

**Hearing
before the
United States
Commission on Civil Rights**

**HEARING HELD IN
MEMPHIS,
TENNESSEE
MAY 9, 1977**

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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CONTENTS

STATEMENTS

Opening Statement	
Chairman Arthur S. Flemming -----	1
Statement of Rules	
Commissioner Murray Saltzman -----	2
Welcoming Statement	
Reverend S. B. Kyles, Chairperson, Tennessee Advisory Committee to the U.S. Commission on Civil Rights -----	4

WITNESSES

Maxine Smith, Executive Secretary, Memphis Branch, NAACP -----	7
Chan Kendrick, Executive Director, Tennessee Office, ACLU -----	10
A. C. Wharton, Executive Director, Memphis and Shelby County Legal Services Association -----	12
Edward Thompson, Public Defender, Shelby County -----	16
Nancy Sorak, City Public Defender, Memphis -----	18
Samuel B. Hollis, President, Memphis Chamber of Commerce -----	31
M. E. Greiner, Jr., Vice President, Scripps-Howard Broadcasting Co. --	33
Emmett Marston, President, Memphis and Shelby County Bar Association -----	34
Larry Brown, President, Memphis Chapter, National Bar Association --	35
Walter Cody, III, U.S. Attorney, Western District of Tennessee -----	43
Hugh W. Stanton, Jr., District Attorney General -----	47
Bruce S. Kramer, Attorney, Memphis -----	58
Robert Wilkinson, Inspector, Internal Affairs Bureau, Memphis Police Department -----	63
Joseph Kent, President, Memphis Police Association -----	65
Robert Fargason, Chairman, Memphis Civil Service Commission, and Wade Hardy, Member, Memphis Civil Service Commission -----	81
Henry Evans, Chief Administrative Officer, City of Memphis -----	87
Joseph Sabatini, Director of Personnel, City of Memphis -----	88
John H. Wright, Commander of Personnel, Memphis Police Department	89
William Turner, Police Training Officer, Memphis Police Department	91
Robert B. James, Member, Memphis City Council, and Patrick Holloran, Chairman, Law Enforcement Committee, Memphis City Council -----	99
E. Winslow Chapman, Director, Memphis Police Department, and John D. Holt, Acting Chief, Memphis Police Department -----	110
Wyeth Chandler, Mayor, City of Memphis -----	121
Frances Wilkins -----	133
Edwin Owens, Jr. -----	134
Ira Sachs -----	135
Cornelia Crenshaw -----	136

EXHIBITS

(All exhibits are on file at the U.S. Commission on Civil Rights, Southern Regional Office, Atlanta, Georgia.)

1. Computer printout entitled, "Disciplinary action report number 77123."
2. Computer printout entitled, "Disciplinary action report number 77125."
3. Documents entitled, "Memphis Police Department rules and regulations May, 1975."
4. The organizational chart of the Memphis Police Department.
5. Memphis Police Department general order number 12-76, internal discipline.
6. Internal Affairs Bureau charts for the years 1974, 1975, 1976, and the period from Jan. 1, 1977, through Apr. 29, 1977, displaying total complaints, types of complaints, total complaints investigated, disciplinary action taken, and types of disciplinary action taken.
7. Undated and untitled, Memphis Department disciplinary summary for 1975.
8. Memphis Police Department order G-73-11 entitled "Promotion procedures," dated Apr. 4, 1973.
9. Miscellaneous data on recruiting, hiring, and promotion.
10. Computer printout entitled, "Complement report for Memphis Police Department for week ending 4/24/77."
11. City of Memphis charter, section five, outlining the city's nondiscriminatory policy.
12. Mayor's executive order of Dec. 21, 1973, setting forth a nondiscriminatory policy.
13. Mayor's memorandum of June 19, 1975, outlining administrative procedure for complaints of discrimination.
14. Nondiscrimination clause of the city's labor union contract.
15. The consent decree in the case of *U.S. v. Memphis*.
16. List of all promotions in the Memphis Police Department by race, sex, and rank for the years 1974 through 1976 and 1977 to date.
17. Charter and related laws of the City of Memphis, article 34, sections 240 through 250.4.
18. Code ordinances of the City of Memphis, volume 1, chapter 12, pages 419 through 429.
19. Minutes of the City of Memphis Civil Service Commission hearing.
20. The annual budget for the police department of the City of Memphis by line item and source of funds for the last four fiscal years, 1974, 1975, 1976, 1977.
21. NAACP "18 Point Program" (18 recommendations to improve police-minority relations).
22. Statement of A. C. Wharton, Executive Director of the Memphis and Shelby County Legal Services Association.

23. Report of City Council Investigating Committee, 1972 (charged with investigating complaints of police misconduct).
24. Percentage of Internal Affairs Bureau recommendations for disciplinary action which result in such action.
25. New York Police Department Study of the Memphis, Tennessee Police Department, 1974.

U.S. COMMISSION ON CIVIL RIGHTS

Monday, May 9, 1977

PROCEEDINGS

CHAIRMAN FLEMMING. I ask the hearing to come to order. This is a hearing of the U.S. Commission on Civil Rights. The law under which we operate makes it possible for the Chairman to designate two members of the Commission to hold public hearings provided both parties are represented. Commissioner Saltzman is joining me today in this hearing. Last fall we received a telegram from Reverend S. B. Kyles, Chairperson of the Tennessee Advisory Committee, in which he made us aware of some experiences that the Tennessee Advisory Committee had had in connection with an open meeting which they held on October 9, 1976, on police-community relations in Memphis.

Our desire at this point to have Mr. Kyles' telegram made a part of the record of the hearing. The telegram stated in part that:

We call upon you, namely the U.S. Commission on Civil Rights, to hold a hearing in Memphis and subpoena information and testimony from those city and police officials who have refused to cooperate with the State Advisory Committee. It is imperative to the welfare of Memphis, the reputation and credibility of the U.S. Commission on Civil Rights and the Federal Government as a whole that you respond immediately and positively.

We also had the opportunity of talking with Mr. Kyles when he participated in one of the regular meetings of the U.S. Commission on Civil Rights. As I have indicated, we decided to respond affirmatively to this particular request and that is why we are here today.

Our objective throughout the day, as we have the opportunity of hearing from the witnesses, is to obtain from those witnesses constructive suggestions designed to bring about an improvement in police-community relations in Memphis. We are not here to rehash the past. We are not going to pass judgment on individual cases. When we have completed this hearing today, the record of the hearing will be made available to the Tennessee Advisory Committee. They will then use the record of this hearing for the purpose of completing their report on police-community relations in Memphis. Their report will contain

findings and recommendations. Some of those recommendations will be addressed to the U.S. Commission on Civil Rights. We will consider their recommendations in the light of the testimony that is presented at the hearing today.

As is our custom, we make provision at the end of each hearing to hear from unscheduled witnesses. These persons who desire to participate in this part of the hearing should so indicate by contacting members of our staff. They will be heard in the order in which they request to have the opportunity of presenting testimony. Their testimony will be restricted to 5 minutes apiece and there will be no questioning following their testimony.

At this time I would like to recognize my colleague, Commissioner Saltzman, who will make all of us acquainted with the rules which govern the hearing today. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Thank you, Dr. Flemming. At the outset, I should emphasize that the observations I am about to make on the Commission rules constitute nothing more than a brief summary of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

And now, finally, the procedures which will govern the hearing. I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102E of our statute provides, and I quote,

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him before deciding to use such evidence or testimony.

When we use the term executive session, we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and present. In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized.

Therefore, the Commission, when appropriate, convenes in executive session prior to the receipt of anticipated defamatory testimony.

Following the presentation of the testimony in executive session and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event we find the testimony to be of insufficient credibility or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses even though those witnesses have been subpoenaed to testify in public session. An executive session is the only portion of any hearing which is not open to the public.

The hearing which begins now is open to all, and the public is invited and urged to attend all of the open sessions. All persons who are scheduled to appear, who live or work in Tennessee or within 50 miles of the hearing site, have been subpoenaed by the Commission.

All testimony at the public session will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of cost. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of the hearing of his or her testimony. That request will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she may also make objections on the record and argue briefly the basis for such objection.

Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the United States Attorney for enforcement pursuant to the Commission's statutory power. If the Commission determines that any witness's testimony tends to defame or degrade or incriminate any person, that person or his or her counsel may submit written questions which at the discretion of the Commission may be put to the witness. Such person also has the right to request that witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted in the discretion of the Commission to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, United States Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegation relating to possible intimidation of witnesses. Let me emphasize that we consider this a very serious matter,

and we will do all in our power to protect witnesses who appear at the hearing.

Copies of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming or the Commissioner presiding in his absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the United States Attorney when required. Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedure and their orders are also to be obeyed.

This hearing will be in public session for 1 day. Today's session will continue until 12 noon. After a lunch break of 1 hour, we will convene at 1 p.m. We will continue until approximately 4:45 p.m. The time between 4:45 p.m. and 6 p.m. has been set aside for testimony from persons who have not been subpoenaed but who wish to testify. As noted by Chairman Flemming, persons wishing to appear at the open session should be in contact with members of the Commission staff before 4 p.m. today. This hearing will conclude at 6 p.m. today.

Thank you.

CHAIRMAN FLEMMING. Thank you, Commissioner Saltzman.

At this time it is my privilege to present for an introductory statement the Chairperson of the Tennessee Advisory Committee to the Commission on Civil Rights, the Reverend S.B. Kyles. Before recognizing the Chairperson, I would like on behalf of the Commission to express to you and your colleagues on the State Advisory Committee our deep appreciation for the service that your Committee has rendered, and I know will continue to render, to the U.S. Commission on Civil Rights as you deal with issues in the civil rights field that come to light in the State of Tennessee.

We are very happy to have you with us this morning, and I am very happy to recognize you at this time for an opening statement.

**STATEMENT OF THE REVEREND S.B. KYLES, CHAIRPERSON, TENNESSEE
ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS**

REV. KYLES. Thank you, Mr. Chairman.

Chairman Flemming, Commissioner Saltzman, I am pleased to welcome you to the State of Tennessee and especially to the fine city of Memphis. The Tennessee Advisory Committee is grateful for your interest, for the interest you have shown in its study of police-community relations. As you well know, the Tennessee Advisory Committee began that study in August of 1976. Every effort was made by the Advisory Committee and the staff of the Commission's Southern Regional Office to conduct a thorough, well-balanced study and open meeting.

As you know, the city and police officials, with the exception of newly-appointed police director E. Winslow Chapman, felt it was not in the best interest of the city to cooperate with our study. The Advisory Committee could not, therefore, fulfill its responsibility mandated by the Civil Rights Act of 1957, as amended, to advise you about an issue of importance to the Tennessee Advisory Committee, police-community relations in Memphis. The testimony you will receive under oath today regarding the policies and procedures of the Memphis Police Department, and the information which you have subpoenaed, will at last produce a thorough study of police-community relations in the city of Memphis that would not have been possible without your involvement.

The Tennessee Advisory Committee thanks you for coming to Memphis. It is the hope of the Advisory Committee that Memphians will view this public hearing as an opportunity for a self-study as well as a study by Federal civil rights officials. It is our hope again that the findings and recommendations which will result from the joint efforts of the Tennessee State Advisory Committee and the U.S. Commission on Civil Rights and the study will serve as a foundation on which police and city officials, community leaders, and other citizens of Memphis will begin to build better police-community relations. I have been involved in the last 18 years in almost every committee that has been organized in Memphis regarding police-community relations, and they simply have not gotten better, so we welcome your coming and we appreciate it.

If I may, Mr. Chairman, I have a few members of our State Advisory Committee in attendance, and I would like to introduce them, if I may?

CHAIRMAN FLEMMING. I would be very happy for you to introduce them.

REV. KYLES. We have Mr. Dick Ramsey, one of our very hard workers over in East Tennessee. Locally, we have Mr. Dan Powell, one of our supporters on the Tennessee Advisory Committee.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very, very much for your introductory statement.

We are also joined today by Mr. Louis Nunez, the Acting Staff Director of the U.S. Commission on Civil Rights.

At this time I will recognize Mr. Baca, our General Counsel, and ask him to call the first witness.

MR. BACA. Thank you, Mr. Chairman. Before we do that, we would appreciate an opportunity at this point to read into the record a number of—to submit for the record and read into the record a list of a number of documents that we have received pursuant to our subpoenas.

CHAIRMAN FLEMMING. I will be happy for you to do that.

MR. STOCKS. The first exhibit is material furnished in response to the subpoena of E. Winslow Chapman, director, and John Holt, acting chief of the Memphis Police Department. There are 10 items in this group.

Number one, computer printout entitled, "Disciplinary action report number 77123." Number two, computer printout entitled, "Disciplinary action report number 77125." Number three, documents entitled "Memphis Police Department rules and regulations, May 1975." Number four, the organizational chart of the Memphis Police Department. Number five, Memphis Police Department general order number 12-76, internal discipline.

Number six, internal affairs bureau charts for the years 1974, 1975, 1976, and the period from January 1, 1977, through April 29, 1977, displaying total complaints, types of complaints investigated, disciplinary action taken, and types of disciplinary action taken. Number seven is undated and untitled, Memphis department disciplinary summary for 1975. Number eight is the Memphis Police Department order G-73-11 entitled "Promotion procedures," dated April 4, 1973. Number nine is miscellaneous data on recruiting, hiring, and promotion. Number ten is a computer printout entitled, "Complement report for Memphis Police Department for week ending 4/24/77."

The second list of documents is material furnished in response of the subpoena of Joseph Sabatini, personnel officer of the City of Memphis.

Number one is a copy of the City of Memphis charter, section five, outlining the city's nondiscriminatory policy. Number two is the mayor's executive order of 12/21/73 setting forth a nondiscriminatory policy. Number three is the mayor's memorandum of 6/19/75 outlining administrative procedure for complaints of discrimination. Number four is a nondiscrimination clause of the city's labor union contract.

Number five is the consent decree in the case of *U.S. v. Memphis*. Number six is a list of all promotions in the Memphis Police Department by race, sex, and rank for the years 1974 through 1976 and 1977 to date. Number seven is the charter and related laws of the City of Memphis, article 34, sections 240 through 250.4. Number eight is code ordinances of the City of Memphis, volume 1, chapter 12, pages 419 through 429. Number nine is the minutes of the City of Memphis Civil Service Commission hearing.

The last group of documents are materials furnished in response to the subpoena of Henry R. Evans, chief administrative officer of the City of Memphis. One item, a copy of the annual budget for the police department of the City of Memphis by line item and source of funds for the last 4 fiscal years, 1974, 1975, 1976, 1977.

CHAIRMAN FLEMMING. Without objection, the documents that have just been identified will be inserted in the record of the hearing at this point.

MR. BACA. Thank you, Mr. Chairman. I would like to call the first panel now. Maxine Smith, Chan Kendrick, Mr. A. C. Wharton, Mr. Edward Thompson, and Ms. Nancy Sorak.

[Ms. Maxine Smith and Nancy Sorak and Messrs. Chan Kendrick, A.C. Wharton, and Edward Thompson were sworn.]

TESTIMONY OF MAXINE SMITH, EXECUTIVE SECRETARY, MEMPHIS BRANCH, NAACP

MR. BACA. Ms. SMITH, could we begin with you please? Would you state your name, address, and occupation for the record?

MS. SMITH. Maxine Smith, executive secretary of the Memphis branch, NAACP, 588 Vance Avenue.

MR. BACA. How long have you been the executive secretary of the NAACP?

MS. SMITH. Fifteen years.

MR. BACA. How would you characterize historically the relationship between the police and the community of Memphis and the present condition of that relationship?

MS. SMITH. There has been very little change since I have been in the position that I am now in, and I am concerned about this problem and I would characterize it as very poor, particularly as it relates to the black community.

MR. BACA. You say there has been no appreciable change, those things are not getting better or worse in any way?

MS. SMITH. I would think not. There are some leveling periods where we don't have quite as many complaints, but they don't remain.

