other parties in Jena?

WASHINGTON:

We've taken the same kind of position so far, Congressman.

We are in the process of evaluating all of the rumors and innuendo and information. We continue to collect information to answer that -- those kinds of questions as we move forward.

As has already been indicated by Mr. Cohen here, when you start talking about selective prosecution and things of those sort, we have to be very precise in the kinds of evidence that we need to collect. And we have to do it in a very deliberate, careful fashion.

GOODLATTE:

All right.

Now, bearing in mind the circumstances you find yourselves in, with an incomplete process, let me then ask you maybe an easier question. That is, what should we be doing to ensure that our criminal statutes are more uniformly enforced?

KRIGSTEN:

One of the things that I think is important for us to note at this time is that in talking about these incidents in Jena, we're talking about two independent judicial systems. We're talking about the state system and the federal system.

As a federal prosecutor for the past seven years, in fact as a prosecutor for my entire career, 12 years, I am very familiar with the idea that there needs to be uniformity in the application of law. But the uniformity of which Mr. Washington and I are concerned is the uniformity in applying federal law.

KRIGSTEN:

And in this case, we believe that we are operating under the correct principles of federal prosecution.

There is a concern about how the state system is making their decisions. And it's important for us to draw this distinction because it is not our concern, as federal prosecutors, that there's uniformity between the federal system and the state system.

GOODLATTE:

All right.

Let me pass those questions down the line.

Mr. Cohen?

COHEN:

Probably simple battery would have been more than sufficient.

GOODLATTE:

If you would hit your microphone...

COHEN:

My microphone seems to be having a problem. I have a light but no sound.

I think simple battery would have been more than sufficient. Aggravated battery, of course, requires both a serious injury and a dangerous weapon. I don't want to minimize any injuries here, but everyone knows that Mr. Barker left the hospital under his own power with no broken bones and no stitches.

Also that the dangerous weapon here was tennis shoes. One can always claim that anything can be used in a dangerous fashion, but I think that simple battery would have been more than sufficient under the circumstances here.

GOODLATTE:

Thank you.

Reverend Sharpton?

SHARPTON:

I would -- as not being one of the learned counsels at the table, I wouldn't even venture to guess what would be appropriate.

I think it would be appropriate that there should have been some kind of a penalty on a juvenile if, in fact, it occurred.

I think that what I would like to address is the second part of your question. I think that the federal government and the Justice Department should review the laws that protect juveniles from hate crimes.

I've seen where people that have been involved in drug trafficking has gotten around those laws by using kids. Are we now going to have a society where if you want to hang up a noose or paint a swastika you use somebody underage to do it, and therefore we can permeate society with hate by just playing around this juvenile law?

Does the federal government have the same requirement that you have to be grown to commit a hate crime? If it does, we need to visit or revisit whether that law protects us. If it does not, then does that -- does the state of Louisiana law supersede federal law?

I think they can immediately do this.

These nooses were hung over a year ago, sir. So I know that the wheels of justice may turn slow, but it seems that it's at a standstill. Because to deal with those nooses does not require interfering in any of the prosecutions of the local district attorney, does not take away any of the power of the prosecutor.

SHARPTON:

It's to say an event happened over a year ago.

Is state law constitutional, and is federal law outdated, where you now have to be grown to commit a hate crime in America? I think that that's a threat to all of us that are in groups that have been targets of hate.

GOODLATTE:

Thank you.

Mr. Chairman, I believe my time's expired, unfortunately. I'd like to continue this down the line. I don't know...

CONYERS:

Could we -- let me allow you enough time to get to the two other witnesses.

GOODLATTE:

If they would care to respond...

CONYERS:

If you have a response.

GOODLATTE:

... to either of those questions?

OGLETREE:

To both questions: In the first case, it seems to me, along with Richard Cohen, that battery seems to be the appropriate charge. These were dramatically overcharged against the Jena 6.

On the other hand, the second question, Robert Bailey Jr. was assaulted with a bottle, had a gun put on him, and those individuals received little or no punishment at all.

So race has been a factor in the way the punishment has been meted out. That's why there's no justice. There is no justice when anybody can look at these individuals and see that the amount of punishment they are exposed to is in direct correlation to the race of the person who is the victim and the race of the person who is accused of the offense.

And that's the problem at Jena that we keep ignoring.

MORAN:

I think that the punishment that was given to the white children who hung the nooses -- it was dealt out by the school system, by suspension and whatever other means of punishment that was given to them. I think that the black students should be treated the same. There should have been some type of educational status or educational punishment given to them.

I don't believe that the law should have been part of what took place inside of the school, when it was in fact a schoolyard fight.

Also, we must also look at the fact that the Third Circuit Court of Appeals has already ruled out that Mychal Bell was illegally charge, but nothing has been done about that as of this point.

Things are steadily rolling and the D.A. is steadily putting out punishment for even Mychal Bell. That's very unjust.

CONYERS:

Thank you, Mr. Goodlatte, for your question. And that's why I wanted the entire panel to respond to it.

The chair recognizes the chairman of the Crime Committee, Bobby Scott of Virginia.

SCOTT:

Thank you, Mr. Chairman.

I thank all the witnesses for their testimony.

I guess I have a fairly specific question, and that is, if you can show that the charging decisions were done in a racially discriminatory way, would Sections 1983 and 1985 be available as a remedy?

And I'd ask Mr. Ogletree and the Department of Justice.

OGLETREE:

In my view, the answer is yes. It would take a lot of effort to get that done, but that's part of the basis of all this testimony: that there are federal statutes that have not been used and can be used to look at specific civil rights violations that could have been and should have been considered, and still can be considered, in what occurred.

SCOTT:

And how would 1983 and 1985 be used?

SCOTT:

And how would 1983 and 1985 be used?

OGLETREE:

Well, there's a separate civil rights issue here in terms of how these individuals lost their basic rights as citizens.

And I think that if you look at the statute and look at the conduct here, it would require the department to take a look at what occurred and do the thorough investigation, which I'm not sure they've done in '83 or '85, and then see what sort of remedies would be available for those who have been inappropriately punished or adults who have not been punished.

SCOTT:

We know that this is a hypothetical question because I know the case is being tried in court, but if it could be shown that the charging decisions were made in a racially discriminatory way, I'd ask the two of the Justice Department to comment on Sections 1983 and 1985.

KRIGSTEN:

I hesitate to speculate at this point whether someone can be charged, either civilly or an entity can be charged criminally under the federal code, in this specific incident.

What I can say...

(CROSSTALK)

SCOTT:

... if, if it could be shown. Now, that has to be shown in court, whether or not it's true.

KRIGSTEN:

Yes.

One of the concerns in my providing an answer directly on this issue is that any decision about whether the statutes can be used will depend on the individuals who are found to have participated in these decisions.

And there's an entire juvenile and adult criminal justice system that people have indicated may be troubling in Jena, and because I don't want to be in the position where I'm specifying precisely who may be responsible for...

SCOTT:

I'm not asking for that. I'm asking whether or not, if you can show that a prosecutor has charged people in a racially discriminatory way, whether or not 1983 or 1985 would be available as remedies.

KRIGSTEN:

I think that there are civil remedies available for situations...
(CROSSTALK)

SCOTT:

And what would have to be -- and what would have to be shown?

WASHINGTON:

Let me just take a quick stab at it.

First of all, I'm no expert here, but I'll tell you what we've discussed so far.

Yes. The answer to your question is yes. If we can prove that charging decisions were made in a racially discriminatory manner, then that leads to the strong possibility that we can move forward, either under the statutes you cited or some other statutes in the United States Code.

You've asked a second question: What would we have to -- what evidence, I presume - - I think that's your question, what evidence do we have to come up with?

The law seems to indicate to us that we would have to prove that the actor -- whoever that would be, and I assume you're talking about a district attorney -- set about to charge one group of persons in a different way than another group of persons.

So, for example, if the district attorney said, "I'm going to charge African-Americans more rigorously than white Americans," then, yes, that would be a violation of law.

SCOTT:

And what would be the sanction?

WASHINGTON:

Again, I'm not the expert here for that.

In some cases there could be potentially a criminal sanction. In other cases it would be probably some order to supervise or remove the district attorney. I'm just not sure about how we would go about doing that.

SCOTT:

My colleague from New York asked about the education system. If you can show that people were denied equal opportunity to education because of the hostile environment, what sanctions would be available to the Department of Justice?

KRIGSTEN:

At this time, the review of the educational system in LaSalle Parish is being conducted under review of the federal desegregation order, and so there will be specific relief available, depending on what the outcome of that investigation shows.

The attorneys who are working on this case will have the range of options, from going into court for specific relief on a particular issue, all the way through perhaps a contempt of court motion.

OGLETREE:

Mr. Scott, if I can just one quick response to that as well.

Mr. Scott, representing Mychal Bell, reminded me that, in fact, the Third Circuit Court of Appeal concluded that this prosecutor violated the law in charging Mychal Bell as a juvenile -- as an adult in the first instance, number one.

OGLETREE:

But even more importantly, it would be interesting to see whether this prosecutor -- and the record seems to suggest no -- has ever, ever prosecuted any white person with an attempted murder case for what was, in effect, a fight on a schoolyard premise.

SCOTT:

And what would you...

OGLETREE:

And so the foundation is there to look at this -- *United States v. Armstrong*, a case the Supreme Court decided a decade ago, talked about the 1983 (inaudible) what's the threshold here. It seems to me this record leads, as I said earlier, at least a foundation to make that claim.

SCOTT:

And what would be the remedies under 1983 or 1985?

OGLETREE:

Well, I think the remedy's beyond 1983 and '85 in terms of violation of civil rights.

One of the things that we haven't even discussed today is that in virtually every state in this country, any person -- not just lawyers or judges -- can file a complaint that could lead to disbarment and other penalties.

Michael Nifong in North Carolina, as you know, was disbarred and punished for his involvement in the Duke lacrosse case. And that happened before anybody was taken to trial or convicted.

So the idea of waiting until after it's over is one strategy, but the reality is that there are things that can and should be done for judicial misconduct. The Third Court of Appeals has ruled about the judge's error, et cetera.

So this is a record that is replete with judgments already made showing disparities based on race, people should not have been charged. Which is only one side of it.

But also, we do know -- the other side -- that people have been charged and not charged for similar conduct, and race is a factor.

So there is an accumulation of material here that would at least say that civil and certainly at least the consideration of some criminal prospects are appropriate as well.

CONYERS:

Thank you very much.

The chair recognizes Dan Lungren, a member of Congress, then a state attorney general for California and then a member of Congress, back on Judiciary Committee again.

LUNGREN:

Thank you very much, Mr. Chairman. I missed you so much, I had to come back.

I appreciate it.

This is a very difficult issue anytime you have race interjected in the criminal justice system.

I can recall in the midst of one of the biggest racially charged issues we had in California, the Rodney King case, I had two cases turned over to me, and we had to make a charging decision on whether Rodney King ought to be charged with further crimes in unrelated circumstances. And we made the judgment there was not sufficient evidence. And I remember getting a lot of mail on that.

LUNGREN:

Another high-profile case in our state of O.J. Simpson, we were asked to take over the question of whether a -- at that point in time -- decorated detective of the Los Angeles Police Department had committed perjury on the stand. And we did and we got a conviction on that and I probably got more hate mail on that than anything else.

And in both cases, the mail was really racially tinged. But we made our decisions irrespective of the race of the individuals involved and tried to look at the evidence.

I am troubled by the atmosphere that existed in this high school because it evidently led to a terrible situation with respect to racial relations. And there were a number of victims here and one of the victims is Justin Barker, as I can see it.

Unless I'm wrong, he didn't have anything to do with the nooses. Unless I'm wrong, the evidence suggests that he walked out of the gymnasium door and was, as someone said, blind-sided and knocked unconscious by a blow to his head. And it was then that he was on the ground and that he was kicked.

And some people say he was kicked with people who had tennis shoes and that, therefore, shouldn't lead to the level of charges. But it sounds to me more than a simple assault. At least you could potentially charge someone with more than a simple assault in that particular circumstance.

