



TESTIMONY BY MARC SCHINDLER
Executive Director, Justice Policy Institute

BILL 22-0451, THE “YOUTH REHABILITATION AMENDMENT ACT OF 2017”

COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Thursday, October 26, 2017, 9:30 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Thank you, Chairperson Allen and other Committee members, for allowing me to testify at this hearing on the Youth Rehabilitation Amendment Act of 2017.

By way of background I have been fortunate in my career that I have had the opportunity to view the justice system and the issue of violence in our communities from several different angles, and therefore I come to this issue today from a number of different perspectives.

Currently, I am Executive Director of the Justice Policy Institute (JPI), a national research and policy organization dedicated to reducing the use of incarceration in the juvenile and criminal justice systems. As you are aware, I held several leadership roles within the DC Department of Youth Rehabilitation Services (DYRS), including serving as General Counsel, Chief of Staff and Interim Director between 2005 and 2010. Prior to working at DYRS, I spent eight years as a staff attorney with the Youth Law Center, a national civil rights law firm, where I advocated at the national and state level on issues related to conditions of confinement, racial disparities, indigent defense and other juvenile justice issues. While at the Youth Law Center I also had the honor of serving as co-chair of the National Juvenile Justice and Delinquency Prevention Coalition, where I worked closely on issues related to reauthorization of the federal Juvenile Justice & Delinquency Prevention Act. Prior to joining JPI, for three years I was a partner with Venture Philanthropy Partners (VPP), a Washington-based philanthropic organization. While there I led VPP’s Social Innovation Fund youthCONNECT initiative – a five year \$40 million dollar innovative philanthropic effort aligning public-private capital, evaluation, and high performing non-profit organizations to improve the education, employment and health outcomes of 14-24 year old disconnected youth in the Washington metro region. I have also served on numerous boards and commissions in the District, including as a board member of the DC Office of Police Complaints, and

most recently on the Mayor's Safer, Stronger Advisory Board and as a member of Progressive Life's Advisory Board for DC Youth Link. Finally, I have been a resident of the District for 20 years, and currently live in Ward 5 with my wife, a former DC Public and Public Charter School Principal, and my two children, who attend DC public charter schools. Unfortunately I also have the perspective of having been victimized by crime on numerous occasions, including having been the victim of robbery, theft and house burglary.

I would like to start by commending the Council's approach to considering these issues. After concerns about the Youth Rehabilitation Act (YRA) were raised in 2016, the Committee on Judiciary and Public Safety responded swiftly and thoughtfully, organizing a public roundtable on the issue in February 2017 to engage the community in a discussion about how to improve outcomes for young adults in the justice system, a discussion that was broader than just the language in the YRA.

Councilmember Allen and Mayor Bowser also asked the Criminal Justice Coordinating Council to analyze data relating to the YRA, including how the law is applied, the likelihood of those who receive it to reoffend, and what programs are available for this population. Following a spring public hearing on the topic, Councilmember Allen convened a summer working group composed of crime victims, returning citizens, youth advocates, government agencies, and the Mayor's Office to discuss a variety of potential reforms. The CJCC's comprehensive analysis is now complete, and the bill was informed by the analysis, the working group's conversations, and public testimony.

This entire process demonstrates how the DC Council and community can work together to formulate effective legislation to better support the young people and residents of the District of Columbia, and I believe is an example of responsible and thoughtful leadership on public policy issues of great concern to the community, including areas in which there is great emotion and strong feelings.

I will say at the outset, that with some suggested modest changes, I encourage passage of the proposed legislation and look forward to working with the Council, the Executive branch and other key stakeholders to enact and implement a law that will be as effective as possible in supporting and holding accountable young adults in the justice system, and thus helping to create safer communities in Washington, DC.