MR. BACA. Does the NAACP have any organizational interest or project regarding police-community relations?

MS. SMITH. We have an ongoing interest. At this point we have no particular project, but a considerable part of our time is spent in the whole gamut of administration of justice, which certainly includes police-community relations.

MR. BACA. Does the NAACP receive complaints from citizens about treatment by police?

MS. SMITH. Quite often.

MR. BACA. What do you do with those complaints?

MS. SMITH. We file them with—those that we feel have some merit and validity which we cannot always tell—we perhaps don't file some that we should—but we do file with the director of police, with the local FBI, with the Shelby County—the foreman of the Shelby County grand jury, with the county attorney general, with the mayor of Memphis, with the members of the City Council of Memphis, and we have some sort of commission here. Excuse me, Mr. Evans, if you're here—I

can't—but a commission that, some human-relations—like commission—anywhere we can.

MR. BACA. Do you file all complaints routinely with all of those agencies?

MS. SMITH. Yes, since we get such little response, we try to have as broad a base of possible action or corrective measures taken as possible.

MR. BACA. Focusing on the internal affairs bureau of the Memphis Police Department, have they responded to any of the complaints that you have forwarded to them?

MS. SMITH. We get practically no response from the police department.

MR. BACA. Let me understand. Now, you have as a routine matter forwarded complaints to them?

MS. SMITH. Well, we file them to the director of the police department, who in turn files them with the internal affairs chief.

MR. BACA. But do you as an organization forward the complaint, or do you merely refer complainants to the individuals you have mentioned?

MS. SMITH. We take the statement from the complainant and file those complaints to the various agencies and individuals that I have mentioned.

MR. BACA. Does the NAACP do any sort of followup to see how the complaint was processed or what result was obtained?

MS. SMITH. We have done quite a bit of this at various instances. However, the general response to our complaints from the various agencies when we do get responses—well, let's say the attorney general's office. It is just a form letter they generally send, and they fill in spaces: no cause or after 7 days of trying to contact the complainant without success we have, you know, we have dismissed it or we have dropped the charges, or whatever it is. But we have never had any response that indicated that any real effort was being made to correct the condition or any admittance that any wrong had been committed.

MR. BACA. Has the relationship between the police and community generally, the black community specifically, improved to any great degree since Mr. Chapman has been director of the police department?

MS. SMITH. Well, I can't see an improvement. I can say this, that during the tenure of the last acting director of the police department, the chief acted almost with no communication. Now, I felt a sense of gratification when Mr. Chapman was named director, because I do know Mr. Chapman. To answer your previous question about followup, I have held conferences with Mr. Chapman on several occasions because we were quite disturbed about the seeming increase during the time that he was coming into office.

But I cannot say other than that we do have conversations and I do think that there may be a difference in attitude of the relatively new director of police. I cannot say, since the number of complaints and the condition of the complainants that we hear and see have not lessened in severity or number, Mr. Chapman, the director of police, has expressed a willingness to do something about these things, but somehow, as far as I can see, it hasn't trickled down to the policeman on the street who has the day-to-day contact with the citizenry.

MR. BACA. Thank you. I have one final thing. I wonder if you or the NAACP as an organization have any recommendations to make to the Commission as regards a resolution of the problem or a beginning toward that end?

MS. SMITH. Well, we have made recommendations through the years and we may as well make one to the Commission too. We have tried as long as I have been executive secretary and long before that, I'm sure, to correct this problem.

First of all, we are greatly concerned about the hiring within the department. I don't think any institution in our community—and I think we can consider our law enforcement agencies as institutions and I am thinking particularly of our police department—one that discriminates against its own members could hardly be expected to be fair in administering the law. We have no black people who set policy as far as the police force is concerned. Absolutely none. I think we have perhaps two captains, but in the scheme of things that is not very high and it took us over 25 years of having black policemen.

I think black policemen have the longest record of remaining beat policemen than any other set of policemen, given their intellect, qualifications, and whatnot, in the history of the department. The atmosphere is so dismal within the department, and I notice on the program that you do have a representative for Afro-American Policemen, and their association. I don't know what Mr. Adair will say, but that group has come to our office because conditions were so miserable and so racially biased for the policemen who serve within the police department. The mere fact that they found it necessary to organize I think is indicative that something is amiss within the department.

So, with that attitude, as far as I am concerned, it's doubtful that we can have the type of administration of justice that we want, so certainly I think we should look at the hiring picture. I know we have looked at it before, I don't know if this Commission has looked at it.

There was a consent decree entered by the police department and the Justice Department perhaps somewhere near 3 years ago. I know we did, the community groups, did negotiate and meet for a long time. However, to my knowledge those who were mostly affected had nothing to do with the consent, and the only thing that has come out of that has been an increase in the number of black patrolmen. I think that's fairly token in the whole scope of things.

MR. BACA. Thank you, Ms. Smith.

TESTIMONY OF CHAN KENDRICK, EXECUTIVE DIRECTOR, TENNESSEE
OFFICE, ACLU

MR. BACA. Mr. Kendrick, if I could direct my questions to you for a moment. You are executive director of the Memphis branch of the ACLU; is that correct?

MR. KENDRICK. The Tennessee office of the ACLU.

MR. BACA. The Tennessee office, I am sorry. Does the ACLU regularly receive complaints of police misconduct or abuse?

MR. KENDRICK. Yes, they do.

MR. BACA. Okay. Can you describe some of the kinds of conduct that is complained of?

MR. KENDRICK. I think during the past year, in 1976, from April through April of 1977, we received about 175 complaints of police misconduct. A lot of those were beatings, harassment, breaking into someone's home or car, continually stopping people on the street, field interrogation, and that sort of thing has continued, I believe. Most of our complaints range in that area.

MR. BACA. In your opinion, did some of these complaints have merit?

MR. KENDRICK. Many had merit. We referred probably 100 of those to the internal affairs department after screening the applicants. Of the 100 we referred there and went there, probably 95 percent, 96 percent got form letters back, if they got anything back at all from the internal affairs department, saying we have dropped your complaint completely. My letters to the internal affairs department have not been answered. I will write a followup letter after I get a complaint to the department, and I will never hear from them one way or the other.

MR. BACA. Let me understand. These are people that the ACLU or that you individually represent as clients?

MR. KENDRICKS. Yes.

MR. BACA. And you received no response?

MR. KENDRICK. No response whatsoever.

MR. BACA. Have you written anyone else within the police department about that situation?

MR. KENDRICK. We send copies of our letters to the director and several of the agencies that Mrs. Smith mentioned.

MR. BACA. None of them have responded either?

MR. KENDRICK. No.

MR. BACA. It is my understanding that the ACLU has maintained for a period of time now some sort of statistical summary of the number of complaints, the kind of complaint and the disposition; is that correct?

MR. KENDRICK. That is correct. I have supplied, I think, the Commission with some of those statistics. What we have is many, many people that come to us with complaints that are arrested for assault and battery on a police officer, resisting arrest, and disorderly conduct, that sort of arrest. It always takes place. We follow those through the

court process to see what finally happens to them when they are represented. And our statistics will show about 25 percent of the people arrested for disorderly conduct, resisting arrest, assault and battery on a police officer are dismissed when they get to court. That is a large percentage.

MR. BACA. Is that a comparatively high percentage?

MR. KENDRICK. I think it is. I think 25 to 30 percent is high.

MR. BACA. Let me understand you, so I will make sure I have it clearly. You are saying that there is some correlation between people who have filed complaints of abuse or misconduct against the police and that that same group of people, those same individuals, have had filed against them charges of disorderly conduct or resisting arrest?

MR. KENDRICK. Yes. Clearly, there is a correlation there.

MR. BACA. Does the ACLU or has the ACLU represented people in litigation in complaints of police misconduct?

MR. KENDRICK. Yes, we have. Our last case was where we won a consent order where we questioned the process of field interrogation, of stopping individual blacks, particularly between 15 and 25 years of age, on the street for field interrogation was a normal policy. This came out of a complaint we had where a young man was beaten fairly severely and spent time in a hospital. That's the sort of litigation we want to get into where we attack a policy of the police department, not necessarily defend on an individual complaint basis.

MR. BACA. The two matters that you have described you have been successful in apparently?

MR. KENDRICK. Yes.

MR. BACA. Is that usual?

MR. KENDRICK. No, it is not usual.

MR. BACA. What is?

MR. KENDRICK. I would say very rarely we will win a case like that. This was an exceptional case, I think.

MR. BACA. How many cases have you personally or has your organization litigated of this kind?

MR. KENDRICK. Well, I have only been director for 2 years, and I don't know prior to that. During the past couple of years, we have only had a couple, and those are the two I mentioned.

MR. BACA. But you won those?

MR. KENDRICK. Yes.

MR. BACA. Would you describe the situation that exists between the police and the community generally, and perhaps the minority community specifically, as a good one, bad one, or how?

MR. KENDRICKS. I would agree with Ms. Smith that it is a very bad one, but let me also add that it is not necessarily with the black community. About half of our complaints, and many of the legitimate ones, are from white citizens of this community. I was surprised when I went back during the past 2 years of interviewing people and taking those statistics that they showed clearly that our office received as many

complaints from the white community as the black community, so I would think it is probably worse than just with the black community. It is probably worse than that.

MR. BACA. Have you noted any improvement since Mr. Chapman became police director?

MR. KENDRICK. I have noticed a lot of lip service. I have not noticed much—certainly our number of complaints and the type of complaints, we have have not gone down whatsoever. They did go down for a period last fall when a lawsuit was filed by individual officers for slander when people went to the internal affairs department. They went down for a period then. Since Director Chapman has become director, they have gone back up, and I have noticed very little change whatsoever.

MR. BACA. Could you, finally, offer your recommendations to the Commission as regards how this situation might be improved?

MR. KENDRICK. We have talked for a long time in this community about police investigating police. It is not going to work. It hasn't worked, and it will not work in the future. What we need is an independent agency to investigate police complaints.

MR. BACA. As opposed to the internal affairs bureau?

MR. KENDRICK. Yes. The internal affairs department, the way it is set up now and possibly any way it is set up will not function properly.

**TESTIMONY OF A. C. WHARTON, EXECUTIVE DIRECTOR, MEMPHIS AND
SHELBY COUNTY LEGAL SERVICES ASSOCIATION**

MR. BACA. Mr. Wharton, could you give your name, address, and occupation for the record?

MR. WHARTON. Thank you. My name is A. C. Wharton. I am the executive director of the Memphis and Shelby County Legal Services Association at 46 North Third Street, Memphis, Tennessee 38103.

MR. BACA. Could you describe generally the matters in which the association does offer and does not offer representation for poor people?

MR. WHARTON. I suppose it will be more helpful for me to take the latter first and explain those areas in which we do not offer help and volunteer why we do not offer help.

We are interested and mandated federally primarily to provide representation, legal representation, in civil matters. Consequently, the incidence in which we actually become involved in criminal matters or alleged criminal matters which result in police brutality are very slim. As I testified before at the State Advisory Committee hearing, we were involved in defending the individuals who were accused of slander by members of the police department after they had filed charges of police misconduct with the local internal affairs bureau.

Routinely, when charges of police misconduct are received, our receptionist or intake workers are instructed to refer the individuals

over to the internal affairs bureau, and in some instances to the FBI; and of course also to the other law enforcement agencies, the attorney general, and what-have-you.

MR. BACA. If I might interrupt for a moment, could you comment on the frequency with which you receive complaints, and how you determine, if you make a determination, whether a complaint should appropriately go to the FBI or to the internal affairs bureau, or is there any distinction?

MR. WHARTON. The frequency is extremely high, and I have worked in various cities throughout the country. I have not worked with the police departments, but I have filed lawsuits against a number of police departments, and I would say that Memphis has one of the highest rates of reports of police misconduct of any city in the United States.

We have no particular machinery for determining which complaints should be sent to any particular agency. It is basically a shotgun approach, to use a phrase which is perhaps quite appropriate in this hearing, to see what will happen anywhere. Basically, nothing happens, so I think the final point is that it is useless to even consider where they are sent.

MR. BACA. I take it from that that there has been little or no response?

MR. WHARTON. Well, the only response we got is once we sent somebody over and the police officer filed suit against them; that's the most direct response we have received.

MR. BACA. Let me ask you, does the association maintain intake records which would indicate the number of complaints that have come to your office and the referral of those complaints?

MR. WHARTON. We would maintain intake records but inasmuch as much of this is done by way of telephone and a simple walk-in, in some instances no records have been kept, so our records would be inaccurate on this in terms of being able to say that this is the exact number of complaints we have received.

MR. BACA. You referred to a libel defense as one instance in which the association has been involved directly as part of the problem of the police. Are there other instances in which you have been able to offer representation?

MR. WHARTON. Yes, there are. My comments on this matter will have to be somewhat restricted because it is now in litigation in the Federal court. We have filed a class-action lawsuit in Federal court against the City of Memphis, its officials, and the police department, alleging certain patterns of beatings in the city jail. As this matter is still before the court, however, all I can do is state what our contentions are, and our contentions are basically that there is or there exists a pattern of police misconduct, police brutality within the city jail, and we are asking the Federal court to order a number of corrections to remedy that situation.

We also filed and have concluded a lawsuit against the county jail, seeking to correct some conditions which were giving rise to numerous beating incidents.

MR. BACA. I understand that lawsuit has been concluded?

MR. WHARTON. I will say for the most part.

MR. BACA. Can you comment on the result?

MR. WHARTON. Well, certain changes were ordered in terms of an increase in the number of guards, a reduction in the number of prisoners to be held in the small cells, better conditions within the cells, and more hygenic privileges for the inmates there.

MR. BACA. Have you noted any particular improvement in the situation that exists in Memphis since Mr. Chapman has been director of police?

MR. WHARTON. There have been a few cosmetic changes at one level, but I think when you get down to the basic philosophical language there has been no change. By that I mean there have been, from press reports, a number of officers whose wrists were slapped. The director has made a number of public statements as to his desire and the department's desire to improve the situation, but when you take that comment and place it against the backdrop of the chief executive of the city, the mayor no less, on TV blanketly describing persons being held in the city jail as criminals and intimating from that that their civil rights are somewhat less than those of us who are not being held in the jail, and then the following week you have the director echo those same sentiments that these people are basically criminals and consequently they don't have the same civil rights, I question quite strongly whether there has been any real change.

I mean, it is one thing to make some cosmetic comments as to what we are going to do, what we would like to see, what we are not going to tolerate; but, when you get back to the same old philosophy that these people are criminals and consequently you can't believe what they say and they are bad people, I question quite seriously whether there has really been any change. There has been some good change: the media, the local papers say on the front page that things are down. The director gets good press coverage of all of his comments with regard to reprimanding certain officers, but by and large the philosophy is the same and until that changes we are not going to have any significant change.

MR. BACA. What recommendations would you make as regards possible changes?

MR. WHARTON. I have one very specific recommendation. By way of history, when I talked with the State commission earlier, I indicated that the idea of police departments policing police departments is inherently unworkable for a number of reasons, which I won't go into at this stage because I have done so before. For some reason there has been no real serious movement toward removing the so-called police policing function from the local law enforcement agency. To the ex-

tent that the State attorney general and other offices can be instrumental in bringing about some change here, they have not done so. Why, I do not know.

Again, just by way of history, I did propose at the earlier hearing that perhaps an agency supervised by the judiciary, as opposed to the law enforcement officer, might be workable. Just looking at it from an extremely practical standpoint, I don't think anything local is going to work.

We have a situation in which you go to the internal affairs bureau and if you'll look across the hall, you will see the attorney's office who represents that police union, indeed an intimidating fact. You can't forget this fellow's name. He has a very distinguished name, and certainly after going in there and filing a complaint, and when you come out the door the first thing you see is the police union's lawyer, you wonder about that. I don't know whether that was happenstance or what, but it certainly intimidated me when I went over there.