Whether or not attempted murder is appropriate under the laws of that jurisdiction, I don't know because I never prosecuted under that jurisdiction. But I think it has been too easily stated here that this was just a simple assault.

At least, I would look at it as a prosecutor to see whether it was more than that.

But my point is, here you have, as far as I can tell, a student who never was involved in the incident of alleged hate crime, unless I'm mistaken, who was set upon by others. And one of the defenses is they are upset because of the atmosphere that has been created.

And that just goes to show you that when you don't have order in a situation, when you don't have respect from a racial standpoint, you have a lot of unintended victims that end up there. And we need to talk about justice being done to all of them, it seems to me.

The problem of the Justice Department is an interesting one, because I had a similar situation as attorney general in California. I could intervene on any district attorney in the state who did not bring forward criminal charges, but I couldn't act to stop him from bringing charges. And the argument was that if the D.A. wasn't doing his job in bringing charges where they ought to be brought, there was no alternative except the attorney general to come in and do it, number one.

LUNGREN:

But if someone overcharged or if someone didn't do an appropriate job of prosecuting, you had the jury that could look at it, you had the trial judge that could look at it, you have the appellate court that could look at it, on the state level, and then the federal level.

So there is, sort of, a system by which we try and regulate ourselves here. And I'm not sure there's a simple answer to this question.

I would like to ask Professor Ogletree, someone I consider a friend -- this is kind of fun. I get to ask you questions, instead of having you asking me questions...

OGLETREE:

This is true.

LUNGREN:

... at this platform.

You have looked at -- because you've gone from the specific to the general, and you've talked about, across the nation, black students, black males being charged more harshly or being dealt with more harshly than white counterparts.

I'm going to ask you a question that's, kind of, a difficult question to ask, because it invites a lot of interpretation.

But when we were looking at this issue, across the board, of juvenile crime in California, one of the things that we looked at was the breakdown of the family structure -- irrespective of race, the breakdown of the family structure, and that young people who -- and there's, first of all, let's put on the table, a lot of great single parents out there, doing a great job, and a lot of kids doing well in single-parent households.

But if you just look at the figures, you will see that children from single-parent families have a larger percentage of drug use, of alcoholism, interaction with the criminal justice system.

Have you ever looked at that issue as -- taking race out of it and looking at how young people in schools come up against either the enforcement system within the schools or the criminal justice system, depending on whether or not we have a family structure behind them that is a complete family structure?

OGLETREE:

It is a very good question, Congressman Lungren. And let me just tell you what is, sort of, missing from it. And we have looked at this.

It's interesting that, in many two-parent families, where both parents are educated and working, there's the same sort of drug use, same sort of violation of laws that -- many are in private schools or other institutions where the laws aren't applied equally.

So it's not the structure of the family. It's the structure of a system that considers something a prank or a practical joke and, in another context, when that student doesn't have a parent to come and support them, it's considered a felony or an attempted murder.

So I think it's too easy to gloss over, in saying family structure is the cause and the consequence of the problem. It's bigger than that.

And if you look at the disparity in the punishment, it's a large factor of where -- let me give you an example of assault with a dangerous weapon in a school.

That sounds like somebody pulled a gun or a knife on somebody and assaulted someone else. It could be as simple as kid taking a straw, putting a piece of paper in it and spitting it at someone else and almost hitting that person. And that's considered an assault with a dangerous weapon.

In fact, a lot of the cases we've looked at, at the Charles Hamilton Houston Institute for Race and Justice, of kids being expelled and suspended, it doesn't involve guns; it doesn't involve knives. They're the exception rather than the rule.

And I think the fact of the matter is that so much behavior that should be addressed within the context of the rules of a public school system are now being addressed in the criminal justice system.

There are police on the campuses of high schools and junior high schools. There's a direct process for people getting prosecuted.

And so you raise a good question, and we can look at that more, about how much family structure matters. But I can tell you the disparities in the individual cases are based more on the race and class of the person involved than they are on the nature of the offense that's been committed.

LUNGREN:

Thank you very much.

SHARPTON:

May I address the congressman on that one, Mr. Chairman, just quick?

CONYERS:

Yes.

SHARPTON:

National Action Network, the group I head, Congressman -- whose acting national director sits behind me, Attorney Charlie King -- we've done studies on that. And we will make available to you the results.

SHARPTON:

But we're finding that there may be a difference in juveniles coming from broken homes, as opposed to full homes, in the criminal justice system.

But when you further break it down, with white homes and nonwhite homes, you find the same disparity that you find when you deal with children that are with their parents and children that are not.

So the question becomes -- and we don't have final results -- the question also should be in your looking into this is whether race is also carried over when you get to the broken homes status, when you look at the family mixup. Because I'm beginning to see the trend doesn't change. And I think that's important.

I might also say, for the record, none of us don't see Justin Barker as a victim. The question is whether or not there's equal prosecution. No one justifies what happened to Justin Barker.

Martin Luther King III has just joined us. We said going in, Justin Barker should not have been beaten. And it has nothing to do with whether he was connected to the nooses or not. It's about how you have one prosecutor that seems to overprosecute in some cases and not in others.

We're not trying to make a link in that. The link is the same prosecutor seeing different situations much differently.

CONYERS:

Thank you very much.

The chair recognizes Sheila Jackson Lee, the gentlelady from Texas.

JACKSON-LEE:

Mr. Chairman, let me thank you very much again for this hearing.

And I respect Reverend Sharpton, and I know that in the second sentence of his remarks, he was respecting this committee, since he made the inquiry early on and he recognizes that there are three branches of government. And because of this chairman, we now have vigorous oversight.

Let me acknowledge Martin Luther King III -- having worked for the Southern Christian Leadership Conference, I have a special affinity for your family -- and Dick Gregory, who is here as well.

Judge Leon Higginbotham said that race matters. And I respect my good friend, who I will share a hearing this afternoon -- he is the ranking member to the committee that I chair -- Mr. Lungren.

All of us are looking at societal issues. We know that Dr. Poussaint and Bill Cosby have just come out with a provocative book.

I don't know if I can get through the questioning because as a parent, I'm on the verge of tears.

Mychal Bell is now in jail. Marcus Dixon is now in jail. My good friend Congressman Scott has laid the legal precedent, and I am not going to review that.

I will say that I am writing legislation that deals with racial theme parties on college campuses -- I revised it to include high schools, primary and secondary schools -- dealing with the question of hanging nooses which, to date, have failed to make the mark as burning crosses. But we recognize that nooses have now proliferated across America. They're in the workplace.

And these questions will be for U.S. Attorney Washington, the U.S. attorney from the Western District, and Ms. Krigsten, Reverend Sharpton -- and he might yield to the attorneys -- and Professor Ogletree.

Reverend Moran, let me thank you for declaring two systems of government, two systems of justice.

JACKSON-LEE:

Let me thank you for your prayerfulness.

And let me thank Dr. Ogletree, Professor Ogletree, for using the word "cancer."

Let me thank the NAACP for burying the N-word, "nigger." But Reverend Moran said that the children were called niggers.

So let me begin my questioning by just a procedural question.

Ms. Krigsten, when did the Community Relations team come in for the first time?

KRIGSTEN:

The Community Relations team has been working with...

JACKSON-LEE:

When did it come in for the first time, please? What is the date that it came in?

KRIGSTEN:

I'm going to defer to the legal counsel of the Community Relations Service.

JACKSON-LEE:

Thank you.

Quickly, can you give me an answer, please? My time is short. What is the date that it came in?

HENDERSON:

The first day it was actually there was on June 12th of this year.

JACKSON-LEE:

Is that 2007?

HENDERSON:

Action on the ground. But we were...

JACKSON-LEE:

2007, June. Thank you very much.

Ms. Krigsten, can you provide me with a detailed response to the calls that I made repeatedly to the Civil Rights Division speaking to the assistant attorney general for civil rights and to the FBI? Would you provide a chronicling in writing of your responses that you gave to my office and whether or not the FBI is on the ground looking into the treatment of Mychal Bell at this time? I don't need it in public statement, just give it to me in writing.

Let me go forward to U.S. Attorney Washington.

September 2006, three nooses were found hanging. The principal said, "Let's expel them." They were then -- the students were suspended.

Then, in the fall, we had a series of fights between black and white students in late November. Arsonists set fire to the school's building. A white student beats up a black student who shows up in an all-white party. And my understanding is that a shotgun was pulled by a white man on three black students at a convenience store.

Let me ask the chairman to put into the record, "U.S. Attorney: Nooses, Beating at Jena High, Not Related," "Nooses Incidents Evoke Segregation."

Right now I'm going to ask you, and I'd like the people that I call to answer this question.

CONYERS:

Without objection...

JACKSON-LEE:

I thank you, Mr. Chairman.

CONYERS:

... those will be introduced into the record.

JACKSON-LEE:

I thank you.

You stated on the record that nooses equal hate crimes. I'm asking you now, first of all, to go back to Jena, Louisiana, in the symbolic position that you hold, one, because you merited appointment, but you are the first black Western District U.S. attorney, and I'm asking you to go back, and I'm asking you to find a way to release Mychal Bell and the Jena 6.

My question that goes down the road: I want to know why in the course of meetings of local district attorneys, why you didn't engage with Mr. Reed Walters, who may be subject to prosecutorial abuse, and confer with him and say, "Mr. Walters, this is not the way to handle this case. I can see disparate treat by white students being suspended, back in school, and by Mr. Bell being still in jail on an offense that he served 10 months for, 10 months, and therefore the judge, the juvenile judge could have said, 'Time served,' and he could have been released."

I want you to tell me why you didn't engage with the D.A., and I want you to tell me what you're going to do now.

Reverend, I'd like you to tell me how they treated us when they came there.

And, Dr. Ogletree, please tell me what federal action legally and legislatively that we can have.

Mr. Washington, tell me why you did not intervene, not by way of the...

(APPLAUSE)

... legal system, but the consultation that the U.S. attorneys have with the local district attorneys. Why didn't you intervene? This broken lives could have been prevented if you had taken the symbolic responsibility that you have, being the first African- American appointed to the Western District.

I don't know what else to say. I am outraged. And that's why my voice is going up like this. Literally outraged.

(APPLAUSE)

CONYERS:

The committee will stay in order.

And the gentlelady's time has expired. But we do seek a response from the persons that she indicated...

(CROSSTALK)

JACKSON-LEE:

I thank you, Mr. Chairman. And I thank you for indulging the increased spirit of my questioning.

And I thank Mr. Washington for respecting the emotion that I am showing here today because of the pain I feel.

Thank you very much.

WASHINGTON:

Thank you, Congressman.

I don't know where to start, so -- I mean, you asked a lot, so I'll just start from the beginning, I suppose.

First of all, I did intervene. I did engage the district attorney. We had conversations about his charging decisions and things of that sort.

At the end of the day, there are only certain things that a United States attorney can do -- that a federal representative can do, with respect to a state and how it handles its criminal justice system.

What I will tell you, however, is that, you know, just like you were offended, OK, when you first heard about this matter, I was also offended. I, too, am an African-American and I was very offended by what I heard.

I took steps to see what we could do within the ambit of the kind of powers and responsibilities that I have.

I am a child of the '60s, of the desegregation era. My mother marched, I'm sure like your parents did, in the 1960s when Martin Luther King was urging African-Americans to get out and march for their rights.

I believe that I...

JACKSON-LEE:

That gives us an extra burden.

CONYERS:

Just a moment. I'm going to ask that the witnesses be able to finish their statement without...

JACKSON-LEE:

Thank you, Mr. Chairman.

CONYERS:

... any further interruption.

JACKSON-LEE:

Thank you, Mr. Chairman.

WASHINGTON:

Thank you, sir.

So, I am, I think, what Dr. King was trying to get us to do, trying to get us to be, trying to get us to become many, many years ago.

Now, having said that, we still have a system of justice that we have to comply with. We still have rules and responsibilities. We still have a concept called due process. We have a federal scheme of laws that I am, unfortunately, constrained to.