Crime in Context

I want to start by sharing just a few thoughts to place this discussion in context, particularly as it relates to crime in the District. Over the past year, Washington, DC was in the mainstream media spotlight with a focus on violent crime, both through stories in *The Washington Post*, and statements by then President-elect Trump. While I'm not going to go into detail on some of the inaccurate data that has been put out there (including just after the inauguration on The White House website), I think it is important to place the crime data in context, including how the District has progressed over the years. Data from the Metropolitan Police Department indicates that homicides declined 18 percent in 2016,¹ and year to date have declined 16 percent in 2017 since this time last year. Furthermore, end-of-year

¹ Marc Schindler and Jason Ziedenberg, "Trump should focus on facts, not fear in reducing violent crime," *The Hill*, January 20,

crime rates based on UCR data (2015) shows that a combined decrease of 10 percent for violent crime and a 17 percent decrease in homicide posted the lowest per capita rate since the early 1960's.²

And despite an uptick in homicides in 2015, Year-to-date (YTD) data from February 2017 shows that most violent crimes have dropped significantly over the years:

- Between 2014 – 2017, homicides dropped 43% YTD
- Between 2014 – 2017, sex offenses dropped 18% YTD
- Between 2014 – 2017, assault with a dangerous weapon increased 9% YTD
- Between 2014 – 2017, robberies dropped 43% YTD³

And most recently, as of October of this year, Year To Date compared with 2016, we see:

- Overall crime declined 9%
- Violent crime declined 26%
- Robberies declined 31%
- Assaults with a deadly weapon declined 21%
- Burglaries declined 29%
- Homicides declined 16%

Reviewing this data isn't meant at all to minimize the impact of violent crime or the fact that even one homicide is too many and a tragedy for our city. We should absolutely be vigilant in our efforts to implement strategies that we know will reduce crime, particularly violent crime.

It is also important to note, that despite what one might think based on how these issues are portrayed in the media, the fact is crime (and particularly violent crime) is concentrated in certain parts of the city. When the increase in lethal violence was a matter of grave concern in 2015, a close look at the data showed that 7 out of 10 homicides come from three of the eight Wards in the city. In other words, while some might generalize that violent crime occurs throughout the District, in actuality, it is intensified in a small area.⁴ And the sad reality is that violent crime in certain parts of the city gets more attention, particularly from the media. It is important that we be guided by the data in considering how to deploy resources, particularly beyond law enforcement, in how best to respond to crime in our neighborhoods.

The Youth Rehabilitation Act

By way of context related to the Act, and the attention it received in the 2016 *Washington Post* series, I would like to say a few words before specifically addressing the legislation. As I believe you are aware, there were significant methodological issues in *The Post's* reporting. As *The Post* noted, they excluded the stories of the vast majority of people who may have benefited under the Act's provisions – the 98 percent of people (more than 3,000-plus people) who did not go on to engage in a homicide. While it is critically important to know what could have been done differently when a serious crime occurs, judging

² Metropolitan Police Department, "Crime Statistics – Citywide – Annual Crime Totals 2007 - 2014," February, 2016. <https://mpdc.dc.gov/page/statistics-and-data>.

³ Metropolitan Police Department, "Crime Mapping Application – Statistics and Data," February, 2017. <https://mpdc.dc.gov/page/statistics-and-data>.

⁴ Ibid.

the whole Youth Act approach based on the troubling acts of a few obscures how we should develop effective public safety policies.

We also now have the benefit of the study on the Youth Act conducted by the Coordinating Council on Criminal Justice, which is a far more comprehensive and sound presentation of the data than we had previously.

As your office noted, important takeaways from the CJCC's analysis of eligible cases and young adults from 2010-2012 include the following:

- ***A very small slice of criminal cases involve young adults eligible for the YRA, and of that slice, even fewer are sentenced under the YRA.*** Young adults eligible for the YRA represent a small slice of all criminal cases in the D.C. Superior Court's Criminal Division – just 7%, or 5,166 cases, representing 3,960 individuals. And of that 7%, only about half of those cases were actually sentenced under the YRA.
- ***There's little difference in recidivism rates between similarly-situated young adults sentenced under the YRA and not sentenced under the YRA.*** The evidence shows recidivism doesn't improve whether or not the young adult was *sentenced* under the YRA – it's the potential of having their conviction set aside later that makes the real difference in public safety outcomes.
- ***In fact, there's a strong relationship between a young adult's conviction being set aside and improved public safety outcomes.*** Individuals whose convictions were not set aside were nearly 3 times more likely to be convicted in the District of a new offense and more than twice as likely to be convicted of a violent offense or a weapons offense as those whose convictions were set aside.
- ***It's very rare that YRA-sentenced young adults are convicted of a later violent offense.*** Only 3% of YRA-sentenced young adults and 4% of non-YRA sentenced young adults were convicted of a violent offense within 2 years.
- ***Multiple "bites at the YRA apple" are also extremely rare.*** Only 4% of those given a YRA sentence, or 104 young adults, received a YRA sentence on more than one occasion. Only 4 individuals received a YRA sentence on three occasions. This is different than portrayals that people were offered YRA as a sentencing option again and again, due to the way that the data was counted.