But I don't think we have a situation in which anything at the local level will ever be done. To the extent that the U.S. Attorney's office does have some authority to act in this, I do not think that the U.S. Government is in a position to establish within the local office or elsewhere an ongoing complement to police this type of activity.

This brings me to my suggestion which would be addressed to the Commission and its legislative offices. What I would suggest—and if the Chair will please advise me as to whether this has been tried or not, I would appreciate it—I would suggest that an amendment to 42 U.S.C. 1975, the legislation under which you operate, be amended slightly to expand your authority to make grants to private, independent, nonprofit organizations to serve as litigational units throughout the country, not simply in Memphis, but at strategic points throughout the United States where you have a high incidence of police brutality complaints.

We are only speaking in terms of a very small portion of your budget. I am sure you are familiar with projects that are funded by HUD that operate in this way by grants being made to private organizations who develop a litigative expertise in this field, and also by the EEOC. I might add in the case of the EEOC, some of your grantees have proved to have a much more successful rate than the agency itself.

So, I would suggest that the Civil Rights Commission seek from the Congress an expansion of its authority to include a specific permission to make grants to establish—well, not necessarily to establish—but to local and national organizations which make it their business filing and prosecuting lawsuits against law enforcement officers accused of police misconduct.

I think this proposal has a number of advantages. One, it removes it from the local level. Two, it takes it out of the administrative forum in which there is some question as to which due process right, which

right to remain silent exists, and would place it squarely in the Federal courts where the rights of both sides are clearly outlined. That is, the U.S. district court would have the authority to compel testimony, both sides would be subject to discovery, and additionally, under the new attorney's fees act, this fund could possibly be replenished by cases in which attorney's fees awards are made. On the other hand, to the police officers or the police department who say, "What about all of these malicious complaints," I would also add that the new attorney's fees legislation swings both ways. If a district judge is convinced that a party filed a malicious lawsuit, then that can be cured by an award of attorney's fees.

The other thing that this would do is that it would get us away from this matter of trial by polygraph. The first thing that is done throughout the United States when these cases come up is, "Are you willing to take a polygraph?" The first side that caves in on that is the side that loses just automatically. And as Mr. Thompson will vouch, those who engage in criminal defense know that the polygraph is not one of our more reliable devices in terms of determining who is telling the truth. It is really a shame that in so many cases these cases stand or fall based on who will take the polygraph or who will not take a polygraph.

One of the chief advantages of such a proposal is that it would provide a permanent presence in the community. I feel that if a number of law officers come to the recognition that each time they take the law into their own hands and engage in matters of police brutality, they know they are going to be put through a rigorous Federal court trial, whether they win or lose, I think the fear of that process will serve as the greatest deterrent. The odds are very high against an officer's being indicted or sued civilly as it stands now. Consequently, it's worth the risk. It would not be worth the risk if that officer could be assured that if you crack someone's skull you are going to Federal court, win or lose. And I don't think there are many people who could stand up under much of that. That's my proposal.

MR. BACA. Thank you, Mr. Wharton. I am sure that the Chairman, when it is the Commission's turn to ask questions, will be discussing that recommendation with you.

TESTIMONY OF EDWARD THOMPSON, PUBLIC DEFENDER, SHELBY COUNTY

MR. BACA. Mr. Thompson, could you please state your name, address, and occupation for the record?

MR. THOMPSON. Edward G. Thompson, public defender of Shelby County, 147 Jefferson.

MR. BACA. How long have you been a public defender?

MR. THOMPSON. Since March of '74, about 3 years.

MR. BACA. In carrying out those duties, do you frequently get complaints; do you or the attorneys that you supervise, if there are any, receive complaints of police misconduct or abuse?

MR. THOMPSON. Yes, sir. The attorneys and investigators in our office do.

MR. BACA. Can you give us any idea of the frequency and the kinds of complaints, that you receive?

MR. THOMPSON. I would say several times a week a complaint of some significance. Almost daily you get a complaint about being shoved or the handcuffs too tight or that sort of thing, but the significant cases, probably several a week.

MR. BACA. Could you describe what you regard as a significant type of case? Only a type, not a specific one.

MR. THOMPSON. Where a man is apprehended, say, inside of a business place on a burglary charge and the dog might be let loose on him after he is in custody. We have complaints of phone books being placed on the head during interrogation, and a stick being tapped on the phone book.

MR. BACA. With what objective?

MR. THOMPSON. Getting a confession.

MR. BACA. In your own opinion and in the opinion of some of your attorneys, did these complaints have merit? Was there some foundation?

MR. THOMPSON. Yes. We had a policy to investigate such complaints and to refer them to appropriate agencies where we felt that there was some merit and some significant degree of force being used, and those files have disappeared since we moved our office. We don't know where they are.

MR. BACA. What result did you get from the referrals?

MR. THOMPSON. None as far as internal affairs. I understand it is their policy not to release the results of their investigation to the complaining party, so that we don't know what happened.

MR. BACA. But they do at least, I think, send a form letter saying that there has been a disposition. The one I have seen does not inform the correspondent what the disposition was?

MR. THOMPSON. Right.

MR. BACA. Did you receive even that?

MR. THOMPSON. Sometimes they received them and sometimes they didn't, but we were never able to find out what the disposition was.

MR. BACA. Has there been any particular improvement that you have noted over the last few months?

MR. THOMPSON. Well, it seems that there is more interest in the—I say interest expressed in the problem at the top, but I don't think that it has filtered down into the ranks. I think the director, if he is interested, has a problem in that he has got a contract with the police union that severely restricts his options in investigating complaints against his own officers.

MR. BACA. What part of the contract are you referring to, sir?

MR. THOMPSON. Well, as I understand it, they are not required to make statements about the affairs and they are not required to take

a polygraph. Many of our people are told that if they want their complaint pursued that they must take the polygraph, the lie detector test, administered by internal affairs, and then the policeman will refuse to do it and the investigation stops.

MR. BACA. Is that because the matter is frequently a complainant without a witness and the officer also without a witness entering into a swearing contest?

MR. THOMPSON. That's right. Many of our people also are not interested in going back to the police department under any circumstances, so, therefore, many of the complaints are not followed up through the internal affairs. They take the position that unless someone comes to them and makes a formal complaint they will not investigate the matter.

MR. BACA. Earlier we heard testimony about an apparent relationship that exists between complaints filed alleging brutality or at least some kind of physical abuse and the filing by the police of charges of resisting arrest or disorderly conduct or some similar charge. Is that your experience as well?

MR. THOMPSON. As far as I know, most of the cases that we handle are criminal felony cases in criminal court, and the disorderly conduct, resisting arrest, are primarily handled by the city public defender's office.

MR. BACA. And finally, sir, do you have any recommendations to make to the Commission as regards how the situation might be alleviated?

MR. THOMPSON. I would have to agree with Mr. Wharton. The department at the present time has a military-type structure with military secrets. I can understand the need for that in some cases, but I think that there may be two solutions. One is political. You have got to have people dedicated to the pro position that they are going to do something about the problem and not to pretend that it doesn't exist. And the second thing, I think the spearhead is going to have to come from the Federal courts the same as it did in the school cases here and the park cases, and all the others and I think in this case that probably the Federal court is going to have to do it. And third, it probably ties in with the political, but there's got to be a community commitment because I think the attitudes that you see in some officers of the police department reflects community attitudes to some extent. These people are criminals, they have no rights; and I think a lot of times police decide they are going to do a little of their own punishment right on the front end when they catch them.

MR. BACA. Thank you, sir.

TESTIMONY OF NANCY SORAK, CITY PUBLIC DEFENDER, MEMPHIS

MR. BACA. Ms. Sorak, could you give your name, address, and occupation for the record?

MS. SORAK. My name is Nancy Sorak, city public defender, 128 Adams, Memphis, Tennessee.

MR. BACA. How long have you been in that position?

MS. SORAK. Eighteen months.

MR. BACA. How many attorneys do you supervise?

MS. SORAK. There are three full-time attorneys besides myself, and one part time, though this expansion is rather recent. We work only in the city courts, handling misdemeanor cases that are tried without jury.

MR. BACA. In that connection have you or the attorneys that you supervise received complaints from clients that you represent or people that sought your representation?

MS. SORAK. Yes, we have, we have represented some people, as Mr. Wharton says, who are currently involved in the suit. We don't have any method for keeping records other than just the client files. We have observed what we feel, all of us feel, are instances of abuse by the police department that were not necessarily brought to our attention by our clients. In very bad situations, of course, a person by looking at him, you can see that he has been subjected to some abuse, and some questioning will determine that it did not happen at the time that he was arrested or for what he was arrested.

I think that our main observation of abuse is people that essentially come in on what I would call trumped-up charges. The same as Mr. Kendrick says—very frequently, disorderly conduct, resisting arrest, interfering with a police officer, will be crafted up together and generally when you see those three charges, you are going to see a defendant that has received some treatment from a police officer when the officer was effecting the arrest. Many times—

MR. BACA. Let me make sure I understand. The person is being arrested for some charge other than those that were brought?

MS. SORAK. No, we sometimes feel that the police will arrive on the scene and perhaps whatever they were called there for was already over with. Through some questioning—they begin questioning some people and other persons will get a little unruly and pretty soon someone is resisting arrest. Of course, he wasn't really going to be arrested for anything until he began interfering and resisting and then he gets disorderly conduct, which is a very handy city charge that we have which encompasses almost any type of behavior other than just sitting very quietly and speaking to another person. And these things will go together, so I think a lot of times people don't realize that they have been subjected to arbitrary police treatment. They are in jail, they are usually people who have been in jail before, frequently they are excitable types, there are often people with past records of many petty things, and they are not inclined—well, they probably don't even know that they have been subjected to this arbitrary treatment.

Secondly, they are not inclined to go over to the 100 North Main Building and file any kind of complaint, because their complaint would

not be having been beaten, but it would have been the arbitrary treatment and perhaps if they see this kind of treatment all of the time on the street, it is a common everyday occurrence. To an attorney, you're looking at it and you're saying, what's this, you know, the guy didn't do anything, and we get a tremendous number of these cases dismissed through working with the prosecutor, and we do take a few of them to trial. But there frequently is a problem where an individual can't get out of jail and we can't provide them with a real speedy trial, and the city jail is not the best of all possible places to be, so they opt to plead to one of these charges.

MR. BACA. With what frequency are they dismissed?

MS. SORAK. Without going back and checking records, I really couldn't tell you. Probably about half the time unless arresting officer is claiming that the defendant in fact did bodily harm to him. We usually have some success in talking with the prosecutor about these type of cases, where it appears that there was no underlying reason for the arrest and the only thing we can assume is that the officers themselves precipitated an incident which involved them and made it necessary for them to make an arrest when if they had behaved differently, that might not have happened.

MR. BACA. Have you on behalf of your clients or other people made referrals to the internal affairs bureau?

MS. SORAK. Well, I—when I first got into public defender work, all of us were very new there and we just would refer people to internal affairs because we viewed that as rather a civil part of the whole business rather than a part of our activities in defending them in criminal matters. It all of a sudden occurred to us that most of the people that we deal with would be very intimidated, and people with previous records, etc., are not going to want to subject themselves to the type of questioning that I suspect they would have to undergo.

When Mr. Chapman took over the directorship, I spoke with him briefly and he indicated that he would be—he wanted to know who these people were and when complaints were filed. So we instituted a policy of trying to take an affidavit or a statement from the client and send that to the police director and send it over to internal affairs in advance so that the person's complaint in substance came before the board before the person himself. We have only had about three instances of this because it is rather new. The first one, we received no notice of what happened to it or anything, and finally through contacting the police director we found that they were not going to pursue it, and we advised the woman that she should take civil action if she felt that was necessary. There was nothing else we could do.

MR. BACA. Have you noted any improvement since Mr. Chapman became director?

MS. SORAK. Well, it seems to me that a lot more things are surfacing, at least in the newspapers. I don't really think so, because I think that the problem is probably—it's on the street. It is with the officers

that answer the calls out on the street, and administratively you just can't control that type of behavior. It is a method that they have always operated under, I guess, and they are continuing to do that; and many of them feel as though they are doing a good job, they are keeping the street clean and safe and all of that. But in reality we find that they are making many illegal arrests and that they observe nothing, but they hear that something went on before and so they arrest someone.

MR. BACA. What recommendations would you make to the Commission as to how the situation might be corrected?

MS. SORAK. I think getting information to the community would be helpful. I agree with all of the things some people before me that have been said, but it seems to me that one of the greatest problems is that the defendant doesn't know where to complain, or how to complain, or what he is likely to experience in making a complaint.

Not only that, there needs to be information out on the street of what is justifiable complaint. Everyone knows that if an officer beats your head in or sics the dogs on you that obviously you are not being treated fairly, but I think the majority of the community don't realize that there are a lot of other things that can constitute arbitrary police action, but, because they are not lawyers, they are not aware of these things. And I think that the legal community itself and a commission such as this could make the populace aware of what would constitute grounds for a complaint, when you see it, or when you are the subject of it, and where you might take your complaint, and what kind of action you might expect. I think that would be helpful.

MR. BACA. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. We appreciate very much the testimony that you have given in response to the questions and, as I indicated in my opening statement, as a commission we are particularly interested in your proposals and the proposals that other witnesses may make, designed to bring about an improvement in the present situation.

Listening to Ms. Smith, I gather that you feel that a good deal of emphasis should be placed on the development of affirmative action programs, both in the area of recruiting and also in the area of promotion. Is there an affirmative action program in effect at the present time within the police department?

MS. SMITH. If there is one, I am not aware of it. The only thing that has prompted the police department to hire more blacks to my knowledge is the consent decree of some 2-1/2 years ago entered by the department and the Justice Department.

CHAIRMAN FLEMMING. Has the NAACP alone or in cooperation with other organizations urged the department to develop an affirmative action program and been rather specific in what you feel should be included in such a program?

MS. SMITH. Very definitely, over a period of years, we have done this, since the days even when we had very few black officers and they

were confined to—restricted to certain sections of the city, and were restricted from arresting white offenders—alleged offenders. We have a history of trying to improve the employment picture, because we are afraid that if we can't do it from within, we are certainly not going to do the job from without. But it has been our experience and our observation that the department has done no more than it has been forced to do by this type action.

You know, sometimes I feel that all law enforcement agencies are just playing games with us, and those who are in a position or have the power to effectuate change have no real concern about it. A few weeks back a number of reporters called me daily, because I think in this instance it was the district attorney's office who promised a great report to me of the many cases of abuse we had filed, and to this date this report has not been forthcoming, so these things are indicative that there is no real interest to correct the situation.

I certainly wish the—I don't know if—to follow up Mr. Wharton's suggestion about a legal remedy, there could be something that the Commission could do. In employment, the mentality of those policemen who would be guilty of the types of things that have been discussed this morning, I think that their job security should be looked at. Their job status should be looked at, because they certainly reflect the mentality of the community. Our complaints rise with the cranks that call our office when we are engaged in a particular situation that is not favored by this type of mentality that hides itself behind a telephone.

CHAIRMAN FLEMMING. Does any other member of the panel desire to comment on this recommendation that efforts be made to develop a meaningful affirmative action program within the police department relating both to recruitment and to promotions?

MR. THOMPSON. Mr. Chairman, I think it's a little more complex than a racial thing, although I think that is certainly a factor. But our experience is that some of the complaints by, say, our black clients in the public defender's office are against black officers, and I think it's a mentality. The police force is a paramilitary type organization, and in some parts of town, primarily the poorer parts of town, they are almost like an army of occupation. They come through in their cruisers heavily armed and looking for trouble.

CHAIRMAN FLEMMING. But you do feel that a vigorous affirmative action program could bring about some constructive results?

MR. THOMPSON. Yes, I do, but I think it may go beyond that.