And at the end of the day -- I hope I've answered your question -- I did have that discussion that I think you were most concerned about.

CONYERS:

Are there any other responses?

Reverend Sharpton?

SHARPTON:

Yes, I think that Mr. Washington's statement, Congresswoman, is most disturbing to us, and that is when he said that the federal government through he, as U.S. attorney, got involved and there was nothing they could do.

And that is why I said in my opening statement, did the federal government or the United States or the Union win the Civil War or not? Because are we saying that the federal government cannot protect us against state laws that are set up unfair and unequal?

It is unconstitutional to say you have to be grown to commit a hate crime.

SHARPTON:

And what they're saying -- beyond Mychal Bell's case, beyond Jena 6 -- that, "If you are under a certain age, we will allow you to operate hate with full immunity." And that is something I don't think the federal government can tolerate to say when we are seeing nooses hung all over this country. That's first.

Secondly, when they can stand by and watch this young man do 10 months in jail and then the Third Circuit overturns that, and the same judge that was the adult judge becomes the juvenile judge and turns around and gives them 18 months in revenge, because the same judge and the same prosecutor runs the same -- the whole town, and we say we have to wait and see while they're doing interviews over CNN and others, creating the climate that this is fair and this is just.

I think that this is nothing tantamount to aiding and abetting people that Dr. King fought against.

And we don't have to experiment. Dr. King's son marched now. We're not talking about our mommas. We're marching now. We marched in Jena now. We ain't gotta go back to back in the day. We're still in the day.

And we need some people today to do what Eisenhower did, Johnson did and Kennedy did: that's intervene, not just sit down and have some casual conversations with the D.A. and say, "Explain to me why you're so biased."

CONYERS:

Thank you.

JACKSON-LEE:

Dr. Ogletree...

CONYERS:

Just a moment.

I've asked Ms. Lee -- your time has long expired, but I have to keep the control, as the chair.

JACKSON-LEE:

No, I agree, but I have -- Dr. Ogletree was one of the ones that I'd asked to answer.

CONYERS:

I'm going to recognize Mr. Ogletree.

JACKSON-LEE:

Thank you, Mr. Chairman.

OGLETREE:

Thank you. And I'll respond very briefly.

There are laws, both state and federal, that could have been used and should have been used and can be used in the prosecution, particularly of the young individuals involved with the nooses who were not charged.

There is a Louisiana statute -- Louisiana Revised Statute 14, Section 107.2, which talks about institutions receiving federal funds have to protect individuals against racial violence and threats. That could have been used.

There's also a federal statute, it's Title 18, that Richard Cohen mentioned in his report -- Title 18, Section 50-32, that also could be used, to make this a 10-year felony. And even though they're juveniles, that would not prevent them from being charged.

So there are laws on the books that can have been used. And I don't think that they are prevented from being considered now.

That's why the federal law exists. And I think there is a way to examine that. And I'm glad you raised that question.

CONYERS:

The chair wishes to announce that he recognizes the presence of Dick Gregory in the hearing room, and I'm very pleased that he could attend.

And the chair also recognizes the presence of Martin Luther King III, who has graciously consented to submit testimony in connection with this hearing.

CONYERS:

Welcome, Reverend King, to his hearing.

The chair now turns to Steve King, the ranking member of the Subcommittee on Immigration, from Utah, for his comments or questions.

KING:

Iowa, in this case, Mr. Chairman, but...

CONYERS:

Oh, Iowa -- excuse me.

KING:

And I thank the chairman for recognizing me.

And I also welcome the living examples of civil rights that are in this room. It's something that I have watched and followed throughout my development years. And it takes us into this current era.

I have often worked and spoken and prayed for the time that we can put these racial divisions behind us.

And, you know, I actually believe that we will know when we arrive there when we can get to the point where we can make light of this rather than serious of this.

And, of course, this is no time, in this meeting room today. We've got much more of this to get behind us before we can get to the point where we deal with each other with the kind of relationship that Chairman Conyers and I do: man to man, person to person, human to human, people that are created in God's image.

We should be treating each other with the same level of respect and dignity.

I have to, though, ask you to look at this from bit different perspective, because it is our job to look at this without regard to race, if we can, and then with regard to who did what and when and what crimes are available for prosecution.

With all the testimony that's flowed out here today, the one that I would take us back to is Mr. Washington's, when, in response to the question, "Was this a hate crime?" the hanging of the nooses, and your response, Mr. Washington, as I have it, is "Yes, hanging a noose, under these circumstances, is a hate crime."

Could you clarify whether you're referring to federal law or state law?

WASHINGTON:

I'm referring to federal law and not state law.

KING:

I thank you, Mr. Washington.

And then I'd just turn to Reverend Moran, on that end, and would you agree with that statement, that the hanging of the nooses was a hate crime?

MORAN:

Yes, I would.

KING:

And is there anyone in the panel that would disagree with that statement?

And if not, then let the record show that there was no disagreement and the panel is unanimous in concurring with the opinion of Mr. Washington that hanging of the nooses was a hate crime.

Then I'd ask -- maybe I need to make a statement first -- the tone that I pick up here, from listening to this testimony, is that the hanging of the nooses seems to be more egregious than the beating that took place.

I think that's got to be put back in a perspective. The nooses were hung by, as my records -- on September 1st, and the beating took place on December 4th. That's three months for cool-off, but we know, also, that there were other incidents in between that accelerated this.

And I know, Reverend Moran, you testified that the punishment that was meted out to the white students who hung the nooses was done by the school, and also that that would have been an appropriate response for the school to discipline those who perpetuated the beating.

Would it be your position that that's where the issue should have stopped?

MORAN:

I would think so, yes.

KING:

OK.

Then I'd ask Mr. Washington, if the hanging of the nooses are a hate crime, as all the panel agrees, was the beating itself a hate crime?

WASHINGTON:

We've had discussions about that. And in fact, I've had discussions with members of this panel about that, and members in the audience. And there is some disagreement.

I have stated, in the public, I think, fairly vigorously, that there were no statements made in the police reports that were actually taken that would get me to the element that the beating of December the 4th was undertaken because of race.

WASHINGTON:

And so, from our perspective -- and that's not to say that we won't go back and relook at this -- but from our perspective, no. We did not get to the conclusion that the December the 4th incident was a hate crime.

KING:

All right.

And, Mr. Washington, I raise that question because it strikes me that an act of violence, in my view, is more egregious than a more passive act of the hanging of the noose. And I know I come from a part of the country that doesn't have that same sensitivity.

But I turn to Reverend Sharpton and point out that the jury that sat in judgment of Mychal Bell was an all-white jury. Is that an issue from your perspective?

SHARPTON:

Yes. I think that the selection of the jury is certainly an issue.

But I also think that you've tapped the core of my testimony, Congressman King.

You've made the -- you've got the U.S. attorney to agree this is a hate crime and you've talked about the crime of the young man being assaulted. But let's be clear, it was never prosecuted as a crime. A school does not prosecute crimes. A school deals with discipline.

The only crimes that were prosecuted was for the beating. So, even if you or I would say it was more egregious, we're not talking about two crimes treated the same. We're talking about one crime being excused. The criminal justice system, federal or state, never prosecuted for the hanging of the nooses.

A school cannot take the U.S. attorney's job.

KING:

For the record here -- and I'd close this because my time has expired -- I want to make sure that those that are viewing and witnessing this hearing understand that the jury that sat in judgment of Mychal Bell, although it was an all-white jury, was selected from a pool that was an all-white pool in a community that's about 90 percent white, about 10 percent black, and that the black jurors who were called to be part of that pool that day did not show up.

SHARPTON:

There was conflicts on how they were called. Some said they weren't noted. Some said that they were relatives of Mychal Bell. His attorneys are here if you want to get...

KING:

But the selection process, though, did not have the opportunity to choose a single black on the jury. I think it's important to clarify that record.

And I thank the witnesses all for their responses and their testimony.

I'd yield back, Chairman.

CONYERS:

Thank you very much, Mr. King.

CONYERS:

The chair now recognizes one of the two members of the Judiciary Committee that traveled to Jena, Maxine Waters of California.

WATERS:

Thank you very much, Mr. Chairman.

I have to thank you again for calling this hearing so quickly. And while I know that you're a very thoughtful, careful and deliberate chair, taking all things into consideration, I am disappointed that District Attorney Reed Walters is not before us today. That's who I wanted.

(APPLAUSE)

Also...

CONYERS:

As you know, he was invited.

WATERS:

Yes. And I'm sorry; you did indicate that.

And I don't know, Mr. Chairman, whether or not there will be more hearings and perhaps you will determine that sometimes later, but, of course, we do know you have the power of the subpoena. So perhaps that's something we can look toward for the future.

Let me just, if I may, go back to Mr. Washington.

Mr. Washington, I first met you when you appeared on television speaking about the Jena 6. If I recall, what you said at that time was that it had been determined that no hate crime had been committed. Is that true? Is that what you said on television?

WASHINGTON:

That there is no hate crime committed at which stage, the December the 4th incident or at some other stage of these -- of the timeline?

WATERS:

Do you remember when you were on television making the statement?

WASHINGTON:

I do.

WATERS:

What were you referring to?

WASHINGTON:

It depends on what the question was. If she was talking about the December the 4th incident, I have been I think fairly -- fairly clear that I did not believe that that was a hate crime because of the statements that I've read and the information contained in those statements.

With respect to the August 31st hanging of the nooses, the September the 1st incident, I think we've been fairly clear that that had all the elements of a hate crime.

What we're missing there, of course, and we would have proceeded forward, would be evidence and an adult to move forward with. It's not that at the end of the day that it's not -- whether or not it's a hate crime on the noose-hangings...

WATERS:

Well, that's really what I'm referring to, and that's what I thought I saw you speaking to on television...

WASHINGTON:

Well...

WATERS:

... where you had determined that it was not a hate crime.

WASHINGTON:

No, there were a number -- no, ma'am...

WATERS:

That's not what you said on TV?

WASHINGTON:

No, ma'am, I don't believe so.

WATERS:

All right. That's good. That's fine.

To the -- Ms. Lisa Krigsten, counsel to the assistant attorney general, in your investigation have you taken into consideration what has been alluded to several times here?

WATERS:

Reed Walters attempted to try Mychal Bell as an adult. There was no law in the state of Louisiana that would have allowed him to try him as an adult, as I understand it. Was he attempting to try him as an adult for attempted murder or for aggravated battery? Which was it?

KRIGSTEN:

I can't speak for what Mr. Walters was attempting to do...

WATERS:

Well, yes, you can. You know what he was -- that's on the record.

KRIGSTEN:

Well...

WATERS:

He attempted to try him as an adult.

KRIGSTEN:

Yes.

WATERS:

What was the charge at the time?

KRIGSTEN:

I believe the charge was attempted murder.

WATERS:

Attempted murder.

KRIGSTEN:

Yes, ma'am.

WATERS:

Does the state of Louisiana allow for the trying of juveniles as adults for attempted murder?

KRIGSTEN:

It is my understanding -- and, again, I'm not a...

WATERS:

Well, you should know by now.

KRIGSTEN:

I'm not a lawyer who's ever practiced in Louisiana, so let me qualify my answer that way.

WATERS:

That's OK. You should know by now. What is it?

KRIGSTEN:

It's my understanding, based on Louisiana law, that a juvenile can be transferred into the adult criminal justice system with a charge such as attempted murder.

WATERS:

So you do not see that the trying of Mychal Bell as an adult was something -- as it has been described here, as something that was being done for the first time, that it was unusual, and that this should be considered in the investigation of how the district attorney has used or abused his power?

KRIGSTEN:

Obviously, we are considering everything we know about this.

I am not aware of the allegations this was the first time that this had been done.

Obviously, we're still gathering information. And we are going to take everything we learn about this incident into our consideration of how we proceed.

WATERS:

Thank you.

Have you started to look at the reported threats to all of the Jena 6 and some reference to them and their addresses on the Internet and a charge to go pull them out of their houses?