In addition, I think probably the most important finding from the CJCC study, and which was also touched on in the later articles in *The Washington Post* series and which you have noted, is that the "rehabilitation" component of the Act is where the biggest problem lies. As the CJCC study noted, there are two main points related to what programming is available: "First, **there are no programs targeted to the YRA population.**" And second, for those programs that a person sentenced under the YRA might access, including from CSOSA, FBOP and DOC, "a YRA sentence is not a qualifying criteria for any of the existing programs."

With this in mind, I believe the most important component of the proposed legislation is the requirement for the Mayor to create a strategic plan to address the educational, workforce development and vocational training, healthcare, housing, family, and reentry (and I would add substance abuse and mental health needs) of this specific population. This includes the creation and

expansion of restorative justice and diversion programs and outreach by the District to those in federal custody to plan for reentry. As you have said, better services mean better public safety outcomes, and while we can't control what's provided by the Bureau of Prisons, we can ensure that a continuum of treatment and services are available for YRA-sentenced young adults in *our* care and custody. Identifying the gaps that currently exist in the services, supports and opportunities that are available to our justice involved young adults, and then filling those gaps with quality programming, is the surest way to improve public safety outcomes, thereby creating safer communities and preventing future victims.

The proposed amendment mandates such programming for those sentenced under the YRA, and requires the Mayor to develop by January 2019 a strategic plan for providing this support. Development and implementation of a successful plan, including adequate funding, will go a long way towards responding appropriately to the needs of young adults coming into contact with the justice system, and holding accountable those who break the law. So while I am supportive of this approach, I believe we need to adjust the timeframe. I believe a suitable strategic plan should be done with a sense of urgency, and can be completed in a timeframe that would allow implementation more quickly. The reality is that if we don't have a plan until January 2019, funding and implementation will not commence until the FY '20 budget. With this in mind, I urge the Council to accelerate the deadline for development of the strategic plan, consistent with a timeframe that would allow for implementation funding to be included in the FY '19 budget.

I would also note that the overall approach of the Youth Act, including developing a continuum of services tailored to meet the needs of this age group, is consistent with research in the field, and it is clear that this type of Youth Act approach is consistent with public safety, in that it accomplishes what social science, common sense, [and the U.S. Supreme Court recognizes](#): there is a significant crime prevention benefit from [treating young adults in a way that acknowledges their adolescent development and legal culpability](#). Young adults are less mature than older adults, less future oriented, more susceptible to peer pressure and greater risk takers, especially in the presence of peers. They surely need to be held accountable for their behavior, but they also need help to get onto a trajectory that puts them on a path to successful adulthood. Studies show that mandatory minimums and enhanced penalties do nothing to stop further offending. By contrast, in giving someone an opportunity to return home sooner, access rehabilitative services and not have the stigma of a criminal record, the Youth Act improves the chances that a young adult will grow and develop, and increases the chances that we can prevent that person from offending later in life. This was at least partly demonstrated in the CJCC study, which showed the benefit of the set-aside.

This leads me to my second recommendation for a change to the proposed legislation. I note that the proposed bill maintains the eligibility for sentencing under the YRA to those young adults under the age of twenty-two. However, recent research in neurobiology and psychology now strongly suggests that cognitive skills and emotional intelligence continue to develop into a person's mid-twenties, and even beyond.⁵ With this in mind, I urge the Council to take this research into account when setting the age of