CHAIRMAN FLEMMING. I understand. Any other comments on that specific suggestion? If not, I notice that a number of the suggestions can be grouped under the heading of a conviction on the part of members of the panel, as some of you put it, that a police department cannot investigate itself, and a number of suggestions have been made. For example, Mr. Kendrick representing the ACLU, suggested an independent agency to investigate complaints. We recognize that this is an

approach that has been taken in other cities, and usually it is accompanied by a great deal of controversy. But, nevertheless, this has been tried in other cities.

Then I also notice the suggestion that funds be made available to appropriate organizations to assist in carrying on or conducting cases in the Federal courts. I might say in regard to the specific suggestion relative to the Commission, that the U.S. Commission on Civil Rights has been in existence for 20 years and during that period of time has never been put in a position where it has what might be called day-by-day operating responsibilities.

We have two basic obligations, and that is to identify fundamental issues in the field of civil rights, conduct studies, conduct public hearings, and make findings and recommendations to the President and to the Congress. Then in addition to that, we have an oversight responsibility for all departments and agencies of the Federal Government that are called upon to implement civil rights laws. And it has been the feeling of the Commission that that oversight responsibility is a very important one, and that if at any time we became involved in direct day-by-day operations, that would water down our abilities in the oversight area.

However, in terms of your basic suggestion relative to the use of Federal funds, in order to stimulate the type of activity that you have suggested, have you every had any conversation with the Law Enforcement Assistance Administration along that line, or have you ever made any effort to get included in the State plan for Tennessee under LEAA provision of that kind?

MR. WHARTON. Mr. Chairman, let me first answer your question as to whether we have sought to get in on LEAA funding for this purpose. The answer is no, and the answer is no because I think we recognize the ultimate futility of such efforts.

LEAA in its operations, particularly in its grantmaking operations, is a very political-type operation, and of course suing police departments in the State of Tennessee or law enforcement agencies in general is not one of your hottest political items. Consequently, I would suspect that any funds that might be available along this line would certainly be in such proportions that it would only be a drop in the bucket; and, again, if you sue the wrong people, in the midst of litigation you will find your funds terminated. Let me go back—

CHAIRMAN FLEMMING. Let me just interrupt for a moment and ask something. LEAA does have discretionary funds that they can allocate without regard to the State plans that are submitted to them. Have you every made any effort to file applications for those discretionary funds?

MR. WHARTON. No, I have not locally. I know of other programs elsewhere that have sought LEAA funds for this purpose. But again we have to keep in mind that the ultimate source of the LEAA funds is the Department of Justice in Washington. Now, to the extent that you

may be successful in receiving those funds, I do not think the mere receipt of funds by local agencies is going to assure any success. I think that we need this Commission's involvement in it because this Commission can then oversee how the LEAA oversees how the funds are granted and spent by your local agencies. I have to differ somewhat with the Chair's statement—

CHAIRMAN FLEMMING. Could I interrupt you right there? We do have that oversight responsibility right now. We have an oversight responsibility as far as LEAA's relationship to the whole civil rights area is concerned, and our oversight reports will include—have included and will continue to include the effectiveness or ineffectiveness as the case may be of the LEAA.

Ms. SMITH. Could I just inject something here. I agree with Mr. Wharton. It is an exercise in futility. About 18 months ago, I believe it was, the NAACP instituted an anticrime program, and we had some leaflets—it was a concerned neighbors type thing; we thought it was a pretty good program; we still do, and we think it has had some effect, positive effect in town, and we got quite a bit of publicity out of Memphis on it.

Somehow, somebody from LEAA wrote us to draw up a program, and I generally don't take time because I have little to waste doing these type of things because generally we aren't the type of people who are funded. We just do the best we can. We did consume considerable time and effort and there was correspondence, telephone, I think somebody even came to town over a period of months, and as I suspected in the first place, it sort of faded out. As I indicated, I think the program that we were proposing but had not sought funds for was a good one.

CHAIRMAN FLEMMING. Well, your testimony and Mr. Wharton's testimony on this particular point is very relevant to the concerns of the Commission because you are telling us about a grassroots experience with this program and your reactions to it. Consequently, that is very, very relevant as we discharge an oversight responsibility.

MR. WHARTON. Mr. Chairman, let me emphasize one thing, and I hope that with this important effort we do not drift into the same largesse that we have drifted into in many other important efforts. As I understand LEAA—well, at least this is the perception that I have and I think this is the perception generally—it starts out “the Law Enforcement.” I think we can just stop right there, and we will know what the perception of that agency's role is in the community. I don't think we should any longer think in terms of saying, “Let's go here and ask this agency to give us a little piece of this, and go here and ask this one to give us a little piece, and maybe we can collectively across the Nation come up with enough money to make some start toward correcting this matter.”

I think we need a very clear, concise commitment of Federal funds for one thing, and that is to sue police officers who are accused of police brutality—nothing else.

CHAIRMAN FLEMMING. It is possible to work for the inclusion in the appropriate budget—this would be the Department of Justice—for a line item that would do that.

MR. WHARTON. Mr. Chairman—

CHAIRMAN FLEMMING. That's a feasible approach. Your recommendation along that line is an interesting one and one that we will take under consideration.

I am going to have to move here. We have got time spans allotted for each panel, and as Chairman I have got to be sure of the fact that we stay within that. But go right ahead on this because you're coming up here with positive suggestions which is the thing that we are looking for. I gather Mr. Kendrick would like to—

MR. KENDRICK. I am not personally opposed to applying for some LEAA funding for a police project, but I fully recognize what has happened in other cities in the country. And that's what Mr. Wharton talks about. The next year, the political implications of getting that refunding, as in Philadelphia, have been a tremendous problem. It is just a nonproductive type project to work on.

CHAIRMAN FLEMMING. Don't misunderstand me; I am not recommending that you do or don't. I am just raising the question as to whether you have considered it and if so, what experiences you have had, and so on, because that's the way we get evidence on the basis of which we can come up with recommendations.

There is one other suggestion that has come out of the members of the panel and that is more emphasis, as I gathered, on class-action suits, and I gather in one or two instances there has been some success. Was that in State court or Federal court, your experience with the class action?

MR. KENDRICK. In Federal court.

CHAIRMAN FLEMMING. In Federal court. Mr. Wharton, you indicated you were involved in an action at the present time. Is that in Federal court also?

MR. WHARTON. Yes. The Legal Services Association, Mr. Chairman, is involved. I think that the attorney who is handling that case will testify before you later.

CHAIRMAN FLEMMING. All right. But so far your class action has been in the Federal courts. That's true on the part of those who have had that experience.

Now, there is one other suggestion that has come out that I would just like to ask a question about, the suggestion of community action, in effect; and I was just going to ask whether or not the organizations represented here plus other organizations in the community have gotten together in the form of a coalition where you are focusing on one or two things that you think can and should and must be done if there is an improvement? In other words, is there such a thing within the city as a community action program supported by a fair number of organizations designed to bring about an improvement in the situation?

What I will do now, I have thrown that out and one or two other things that I think some of you may want to comment on, I will just ask for brief comments, if you so desire, on the part of each member of the panel, maybe amplifying those proposals a little bit. Mr. Thompson, you didn't get in on the earlier one on an all-independent agency of some kind or Federal action designed to improve the investigation of the complaints. Did you want to make a comment on that?

MR. THOMPSON. Well, on that proposal I think it would have to be an independent agency. Simply individuals filing class-action suits over here in Federal court is a little bit slow and cumbersome. As to community action, I don't know of any coordinated plan. I think you would have to get the middle class of this city interested in that, and at the present time they are not because either they don't see it or don't choose to believe it when they read about it.

CHAIRMAN FLEMMING. Mr. Wharton, any further comments?

MR. WHARTON. In direct answer to your question, Mr. Chairman, we have not, the association has not been involved in any community action type activity and it would be quite reluctant to do so, simply because we recognize again the ultimate futility of such. The only way this thing is going to be pierced, literally, would be to have someone riding in the squad cars, going to the jails, and what-have-you. So all of the community education and what-have-you is not going to pierce this veil of silence with which one is greeted when they seek to challenge this type of conduct.

In reference to my other testimony, I would like to make one other suggestion, Mr. Chairman, and that is that the Commission explore whether it might already have this authority to which I referred. You do have the authority to request that all agencies cooperate fully with you. Now, "fully" in my opinion would mean giving money or setting money aside, and I would like to see the agency go to the Justice or what-have-you and say now, "The Federal Government says you are supposed to cooperate with us fully, so we have this data base here, let us do something with it." And just see what "fully" means.

CHAIRMAN FLEMMING. You believe in the carrot approach?

MR. WHARTON. Yes, indeed. Thank you.

CHAIRMAN FLEMMING. Ms. Sorak, do you have anything further?

MS. SORAK. No, I would agree with what Mr. Thompson said. I realize from the job that I have that he is correct that the general population, the middle-class population, either chooses not to believe or it has just never seen this type of activity. I suspect that if any of them, or any of their relatives, etc., were subjected to some kind of treatment that we see on a daily basis that they would be exceedingly surprised and indignant and be pursuing it in all directions. But the fact of the matter is that it doesn't happen to those persons.

CHAIRMAN FLEMMING. Ms. Smith?

MS. SMITH. Perhaps I am the veteran on this panel in this type matter, but I would say over the years, as I look back in the audience

at people who have been a part of community action with men, we have tried what I consider community action. We have demanded audiences, say with the U.S. Attorney General, not the present one—we'll get to him. We have appeared before the various bodies en masse or however necessary and, despite the fact that every gain in social change that we have been able to make in Memphis has come through community action, a direct action approach, this is sort of a ticklish one.

I don't know, perhaps the power structure is more resistant to this. We talk about a healthy political climate, but perhaps it's because the political structure, that I don't think is too healthy, has such control, but the type of community action program that ends this has escaped us. And I would say that Memphis being a completely segregated city in sixties and no voluntary change having taken place, community action has helped—but we have a long way to go in all of these fronts—helped in most other instances, but this is just a tough nut to crack.

CHAIRMAN FLEMMING. Mr. Kendrick.

MR. KENDRICK. There are two points I think. One is that it is not going to happen voluntarily. The other is we need to, while we wait on the Civil Rights Commission to fund a police abuse project hopefully in Memphis, we need to move now for an independent agency with some power, with staff, and with subpoena power to bring people in; we have to have that.

CHAIRMAN FLEMMING. Mr. Saltzman.

COMMISSIONER SALTZMAN. Ms. Smith, which of the agencies that you listed in your initial testimony to which you brought complaints as an agency responded in the most receptive manner, and I believe you went through city agencies to Federal. Was there any receptivity of any agency?

MS. SMITH. They are all equally bad.

COMMISSIONER SALTZMAN. On the Federal level also?

MS. SMITH. Yes.

COMMISSIONER SALTZMAN. In the filing of complaints, Ms. Sorak and Mr. Thompson, do you find that the complainants are subject to or claim they have been, allege they have been, subjected to intimidation by reason of their submission of complaints against the police department?

MS. SORAK. I have had at least one individual who indicated to me—he had an ongoing bad relationship with the police department and filed a number of complaints, and indicated to me that when he tried to follow them up they said they only had one on file. He also felt that the filing of complaints had led to increased intimidation on the streets as opposed to being in the internal affairs division itself. But the officers upon whom the complaints were filed tended to harass him and pick him up on minor charges or nonexistent charges.

MR. THOMPSON. We find the same thing basically. I don't think it is a policy of the police department to intimidate or to make illegal arrests, but we find the same officers' names coming up over and over again. So what intimidation there is, is from these individual officers against individual people.

COMMISSIONER SALTZMAN. From what Mr. Kendrick said in his earlier testimony, I have the impression that the complainants are white and black, not exclusively from the minority community. However, I have the further impression that the complainants relative to alleged police brutality are essentially either poor or those who have in some way come into contact with the law enforcement community prior to that particular event, that largely the middle class has not experienced the kind of alleged police brutality that you're suggesting the poorer economic levels are subject to. Am I correct in perceiving that?

MR. THOMPSON. Well, our clients are all poor because by nature of our job, we represent the people who are unable to hire attorneys of their own, but I have been in private practice and I have seen that to a much lesser degree among the middle class. I would say it is primarily the poor people that these things are visited upon.

MR. KENDRICK. I need to add also that, and in our lawsuit in particular, it affected the minority community more than the white community. Our staff, myself and the other person working in my office, is white. We are going to get white complaints, and we still get 50 percent of black complaints. So, I think the problem is particularly more severe with the minority community.

COMMISSIONER SALTZMAN. But in particular it's largely restricted to the lower economic levels, the alleged police brutality does not extend into the middle class by and large; is that what you are all suggesting?

MR. THOMPSON. That's my experience.

MS. SMITH. By and large.

MS. SORAK. That is what I would suggest, even though since I am also a public defender and only work with those type of individuals who cannot afford what is a limited fee even in a city court case, but that's the general impression I get just from the types of activities that I see. It may also be, as you said, the same officers are coming up again and again and these officers work in those particular communities, and it may be if they worked in another community they would be behaving the same way. But the fact is that they are assigned to a precinct that includes a lot of low-income persons.

MS. SMITH. If I may, I cannot say that is without exception by and large. I guess I would be considered a middle-class black. I have had a very unfortunate situation. My own teenage son, at the time he was a teen-ager, who was quite law abiding and everything was all right as soon as it was discovered that he was my son, but that is not the way things should be. While I am talking, there's one other thing, if I could just shift gears for a bit—well, a lot of other things concern me, but this has not been touched on today.

We have several standards of administration of justice, and I think I have tried to say that the problem goes further than just the police department, the law enforcement agencies, the sheriff's department, and what-have-you. I think I have given one of your staff members a copy of an 18-point program that I hope you will look at. The NAACP has had hearings also a few years back hoping to really get at the root of the whole thing. But just to give you an example, and this is—

CHAIRMAN FLEMMING. May I interrupt? Do you identify the 18-point program?

MR. STOCKS. Yes, we do.

CHAIRMAN FLEMMING. Do you have it?

MR. STOCKS. Yes, we do.

CHAIRMAN FLEMMING. Then without objection, I would like to have it inserted in the record at this particular point.

MS. SMITH. I am hoping that out of your wisdom you can come up with suggestions from that, and also—this is not a suggestion but it is a condition that prevails here of the various standards of justice, and just to give you an example without citing specific cases, unfortunately in recent months in Memphis we have had three murder cases involving youth who have been charged with murder. In one instance there was black-on-white crime, in another instance there was black-on-black crime, and in another instance there was white-on-black crime, and the disposition of these cases—the difference in the disposition has been very marked, and that bothers me greatly.

The white-on-black crime, these were all juveniles, without any fanfare from the news media. If I could interject here that all of our cases are released—all of our complaints are released to the news media, but they are generally ignored. It seems when the police department wants something in the newspaper there, but without fanfare from the news media the case involving white-on-black murder—all these are murders. The youngster, perhaps as he well should have been—in a very few days with a very short newspaper item—I happened to see it right over the death notices, has been sent to a training school to his, not to go beyond what is his, whatever the law is, I think his 21st birthday and that's as it should be. The black-on-black-crime, as I remember it, the youth was at one point in the case dismissed on his own recognition.

And the white-on-black crime, one of the youths has been committed to an institution until he is cured of mental retardation, and to my knowledge there is no such cure—

COMMISSIONER SALTZMAN. I am sorry to interrupt you but—

MS. SMITH. Well, I hope you see the point.

COMMISSIONER SALTZMAN. Yes, I do. I just want to ask two other questions.

I would like to ask, Mr. Wharton, do you feel that the legal community in Memphis has adequately fulfilled its responsibility and its interest in the area of the administration of justice, especially with regard to the allegations against the police department?

MR. WHARTON. No, I do not, Commissioner, and again, I have not been involved in criminal defense, but maybe Mr. Thompson can vouch for me on this. I would suspect that an attorney engaged in private practice would not do himself or herself too well to stir the water too much in this area, particularly when he is practicing routinely in the city courts and in the criminal courts.