KRIGSTEN:

We have heard about those threats. The FBI takes these sorts of threats very seriously. There is an open investigation into many incidents surrounding Jena, including some of the threats that we have learned about.

The FBI is aggressively investigating all of those allegations. The United States attorneys office is working with the Civil Rights Division. And, again, I cannot emphasize enough how seriously we take these incidents. And if we find that there is a prosecutable violation of federal law, we certainly will seek to do the appropriate actions.

WATERS:

Mr. Ogletree, could you illuminate the discussion on the trying of Mychal Bell and the history of that as you know it and understand it?

OGLETREE:

Yes.

And with the permission of the chair of the committee, I'd like to have entered into the record the decision of the state of Louisiana Court of Appeals, Third Circuit, on September 14th, 2007, where it concluded that...

CONYERS:

Without objection, so ordered.

OGLETREE:

... that Mychal Bell should not have been charged with aggravated battery as an adult, and reversed that conviction.

So the record is clear. The Louisiana Court of Appeals for the Third Circuit made that determination. And it was clear that he was over charged, that the lawyer who represented him didn't try to prevent that from happening. That is original charge. That the court didn't grant a dismissal of the charges, as the lawyers had requested. And only when it went to the appeals court was it finally rectified.

OGLETREE:

So the error occurred from the time Mychal Bell was charged and wasn't corrected until, gosh, a year after the charges.

And that the record is absolutely clear and I'd hope that we can submit the rest of the material as well.

WATERS:

Thank you very much.

Mr. Chairman, as I close, let me just say that for those of you who are here today, you must recognize that the problem that we're dealing with is not simply in Jena.

If you take a look at what has happened on this committee today, first of all, the opposite side of the aisle is missing for the most part. And those who came in, Mr. Lungren and Mr. King, were concerned about Justin Barker.

They came in asking questions about Justin Barker and even saying that perhaps we should take the nooses -- the hanging of the nooses lightly and someday we'll be able to maybe, kind of, look back at this and not think it's so serious.

So, I want you to understand that because just as we're talking about what is wrong in this country, the institutionalized racism, that leads us to this point, it is not only institutionalized racism that causes the desperate treatment of -- such as in this case, but it's the kind of thinking that goes on in this country by public policy-makers.

We see things differently. We're here talking about a case of six young black men who, obviously, have been treated differently. We're talking about a district attorney or prosecuting attorney who appears to have abused his power. We're talking about nooses that have been hung over trees.

And we have those who come in today who are talking about single-parent families and the fact that perhaps more criminality comes out of single-parent families and talking about perhaps Justin Barker's civil rights were violated. That's how they see it. We see it differently.

Thank you, Mr. Chairman.

CONYERS:

I thank the gentlelady and the chair would observe that if everybody agreed with us, we wouldn't be here today.

CONYERS:

That's what the problem is that we're addressing, is that we do have this grave disparity that has been developed as a result of this incident in which tens of thousands of people have alerted the nation to the significance of Jena, Louisiana.

And it's not to blame or pinpoint Jena, because there are Jenas all over this country.

And it's to this end that this hearing, to me, becomes extremely significant, in terms of how we deal with this here today, but what is it that we do about the tremendous legal analysis at the federal level, as to where we go from here and how we beef up the Department of Justice, which has gone through a recent trauma all of its own?

I mean, we've got a part of the federal government that is in a very disabled circumstance.

And so I appreciate the fact that there would be, logically, different and opposing views put forward.

But it's what we do with this information that will be the test of time that we will all be judged by.

The chair is pleased now to recognize Steve Cohen, the gentleman from Tennessee.

S. COHEN:

Thank you, Mr. Chairman.

And I just want to emphasize that, if Congressman Waters said something about this side of the aisle, I don't know if she was referring to Congressman King, but I'm only on this side of the aisle because we have a majority.

(LAUGHTER)

I want to ask the attorneys, particularly Mr. Washington, first, about the hate crimes.

My staff and I have been looking at this for a couple of weeks. Pastor Derrick Hughes of Springdale Baptist in Memphis called me and asked me, "Can we make this a crime, to hang a noose?"

I know that there are laws about swastikas and cross-burnings and nooses, of the kind, but don't they have to have some specific intent -- not simply the display of an object, but the object with a particular intent?

WASHINGTON:

Yes. That is among the things that have to occur.

S. COHEN:

And in this situation, is it because it was on school property that makes it a hate crime?

WASHINGTON:

What makes it a hate crime is the idea that there was a threatened use of force, that it was to intimidate, injure, interfere with some folks, because of their race, while they were exercising a constitutional right, and that is going to school.

What was, sort of, confusing here -- and there is agreement amongst the panel, except for the fact that we don't agree as to whether these particular folks could have been prosecuted. These particular folks not could not be -- not would not have been prosecuted but they could not have been prosecuted. It was impossible under federal law, as written today, for us to go after these particular juveniles.

S. COHEN:

Why?

WASHINGTON:

Because they were under the age of 18.

S. COHEN:

OK, because of their age.

Now, you say that there had -- did these individuals make a threat of violence?

WASHINGTON:

Well, that is among the kind of things that we'd have to prove in court. I mean, we'd have to go and make our best case, of course. And if the evidence...

S. COHEN:

So the simple display of a noose is not a hate crime?

WASHINGTON:

That's correct.

S. COHEN:

Right. And so it has to be with some intent and something else to it?

WASHINGTON:

There are elements in the statute that we have to prove in court.

S. COHEN:

And then what if it was not on a school ground or in a federal building? What if it was simply a noose at somebody's home? Would it be sufficient that their constitutional right of having pursuit of happiness or whatever -- I don't know what. That's not a constitutional right -- but would there be places that are not covered because of the locale of the placing of the noose?

WASHINGTON:

That's possible. But there are other statutes possibly that we'd look at, if there was racial animus involved.

S. COHEN:

Well, you say there would be the ones you might look at. Do you think -- is there maybe a void somewhere that needs to be filled, where the exhibiting of a noose, the burning of a cross, the painting of a swastika, with an intent to deprive a person of their constitutional rights needs to be passed, either with that language which I just mentioned or some other language to fill any void?

WASHINGTON:

Actually, I think you just quoted the elements of a federal statute today, 18 USC 241 -- 242 or 241 already exists to cover the situation that you just indicated.

S. COHEN:

So you think it's pretty filled.

WASHINGTON:

Well, it's pretty filled. Where we get into I guess significant discussions is where's the limit between speech versus criminal law.

S. COHEN:

Right. So you've got to have some element of violence that has been alleged to have occurred to make it a hate crime. Is that right?

WASHINGTON:

We would like to see that.

S. COHEN:

You say you'd like to see it. See, it's always been my thought, maybe just the conventional wisdom, that the hate crime is violence and not speech. And a noose, while it's objectionable as a swastika or burning a cross, is speech.

What do you have to have added to that speech? Don't you have to have something besides speech to make it a hate crime?

WASHINGTON:

Yes. Just as an example, 18 USC 245, when you get to the punishment section, if there is no injury, it's not a felony, it's a misdemeanor. So that's one.

So when you back up into the elements of the crime itself, you do need some use of force or threatened use of force.

S. COHEN:

OK. Great.

Let me ask -- different subject, and maybe Mr. Ogletree would be best to respond. I'm not sure.

Do you know if there's anything that we should look into putting into the No Child Left Behind Law, if there's anything in there now, maybe to mandate education that requires some courses on tolerance or some courses on civil rights history, Holocaust history or things like that, to teach all children in the United States about such episodes of racial and ethnic intolerance?

OGLETREE:

Well, Congressman Cohen, as I said earlier in my remarks, at the beginning, I think that No Child Left Behind is the huge opportunity for this Congress to address a number of these issues that are slipping and sliding away from both state and federal prosecution. It's the right to an education.

And we leave -- No Child Left Behind -- when we have a real law that treats all children fairly, in terms of the quality of their education.

And I would, with my institute, be more than happy to work with Congress to think of ways to specifically amend and reform the No Child Left Behind to address some of the underlying issues here that aren't being addressed in other ways.

I want to make a quick comment to your earlier query to Mr. Washington. I really can't think of a circumstance where a noose is a household item or an article. It's offensive. It has a deep history.

And you can't trivialize it because it's in someone's house, or they don't say words. It's designed for one purpose. Nooses were used for one thing and one thing only. In the history of this country, it was used, by and large, to lynch black women and men.

And we can't ignore the 3,000 people who died and no one was prosecuted. We can't ignore that this Congress, this Senate, just last year, didn't stand up and talk about an anti-lynching law. They had a voice vote. Because there still are questions about that.

And I hope we don't bury the history that comes with what this symbolizes. This is one of the most destructive, mean-spirited, racist examples of individual behavior.

And it doesn't just hurt the three or five or seven black children under the tree. It hurts all of us, every single one of us.

I don't have to be in Jena to be deeply offended when every any person, for any reason, on a truck, in a car, in a tree, in a house, has a noose. It is not a neutral term. It's a term that connotes threats, violence, death and destruction.

And I think we should not try to homogenize or anesthetize what is one of the great symbols of racial hatred, that so pervasively marked this country's history, that influenced a world war, and that is still a symbol that groups like the Ku Klux Klan applaud and celebrate as if it's another way to dig it in.

It is not a neutral item. It is not a neutral instrument. It's an instrument of hate, and the most vile form of hate. And Congress, in no uncertain terms, should ever tolerate the noose as anything as a household article or a garment that can be used as a term of endearment. It's a term of hate. And we should never move from that.

S. COHEN:

I certainly agree. And that's why we've been looking into making any amendments in the law that might be necessary, any voids concerning a noose. And I appreciate each of the members of the panel, and particularly the chairman, for holding this hearing.

And if you could get us some suggestions on No Child Left Behind, I think we'd like to put that in and offer it as an amendment. But Tennessee has a good course, where we teach people about the Holocaust and teach about civil rights. And that's required. But a lot of states don't have it, and...

OGLETREE:

I'll be happy to submit that.

S. COHEN:

... every state should.

Thank you, Mr. Chairman. Thank you, panel members.

CONYERS:

Thank you so much.

Judge Hank Johnson of Atlanta?

JOHNSON:

Thank you, Mr. Chairman.

And I must say that I am very happy that you called this hearing so quickly, in response to the escalating developments in Jena, Louisiana, which continue to this day, an injustice that pains the hearts of so many, including myself.

And I would first want to, kind of, set the record straight about actually happened here.

Back on August the 31st of '06, a student who had asked for permission to sit under a tree, indicating a problem in Jena, Louisiana -- any time you have to ask for permission to sit under a tree, there's a problem.

And so the student sat under that white tree, the so-called "white tree," on August 31 of '06. And that's when all Hades broke loose. The noose incident, nooses hung from trees -- we know what that means.

JOHNSON:

A noose is not a symbol of endearment; it's a symbol of terrorism. And terrorism was commenced. The students who engaged in the terrorist act were suspended and when the blacks protested, when they exercised their constitutional right to protest the slap on the hand given for the terrorist incident, then the LaSalle Parish District Attorney Reed Walters flanked by police officers, came to the school and issued a threat to the students.

He said, "With the stroke of my pen, I can make your lives disappear. So you'd better be quiet." But the situation continued to escalate. He's also, by the way -- Reed Parish -- Reed Walters, the attorney for the LaSalle Parish school district, which means that he has access to all of the privileged information that these students have -- all of their school records, all about their parents and all about their families; he has access to that.

And so, the situation continued to escalate. The building -- the school building was burned back in November of '06. Thereafter, physical attacks against black students ensued.

One of the Jena 6 students, Robert Bailey, was attacked physically.

JOHNSON:

And then the next day, a white boy pulled a gun on him. And they charged Robert Bailey with stealing the gun after he took the gun away from the guy.

Egregious conduct, then taunts, calling folks niggers out in the school yard and then, finally, there was this fight -- a school yard brawl which resulted in, you know, small degree of physical injury to the white student who attended a party later on that night.