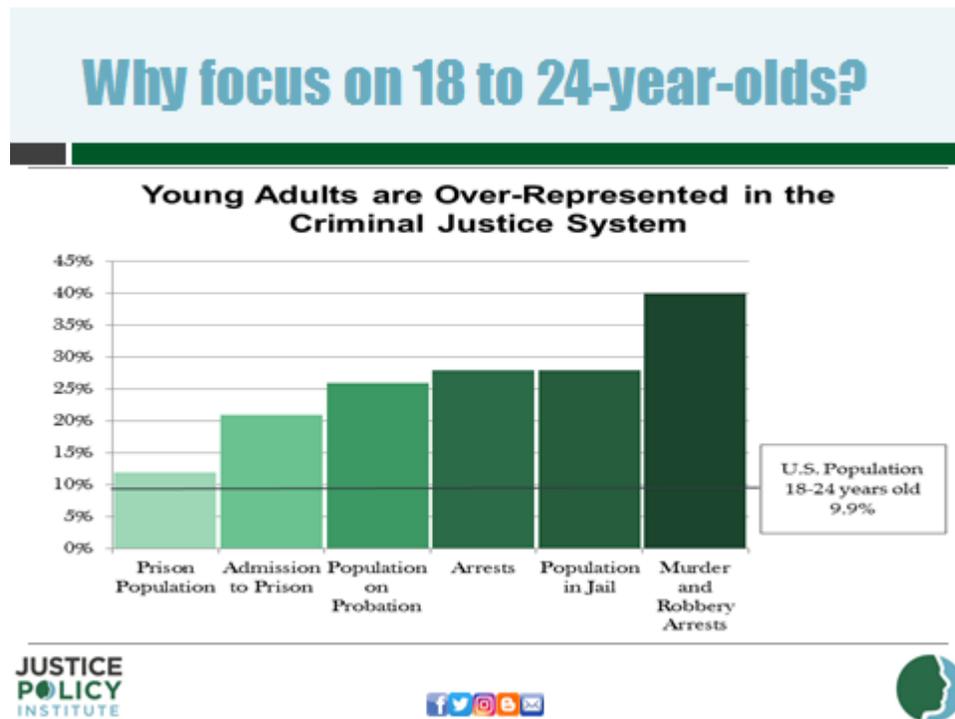
⁵ Perker, S.S. and Chester, L. (June 2017), "Emerging Adult Justice in Massachusetts," Harvard Kennedy School. See also, Giedd, J.N., Blumenthal, J., Jeffries, N.O., Castellanos, F.X., Liu, H., Zijdenbos, A., Paus, T., Evans A.C., and Rapoport, J.L. (1999). "Brain Development During Childhood and Adolescence: A Longitudinal MRI Study." *Nature Neuroscience* 2:861-863; Howell, J.C., B.C. Feld, D.P. Farrington, R. Loeber and D. Petechuk (2013). "Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know." Study Group on the Transitions Between Juvenile Delinquency and Adult Crime. Final report to National Institute of Justice (grant number 2008-IJ-CX-K402).

eligibility and I recommend allowing those up to the age of 25 to be considered for programming and sentencing under the YRA. Based on the CJCC analysis, it is clear that judges have been exercising sound judgment in applying the YRA, and the proposed legislation also now spells out specific criteria to be considered in determining whether a young person would be sentenced under the YRA. Considering the research and the fact that our judges are exercising sound judgment, there is no reason to limit the age eligibility in a way that is inconsistent with the science.

Beyond the YRA

I believe there are ways to improve more generally how the justice system responds to and serves young adults, and strengthens the city’s approach to helping crime victims rebuild their lives. And although the *Post* series was flawed with methodological and framing issues, it provided insight to legitimate areas of concern, including the problem with sending high needs young adults to far-away Bureau of Prison (BOP) facilities; as we have discussed the need for more effective and intensive programming for young adults; the need for better data collection across all key justice stakeholders; and the challenges of a city-federal bifurcated system.⁶

Young adults are roughly 1 in 5 people incarcerated in the United States’ prison and jails – with about half of the population being young people of color. It is sound policy to focus on this group of individuals because they are disproportionately involved in violent crime.