COMMISSIONER SALTZMAN. Can I ask you, Ms. Sorak and Mr. Thompson, do you think the bar associations have a responsibility in this area, and could you make a recommendation to us relative to what they might be doing in a corrective effort in Memphis?

MS. SORAK. I do not belong to the local bar association myself. I think there are probably a lot of persons like myself who don't. I feel that the—and of course, as I understand, the president of the bar association is to appear before this panel—and I feel as though criminal defense law is not something that a lot of persons who are in the city are interested in. I understand from an article in the paper not too long ago that criminal defense lawyers are rather low on the totem as far as prestige among the cohorts.

I think the local bar is more interested in civil matters. I think that some of them probably realize that the problem exists; however, they don't seem to be very well organized in being able to address any kind of problem. It just doesn't seem to be a very cohesive organization.

As I say, I don't belong to it, and I am sure that there are many other attorneys like myself who do not, especially those who work in the public sector where they are not in business for themselves and do not have a private practice. I think there is much that they could do, but whether they really have the interest—the number of criminal lawyers in the bar is not large.

MR. THOMPSON. Commissioner, I am the chairman of the criminal law section of the local Shelby County Bar Association. We have difficulty just getting people together to discuss anything. To my knowledge the bar association has taken no action whatsoever in this field, and I feel that it would take a major effort to get any meaningful action out of the bar association. I think, again, the criminal law practicing attorneys are a very small component of the local bar association. They are fragmented, and they are individualists primarily, and many of them, I think, would just be uninterested in this sort of a project.

I agree with Mr. Wharton that it is going to take some funding, and the average attorney doesn't have, knowing the climate in this community, doesn't have the funds or the information to go through proceedings on something like, say, a suit in the Federal court where the chances of recovery would be very slim.

CHAIRMAN FLEMMING. Mr. Nunez.

MR. NUNEZ. While your organizations do receive complaints from citizens, in your opinion do you think that the average citizen that complains to your organization knows the nature of what constitutes

excessive police force and the means of redress, how to go about filing a complaint, officially, aside from using your respective organizations?

CHAIRMAN FLEMMING. I ask that each one of you just kind of respond yes or no on that in the interest of time.

MS. SMITH. I would not think that they would. That's why they come to us, and often after its necessary to take the next step with the law enforcement agencies, they are hesitant and sometimes, even refuse to do so because they view them as the enemy.

MR. THOMPSON. I think they know, but they don't believe there is anything they can do about it.

CHAIRMAN FLEMMING. Mr. Wharton.

MR. WHARTON. I agree with Mr. Thompson's response.

MS. SORAK. I would say a combination of the two. First, they don't think they are going to get any action once they find out that it's going to be the police department that's going to investigate it, and then a lot of them don't know how to begin. They think they can bring these things out in the course of the criminal charge against them when the case comes to trial. Which we have found has been a very poor way to get at these problems.

MR. KENDRICK. I would say that they not only don't think they won't get action, but they know they won't get action and that is why they come to us.

CHAIRMAN FLEMMING. We appreciate you very, very much being with us this morning and appreciate the constructive response you've made to questions.

Counsel will call the next witnesses.

MR. BACA. Mr. Samuel B. Hollis, Mr. M. E. Greiner, Jr., Mr. Emmett Marston, and Mr. Larry Brown.

CHAIRMAN FLEMMING. May I ask that conversations take place outside of the room, please, in the interest of our moving forward expeditiously.

[Messrs. Samuel B. Hollis, M.E. Greiner, Jr., Emmett Marston, and Larry Brown were sworn.]

CHAIRMAN FLEMMING. Counsel will proceed with questioning.

MR. BACA. Thank you.

TESTIMONY OF SAMUEL B. HOLLIS, PRESIDENT, MEMPHIS CHAMBER OF COMMERCE

MR. BACA. Starting with you, Mr. Hollis, would you please state your name, address, and occupation for the record?

MR. HOLLIS. Samuel B. Hollis, president of Federal Compress and Warehouse Company, 5955 Fairwood Lane in Memphis, and I am here as president of the Memphis area Chamber of Commerce.

MR. BACA. In an organization of this type, what is the membership?

MR. HOLLIS. We have about 2,500 members.

MR. BACA. About 2,500 members?

MR. HOLLIS. Yes.

MR. BACA. Has the chamber as an organization or you as an individual taken any position or any cognizance of the problem of police-community relations?

MR. HOLLIS. We through our normal committee process have taken from time to time an interest in this. Specifically, we maintain contact with the mayor and with the police director to offer our assistance and to get input as to what problems are and what help we might offer.

MR. BACA. Do you have a standing committee on the situation?

MR. HOLLIS. No, we do not. We have a human relations division, and under this division comes the matter of police relations.

MR. BACA. How would you personally characterize the nature of the relationship in Memphis between the police and the community?

MR. HOLLIS. Well, by personal knowledge it is difficult for me to state any personal experience. My experience is through the chamber and through the news media and through businessmen, reports that we have, and we recognize that there are some problems. We have not been made aware directly of the large number of complaints that have been outlined here today.

MR. BACA. Would an improvement in that relationship, if it is bad, be helpful to the economy of Memphis, the general business climate?

MR. HOLLIS. Well, I would say this, that we are interested in the total welfare of this community and in the quality of life, and if such problem does exist then the chamber of commerce would be very interested in seeing that problem solved and improved. There's no question about that.

MR. BACA. All right. Are there resources that you think the chamber might bring to bear on this problem, offer through its membership some kind of assistance to the police?

MR. HOLLIS. It is possible in some of the areas where we have businesses that are members that might have or a large national company that might offer assistance if it were requested or needed. We have not had such a request, and we haven't really observed that, but we would certainly be willing to offer our support in trying to help out in any way possible.

MR. BACA. You have not been contacted?

MR. HOLLIS. No, we have not.

MR. BACA. Do you have any specific recommendations to offer the Commission as to how it might begin to address the problem?

MR. HOLLIS. Well, I guess it's a matter of information. I think as a practical matter the business community is certainly as interested in this matter as any single element in the community because of the overall well-being and economic development of the community is our major responsibility.

I guess the major recommendation I would make is a matter of information and awareness of the problem. I would say in general that the feedback we get from our members would be more concern of crime and law and order as opposed to police brutality, in all candor,

and I think it is a matter of information. We will be happy to assist in that among our membership, but as far as—and we also believe that we might be able to offer services if asked, and we certainly do maintain contact with the city officials. We would be happy to cooperate with them in any effort in this regard.

TESTIMONY OF M. E. GREINER, JR., VICE PRESIDENT, SCRIPPS-HOWARD BROADCASTING CO.

MR. BACA. Mr. Greiner, would you please state your name, address, and occupation for the record?

MR. GREINER. M. E. Greiner, Jr., 18 Morningside Park. I am vice president of Scripps-Howard Broadcasting Company, and general manager of the WMC stations here in Memphis.

MR. BACA. How long have you resided in Memphis?

MR. GREINER. Thirteen years.

MR. BACA. And can you describe some of the community activities that you have been involved in that have brought you in contact with Memphians of all economic and racial classes?

MR. GREINER. Well, we have done some—in addition to regular news programming, we have done various special programs aimed at addressing community needs and problems as we perceive them.

MR. BACA. What about some of your personal activities? I mean, United Way, and some of the other—

MR. GREINER. I have been president and I am currently chairman of United Way of Greater Memphis, and the president of Memphis Speech and Hearing Center.

MR. BACA. How would you characterize the status of race relations in this community?

MR. GREINER. Race relations?

MR. BACA. Yes, sir. In particular—

MR. GREINER. I would say that they are not as good as they should be.

MR. BACA. And what about police-community relations?

MR. GREINER. As Mr. Hollis has said, I must plead lack of personal knowledge. The continuing ascertainment interviews that our stations have conducted lead me to believe that the great public interest is in eradication of crime, greater safety, greater police protection. We do not hear nearly as much anymore any complaints about police attitudes, harassment, or anything of that sort.

MR. BACA. Do you think that there is a general unawareness in this community at large of a problem between the police and say the lower economic levels of the citizenship?

MR. GREINER. Yes, I would say so.

MR. BACA. Do you believe that there is a way that city leaders, both elected and informal or unelected city leaders, can have some impact on creating a better climate?

MR. GREINER. Yes, I do.

MR. BACA. Do you have any recommendations that you might care to make to the Commission that would help us deal with this problem?

MR. GREINER. I would think any effort to bring forth factual, provable incidents would be of great help in getting the idea across to the largest number of people. There has been difficulty in that regard in the past. We have professionally—our own stations who try to track down various allegations—and had difficulty with coming up with anything that we could put on the air, and any help of any government body or any other body could bring to bear in that area would be good.

MR. BACA. Thank you.

TESTIMONY OF EMMETT MARSTON, PRESIDENT, MEMPHIS AND SHELBY COUNTY BAR ASSOCIATION

MR. BACA. Mr. Marston, would you please give your name, address, and occupation for the record, please?

MR. MARSTON. My name is Emmett Marston. I live at 5877 Brierfield, Memphis, Tennessee. I am the president of the Memphis and Shelby County Bar Association.

MR. BACA. And how long have you been president?

MR. MARSTON. For approximately 4 months.

MR. BACA. How large is the association? What is the number of its membership?

MR. MARSTON. Approximately 1,350 attorneys.

MR. BACA. Out of how many in the Memphis area?

MR. MARSTON. Approximately 1,500.

MR. BACA. Does the bar association have a standing committee on various subjects?

MR. MARSTON. It has approximately 29 committees.

MR. BACA. Does it have one on the administration of justice?

MR. MARSTON. Not as such, not by that caption.

MR. BACA. Through what committee would the bar association deal with problems of the administration of justice?

MR. MARSTON. We have a judicial practice and procedure committee which has to do with the courts and the rules of the courts, and the relationship between lawyers and judges. We have a criminal law section. We have judicial recommendation committees. Of course, we have discipline-ethics committees, fee dispute committees. We have a public relations committee.

MR. BACA. Do any of them to your knowledge directly deal with the problem of police-community relations?

MR. MARSTON. No, none directly. We have had occasion over the past several years on cases in the courts, the city courts in particular. We have had factfinding committees. We presently have one underway with request from the various judges and court officers for a better handling of the municipal court, traffic court situations.

MR. BACA. Do you personally, or as president of the bar association, recognize that there is a problem with police-community relations in this city?

MR. MARSTON. I don't know that there is a problem, personally. I know what I read in the newspapers: I do not have any personal knowledge. No complaint as such has been made to us in any form.

I think it is important to ascertain whether there is a problem, and if they are of the widespread nature that apparently some say they are. I think that's the first and foremost thing to make the determination that they do exist. I do not know personally that we have a poor police-community relation.

TESTIMONY OF LARRY BROWN, PRESIDENT, MEMPHIS CHAPTER, NATIONAL BAR ASSOCIATION

MR. BACA. Mr. Brown, when was the local chapter of the National Bar Association started?

MR. BROWN. The local chapter was started in the late fifties here in Memphis, but I can't give you the exact date right.

MR. BACA. I am sorry, I am doing things out of order. Would you please state your name, address, and occupation?

MR. BROWN. My name is Larry Brown, and I reside at 2024 Keltner Circle. I am an attorney, and I am here today as president of the Memphis chapter of the National Bar Association.

MR. BACA. Which you say started when?

MR. BROWN. In the late fifties.

MR. BACA. And you have been president for how long?

MR. BROWN. For approximately 6 months.

MR. BACA. For approximately 6 months.

MR. BROWN. Yes.

MR. BACA. How many members does the NBA have?

MR. BROWN. The local chapter has approximately 35 members out of about 47 to 50 black attorneys in Memphis.

MR. BACA. Does it also do its work through standing committees?

MR. BROWN. No. It works more through committees which are appointed to deal with a particular problem.

MR. BACA. Do you personally or does the local chapter of the National Bar Association believe there is a problem of community-police relations in this city?

MR. BROWN. The answer on both counts is very definitely, through personal knowledge and through the association, there is a problem.

MR. BACA. Has the National Bar Association or your chapter attempted to confront that problem or help ease it in any way?

MR. BROWN. The chapter is in process now of attempting to confront it and ease it, mostly through encouraging and trying to provide methods where black attorneys can donate their time to attack these problems from a legal standpoint.

MR. BACA. Thank you.

Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. I would like to ask one opening question to the members of the panel. At least two panel members indicated that there is within the community a very real concern for what has been identified as law and order. Someone else expressed it as a very real concern for greater, and I assume more effective, police protection. Would you agree that if in fact the civil rights of citizens are being violated in connection with certain aspects of the police-community relations that it would be very difficult to build an effective law and order program on that kind of a foundation?

MR. BROWN. Mr. Chairman, I would thoroughly agree with that, and I think that is in essence the problem, particularly in the black community, because the black community does view the police department as simply a law and order organization. And in fact there is a very real fear in the black community of even dealing with the police department. I have had numerous individuals express to me personally that they would be afraid to report a crime, if they were to witness one, because they feel that they will immediately become a suspect in the crime. So, that does work to keep the relationship from becoming a harmonious one.

CHAIRMAN FLEMMING. Would any other member of the panel desire to comment on that?

MR. HOLLIS. I would like to express this. As I said to the interviewers when they came to me, it seems to me in the area of professionalism that if we can get—I think Director Chapman is working in this regard. As I said to him, I think it's unfortunate that this hearing is coming when it is and not giving the new administration a chance to begin in what I think is a program on professionalism, and I think that cuts across what we are talking about. There is a balance there between the law and order aspect and the violation of civil rights that pure professionalism and training can help solve.

CHAIRMAN FLEMMING. In other words, your feeling is that if there is some violations of civil rights in connection with police-community relations that one approach to dealing with it would be more effective training in this area of the members of the police department?

MR. HOLLIS. Yes.

CHAIRMAN FLEMMING. Do you feel that your organization would be prepared and willing to support that kind of a move on the part of the police department to introduce that kind of training?

MR. HOLLIS. Yes, sir. No question about that. Now, we are not an organization that provides services normally, but when you say support—

CHAIRMAN FLEMMING. I mean public support. No question of support?

MR. HOLLIS. No question that if this is an identified community need and this is an area that would work toward the solution of the problem, and if it's of the magnitude as might be described, we certainly would support that.

MR. GREINER. Historically, Mr. Chairman, we have seen societies that have traded off safety for liberty and equality under the law, and I wouldn't care to live in such a state and don't think that most of us would. I think it's essential that the enforcement of justice at whatever level, beginning with arrest, be administered evenhandedly and fairly, and I don't think we can build a secure, happy, and productive community here unless we are assured of that.

CHAIRMAN FLEMMING. Mr. Marston, do you have any comments?

MR. MARSTON. Mr. Chairman, I think to ask the question is to answer it as you expressed it. Obviously, if civil rights are being violated, then law and order obviously suffers. I think we all agree on that. I do believe that the first and foremost thing of any group is to determine how widespread, if it exists, and in what manner it exists, because, of course, there are legal recourses and legal remedies available. I do believe that the police force that we have, to my knowledge, is good, but I think it should be better. I think it needs funds. I think it needs people, I think it needs training, and certainly in that area we would support it. I think any group would support it. I think its essential.

CHAIRMAN FLEMMING. I don't know whether you had the opportunity of listening to the testimony from the members of the previous panel. Under oath, of course, they identified what they feel on the basis of their day-to-day situations as it being a very real problem. As you know, in October of last year our State Advisory Committee held an open meeting where some very specific situations were documented. There is a transcript of that hearing and it is available, and of course there will be a transcript of this hearing that is available. After considering the kind of testimony that was presented at the open meeting and after considering the kind of sworn testimony that was presented earlier this morning, would the organizations that you represent at least in three, these instances be willing to evaluate that testimony and then on the basis of it try to develop a positive effort on the part of the community to come to grips with the kind of situations that were identified this morning?