And then the black students, the Jena 6, were charged with attempted murder. And that's what was done to try to diffuse this situation, is to treat it harshly, treat it with the long arm of the law, to treat it under color of state law in a terrorist way.

At some point, the federal government became aware of this situation and I'll ask about that in a second, but I do know that at some point, the parents calling out for some kind of justice, none being forthcoming from the federal government or the state government, they contacted someone who they knew was about justice, and that was Reverend Al Sharpton.

And Reverend Al Sharpton responded and I want to thank you for your response. There are people who will criticize you, Reverend, and say that you only go where the cameras are. But I'll say that wherever you go, the cameras go. And it shed light on this gross injustice that was happening and that continues to happen.

Marty King, Jesse Jackson, all of the other stalwarts of the civil rights movement came out and responded to this with 20,000 or so young people who arrived at the scene. I know, Mr. Washington, that it upset the locals. You indicated that they were not expecting that kind of a response.

And so, they were -- they were undeterred, however, after the appellate court released or after the appellate court threw out the charges against Mychal Bell, the adult charges, and he was released on bond. But now he has been locked up again for a probation violation and it smacks of vindictive prosecution.

I wonder if...

CONYERS:

The gentleman's time has expired and we're under the pressures of bells summoning us to the floor.

JOHNSON:

All right. Thank you. If I might ask one question, Mr. Chairman.

Has the district attorney's office been investigated for depriving the students of Jena, Louisiana, of their rights to protest by threatening them with taking away their -- making their lives disappear? Is that a civil rights violation that has been investigated by your office?

WASHINGTON:

That me just say that your recitation of the facts...

JOHNSON:

Well, no. If you could answer my question, I would appreciate it.

WASHINGTON:

... varies greatly from the facts that appears to exist.

JOHNSON:

Has your office investigated the district attorney for violating the civil rights of the students by issuing that threat to them, trying to stop them from legally protesting?

WASHINGTON:

That situation did not occur, as best I know. That's what I'm trying to get at here.

JOHNSON:

The D.A. did not say that at an assembly?

WASHINGTON:

Yes, the D.A. did say those words, but not under the...

JOHNSON:

Surrounded by police officers...

WASHINGTON:

... not under the circumstance. No, sir. Not as best as I can tell from a review of the situation.

JOHNSON:

Well, has it been investigated by your office?

SMITH:

Mr. Chairman, that's the seventh question asked after he ran out of time. I ask we could move along.

JOHNSON:

But he still hasn't answered...

SMITH:

Mr. Chairman?

JOHNSON:

He still has not answered, Mr. Chairman...

CONYERS:

Well, let's see if he's going to answer, and then I'd like to try to get in Betty Sue Sutton before the bells ring.

JOHNSON:

Yes or no, sir?

WASHINGTON:

My answer is that the congressman's statement of the facts didn't occur in that fashion. And if it had occurred in that fashion, perhaps there would be an investigation, but they did not occur in that fashion.

CONYERS:

I thank you very much for your response.

The chair's happy to announce the newest member to the committee, the gentlelady from Ohio, Betty Sue Sutton.

SUTTON:

I thank the chairman.

I think the sum of the answer to that question was then that, no, that didn't happen, that investigation.

There are so many things that I could talk about, and I have a statement that I'm going to submit to the record. And everybody who is interested certainly you'll have access to that, and it parallels much of, frankly, what my colleague just recited about this situation.

I want to thank the chairman for this hearing because while we're talking about the events in Jena today, make no mistake about it, this is a national issue.

And I'd just like to take this moment to maybe pull together some of the things that we've heard here today. And we've heard some discussion down the lines of what we can do in our schools, and we talked about the opportunity that exists with No Child Left Behind, and I think absolutely we need to pursue that.

And to the Southern Poverty Law Center and this program that you provided for us, wonderful, wonderful program to implement.

But as I think Mr. Ogletree also pointed out -- and, Reverend Moran, I have to tell you, you said something here today that I think is really important and bears repeating, and that was that there is a cry for peace, love and harmony, but there is no cry for justice.

So while we're pursuing these other elements that we have to pursue to make ourselves into the nation that is worthy, we also have to have our legal system. And one is not a substitute for the other, but they must in tandem.

SUTTON:

And I'm really, really concerned when I hear it acknowledged that this was -- the hanging of the nooses under these circumstances, and I want to get this right, was a hate crime, because the threatened use of intimidation, force, injury, because of race -- while exercising the constitutional right of going to school qualifies this as a hate crime.

Now, we all agreed that it was a hate crime. And, yet, there was no response from our legal system of what we acknowledge as a hate crime.

So, while we say it's a hate crime, if we don't act on it like a hate crime, then I don't really believe it. I don't believe that we believe it's a hate crime if we're not acting on it.

And so, what if there had been a legal response -- and we've heard there were actions that could have been taken -- what if there had been a legal response that said, not just for those students, but said for the United States of America that this is unacceptable to all of us; it harms us all as a country?

What if that legal response had been taken?

Now, I know it's a hypothetical. And we can't get -- we can't get a complete answer. But explain to me how the people out there in this country can accept that our justice system could do no better than to go in on June 12th, 2007, to start to address this issue.

KRIGSTEN:

I want to make clear that immediately after the incident that happened in August 2006, the Department of Justice had two responses.

Immediately, the Education Section sent a representative to go talk to school officials. More importantly, the Federal Bureau of Investigation sent an agent to that area, in that area, to investigate the allegation that there had been this noose hanging.

Now, it is undeniable that a noose hanging is a symbol of hate and racial violence. In this situation, it was not appropriate to pursue federal charges, for reasons that have already been discussed.

What I want to make sure the committee is aware and that the American people are aware of is that the Criminal Section of the Civil Rights Division is taking all of the allegations of noose hangings around this country extraordinarily seriously.

There are open investigations in numerous cities that are ongoing right now. The Criminal Section has formed a task force to coordinate the division's response to these noose hangings. And we are working very closely with the FBI and local U.S. attorneys offices.

SUTTON:

With all due respect, and my light's about to turn red, too, but there was no legal consequence. There was no legal consequence, as you said. You said that you sent them

in and there was an educational response, which is good -- I'm sorry -- and perhaps we should shift over to the gentleman.

(UNKNOWN)

There was no educational response. That's the problem. And, you know, there's some dispute about the nature of this suspension or whatnot. But there was not public apology. There was no educational component to it.

And had there been, perhaps that would have been sufficient, who knows?

Right now, people call for the prosecution of the noose hangers, in some sense to balance the scales because of what happened to the Jena 6 in being overcharged. I think that's the wrongheaded response.

SUTTON:

Good point.

(UNKNOWN)

I just think that in the beginning it was dealt with very, very poorly. And, you know, I don't fault the U.S. attorney for not filing charges. But I do think that the way the school handled it was, you know, a recipe for disaster. And that's what happened.

SUTTON:

I appreciate the gentleman's remarks.

Thank you.

CONYERS:

Reverend Sharpton, did you want to...

SHARPTON:

Yes. I just wanted to say, I think that Congresswoman Sutton hit the nail on the head, in terms of we keep trying to, in my opinion mistakenly, place the school as the response of the criminal justice system.

SHARPTON:

And I think the reason why we are seeing what some call copycat nooses, and I would call just racists that feel empowered, is why wouldn't they? Nothing happened when a noose was hanged.

And when people get the message that they can do this and nothing will happen, they will continue to do it.

Yes. Beating a kid is egregious. But there was a response. There was an over-response.

There was no response by the criminal justice system at all. A school having a seminar on suspension is not a criminal justice response that would tell me, anywhere in the country, that I'm going to pay for that if I do it.

And that's why we're seeing nooses all over America.

CONYERS:

And we thank the congresswoman from Ohio for her very lucid questioning.
The chair wants to welcome Faye Williams, Esq., the national chair of the National Congress of Black Women. And we appreciate her being here.

And I recognize the gentlelady from Texas for a unanimous consent request.

JACKSON-LEE:

Thank you very much, Mr. Chairman. I'd ask unanimous consent -- I'm not sure if it has already been done -- to put into the record two items, "Six Lessons from Jena: Teaching Tolerance." That's the Southern Poverty Law Center. And I ask unanimous consent.

I'd ask unanimous consent -- it answers most of the questions -- to put this graph from the Department of Justice that shows...

CONYERS:

Without objection, so ordered.

JACKSON-LEE:

... that 50 (ph) cases were prosecuted -- that's all -- under racial violence and hate crimes.

Thank you very much, Mr. Chairman.

CONYERS:

We stand in recess, but we will come back immediately after the vote. And I thank the panel for its endurance.

(RECESS)

CONYERS:

The chair has been slow in convening -- reconvening the hearing because the interaction has been so important between many of the parties that are interested in what's going on here today. And I think it's a very healthy interaction indeed.

The chair recognizes Artur Davis of Alabama, himself a former assistant U.S. attorney.

DAVIS:

Thank you, Mr. Chairman.

Let me thank the panel.

Reverend Sharpton, good to see you.

Let me thank the panel today.

The downside of Mr. Ellison and I being fairly junior members of the committee is every brilliant insight and every passionate insight that could have been offered has no doubt been offered already. But there are some points I do want to make, and I'll try not to cover old ground.

Mr. Washington, let me begin with you, and this is not an admonition in any way, but I think since you're the -- one of the two people on this panel who's on the ground, literally, in dealing with the issues in this community, I do want to make one observation.

It strikes me, as someone following this case from a distance, as someone following this case through television from the news media, that there were a lot of missed opportunities to prevent this situation from ending up in the very tragic place that it ended, because everyone in this room thinks it ended on a tragic place. Tragic place for the six young men and their families. Tragic place for the young white man. Tragic place for the community.

This is what's notable to me, though. How in the world do you have a school in the modern era that has a principal, that has administrators, and that isn't moved to action by a white folks tree, or by there being some ambience at this school or some sense at this school that, well, there's a place where the white kids hang out, but black kids don't hang out there.

Even before you get to nooses, I don't understand how that kind of physical symbolism, that there's a place that's off limits to certain kids because of their race, I don't understand why that didn't have people up in arms.

And, frankly, Reverend Al, the sense that I get is there was a whole lot of sense of, well, this is kind of the way things happen in Jena, and we don't like it, but this is kind of the way it is. And if that mentality and that spirit had prevailed in my state, in the state where your mom lives, Alabama, God knows where we would be. If we had settled into this attitude that, well, there are just certain customs and traditions.

I don't understand why the good people in Jena, why the school administrator was not troubled by the very fact that there was a physical kind of segregation at the school, is the first point.

The second point, I want to say something in response to what one of my colleagues from the other side of the aisle said earlier, Mr. King. He was making the observation that, well, the noose is a speech act, so we shouldn't be so troubled by that.

And I was surprised to hear him say that, frankly, because I thought that conservatives told us over and over that our moral standards in society aren't defined simply by what we can send people to jail for and what we can sue them for, our moral standards are also defined by what draws our outrage.

DAVIS:

And I don't care whether or not you can prosecute somebody just for hanging a noose. I'm sure good lawyers can argue both sides of that. We know the D.A. here could be creative when he wanted to, and I'm sure we can argue both sides of that.

I'm sure we could probably argue both sides in terms of a civil liability theory.

But that's not always the standard -- whether or not you can sue somebody or put them in jail. The question is: What outrages us?

The next point I want to make: All of the copycat business with nooses in the last several weeks in this country, for anyone who wants to know, why is speech dangerous, well, that's an answer -- because speech can be provocative, and we use the word provocative sometimes as a synonym for that which titillates. Provocative can also mean literally what it says -- to provoke, instigate others to action.

The final point that I want to make -- and this is, frankly, the most important one -- we are talking first and foremost about children attacking children on both sides. We're talking about black children attacking white children and white children attacking black

children. And that is enormously troubling to me, because we used to have this belief in society that racism lost traction as it moved down the generational lines.

DAVIS:

We used to have this belief in this society that, well, as younger people came along they were somehow pure and they were less diluted and they were not likely to be as contaminated by racial bigotry.