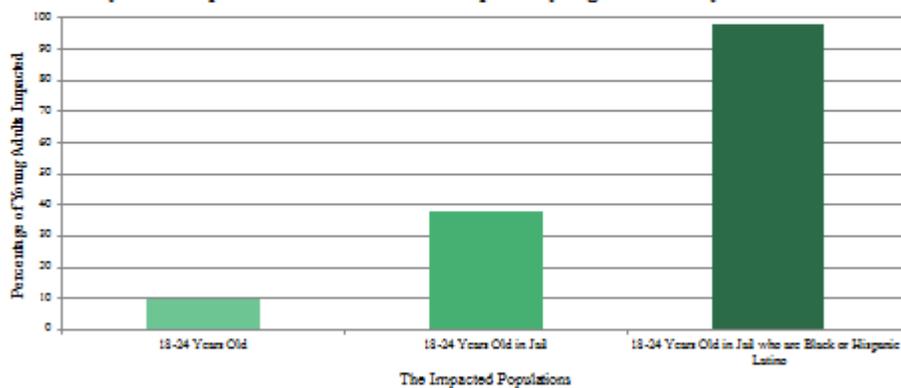


⁶ Amy Brittain et al., “Second-Chance City Series,” *Washington Post*, May 14, 2016.

Nationally speaking, 40 percent of the homicide and robbery arrests are young adults, where the U.S. population of 18-24 year olds is only 9.9 percent.⁷

Why focus on 18 to 24-year-olds?

In Washington, D.C., incarceration costs \$130.99 a day and \$47,811.35 a year. The price of incarceration is especially high for 18-24 year olds.



JUSTICE
POLICY
INSTITUTE



In Washington, D.C., 12.7 percent of the people living in the District are between the ages of 18 and 24, and according to the D.C. Department of Corrections, 38.2 percent of those admitted to jail were young adults. Of the population of young adults in jail, 98.3 percent are African American or Latino / Hispanic.

In addition, despite what some may believe and despite how these issues were presented in the *Post* series, young people of color are also disproportionately victimized by serious violent crimes. So not only does this age group commit more crime, but they tend to commit them against each other. An analysis of 2015 showed that out of 162 homicides in the District, 129 victims were black and 120 were black males. Furthermore, the most common age of death for black men was 24, followed by 21 and 23.⁸ Thus, it is clear that young adults of color are disproportionately affected by homicide, not only being an offender, but also a victim.

By focusing our resources on improving our approach to responding to and working with young adults in the justice system, we will make the most progress towards reducing crime and victimization, and enhancing public safety. Essentially, if we want to get the best bang for the buck, we should double-down on effective approaches to working with this group of young people. Put another way, we should build on the best features and principles of the Youth Act, and improve DC.'s approach to meeting the needs of young adults. Developing and implementing -- including with sufficient funding -- the strategic plan required in the proposed legislation, will give us the best chance to achieve the public safety goals we all share.

⁷ N.A., *The Council of State Governments - Justice Center, Reducing recidivism and improving other outcomes for young adults in the juvenile and adult criminal justice system* (The Council of State Government – Justice Center 2015).

⁸ Swift Justice, "The Face of DC. Homicides," 2015. <https://swiftjustice.atavist.com/dchomicides2015>

Next Steps

By focusing our attention and doing substantially better with justice involved young adults in the District, it is fully within our power to improve public safety substantially. One thing to do, is not to implement the types of approaches that *we know don't work*. For example, research shows conclusively that long mandatory minimum prison sentences do not correlate with reduced recidivism or reduced criminal activity.⁹ So if we want to be smart on crime, we won't go down that road again, which has been shown to result in mass incarceration and ruined lives, but little if any public safety benefit. So, while clearly incarceration for some period of time is necessary in some circumstances, when that happens we should do our best to have those who are incarcerated, remain in DC. This is especially true for young adults, who we should keep within DC and as close to their home and family members as possible.

I truly believe we have a unique opportunity to dramatically improve the way we work with young people in DC's justice system. With this in mind, I have a few additional recommendations moving forward, including:

- *We should pursue development of a model special facility program for young adults:* This should be a facility that is designed to provide *treatment* within the District for young adults who would otherwise be sent to a federal facility. The staff should be specifically trained for issues that arise with the population of 18-24 year olds. Additionally, this facility should be as non-institutional as possible, and with an emphasis on programming. I'm pleased to say that I know that the District recently applied to receive assistance from the Vera Institute, which is working in Connecticut and Massachusetts on promising approaches, to develop this type of program within DOC.
- *We should consider development of a special court for young adults:* The court would be equipped with trained judges, prosecutors and defenders to assure that young adults are provided the best opportunity for treatment. The court would be provided with ample discretion to use community-based options in lieu of incarceration, and should track and publicize data. Promising models of these types of young adult courts are being implemented in NY and California, and we should study those approaches.
- *We should implement special probation and parole caseloads:* There would be an emphasis on special training as well as smaller caseloads to assure individualized treatment. Probation and parole strategies would offer programs designed with young adults in mind, with an incentive based approach to motivate positive behavior. We know that CSOSA is doing some of this, and we should evaluate and improve that practice as much as possible.
- *We should build on efforts to implement special community-based programs:* This would build on the already existing Career Connections and SYEP, and the DYRS community-based continuum, tailored for 18-24 year olds. It would provide services, supports and opportunities for this population, but also carefully track data and assess the outcomes to assure optimal effectiveness. We also are now learning about promising approaches in other jurisdictions,

⁹ *Fact Sheet: The Youth Rehabilitation Act and depictions of its use in DC.'s justice system* (Washington, DC: The Justice Policy Institute, 2016).

including programs like Roca and UTEC in Massachusetts, that I understand a delegation of DC officials is planning to visit in the near future.

- *We should improve our data collection:* Currently the system is experiencing gaps in the type of data being collected. Weaving these gaps together will allow the system to understand the effectiveness of programs for young adults, and also provide insight into individualized treatment plans.
- *We should maintain an approach that allows for confidentiality of records:* Under the current Youth Act, upon full completion, the record of conviction is 'set aside'.¹⁰ Although this is not necessarily expunged, it allows the young adult a better chance to proceed after criminal justice involvement to find a job and housing. This practice must continue and be strengthened when possible, as successful reentry creates better public safety outcomes.
- *Youth Act Implementation:* The Act has three primary benefits for young adults: more confidentiality, more sentencing options, and intense rehabilitative treatment. However, in reality, those sentenced under the Youth Act have not been receiving specialized treatment, if any. Full implementation would mean that young adults are afforded opportunities to advance their progress in and out of the system.

All of these can be advanced with the overall practice change that our D.C. and federal corrections agencies are shifting to with this population: that is, we address the risk, need and responsibility of each individual we touch, and provide them with the services that they need at the scale that they need it. What we've heard from the corrections field time-and-time again is, they can assess what a person needs to move past their contact with the justice system, as long as the services are there in the community for them to access.¹¹ That's why the programmatic expansion of this approach is so critical.

The Youth Act as part of a larger violence prevention strategy in DC

We should be clear that the Youth Act has only had a very limited impact on crime and violence in the District, and while I believe the changes being proposed should largely be supported, the work of creating safer communities must go far beyond this law.

Fortunately, the District has already taken the initial steps in pursuing another approach and one that is informed by the research, by unanimously passing and now funding the Neighborhood Engagement Achieves Results Amendment Act of 2016 (The NEAR Act). As you know, rather than emphasizing incarceration and a law enforcement response to violence, the Act puts forth a public health approach to create safer communities. This same approach has been strongly recommended by the Mayor's Safer, Stronger Advisory Committee, which I was proud to serve on.¹² I was also pleased to see that just yesterday the Mayor announced the opening of the Office of Neighborhood Safety and Engagement, a

¹⁰ *Fact Sheet: The Youth Rehabilitation Act and depictions of its use in DC's justice system* (Washington, DC: The Justice Policy Institute, 2016).

¹¹ Amanda Petteruti, Marc Schindler and Jason Ziedenberg. *Parole Perspectives in Maryland: A survey of people who returned to prison from parole and community supervision agents* (Washington, D.C.: Justice Policy Institute, 2015).

¹² *Ibid.*

critical component of implementation of the NEAR Act approach. I also think it is incumbent for city officials to consider how these various efforts relate to each other. For example, what role will the ONSE office have in development and implementation of the strategic plan under the NEAR Act?

In closing, I think the proposed changes to the YRA are largely a step in the right direction. It is important though that we view this as part of a larger strategy to address violence in our city, which should include a range of actions, amongst them implementing a research-based strategy to substantially improve how we work with justice involved young adults, and fully funding and implementing the NEAR Act and the key recommendations of the Mayor's Safer Stronger Advisory Committee.

Thank you for your time and I would be happy to answer questions.