I gather, Mr. Hollis, you really in effect already answered that question in response to an earlier question on my part, but I am just wondering if your organizations would be willing to utilize this record, analyse it, evaluate it, and draw conclusions, and we will be making some findings and some recommendations, as will the State Advisory Committee. But it seems to me that if other bodies in the community would be willing to do the same thing that that might start the ball rolling in the right direction.

MR. MARSTON. Chairman, I think I can speak for the Memphis and Shelby County Bar Association. To what extent that we can actually do something to make a change if a change is necessary, I am uncertain. But certainly we would cooperate and do everything within our power to do something if finding that a real problem exists that we should address ourselves to.

CHAIRMAN FLEMMING. Has the bar association ever given consideration to a standing committee on police-community relations?

MR. MARSTON. Not to my knowledge, no.

MR. HOLLIS. I would like to add one point about committees. The Memphis Area Chamber of Commerce was instrumental in forming not too long ago a crime and delinquency committee headed by a very distinguished attorney, Mr. Newton Allen, to deal with the entire subject, and the fact that we do not have a standing committee doesn't indicate own lack of interest. We have supported and worked with this group and will continue to do so.

CHAIRMAN FLEMMING. Have you ever given consideration toward the possibility of establishing a committee on police-community relations?

MR. HOLLIS. Not to my knowledge.

CHAIRMAN FLEMMING. Mr. Brown.

MR. BROWN. Mr. Chairman, the NBA would be delighted to review the transcript and make recommendations. However, I feel it would be somewhat unnecessary for most of the members because we already know that these things exist, and we have had probably some involvement in most of the matters that were testified to before the Commission, but we would be willing.

CHAIRMAN FLEMMING. Mr. Greiner, do you have any comments on that? I appreciate the fact that you're not representing an association at this point.

MR. GREINER. Well, our station is already planning some special programmings based on these hearings along with regular news coverage. In the past we did gavel to gavel coverage of the NAACP ad hoc hearings, which were somewhat similar. We've done some other programming. There are—well, with all of the lawyers present I don't have to say it, but there are definitely libel and slander considerations in the medium of [indistinguishable]—

CHAIRMAN FLEMMING. Members of the previous panel identified the problem as a fact and, as they put it, the middle-income group of the population in their judgment are not aware of at least the seriousness of the problem. I have noticed a number of the members of this panel have emphasized also the importance and the desirability of providing information relative to the nature of the problem to the public generally. To your knowledge, any member of the panel, has any effort ever been made in regard to a number of community organizations to form a coalition to take a look at this problem, and to agree on the kind of constructive actions that might be taken, and then to go out and get public support for implementing those suggestions? Has this happened in the life of the city at any point?

MR. HOLLIS. Not to my knowledge. The closest thing might be this recent committee called the crime and delinquency committee. It is not just a chamber of commerce committee, but it cuts across different lines. That committee has not been in existence long enough to evaluate its performance, but that's the closest thing that I am aware of.

CHAIRMAN FLEMMING. Anyone else?

MR. GREINER. I am not sure that this is relevant, Mr. Chairman, but in October or November of 1975, 12 radio stations and 3 television stations here in Memphis last did a broad study of the public. I believe it was 1,002 personal interviews were conducted and over 600 of those in the city of Memphis, which is about twice the number necessary for good statistical balance, and I looked at that thing this morning. I was interested to find that in response to the first question as to what the respondents thought were the most important problems in the community, 72 percent listed crime-police-law enforcement. Seventy-one percent of white respondents and 73 percent of blacks so answered.

Then all respondents were asked to name the single most important problem and 34 percent of the total said crime-police-law enforcement, and those responses were more than the total of everything else, obviously. I went to the comments to see what they meant, and I could find only 10 instances in which police harassment, police attitudes, or police brutality were mentioned. The others—apparently, they were all by black respondents. All of the need for more police protection.

CHAIRMAN FLEMMING. This would again, then, point out the necessity for getting into circulation the kind of information that was identified by the previous panel.

Mr. Saltzman.

COMMISSIONER SALTZMAN. I would like to ask the panel whether in their personal opinion the agencies represented by the former panel—the American Civil Liberties Union and the National Association for the Advancement of Colored People—are responsible community organizations and have the image in the community of being responsible community organizations. May I ask each member to respond to that briefly?

MR. MARSTON. Yes, I think they are responsible, and I think they have the respect of the community. Definitely.

MR. GREINER. Yes, absolutely.

MR. BROWN. Yes, and along those lines I would like to add that these are the groups which have been raising the concern which the Chairman just expressed if there had been any groups that had organized together. These groups have, but they have not been really taken seriously by the powers that be or by the middle-class community, but I do think they are responsible and respected groups.

MR. HOLLIS. Yes, I agree they are.

COMMISSIONER SALTZMAN. Well, then my next question. I am astounded that in a community where these two organizations are considered and have the image of being responsible to the community that, first of all, they have suggested or alleged that there are complainants who are intimidated after making complaints against the police department. Secondly, in the hundreds of cases where they issue or become the agents for the issuing of complaints to the police department and the various other organizations and agencies from the police department up to the Federal agencies, that they get no response, and

I can't comprehend it. If they are responsible agencies in the community or vehicle in the community that from the local to the Federal level, that there is no sense of responsibility to those agencies to respond to them when they come with a grievance. Doesn't this sound rather irresponsible on the part of the various agencies, Mr. Marston?

MR. MARSTON. Well, I will have to assume that they have made complaints and no response has been made from either the city, State, or Federal agencies, and I do not know that.

COMMISSIONER SALTZMAN. Well, they offered us that testimony under oath.

MR. MARSTON. Yes, sir, I understand that. They may have, but I have no knowledge of that. It is hard for me to understand it that, if they have a complaint and have filed it with either the city, or the State, or the Federal agencies, that they have gotten no response and no action taken.

COMMISSIONER SALTZMAN. You are equally astounded as I am.

MR. MARSTON. It has not been brought to my attention. I would like to know if those type of things do occur that they are getting no response. It is hard to believe that, but no one has brought that by any of those groups to us as such, or to me personally.

MR. BROWN. If I may respond.

COMMISSIONER SALTZMAN. Go ahead.

MR. BROWN. I am not so much astounded by it, and I will amend my previous answer on them being respected, responsible organizations to say that in the black community they are. In the white community there may be some resistance to these organizations, and I think the reason they have not gotten any response is the procedure through which complaints go. Here in Memphis a complaint against the police department is routinely channeled into the internal affairs bureau, which is policemen investigating policemen and it gets lost in the shuffle. So, for the most part, people go through the routine of filing a complaint, but they don't expect any action on it.

The second thing is that the administration in the police department and even up through the mayor's office has viewed particularly people like Mrs. Smith of the NAACP as just being rabblers and troublemakers, and that is certainly not the case. But because of that view somewhat they refuse to deal with the complaints that she makes, and they are valid.

Finally, I would add that there is a local paper here that carries a feature story every week on an item of police brutality in the community, and no one responds to those public charges or allegations.

COMMISSIONER SALTZMAN. Mr. Marston, are there any black members of your bar association?

MR. MARSTON. Yes, there are.

COMMISSIONER SALTZMAN. Do you think that the bar association possibly has an affirmative responsibility in this area of police-community relations to fulfill its own responsibility as lawyers to their own

profession relative to the equity in the administration of justice in Memphis?

MR. MARSTON. Well, I think certainly we do have a responsibility. You know, where do you go? Who's responsible for crime? Are the lawyers the ones to take charge and rectify the wrong there? I don't believe that is necessarily within our sole province. If there are instances of police brutality, how far does the bar association go? What does it do as a group?

I think obviously the determination of the administration of justice, whether it be in the lowest court or the highest court, is an interest and concern of the bar association. Certainly, we are willing and will strive in any way we can to assist and correct a deficiency that exists. As lawyers we do have that interest, and we will attempt to do it in whatever manner we can. How much strength we as a group would have to change all the social ills, I don't know. But I think we are certainly willing to cooperate and willing to do whatever we can do in this regard.

COMMISSIONER SALTZMAN. Do you think, Mr. Marston, that it is a good idea for the police to be the principal investigative vehicle for allegations against the police?

MR. MARSTON. Now, you are getting into a field that I am not familiar with. The administration of police organizations is not my speciality by any means. I don't know many lawyers who would know. Obviously, they have to have their own means and methods of internal examination of complaints. I think that's a beginning point perhaps for investigation of their own. I think, of course, there are, if those instances do occur, there are redresses in the courts that are available that can be brought, and I think are brought. Both of the organizations you mentioned, the civil liberties union and the NAACP, they certainly have class action along with Legal Services Association which we sponsor, Mr. Wharton spoke of, has brought class-action type of litigation where police brutality and denial of civil rights occurs and individual lawyers do the same. So to that extent there are redresses available to people who are in this situation.

Now, what the system should be insofar as investigation by police of its own complaints, I think that is a beginning point. They obviously have to have some internal control. Perhaps there should be something in addition to their control. In addition to the lawsuit if necessary to redress the wrongs. I don't know and don't purport to try to give an answer on how complaints should be investigated, the procedures internally.

COMMISSIONER SALTZMAN. Mr. Greiner, were you here when the earlier panel testified?

MR. GREINER. No, sir, I wasn't.

COMMISSIONER SALTZMAN. Well, I think generally the panel indicated that they felt some independent agency ought to be somehow funded to deal with these allegations, and I think in effect to reassure those

who are the recipients of alleged police brutality that the system is being administered, that justice system is being administered with equity. Would you as a person within the context of the community, and recognizing you are not an expert and neither am I, but would you support that kind of effort to have an independent agency?

MR. GREINER. Well, it seems to me, Commissioner, plain that 40 percent of the community is dissatisfied with that procedure and has been for many years. That means to me that it is inadequate. I think that there should, at the very minimum, be a review system that pleases a large majority of the population, with which they are satisfied and comfortable.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Nunez.

MR. NUNEZ. Just getting back to that point. You indicated that the perception of the average citizen in Memphis is that law and order is the basic issue of criminal justice in this area, and that perhaps the whole question of police-community relations as regards police brutality is lower on the order of importance, but the survey you cited is perhaps a general survey across the community.

MR. GREINER. Yes, sir.

MR. NUNEZ. Perhaps if it had been focused on lower economic levels and more directed on the black community then perhaps the results would have been slightly different. Would you say that?

MR. GREINER. Yes, sir. There were special methods taken so that the group was well represented. They were not unrepresented. Also, Commissioner, we also did individual interviews with 275 community leaders from 19 areas, including minority groups, groups for women, public officeholders, professionals, and so on, and on those we don't quantify the answers. However, I did go through those also this morning to see how many mentions there were. I find surprisingly few out of several hundred problems. We make a record of every problem, that is unless it is clearly frivolous. And some were very contradictory incidentally, perhaps a half a dozen of them. There were several members of the ACLU, the NAACP, PUSH, and other groups that interviewed in the course of this.

CHAIRMAN FLEMMING. Mr. Brown, I gather you would react positively to suggestions for what might be called an independent review board? On whatever name might be associated with—

MR. BROWN. Yes, sir, Mr. Chairman, I would, as I have indicated by my prior comments. Along those same lines I would like to add that the black community is particularly disturbed about the procedures used in suspending officers who are accused of misconduct. Maybe that's been covered. Where they have been suspended with pay pending an investigation. I am a strong believer in due process and in not having the accused punished before convicted, but the black community views this procedure as in effect giving a policeman a paid vacation for going around busting black heads. That causes quite a bit of concern in the black community.

CHAIRMAN FLEMMING. I want to express our appreciation to each member of the panel for being here with us this morning and making the contributions that you have made.

Counsel, call the next witnesses.

MR. BACA. Walter James Cody, Hugh Stanton, Jr., and Bruce Kramer. Are any of those people in the room?

[No response.]

MR. BACA. Walter Cody, Hugh Stanton, and Bruce Kramer.

CHAIRMAN FLEMMING. Have the marshal call them.

MR. BACA. Mr. Chairman, while we are waiting for additional witnesses, we have a statement from Mr. Wharton which we would like to make part of the record. It is a statement of some three pages, and with your permission we would like it submitted into the record at this time.

CHAIRMAN FLEMMING. Without objection, it will be included in the record at this point.

We are a little bit ahead of schedule here, but if we pick up a little time it might be helpful later on in the day.

[Mr. Walter J. Cody was sworn.]

TESTIMONY OF WALTER CODY, III, U.S. ATTORNEY, WESTERN DISTRICT OF TENNESSEE

MS. PENDRY. For the record, would you state your name, address, and occupation, please.

MR. CODY. My name is Mike Cody, and I am the United States Attorney for the Western District of Tennessee. My address is this building, the Federal Building in Memphis, Tennessee.

MS. PENDRY. How long have you been the United States Attorney?

MR. CODY. A month.

MS. PENDRY. What is the authority of your office with regard to charges of police abuse and the investigation and prosecution of those charges?

MR. CODY. Our authority rests with the civil rights statutes. We work in conjunction with the Civil Rights Division of the Justice Department.

Whenever any complaint is made, or even to that extent if a newspaper article appears in the paper which indicates that there might be a violation within the parameters of the civil rights legislation, then the FBI can make an independent investigation or we can recommend that, and in fact we do. The natural progression is that, say, if my office gets a complaint, we ask the FBI to prepare a preliminary investigation, which in fact is a fairly full investigation. That investigation is turned over not only to our office, but also to the appropriate personnel in the Civil Rights Division of the Justice Department.

At the conclusion of the investigation, if we feel that there is probable cause of a violation the matter will be referred—it can be referred to the grand jury for indictment. Assuming that, even if our office did not think that probable cause was there, there is an independent review by the Civil Rights Division of the Justice Department and the Justice Department itself could seek an indictment. They could either try the case or prosecute the case here alone, allow us to do it, or do it in conjunction with our office.

MS. PENDRY. Your office does have the authority to decide to submit a case to the grand jury for indictment without the approval of the Civil Rights Division of the Justice Department?

MR. CODY. I am not sure. I think we do. I think it is a matter of policy that we have, from the very short time that I have been involved in this job, we have coordinated and advised the Justice Department as to our feeling about particular cases and the investigations which are going on.

MS. PENDRY. I see. Would you normally be made aware of the investigation being conducted by the FBI of police abuse?

MR. CODY. Yes, I am made aware. We initiate some investigations. Those investigations which are initiated by other means, we receive copies of any preliminary investigation reports.

MS. PENDRY. Is every allegation of police abuse investigated by the FBI, every complaint received by that office?

MR. CODY. As I understand the procedure, if a complaint is made to the FBI, it is investigated. That complaint can either originate from the victim, from the U.S. Attorney's office, from the Department of Justice itself, and it is my information that they are investigated and a report is sent to our office.

MS. PENDRY. Are there currently investigations pending?

MR. CODY. Yes.

MS. PENDRY. Are there cases that are pending for prosecution in your office now, cases of police abuse?

MR. CODY. Well, I think without referring to particular cases that there are matters involving police abuse which are under investigation and will receive prosecutorial decision by my office and by the Justice Department.

MS. PENDRY. Given your long involvement in the community of Memphis, do you have a perception of whether there is a problem in police-community relations here?

MR. CODY. I think so.

MS. PENDRY. Could you define that problem as you see it?

MR. CODY. Well, I think it is a problem which is bigger than just the police-community aspect. I think it is a community problem which has to do with the race relations, which have generally been poor in Memphis, and I think that in listening to the testimony earlier this morning that it is not going to do the job just to have a few people in positions of responsibility who want to make some changes in this

area. These changes will have to be forthcoming, I think, from the community itself, and I think that proceedings such as this help to make the community aware that the problems are not just affecting a few, but affect many in the community.

MS. PENDRY. Are there other recommendations that you would make either for increasing community awareness or for increasing the commitment on the part of the community to deal with these kinds of problems?

MR. CODY. Well, I think again, as in anything else, the leadership in any community helps to set—they not only reflect the community attitudes and feelings, but they help to develop and help to educate the public as to needs, and I think that the bottom line in our community is developing strong leadership that has a commitment in this area and will try to educate the community that if there is an unhealthy condition in any part of our city it affects the whole community. I think these are many of the things that went on in Atlanta that I think our city has to do.