I am bothered by seeing a resurgence of racism among young people. And that's the question I would ask someone on the panel to address. What do we do about this regeneration of racism among children, who ought to be the people who are most naturally coming together in this society?

CONYERS:

I thank the gentleman.

We're pleased now to call, from New York, Mr. Anthony Weiner, who has served with great distinction for the time that he has been on Judiciary Committee.

WEINER:

Thank you, Mr. Chairman.

Let me just ask, you know, I would observe that it seems to me that the panel is divided between two groups of people.

One group that argues that government is powerful and can have an influence over the outcome here and over leading us in prosecuting hate crimes, who can lead us to a place where we understand there's a national imperative that transcends what a local politician might want to see happen.

And another group that is saying they're basically powerless to act until a certain series of things happens and a certain set of dominoes falls, and perhaps even long after someone sits in jail for a race-driven prosecution.

And rather than have the forces of government arguing for government power and government authority, and people on the ground arguing that government is too powerful or doing too much, it seems to be inverted.

And it strikes me that as I read the testimony of my good friends from the Department of Justice, there's mention of the department's Community Relations Service, there's mention of the Civil Rights Division's Educational Opportunities Section, good people who do good work, no doubt.

But it isn't until far into the testimony that we talk about the FBI, talk about the power for the U.S. attorney's office to prosecute crimes.

WEINER:

This could have been a conversation we had in the 1950s, about the government saying, you know what? This is the problem of localities; it's not the federal government.

And we had a whole civil rights -- we had broad chapters of civil rights legislation written to empower the federal government to go into communities where rights were being violated and say: You know what? There's a higher imperative here. Just because

you were elected by a locality who may want you to have a racial prosecution, doesn't mean that it's right.

And it sounds like Professor Ogletree has articulated on several occasions and Reverend Sharpton, although not from a legal perspective, but basically the same thing, is that you simply seem to have kept in your quiver the most powerful arrows that you have to deal with this problem.

And to the outside -- to communities outside Jena, where I assume these types of things are going on frequently, what is the message that is sent to a local prosecutor or a local sheriff or someone looking to make points?

They would look at this case and say: You know what? That's not a bad way to get re-elected in some towns.

They probably look at this and say, "Look at the attention I'm getting. Look at me on the side of prosecuting these black kids and defending the white community and the like."

And the Justice Department is, I think -- "Let's see how it works out. Let's see what happens next. Let's see what -- let's see where it goes. Let's see how long they sit in jail. Let's see how" -- it seems to me the tenor of the Justice Department of the United States government should be that we learned what happens when you sit back and watch and say, "Let's see what local authorities come up with."

This is not dissimilar, I think -- I think my friends at the Justice Department would realize, this is not dissimilar from a debate that's been going -- that went on in this country when those who defended the violations of people's civil rights said, "Well, it's really not the federal government's role to be going in. These are local laws. This is a local prosecution," and the like.

Is Professor Ogletree wrong, that we have empowered you all to act more aggressively than you have? And if not, tell us. This is a committee of Congress that makes laws and now it's back in the hands of people who really care about civil rights.

So we're prepared to -- we're prepared to act.

WEINER:

If you need additional -- if this is -- if we need the Jena civil rights amendments of 2007 in order to make sure that things like this don't happen again, tell us.

But I have to tell you, I don't really see that. I see that, what this comes down to is an excessively timid interpretation of the rights -- of the tools that we've already granted to the Justice Department.

And if this was an administration that had been out there, saying, you know, going out and seeking these types of things in the past, maybe I would say, all right, this one just, kind of, slipped through; you're caught up now; you're going to get really get on it.

If I read the testimony in response to questions today, it's, more or less, saying, just wait; we're going to let things play out for a couple more years -- because this has now been a couple years.

And so, I guess, the question I would ask is that, is the Justice Department testifying today that, if they had additional powers, they might have been able to, or could today, deal with this situation in a more forceful way, that not only makes it clear that what's going on there is immoral or troubling or unethical; that it's illegal, in the eyes of the prosecution, and is going to be stopped?

How far does it have to go before you say, ah, we've reached the point now that we can take the arrow out of our quiver that was given to us by Congress in the 1960s, that people died for, and start to use them?

Do you need additional laws to be passed?

KRIGSTEN:

I am grateful to have the opportunity to assure you, Congressman, and the committee, of the leadership that the department has shown throughout this nation.

The number of important and high-profile hate crime prosecutions that have taken place in the last few years is remarkable.

We can talk about the prosecution in California, the United States v. Saldana case, in which, a gang, a Latino gang, was targeting African-Americans.

And the individuals who were responsible for those acts actually received life imprisonment for their commission of federal crimes.

We can talk about...

WEINER:

Could I interrupt...

That part is in your testimony. I read your testimony, cover to cover.

Could you respond to my question now?

KRIGSTEN:

Yes.

WEINER:

Thank you.

KRIGSTEN:

One of the questions that you asked was the leadership of the Department of Justice, and...

WEINER:

No, no, no. Let me refresh. I did not ask that question. I asked, are there additional laws that you -- I made observation about the leadership of the department being lacking, and I think that's virtually -- I think you should stipulate to that at this point, but if you choose not to, that's your question.

My question was a succinct one. Are there additional laws that you think you require?

Has Congress and the American people not spoken forcefully enough with the Civil Rights legislation that exists, that says the federal government will no longer -- like it did in the late 1950s -- sit back and say, ah, it's up to a local sheriff and his dogs to decide what the laws are.

Do you need additional -- do you need the Jena civil rights amendments of 2007 to make it so you can go ahead and prosecute things like we have here, or are you saying you've got all the laws you need; you just can't figure out a way to use them?

KRIGSTEN:

The question actually wraps in several concepts. And what I want to do is make sure that I understand what you're asking for. If you're asking whether the department has shown leadership in the prosecution of civil rights cases across the country, I'm happy to address that.

Last year, the criminal section of the Civil Rights Division convicted the largest number of civil rights -- has the largest number of civil rights convictions in the entire history of the criminal section.

The activity in that criminal section of federal prosecution is unprecedented and remarkable. And so if you're asking whether there is leadership, I believe that our record, in the last few years, speaks for itself.

If you're asking whether there are additional laws that are needed to address, for example, some of the activity that's happened in Jena -- and you've made it very vague. And so what I want to do is make sure I address each of the points you raised.

If you're asking whether there's additional laws that are needed to address the noose hangings in August 2006, what I will tell you is the reason that that prosecution was not initiated by the United States attorney and the Department of Justice was not because the law was lacking. It was because these individuals were under 18 years old, which makes them children in the eyes of the law.

It's important that the committee understand, and the American people understand, that, once we're talking about juveniles and a juvenile justice...

WEINER:

But aren't you defining a shortcoming in the law, Madam?
(CROSSTALK)

WEINER:

Are you defining a shortcoming in the law that, if it were changed, would allow you to prosecute this with more fervor?

That was exactly the question.

KRIGSTEN:

The concern that I've heard raised by this committee is the prosecution of juveniles in an adult court. And so it is up to this committee, of course, to decide whether it wants to propose an amendment to allow juveniles to be prosecuted as adults in the federal judicial system.

But I will say is, at this point, because these individuals were juveniles, that puts them in the juvenile justice realm, which means that their proceedings are secret -- they're juvenile delinquency proceedings instead of court proceedings -- that anything that would have happened to these individuals in a juvenile delinquency proceeding would have been private, not available to the public, not available to the press, and would not have been available to be the deterrent effect that the committee seems to believe is needed.

When the committee talks about deterrents and the leadership of the department, I want to make sure the committee understands the Department of Justice relies on its prosecutions throughout the country as leadership in the area that it's showing, in hate crime prosecutions, and addressing the racial violence.

WEINER:

Thank you, Mr. Chairman.

CONYERS:

Thank you very much, Mr. Weiner.

This has led us in a very important direction. I'm grateful to you for it.

The chair recognizes the gentlelady from Wisconsin, Tammy Baldwin, whose contributions to civil rights and justice are well known by this committee.

BALDWIN:

Thank you, Mr. Chairman. And thank you especially for holding this incredibly important and timely hearing on the Jena 6 case.

I think it would be difficult to overstate my own gratitude not you, not only for your leadership, generally, on civil rights, but for your championship, earlier this year, of the Local Law Enforcement Hate Crimes Prevention Act, which we'll return to in a moment.

And I also know that my own constituents in the northern state of Wisconsin are very grateful about this opportunity to continue what has become not only a national dialogue but, frankly, an international dialogue about the Jena 6 case, hate crimes, racial inequality, and race-related violence.

I also want to extend my thanks to the witnesses who have been here today. And I apologize for my belated arrival at this hearing. Sometimes you pinch yourself about what you get to do in this job, and I have been shuttling between a markup on mental health parity, of enormous importance, and negotiations and discussions on employment nondiscrimination.

And so some very weighty matters that are being discussed. But thank you all for being here.

Now, I was privileged to help work on the passage of H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act.

BALDWIN:

And I had the opportunity to become intimately familiar with the federal prohibition against hate crimes enacted as part of the Civil Rights Act of 1968. And as I stated in this very committee during our markup of 1592 earlier this year, I believe that hate crimes legislation is important for both substantive and symbolic reasons.

The legal protections are essential to our system of ordered justice, but on a symbolic basis it is just important for Congress to enunciate clearly that hate-based violence will not be tolerated, it is just plain wrong.

We have certainly made great strides as a nation since 1968 and our hate crimes laws serve as a cornerstone for eliminating violence based on irrational fears and hatred.

Hate crimes are also among our nation's -- hate crimes laws are among our nation's strongest statement that racially motivated violence is unacceptable and wrong.

Yet these legal protections can truly only be as effective as their implementation. And what troubles me so deeply about the Jena 6 case is that our efforts to extend legal

protections against violence motivated by hate is an empty effort, both substantively and symbolically, unless the implementation of these laws are swift and effective.

And so I'm just incredibly disappointed in the collective law enforcement reaction to the August 2006 schoolyard noose-hanging incidents that served as a catalyst for the episodes of racially charged violence in Jena. And I am still unclear as to why two government agencies, the U.S. attorney's office and the FBI, that investigated the noose incident determined that hate crime prosecutions could not be pursued.

And I'm also unclear why LaSalle Parish District Attorney Reed Walters did not purpose hate crimes charges under the Louisiana statute. District Attorney Walters wrote in the New York Times, in a piece last month, that the nooses broke no law, a statement which directly contradicts Mr. Cohen's written testimony that the Louisiana statute creates a hate crime for any institutional vandalism and criminal trespass motivated by race.

BALDWIN:

I'm also unclear about how to understand Mr. Walters' decision to pursue second degree attempted murder charges against Mychal Bell, one of the six teenagers charged in the case, in light of his finding that the noose incident did not warrant any charges.

Was this a singular case of excessive prosecution or a window into the inequities within our justice system and our juvenile justice system?

Whether in Jena, Louisiana, or in Wisconsin or any other state, violence like this has no place anywhere, but let alone in our schools and nor does a racially hostile school environment.

But, as I said, we have hard-won laws aimed at protecting our children against violence motivated by hate. And we have tried as a nation to take a strong stand, both substantively and symbolically, against such inequity.

So, are our hate crimes laws effective? I'm getting back to the same sort of big questions that my colleague from New York raised.

What can we do to mitigate these injustices in the national criminal justice system? And how do we understand the lack of prosecutions as well as the excessive prosecutions in Jena and around the country?

I know these are big questions. But perhaps, just starting with the hate crimes question itself -- are they effective? How can we make them stronger?

CONYERS:

Well, that's a great question to ask after your time has expired.

But let's give it a shot. Let's see if we can quickly move down the table and get some responses. You know, we're not trying to solve this historic problem in one session. This is going to be something that goes throughout the 110th Congress and, my guess is, even beyond.

So let's go right down the row, to Ms. Baldwin's query.

KRIGSTEN:

On behalf of the federal government, I can tell you that the hate crimes laws are effective and that they are being used aggressively across the country.

We're prosecuting cross burnings; we prosecuted a case in Ohio where individuals put mercury on the front steps of a couple -- a biracial couple and their children with an intent to drive these individuals out of their home. Those perpetrators are now in prison; the (inaudible) case that I mentioned.

We can go through a laundry list of cases in which the Criminal Section of the Civil Rights Division, along with the FBI, along with our partners in the local U.S. attorneys' offices, has used the tools provided by this Congress very effectively across the nation and we will continue to do so.

S. COHEN:

Thank you.

I think you're absolutely right. There is an inexplicable -- it's inexplicable how Mr. Walters could say that there were no crimes that could have been prosecuted there. There clearly were crimes that could have been prosecuted in the noose hanging.

Again, though, I want to make clear that we're not here to call for the prosecution of noose hangers. What we're here to call for is a level playing field, an equal justice under the law. And that's what's not happened in Jena.

The prosecutor, unfortunately, sees race. And when that happens, there are calls for retribution. And, you know, this kind of stuff has to end. Someone has to have enough common sense to say enough is enough..

I hope people file charges against Mr. Walters and get him removed from office. I hope the people of Jena reject him when he runs again, if he does. But I think your comments were right on the mark.

SHARPTON:

I concur with Mr. Cohen and, in fact, let me make a record, Mr. Chairman, that National Action Network has filed charges with the Disciplinary and Ethics Committee in Louisiana and they have acknowledged receipt of that.

But I think that Mr. Cohen's statement applies for us in National Action Network and I would also, in this particular matter, speak for Martin Luther King III and realize the dream because we've operated jointly in this.

Weave a justice as an even playing field. This is not about prosecuting one side and not the other. It's how do you rationalize no prosecution based on juvenile status for the hangman noose and then prosecute juveniles the same age as adults for a fight?

SHARPTON:

And I think that a lot of confusion -- and I think Congressman Weiner addressed this properly -- a lot of the confusion is, one, there was no immediate reaction by the Justice Department to say, "Explain to us how kids the same age, one becomes adult and the other remain juvenile." I mean, explain that; the same age. They all go to the same school, same age.

And I think we fabricate this -- well, did they have anything to do with the noose? It doesn't matter. It's the same prosecutor.

And I might add for the record that even when they were -- there was a recommendation to expel the kids, that was overturned into a suspension. And the district attorney is the general counsel of the school board that overturned the expelling. And even if they were expelled, that's still not the criminal justice system.

So I think what we are begging for, Congresswoman Baldwin and Congressman Weiner, is an even playing field, where the Justice Department responds by saying there be equal protection under the law.

And Congressman Weiner's point, that he made very eloquently -- and Mr. Chairman, I will tell his folk at home he spoke very eloquently here today -- is that he's correct. If we can't turn to the federal government, as we have for the last 50 years, then what are we telling young students that marched in Jena?

Where do they turn? And how do we tell them that we want peace and we want nonviolence if the federal government is saying we're going to wait and see what happens. OK. He's done 10 months. Let's see what happens in 13 months.

We can't keep telling young people that.

OGLETREE:

I'll just briefly say this: I agree with those comments.

I think Congressman Weiner and Congresswoman Baldwin and Congressman Artur Davis, who left, it seems to me that to make this record and to really get answers to the questions which you haven't heard today, you have to propound the questions: What authority did the state and federal officials lack to create a fair and equitable criminal justice system and educational system in Jena? And what resources the state and federal government lacked to bring future actions, taking into account -- we know you've prosecuted all these cases.

We're talking about this one in this city that everyone's talking about. And my sense is that the best way is to propound questions and get answers, and they'll tell you whether the government is satisfied to have all the authority that they need and don't need any more.

And if they say that, I think we've got a very different role for this committee to play in addressing what we've already heard about.

(UNKNOWN)

Thank you, Mr. Ogletree. I really thank you for elaborating on some of the things that Justice Department has been stating.

I think the main initiative now is considering what's going on in Jena, not considering what they've done in past instances in different cities and different states.

We have six black boys, young men who are charged unrighteously. And we're here today to see that fair judgment is dealt out to them.

Also, I was quiet a few moments ago, but I want to elaborate on what Mr. Washington said about the T.V. broadcast that he, himself, was on. I've seen the T.V. broadcast, and personally I took it as though he said that the hangman nooses were not an act of hate. That's the way I received it, and that's the our community received it, and that has a lot to do with the copycat mentality. It has a lot to do with it, because if it would have been ruled out not to be a hate crime, there would have been a lot of people who would have been scared to even look at a noose or think about a noose. But because of the fact that it

was ruled out, not a hate crime, and because it was said not to be a hate crime, that has a lot to do with the copycat mentality.

And the stupidity of anyone that would hang a noose after hearing that it's not -- that it's not a hate crime, someone would even be so stupid as to commit a crime, as far as hanging somebody.

If we continue to allow people to see that this is not a hate crime, somebody's going to hang somebody. And I wonder whose eyes are we going to be -- I mean, who are we going to be putting our eyes on then. And I would think it would be the Justice Department for ruling out nooses not being a hate crime.

CONYERS:

Thank you very much.

Ms. Baldwin?

And I want Reverend Sharpton to know that Mr. Weiner speaks eloquently at all of these hearings.

SHARPTON:

I'll stipulate to that.

(LAUGHTER)

CONYERS:

And now I'm very pleased to turn to Ms. Debbie Wasserman-Schultz, the gentlelady from Florida.

WASSERMAN-SCHULTZ:

Thank you, Mr. Chairman.

Mr. Washington and Ms. Krigsten, I need to get a sense, because I have repeatedly heard both of you say that because these children were under the age of 18, it was not within your discretion prosecutorially to pursue a hate crimes charge. Is that accurate?

WASHINGTON:

Yes, that's accurate. It's not a matter of we wouldn't pursue hate crimes charges, it's a matter of we could not pursue hate crimes charges.

WASSERMAN-SCHULTZ:

Well, that leads me to believe that it's your testimony that you declined to charge them with a hate crime because they are under 18.

WASHINGTON:

That's correct.

WASSERMAN-SCHULTZ:

OK.

Is there anything in the federal hate crimes statute that specifically excludes minors? Does it say anywhere in the law that you cannot charge a minor with a hate crime?

WASHINGTON:

18 USC 5036, I think it is, is the statute that governs -- did I get that right, 5036?
(CROSSTALK)

WASHINGTON:

Oh, I'm sorry. We could charge -- we could charge them under 18 USC 245, but we get back to the limitations for juvenile proceedings for juveniles that's also in the United States Code, which puts us in a position of having to find juveniles who have committed what's called a felony crime of violence or some of the enumerated crimes that are in that statute.

WASHINGTON:

But there's nothing in the law that specifically prohibits you from charging a minor with a hate crime, other than process -- the order in which you would pursue a case against a minor...

KRIGSTEN:

If I could add something -- Mr. Washington is absolutely correct and I think there may be a matter of semantics that I want to make sure is cleared up.

When we talk about prosecution, that is a term that's used in adult court. And these individuals, because they were juveniles, were not eligible to go to adult court.

Now, if we're talking about juvenile delinquency proceedings, that possibility was there to address the August 2006 incident.

WASSERMAN-SCHULTZ:

But if a juvenile is charged with a crime in juvenile court, can it result in them being held in a...

KRIGSTEN:

It can. The result of a finding in juvenile court is a finding of delinquency, not a conviction. One of the possible punishments...

WASSERMAN-SCHULTZ:

You're right, that is a matter of semantics.

KRIGSTEN:

Right. Right.

WASSERMAN-SCHULTZ:

When you are charged with the crime, whether you are a juvenile or an adult, if you are held in a facility in which you cannot voluntarily leave, it doesn't matter whether it's called a prosecution or a case against a juvenile or whatever you choose to be calling it.

KRIGSTEN:

Right.

WASSERMAN-SCHULTZ:

And what Reverend Sharpton, what Professor Ogletree and what all of the people, other than you, have been saying is that this is a matter of equality -- of equal justice under the law, which clearly does not seem to have been applied here.

Here's my other concern. Congressman Weiner asked you directly whether there was anything that you needed to change in the law in order to have pursued hate crime charges against these minor and you, from it sounded like to me, said no, that your department has led the way in pursuing civil rights cases and that you are doing just great.

WASSERMAN-SCHULTZ:

Well, if process is what has prevented you from pursuing hate crimes -- the hate crimes against minors, then it appears that the law needs to adjust the process so that those things could be pursued simultaneously, wouldn't it?

KRIGSTEN:

A, I'm happy to have this opportunity to clear up any confusion. There has been several statements during this hearing, both from panelists and from members of the committee about equality between the August 2006 noose incident and the December incident.

WASSERMAN-SCHULTZ:

I would like you to answer my question.

KRIGSTEN:

What I want to...

WASSERMAN-SCHULTZ:

I'd like you to answer my question about the process and whether the law needs to be adjusted so that hate crimes charges could be pursued without regard to juvenile proceedings being pursued against minors.

KRIGSTEN:

And I -- with all due respect, I'm answering it the best way I know how, which is to say, looking at the way that the federal government looked at the August 2006 incident, is completely separate from how the state government looked at the December 2006 incident.

We're not talking about the same offices. We're not even talking about the same system of government.

The December incident was charged by a state prosecutor in state court.

We're talking about federal charges in the August 2006 incident.

WASSERMAN-SCHULTZ:

I realize what we're talking about.

KRIGSTEN:

And so, with that framework, what I can say is, as a matter of policy at the Department of Justice, this case was declined because these individuals were juveniles and because there was a noncriminal alternative to prosecution that was reached by the school district. Immediately after the incident...

WASSERMAN-SCHULTZ:

What does that have to do with the price of fish?

KRIGSTEN:

That is one of the -- looking at the noncriminal alternatives is one of the principles of federal prosecution that federal prosecutors are obligated to consider in considering any charges.

The decision and the manner in which this decision was reached is consistent across how the criminal section of the Civil Rights Division reaches charges in all federal cases.

WASSERMAN-SCHULTZ:

Then that would seem to cry out for a change in the law, so that it didn't have to be pursued that way any longer.

Ms. Krigsten, I have to be honest with you, to follow in the same vein that my colleague Congressman Weiner did, you know, caution is advisable in many cases. Too much caution results in impotence. And that appears to be what has happened in the pursuit of justice and equal justice under the law in this case specifically.

And, Mr. Chairman, I also appreciate that you held this hearing, that you called us together to examine this more closely, because one would think that in 2007 that something like what happened in Jena wouldn't happen.

And no one is discounting any of the crime -- the pursuit of the justice against any of the crimes that were perpetrated. It's just that those -- that pursuit should have been handled equally.

And, Mr. Chairman, I have to tell you that as someone who has witnessed in my community the spraying of swastikas on homes and synagogues, and if you substitute a swastika for a noose on this tree, I would want the same -- the same treatment that the people in the community of Jena are asking for.

WASSERMAN-SCHULTZ:

And I assume that we might have a different reaction, but I don't trust that we would under this Justice Department.

I yield back the balance of my time.

CONYERS:

I thank the gentlelady from Florida.

Now, normally, the last member asking questions is the final person on the committee. But we regard Keith Ellison as our clean-up hitter.

The gentleman from Minnesota has been very important in this 110th Congress and we recognize him at this point.

ELLISON:

Thank you, Mr. Chair.

Professor Ogletree, do you agree that a federal delinquency proceedings against the noose hangers was legally impossible? Do you agree with that statement?

OGLETREE:

No. As I said earlier, there were both state and federal provisions available to pursue this and they were -- the nice words, they were declined.

ELLISON:

Right. They were declined.

And so it was essentially -- and Mr. Cohen -- and I know how you feel about the question of prosecuting the noose hangers, but let me just ask you this question. I'm asking you this just from your legal analysis.

Isn't it fundamentally a question of discretionary latitude?

OGLETREE:

That's correct. You could absolutely prosecute the noose hangers, both as juveniles, under 245, and as adults because the hanging of a noose was a crime of violence under the United States code.