A specific matter in just the very short time I have been here—and certainly I really don't have much background to express an opinion as to the procedure in the handling of it—the only thing that I have noticed is that it would be helpful to us in processing complaints if some of the organizations, say, the NAACP, American Civil Liberties Union, and others that have complaints that they receive which are not necessarily initiated in our office, that we don't receive, rather than saving those complaints up for maybe a month and submitting at the end of the month a list of complaints which they have received, statements written up, if we could get those more contemporaneously to the event it would help our investigation rather than waiting sometimes a month to begin because these investigations are difficult at best, and any time that lapses, I think, hurts it.

Again the second suggestion, people from the community must come forward to testify as witnesses in these matters. When you have a situation where it is just the officer's word against the victim's, it is difficult if not impossible to effectively prosecute and obtain convictions in those kinds of cases; but if you have a situation where you have impartial witnesses, people that are not involved in the altercation, preferably people who were on the scene or even other police officers, then that puts the case in a different perspective and one that has more likelihood of successful conviction.

MS. PENDRY. Thank you, Mr. Cody.

CHAIRMAN FLEMMING. The testimony that we received would indicate that in the minds of those who have been living with this issue that Federal presence is a very important factor. As one who has lived in this community and has observed the situation, do you feel that Federal presence in the past, take any span of time you want, has left something to be desired?

MR. CODY. I don't have any personal knowledge myself of that, but I know that there is a feeling in the community that that presence has not been involved to the extent that it could have been. I believe that this is one of the areas that I personally feel is a priority area in the community, and the office, as long as I am the United States Attorney, will have an interest and an involvement in this area.

CHAIRMAN FLEMMING. I know you haven't had very many contacts with the Civil Rights Division of Justice in the period of a month, but have you had some contacts dealing with this particular issue and, if so, do you react positively to the nature of those contacts?

MR. CODY. Yes, I have had a number of contacts with the Department of Justice, the Civil Rights Division, since taking office in April. The response has been very positive and very encouraging. Their only concern, being my concern, is that we have sufficient evidence to have a successful prosecution of any matter in this area.

CHAIRMAN FLEMMING. Drawing on your previous experience, not necessarily your experience as U.S. Attorney, do you have any reactions to the role that the Law Enforcement Assistance Administration has played or could play in dealing with this very basic issue?

MR. CODY. Well, assuming—I am repeating again what I said—that these problems are not necessarily solved at the top, but that community attitudes make the leadership in large measure. I think that the reverse of that is simply that, if there is a strong effort made at the top of the police department in law enforcement generally, that the job of law enforcement is more than just solving crimes but it also involves protecting the rights of all citizens in the community. If that attitude is made and made strongly at the top of all law enforcement efforts, then I think there will be a resulting modification of behavior of those responsive to the people at the top. So, I think that there is both the educating aspect to it and the enforcement aspect. I think if people feel that their superiors look upon certain conduct as reprehensible and not in keeping with the kind of department or operation that they want to run, then they will respond in line with what they feel their cues are from the top.

CHAIRMAN FLEMMING. In other words, if those at the top decide to recognize this as a basic problem and decide to move in a positive direction, they could be helped by some funds from the Law Enforcement Assistance Administration which would be dedicated to training of members of the police force in the whole area of police-community relations?

MR. CODY. Yes, sir.

CHAIRMAN FLEMMING. To your knowledge, has any effort been made on the part of the police department or the city to obtain funds for this particular purpose from Law Enforcement Assistance Administration or any other body that might be able to make such funds available?

MR. CODY. Well, I know that LEAA funds are utilized, but to my knowledge, and really I don't guess I know, but I am not aware of any funds being used in this particular area.

CHAIRMAN FLEMMING. Again, drawing on your experience, would you agree with the testimony that has been given by members of both panels to the effect that there appears to be a lack of awareness on the part of what some refer to as the middle-income persons in the community as to the existence of this problem?

MR. CODY. I don't know how much there is a lack of awareness, or how much it just does not affect their daily lives and it is just not something that they concern themselves with or even want to know. I think basically people in this community know that one of the most abrasive areas in our community life is the feeling on the part of many citizens that there is a lack of courtesy or response many times in the poorer community, and that this sort of snowballs in creating hostility and bad community attitudes between the races. There are actual cases of abuse, and those as they travel through the community aggravate an existing attitude situation, I think, and harm many more people or the attitudes on the part of many more people than those actually involved.

CHAIRMAN FLEMMING. I was interested in Mr. Greiner's testimony relative to the survey that had been made in the community some months ago which indicated that a large percentage of the community were concerned about law and order, law enforcement.

Do you feel that there has been a failure to link up that concern with the fact that, if you have poor police-community relations which grow out of a violation of civil rights, that you in effect have a cancerous sore at the heart of the law enforcement program which virtually assures the fact that the law enforcement program is not going to be very successful?

MR. CODY. I think that is the case certainly in many cities, and in Memphis I think there is certainly evidence that, as there is a lack of rapport and confidence between community and the police, that there follows that a lack of cooperation in terms of witnesses and people that could help the police in their main law enforcement operation.

CHAIRMAN FLEMMING. If I might interrupt at this point, Mr. Stanton is here, and we can bring him into this discussion.

[Mr. Hugh W. Stanton was sworn.]

TESTIMONY OF HUGH W. STANTON, JR., DISTRICT ATTORNEY GENERAL

MS. PENDRY. For the record, would you please state your name, address, and occupation?

MR. STANTON. Hugh Stanton, Jr., 8324 Chippingham, Cordova, Tennessee, district attorney general.

MS. PENDRY. How long have you been district attorney general?

MR. STANTON. Since the first of March of '74.

MS. PENDRY. In—with regard to complaints of police misconduct, what role does your office take in the investigation and in the prosecution of those complaints?

MR. STANTON. Well, if the case was to be prosecuted, it would be prosecuted by our office. We do a limited amount of investigation. The attorney general's office has 12 investigators whose primary function is to prepare cases that are pending in our criminal courts for trial, and I do not have a staff that would be adequate to investigate as thoroughly as perhaps they should be all complaints made against anyone. We normally don't accept any initial complaints. We refer them to the proper department in either the sheriff's department or the Memphis Police Department, and the Memphis Police Department has an internal affairs division which normally does it. We ourselves have on occasion investigated cases against members of the Memphis Police Department and the sheriff's office.

MS. PENDRY. Under what circumstances would you initiate the investigation in your office?

MR. STANTON. Would we initiate it?

MS. PENDRY. Yes.

MR. STANTON. We would normally get it from internal affairs of the Memphis Police Department and review what they have done. We present all cases where there has been an officer that has killed a person in the commission of a felony or that he reasonably believes is a fleeing felon; those cases we have reviewed the internal affairs investigation. We normally have a man from our investigator's office go out to the scene when there is a homicide, but he is there primarily as an observer and to make certain that things are done as they should be rather than taking over the investigation.

MS. PENDRY. What discretion does your office have in determining whether or not to prosecute cases of police abuse?

MR. STANTON. Well, we have normal prosecutorial discretion which before we prosecute a policeman or anybody else, we make certain that we have a case that is going to stand up against them. But we would have just what I think you would call prosecutorial discretion that we exercise. I am not going to prosecute anyone or seek an indictment against a person unless I feel like we do have a case.

MS. PENDRY. When you determine to seek an indictment, who presents the indictment to the grand jury?

MR. STANTON. We would draw the indictment. I have two lawyers whose primary responsibility is drawing indictments. They don't have any other function.

Normally the chief investigator for our office or perhaps a member of the police department, depending on what type of case it was, if we had no role in the investigation, then it would be the investigating officer. We don't normally, and there are exceptions to this, but we don't normally have a lawyer in the grand jury room, which so many jurisdictions do. We let the investigating officer state his case. Our

grand jury, unlike the Federal grand jury, can't be the efficient investigating office because if a person is sworn before our grand jury he is automatically immune from prosecution about that which he testifies. Of course, that is not true in the Federal system. So, if we made a mistake and put on a witness in a grand jury investigation, he would be by our statute immune. Of course, there have been times when we have permitted possible defendants to waive immunity and testify before the grand jury.

MS. PENDRY. Customarily, then, the presentation to the grand jury would consist of the paper case?

MR. STANTON. I beg your pardon?

MS. PENDRY. Customarily, the presentation to the grand jury would consist of whatever investigative record had been built up rather than of the testimony of witnesses?

MR. STANTON. Normally. We handle—oh, we probably have 6,500 or 7,000 indictments a year. We don't try our cases before the grand jury as they do in some jurisdictions. They use hearsay and the officer will basically state the case rather than having all of those witnesses brought down. There are exceptions to that as there are to anything else, but I don't call it a paper presentation. You have the investigating officer who—well, that's what we try to have. Sometimes they will send an officer down there who really doesn't know too much about it, but we want an officer that was responsible for that investigation to present his case to the grand jury, and we do not normally have a lawyer in the grand jury room.

MS. PENDRY. Of those 6,500 or 7,000 indictments presented yearly, what percentage—in what percentage of those cases would a true bill of indictment be returned?

MR. STANTON. It would be a relatively a high percentage.

MS. PENDRY. Do you have any numerical estimate?

MR. STANTON. I don't have those figures. We would have a few true bills returned. I would hate to guess at how many. But certainly it's an extremely high percentage.

MS. PENDRY. An extremely high percentage?

MR. STANTON. Yes.

COMMISSIONER SALTZMAN. What is at an extremely high percentage?

MR. STANTON. The percentage of true bills that the grand jury returns as to no true bills. One reason that it is extremely high is that we have two investigators as well as the two lawyers. We attempt to weed out those cases that should not be—that an indictment should not be presented to the grand jury on. When you indict a person, the accusation itself can be and is damning, and we try to be as careful as we can be about the exercise of—

COMMISSIONER SALTZMAN. Due process.

MR. STANTON. Yes, sir.

COMMISSIONER SALTZMAN. May I interject? Is this true also in the area—the question I want to ask, I guess, is do you have a record of

how many true bills have been issued relative to the area of police abuse?

MR. STANTON. Not as such. We file basically by name, or we have a numbering system, but it's alphabetical in the card index, and I don't separate police cases from larceny cases, and larceny cases from murder cases. They just take whatever numerical order they come.

MS. PENDRY. Since your tenure in office, have there been police cases presented to the grand jury for indictment?

MR. STANTON. I have presented them both ways. I was reviewing one this past week, after I talked to you, I believe, where we have an indictment on an officer who was off duty and who a complaint was made. I don't care to go into the specifics of it—

CHAIRMAN FLEMMING. We would rather not have the specifics.

MR. STANTON. We have had other cases where we have had complaints where we presented the whole facts to the grand jury.

When I first was appointed to my job, the director—the then director of the police requested that we actually submit an indictment on every homicide where a policeman shot somebody who was fleeing or what have you. I did that at his request and that of Chief Bill Crumby. I didn't like doing it, because I didn't like putting my name on an indictment that I frankly felt should not be. They wanted a record of it, and we did do that for a while, and we presented the witnesses to the grand jury.

They changed foremen and they didn't want to hear all of that. They wanted us to submit a report to the grand jury, and if they want a presentment we could prepare that presentment for them, and that is the way they are being handled now. We always have the witnesses available if the grand jury wants to hear them. They are generally outside and subject to their call.

MS. PENDRY. In those cases where an indictment has been presented to the grand jury have there been any instances where the grand jury has returned a true bill of indictment against a police officer?

MR. STANTON. I can think of the one I just mentioned that I had on my desk last week. It was an indictment that has been returned; the trial date is set.

MS. PENDRY. Do you remember the specific offenses for which the true bills were returned, without going into a specific case?

MR. STANTON. Assault to murder. I know he was indicted on assault to murder. Shooting a missile calculated to produce death or great bodily harm into an automobile, those two. There may have been another indictment.

MS. PENDRY. And what about other cases where the grand jury has returned a true bill?

MR. STANTON. I can't think of another specific case that involves an arrest situation. We have indicted members of the police department and had them plead guilty for offenses involving theft where they make arrests and some of the money doesn't get where it's supposed to go.

We have got a right extensive investigation going on right now against some that I would like to be able to discuss with you but can't.

MS. PENDRY. What about in those instances where the grand jury returns a no true bill? Would that be a failure to indict?

MR. STANTON. The result, if a no true bill is returned, it means that the grand jury did not find probable cause to try the man.

MS. PENDRY. In those instances what kind of offenses have been alleged against police officers?

MR. STANTON. Well, initially we submitted indictments for murder on the fleeing felon cases. They were, since I have been in the office, "no true bill" without exception.

MS. PENDRY. Any other kinds of cases?

MR. STANTON. Well, I am not going to guess. As I say, we handle some 6,500 to 7,000 cases a year, and our system is not set up to say that these involve police officers, and these don't. I know that we have returned some indictments against officers for larceny and that kind of thing.

MS. PENDRY. None for physical abuse?

MR. STANTON. Well, the one that I can think of I have already mentioned.

MS. PENDRY. Yes, other than that one?

MR. STANTON. I don't want to guess, young lady.

MS. PENDRY. I have no further questions.

CHAIRMAN FLEMMING. During the period of time that you have been in office, you indicate that if complaints are filed with you initially you are very apt to refer those complaints to an investigative body such as the internal group of the police department or the sheriff's office?

MR. STANTON. That's right.

CHAIRMAN FLEMMING. Do you have any feel at all as to the order of magnitude, in terms of the numbers that have been referred, but especially do you have any feel as to what the response has been on the part of those investigative bodies; whether they have in turn asked you to pursue the matter further?

MR. STANTON. We have on occasion pursued the matter further.

CHAIRMAN FLEMMING. At their request?

MR. STANTON. Well, I don't know that there was a specific request, Mr. Chairman. If we thought that any case—all of our staff originates, every case we get originates either from the Memphis Police Department or the sheriff's department generally. Very, very, very often we on our own initiative will follow through an investigation where perhaps there is a link that's missing, or a witness that was not interviewed, or what-have-you. That's not unusual at all, be it involving a police officer or whatever.

I could go get some files, and bring individual files and discuss what we have done. It is kind of hard to speak in generalities about that, but we do investigate certain and do take some initial complaints involving officers because we feel that they can best be handled by our

office. Sometimes we have done it at the request of the sheriff's office or the police department.

CHAIRMAN FLEMMING. Do you have any particular policy that you follow in deciding on those that you are going to refer and those that you are going to pick up and pursue?

MR. STANTON. I guess it's somewhat of an individual basis. I have been requested on occasion, and I won't even name the department, where an individual member of a particular department they felt was not doing what he was supposed to be doing, and they felt that they didn't want to investigate him. They asked us to do it and we did do it. That particular case turned out not to be anything, but it is just a matter of individual judgment, probably. As I say, I cannot and don't have the staff to investigate initial complaints, and our office policy generally is to refer those back to the proper investigatory department in either the sheriff's office or the Memphis Police Department.

CHAIRMAN FLEMMING. Do you have any personal knowledge as to the procedures that are followed by the police department and the sheriff's office in pursuing those complaints?

MR. STANTON. I would prefer that information come from them. I have seen some reports, and we are hampered a little bit, sometimes—I would rather that you really get that from somebody else. I think that they have a policy to some extent that says, you must give me a statement. You must give me, the IA officer, a statement or else you're liable for dismissal. Those statements are not taken the way we want a statement taken. We want a statement taken where a man is advised of his rights, and a statement that we could use in court. They are interested in some instances in finding out whether or not departmental regulations for which no prosecution is expected or desired as opposed to wanting to get that statement. I have gotten those statements also from IA, and we have a fairly good working relationship, but I would prefer a statement taken that I could introduce into evidence if the time ever came.

CHAIRMAN FLEMMING. Well, I gather from your response that at times there is a question in your mind as to whether or not due process is in effect being followed?