So, as long as the noose -- as long as they were over 15, they could have been tried in adult court under section 1850 32 (ph).

ELLISON:

So, Mr. Washington, you used your discretionary latitude to decline the juvenile proceedings for the noose hangers. Isn't that true?

WASHINGTON:

Actually, what our process is is...

ELLISON:

I need a yes or no, sir.

WASHINGTON:

Well, I'm trying to answer your question the best...

ELLISON:

No, I'm not going to let you waste my time. I need you to answer my question.

WASHINGTON:

My office works with -- or actually the Civil Rights Division...

ELLISON:

Sir, I got five minutes. I'm not going to tolerate you wasting my time. I need you to answer the question.

You used your discretionary latitude to decline the charges on the noose hangers. Isn't that a yes?

WASHINGTON:

No, sir.

ELLISON:

OK. Well, we've got two learned counsel that says that's not true.

Now, in the course of this of my time on this committee, we have dealt with eight U.S. attorneys who were fired because they did not slavishly obey the dictates of the Bush Justice Department.

ELLISON:

And we had some people who got promoted, benefits accrued to them because they did do what the Justice Department wanted them to do under Gonzales and Bush.

You still have a job, don't you?

WASHINGTON:

Yes, sir.

ELLISON:

And I almost fell off my chair when you invoked the name of Martin Luther King to say that you were somehow the culmination of his work.

Sir, I would expect you to quit in protest based on that, based on your inability to use your discretionary latitude to charge these noose hangers. That's what I would expect of somebody who was truly in fidelity with that great legacy of Martin Luther King.

Let me say that, you know, Jena 6 is obviously the occasion that we're here, but for those folks who are not from Jena, you know and I know that we're outraged because we all have some Jena 6s. We got some Minnesota Jenna 6s. You know, the fact is, is that nationally, according to the testimony of Professor Ogletree, black students are 2.6 times more likely to be suspended than white students. Overall, the numbers of students being suspended each year increase due to tough zero-tolerance policies.

But that's just school discipline. The fact is, juvenile justice data mirror disparities in the school. 2003, African American youth were detained at a rate of four to five times higher than that of their white counterparts.

Aside from the issue of the civil rights decision and the hate crimes stuff, what about black youth and Latino youth in the criminal justice system and the over-incarceration of black people? We live in a country that incarcerates more than 2 million people. Don't we have a system that is essentially using the legal -- the criminal justice system to do what the Jim Crow system did in the past? Isn't it just an extension?

Reverend Sharpton, could you elaborate on this?

SHARPTON:

I think that you hit it on the head. I think the challenge of the 21st century is exactly that, Congressman Ellison. You know, I said in my statement on September 20 in Jena with Martin III and (inaudible) and others, we've gone from Jim Crow to James Crow Jr., Esq. He's a little more polished. He uses different techniques. But it's the same result.

At the end of the day -- and no one salutes the chairman more than we do for calling this -- if you start in August of '06 and go to December, the scorecard is at the end of incidents six young blacks are standing as adults under indictment or in jail and no whites are, after several incidents. That's the bottom line. You can't get around that.

And a Justice Department that says, "We're looking at it, we'll study it, maybe," then what do we do?

So there are those of us that respond, even though we will be attacked -- Martin III, Father Michael Pfleger's here, on his way to Jena -- we are only responding because they won't respond.

ELLISON:

Well, you know, thank you for acknowledging the presence of Father Michael Pfleger, a true hero -- many years of service. Thank you.

But I just want to just go back to this eight U.S. attorneys thing, because this has taken up a lot of time here, and one of the things that always concerned me is not just the eight who were fired because they wouldn't bring fake voting rights cases, but the people who stayed and kept their jobs. These people are the ones who I'm truly concerned about.

And I guess, you know, one of the things that I would like to know is, Mr. Washington, have you prosecuted other juveniles? In your tenure as U.S. attorney, have you prosecuted other juveniles?

WASHINGTON:

No.

(CROSSTALK)

ELLISON:

Because let me tell you, I've defended juveniles in federal court.

(CROSSTALK)

ELLISON:

Let me tell you, sir, I've been -- I spent 16 years as a criminal defense attorney, and I've tried over 100 cases to a jury.

ELLISON:

And I've defended juveniles in federal court.

So you can't tell me that the federal government doesn't prosecute -- you prosecute them for having 5 grams of crack cocaine.

No, you put them in jail for that.

You know, we have incarcerated generations over your drug war -- and I say it's yours because you will not step away from an unfair system. And, you know, but you -- what about the selective justice?

You're telling me you have never prosecuted a juvenile. We're going to find out.

WASHINGTON:

No, what I'm telling you is...

ELLISON:

Is that your statement before Congress?

WASHINGTON:

In my district. And you're asking me, I guess, about the Department of Justice, and I cannot speak to whether or when or how we prosecute juveniles and...

ELLISON:

Right. Well, let me just say this, Mr. Washington. You know, you've been on record saying that you believe that the noose hangers didn't commit a crime. And now you're saying today that they did.

I'm glad to see that and I want to give you credit for that.

Have you changed your mind? Is that -- does that explain your change in testimony?

WASHINGTON:

I don't believe so, sir.

ELLISON:

Have you come to see the light? Is that why you're saying that it's a crime today?

WASHINGTON:

I don't think I've changed my testimony.

ELLISON:

Well, you changed your statement. Do you agree with that?

WASHINGTON:

I don't think so.

ELLISON:

OK. Well, I guess The Reverend seems to have another viewpoint.

Reverend Moran, do you have another thing you'd like to share on that?

MORAN:

What I think, a gun on school property is a federal offense, is it not?

ELLISON:

I think that it certainly could be.

What about that case about the guy having a gun pointed at him...

MORAN:

Justin Barker, the one that was accused of being jumped on at the school.

ELLISON:

Had a gun at school?

MORAN:

Yes. He had a loaded gun.

ELLISON:

Did he get prosecuted by a U.S. attorney?
(CROSSTALK)

MORAN:

Nobody.

ELLISON:

You know, if you claim to be a beneficiary of the work of Martin Luther King, you've got to stand on that. You can't just -- it's not a matter of career advancement.

Martin Luther King did not do his work so you could get elected and a nice house. It's not just a matter of your own career advancement and buying consumer items. It is fidelity to a set of ideas.

Reverend Al, what do you expect of this new generation of African-Americans, who have benefited from the opportunities opened by the works of people like you, Reverend Jackson and Martin Luther King? What do you expect of us?

SHARPTON:

I think that all one can expect is that they would keep the door opened that they walked through and even make it more opened for the generations behind.

We, I think, have the right not to expect that they would become the apologists for the element that would have prevented their coming to existence.

We're not asking them to show favor. We're asking them to do justice, do what is fair.

Mychal Bell is in jail today on an unequal situation. If he cannot look to federal officers who wouldn't have been there if it wasn't for people marching, who is he supposed to look to?

SHARPTON:

So, for people to give up their careers so you can have a career, and you do not use your career to make sure other careers are justly treated is the height of ingratitude.

Yes, Dr. King had a dream, but he wasn't asleep to get the dream. He woke up to get the dream.

ELLISON:

Mr. Washington, I just have a last question...

CONYERS:

The gentleman's time has nearly expired.

ELLISON:

I just have one more question for you. I mean, you know, the worst thing that can happen to a young person is not that they be prosecuted for hanging the noose.

Even if they were prosecuted, wouldn't it perhaps prevent them from ever going into a life of racism and perhaps step away from that kind of lifestyle, into the future?

Wouldn't it drive home the point that what they did is deathly serious and can't be tolerated?

And wouldn't it also signal to the community that we take your lives seriously and are serious about your health and your safety and your well-being?

Couldn't that have been an outcome of a prosecution of these noose-hangers?

WASHINGTON:

Well, first of all, we could not prosecute these noose hangers. At the end of the day, all we could do, if the facts were there, was to bring a juvenile delinquency proceeding, which we elected not to do.

There's been some talk here...

ELLISON:

OK, so at least you admit you elected not to do it.

What about a juvenile proceeding against them for the noose hanger?

Wouldn't that have achieved the goals of signaling to the community that we take their health and safety seriously?

And wouldn't it have simultaneously signaled to the noose hangers that this is very serious behavior and will not be tolerated in civil society?

And Mr. Washington, I'd like to hear from you.

CONYERS:

I'm going to have to cut my friend off. I know he's the clean-up hitter, but I'm going to have to stop him at this point.

Please respond, whoever...

KRIGSTEN:

If I may respond for the Department of Justice on this, the idea of juvenile justice is not to send a message. The idea of juvenile justice is rehabilitation. Just as the prosecutor in Jena is being accused of using these youth to send a message, the Department of Justice wants to be very careful in its exercise of prosecutorial discretion. It does not use that discretion to send a message.

Moreover, that message could not have been sent. Because the results of such a proceeding never would have reached the public.

SHARPTON:

Well, Mr. Chairman, could I say, in response to that, one, the prosecutor in Jena did not use the juvenile system to send a message. The Third Circuit forced him into the juvenile system.

SHARPTON:

He tried to use the adult system. And everything that has happened in the juvenile system seems to be a national headlines with Mychal Bell, so it's very, very, very strange to me that if the federal government had elected to go juvenile, that they would not have been known to the community that you don't get away with racist imagery like hanging nooses on tree.

I think, in a community as small as Jena, that message would have gotten around had they elected to enforce the law of hate crime against juveniles or against those that were guilty of what was done on that day.

CONYERS:

I thank the gentleman. I thank Mr. Ellison for bringing us to a conclusion.

And I'd like to let everybody know that this hearing has taken place on two dimensions. One is around Jena. But the other is around the state of the criminal justice system in America going back way beyond Jena, going back beyond the 20th century and I feel honored to be the chairman of the committee that has had this kind of hearing for the first time since I've been in Congress.

We've had some forums and we had rough (ph) hearings, we've had other things but this is, indeed, critical. And so, to the fact that we have not resolved this case yet is certainly not the point. This matter goes on.

Clearly, as we all know, this is not the last hearing or inquiry, because we're dealing with a historic circumstance that even precedes the late Dr. Martin Luther King Jr.

And I want to celebrate the stimulating debate, but the question that will really be the test of time for this hearing on October 16th will be what do we do about and what solutions ultimately come out of it?

And so, I believe this committee owes its thanks to those persons who rallied around the Jena 6, who came in to march and lifted one case that could have been a newspaper item, but lift it not just nationally, but internationally.

We are now focused on this question of disparate treatment under the law in the United States like, in my view, we have never been before. To that, we owe your thanks. We are also going to solicit your continued cooperation.

From my point of view, we need to help the Department of Justice. I mean, this is a crippled agency. We don't even have an attorney general at this moment. We've gone through months and months of hearings, as has been alluded to, about the nature of the laws, both federal and state.

I've been asking for an expedited return of the transcript. We've got a lot of searching and inquiry to do, in terms of finding out what the state of the laws are and then how we accelerate the enforcement of the law.

And so, I am deeply indebted to the witnesses who have given up their time, of those who have gone to Jena, and I think you can understand the pride that I have for the Committee on the Judiciary.

CONYERS:

We have had some tremendously insightful commentary and I want to reach out to those members of the Judiciary Committee that weren't here today. Because that's what it's really all about.

I mean, we can hold a meeting or a rally, but the question is what is the Congress going to do. We've got a responsibility, just as the Department of Justice does, just as the Community Relations Service, just as the U.S. attorneys do.

And so, it's in that sense that I, again, thank you from the bottom of my heart, not only the witnesses here, but many distinguished men and women in the audience, the lawyers that are still active.

This matter goes on. It's far from resolved. And perhaps our discussion can cast, in a small way, a positive light on what will ultimately end up. We are an integral part of this solution and of the resolution of Jena 6.

And so, we will give all members five legislative days to submit additional questions to the witness and five days for the record to be open for the submission of other materials.

And I pronounce the committee concluded for today.

(APPLAUSE)

CQ Transcriptions, Oct. 16, 2007

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