MR. STANTON. Well, if you are asking me whether or not they give them the *Miranda* warnings in all instances, I would tell you that I know of instances where they have not been given. And about due process, that is kind of a big word.

CHAIRMAN FLEMMING. I appreciate that it involves a good deal, but I gathered from some of your comments that you had some question about that—

MR. STANTON. Well, if I am going to build a case, Mr. Chairman, I want the evidence to be there. I want to have it beyond a reasonable doubt and to a moral certainty. I want what I am relying on for that indictment and for that lawsuit to be admissible into evidence. I could not introduce a statement into evidence that was coerced on the threat of a man losing his job.

CHAIRMAN FLEMMING. We have received testimony to the effect that, at times anyhow, the complainant is required to take a polygraph test, and that same testimony has indicated that at times, I guess in no instances is a police officer required to take the polygraph test.

MR. STANTON. I have seen reports where they refused to take them on the advice of their lawyer, where the Memphis police officer refused to take it. Polygraph, of course, is not admissible in evidence in Tennessee and I am not all that wild about doing things that are not calculated to be used in a court of law.

CHAIRMAN FLEMMING. In other words, that raises at least a *prima facie* issue of due process.

MR. STANTON. What, the introduction of polygraph material?

CHAIRMAN FLEMMING. Yes, requiring the complainant to take a polygraph.

MR. STANTON. Well, I think they can—you are into a field that I really don't have the discretion, the say-so over, I don't know whether they require them to. I don't know how you can require somebody, you can make somebody do something of that nature that they don't want to do.

CHAIRMAN FLEMMING. I mean, if the complaint is going to be followed up? Now, we will get some firsthand testimony on that later, but some of the testimony has indicated that if the complainant's complaint is going to be followed the complainant must take a polygraph.

MR. STANTON. That is not a requirement from my office.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Mr. Stanton, in earlier testimony, representatives of various organizations in this community, and indeed the United States Attorney before you came in, indicated that they felt there were some problems relative to the administration of justice and the attitude in the community toward the inequities on minorities and those in the lower-income level in this community with respect to police abuse, that there were problems. In terms of your office, are you prepared to say that you think there are problems in the Memphis community?

MR. STANTON. Well, I am not—I don't mean to hedge, but I am not sure what you mean by problems.

COMMISSIONER SALTZMAN. Well, the specific charges or allegations that we've heard are that there is a significant number of complainants in the Memphis community, and that the process is not receptive to resolving those complaints. For example, the organizations dealing with the complainants, the NAACP, ACLU, never hear—not never, but by and large, generally speaking, do not receive any response from any of the law enforcement agencies in the community to which they bring their complaints.

MR. STANTON. Of course, I can't speak for offices other than my own, but we have investigated at the instance of Ms. Maxine Smith, who is executive secretary of the NAACP here, a number of cases and,

if I am not mistaken—I know it's the policy and if one slipped by I don't know about it—it is the policy of our office to answer those complaints, and write her a letter stating that the complainant didn't want to pursue the matter, that it was done and this is what happened, and the story that she got was a little bit different from the story that we got, and so forth. But those are some that we have investigated. We sort of changed that policy a while back because most of those instances, perhaps she got a different impression than what the witnesses told our investigators. Now, I don't go out and do these myself, you understand, but instead of spending a great deal of time in trying to run those witnesses down, when most of them didn't want to follow through themselves, that's been the experience we have had—

COMMISSIONER SALTZMAN. Well, let me put it this way. Do you think there are problems in the relationship between the minority community in Memphis and the police or law enforcement community?

MR. STANTON. I suspect that there may be some individual problems. I can't speak really in the generalities. If you can ask me a specific instance, I will be glad—or to best explain—

CHAIRMAN FLEMMING. You said that some of the witnesses, complainants were not willing to pursue the matter any further?

MR. STANTON. Yes, sir.

CHAIRMAN FLEMMING. Do you have any feeling as to why they were not willing to pursue it? Was there fear on their part that if they pursued it that there would be retaliation of one kind or another?

MR. STANTON. I certainly hope not. Most of those complaints were made by a black investigator in our office named George Whitney. He would probably be more able to tell you than I, but I certainly hope that that hasn't been conveyed.

COMMISSIONER SALTZMAN. Well, we have received testimony this morning that complainants were subject to intimidation—

MR. STANTON. By my office?

COMMISSIONER SALTZMAN. No. No.

MR. STANTON. Well, I was going to say that I would like to know about it if you had.

COMMISSIONER SALTZMAN. I don't think they referred to your office, but rather to the police department, and that countersuits are brought against a complainant alleging that they responded in a disorderly manner to police, etc., in such a way as to intimidate them from pursuing the allegation on their part of police abuse.

MR. STANTON. Well, as I say, I would be glad—I can't answer that. I hope that's not the case. It is not the policy in my office for sure. George Whitney in our office has investigated a number of those things in the past. John Carlisle is the chief investigator, and I think they would be in a better position to tell you how a person felt that they interviewed rather than I would who did not interview them.

COMMISSIONER SALTZMAN. Generally speaking, have you seen in the media, in the newspaper, television, covering allegations of stories related to police abuse in the Memphis community?

MR. STANTON. Yes.

COMMISSIONER SALTZMAN. Is it your impression that this is really not an accurate portrayal of the administration of justice, or on the other hand it is and does reflect a problem in the administration of justice in the Memphis community?

MR. STANTON. I don't—I don't make up my mind about the facts of a lawsuit from what I read in the newspaper. I have seen stories in the newspapers that were totally inaccurate, and I have seen stories in the newspapers that were in the main accurate. When we investigate one of these things, and we have investigated—we had some dogbite cases a year or so ago that we investigated, and I felt that there might have been some abuse, not so much by the dog man but by some of the officers that were involved; but again, an investigation and proving a lawsuit beyond a reasonable doubt and to a moral certainty against an individual, you may have a feeling, but you don't convict on feeling; and I don't—when we indict if we indicted you or anyone else, we want a lawsuit against you. We are not going to harass members of the police department any more than we do the citizenry of Memphis and Shelby County with guesswork and perhaps it will come out later. We want that thing to be there. There are specific instances that I can think of where I felt there was some abuse and where I felt that I didn't have enough to say that this officer as opposed to this one or this one or that one committed it.

COMMISSIONER SALTZMAN. In your general estimation, do you think that the professionalization of the police department in Memphis is proceeding as it should be?—because we have some suggestion that that would be a part of the total picture in the Memphis community in relationship to the administration of justice.

MR. STANTON. Well, we have got many, many, many, many, many, fine officers in the Memphis Police Department. I know a number of them that we work with in presenting cases. I know that they are professional; they do their job. They are honest. They are not going to fabricate any evidence and tell us something that isn't there.

There may be instances—and I think we have got 1,250 or 1,300 people in the police department. When you get that many folks, you may have some bad ones. I think it is the policy of the police department, is and has been, "Let's get rid of those bad ones and maintain the good ones and have a fine police department," and I think by and large we do.

COMMISSIONER SALTZMAN. Mr. Cody, do you think that your suggestion of working from the bottom up, in effect, getting community concern and involvement relative to the improvement of the administration of justice in the community, do you think that the bar association can be helpful and what might it undertake in relationship to your recommendation?

MR. CODY. I don't think that you will find either in this community or any other community that the bar association is probably going to

be the cutting edge of that kind of movement. I think it has to come more strongly from other community groups. I don't think this is anything new. I think this problem has been in Memphis for many, many years and that leadership has not developed to the extent that I think it could.

I would comment specifically, though, I heard this morning that there—some comments that maybe since Mr. Chapman took over, that there had only been a pro forma, surface kind of attitude change. My experience has been different, and I happened to wear another hat and sit as a member of the city council in approving Mr. Chapman as director. I, from the reports that I have gotten and the materials that I have read and the interviews that I have had, I believe that he is making a very serious effort to make the community aware that he will not tolerate as director misconduct on the part of police officers.

I think that, as the department reflects that attitude and as it begins to take hold, there is a chance for substantial improvement, that if the director not only gets the support of the people in law enforcement, but the support of the political, economic community, that this is something that will be good for Memphis generally. If he gets that kind of support, I think he will make significant changes.

COMMISSIONER SALTZMAN. Can I just ask one final question of Mr. Cody? Can a citizen who has experienced what he or she considers police abuse come directly to the United States Attorney for action on his part?

MR. CODY. Yes.

COMMISSIONER SALTZMAN. That is, under any circumstances you can initiate action?

MR. CODY. Under any circumstances I can initiate action and as a matter of fact any time anything appears in the *Tristate Defender* or the *Commercial Appeal* or the *Press-Scimitar* that indicates that even from a news article that there might be probable cause that a violation has occurred, that matter is submitted to the FBI and will be.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Cody, I am fully appreciative of the fact that in the discharge of your present duties and responsibilities you may not be able at this point to get into certain issues that you would have been getting into as a member of the city council. But the comments that you have made up to the present time lead me to ask you if you could give to us as a Commission anything, any additional specific suggestions relative to the kind of affirmative action that might be taken in the community to come to grips with this issue in a constructive manner. Now, you have already given us some, but I would just want to see if there are any others that you would like to submit to this committee and now not only as a citizen of this community, but also in terms of the Federal structure because, as you know, one of our major responsibilities is an oversight responsibility as far as all of the Federal departments that are involved in civil rights enforcement are concerned.

MR. CODY. I don't know that I have any specific recommendation to make. Of course, there is always the feeling that if more funds were available for investigation, pay for police officers, you would get more professionalism in the whole law enforcement community. But, I think in Memphis, Tennessee, if there is going to be a significant change, it is going to have to take place in total community attitudes where we live and that, once that begins to happen and once the people in the city feel that hostility and apprehension on the part of citizens in the community, real or imagined, exists in terms of law enforcement, that as long as that is prevalent you are not going to have as effective law enforcement as you would have in the community where the citizens and the police are working very closely together in solving crimes.

CHAIRMAN FLEMMING. Well, as you know, we as a Commission have held quite a number of hearings dealing with the issue of desegregation of the public schools, and we have discovered in quite a number of communities that where in effect a coalition of the citizen leaders, a coalition of voluntary organizations, gets together and makes up their mind that they are going to implement the constitutional and moral imperatives that are at stake, they get excellent results. It makes all the difference in the world in terms of how that program operates in a particular community.

As I have listened to the testimony and to your comments I have asked this question: If a group of civic organizations, civic leaders, decided that here is a situation that is operating as a cancer sore in connection with law enforcement and decided they were going to work on it, they were going to make sure that they did everything they could to get the facts, that they were going to develop action programs, and then going to try to rally public support back of those action programs, in your judgment would that help?

MR. CODY. Yes. I think there is no question but that if a real commitment was made by the political, economic, and moral force in this community, all segments of those groups came together, recognized this as a serious, divisive problem for our community, that substantial changes could be made.

CHAIRMAN FLEMMING. It seems to me that here again we are dealing with constitutional and moral imperatives, just as we are in the field of desegregation.

Mr. Stanton, do you have any specific suggestion to make to us, specific recommendations to make to us that we might weigh in arriving at our conclusion?

MR. STANTON. I can't think of anything specific either. I don't know how, how best to convince the general population in a city like Memphis that the police department is not out trying to get them erroneously or trying to do anything to them or they are really there to help and protect and do their job except as he says, from an educational standpoint. I don't know how to accomplish that; and if I did, I would try.

CHAIRMAN FLEMMING. Okay. I notice Mr. Kramer has come in and I understand he was in court and consequently delayed. Do you mind standing and raising your right hand?

MR. STANTON. Excuse me just one minute. Are you through with us?

CHAIRMAN FLEMMING. As far as members of the Commission are concerned, I think we have addressed all of the questions that we desired of Mr. Stanton and Mr. Cody.

MR. STOCKS. We would like an opportunity to examine Mr. Kramer briefly.

CHAIRMAN FLEMMING. Yes, that is fine. We will excuse you and express our appreciation for your being here and for providing us with the kind of testimony that you have.

MR. STANTON. Thank you.

MR. KRAMER. I apologize to the Commission for being late.

CHAIRMAN FLEMMING. We understand.

[Mr. Bruce S. Kramer was sworn.]

TESTIMONY OF BRUCE S. KRAMER, ATTORNEY, MEMPHIS

MS. PENDRY. For the record, would you state your name, address, and occupation, please?

MR. KRAMER. My name is Bruce S. Kramer. I have an office on the 11th floor of the Union Planter Bank Building in Memphis, Tennessee. I am an attorney.

MS. PENDRY. In the course of your practice have you represented clients who claim to have been the victims of police abuse?

MR. KRAMER. Yes, I have.

MS. PENDRY. And is one of the remedies available to clients in that circumstance the filing of a civil lawsuit for money damages or for any other kind of relief?

MR. KRAMER. Yes. The other relief would be injunctive relief.

MS. PENDRY. Have you had that kind of case yourself?

MR. KRAMER. Yes, I have.

MS. PENDRY. Without going into the specifics of the case, could you tell us what the basis of the complaint was, what the result of the lawsuit was, and whether you see problems in using the civil remedies, whether there are problems in litigating those kinds of cases?

MR. KRAMER. After I was served with a subpoena I tried to check a file of a case that I handled in the United States district court here in Memphis. If my memory serves me right there was a consent order entered in that case which precluded certain comments about the settlement, so within those restrictions—

CHAIRMAN FLEMMING. We understand.

MR. KRAMER. I can give you some general comments regarding several cases that I have handled. First of all, the victims of alleged police brutality were reluctant to get involved. In all of the instances, the potential plaintiff was a defendant at one point and, after the

criminal charges were dismissed or taken care of they wanted to call an end to the proceedings. They didn't want to stir up further problems or to rock the boat or be hassled.

In the few cases that I have handled that went to litigation after the disposition of the charges, either in circuit court, or rather city court, or in the general sessions court or in the criminal courts—the plaintiff did not want to institute any complaint to the internal affairs department. They were reluctant to go back to the police department. In the beginning, as this Commission probably well knows, the internal affairs department was in the police department proper, but they subsequently moved it. That was a good step, but it is still the police department, and a lot of these people, in all instances, were a minority group in the community, and so they did not want to follow through with that remedy. They did not think that was effective. They didn't feel that they would get anywhere.

When suits were filed, I think—thinking back on it there have been three or four that I have handled that have come through the situation that I have just described. Another one I was appointed on by one of the judges here, district court judges, and this was an instance when a Federal prisoner was being housed in the county jail and was alleged to have been beaten by the guards. We did go to trial with that, and the jury returned a verdict for the defendants, finding in essence that the only force that was used was reasonable force. The other cases were settled prior to trial.

In all of the cases there is a problem with manpower, time. Most of these people are of low economic standing. I have two going on right now where the plaintiffs are incarcerated. They have no funds. These are civil actions. There are no funds available through the Federal Government to prosecute these cases, to take depositions or other discovery.

Most of your witnesses, if the alleged abuse took place within the jail itself, which is frequent occurrence, the witnesses are people who have records and do not make the ideal witness. The juries cannot relate to them. The defendants are either actual police officers and, if you can get by certain Supreme Court rulings you can get the officials of the police department, and it comes down to a question of whether or not there is reasonable force used under the circumstances. I think jurors are reluctant to find except in the most flagrant situations that there was excessive force. In those rare instances where you get by the jury or the defendants have failed to ask for a jury trial, the awards have been very small. The plaintiffs have a feeling that the principles have been vindicated but they are not compensated for the 2- or 3-year wait and the abuse and the anxiety that they have gone through.

MS. PENDRY. I have no further questions.

CHAIRMAN FLEMMING. I ask the question of counsel that the representative of the Legal Services Association—is that the Legal Service Corporation operation here?

MR. STOCKS. Yes.

CHAIRMAN FLEMMING. Okay. I was just going to ask the role that the Legal Services Corporation is playing, but we did receive testimony earlier from Mr. Wharton on that line.

Do you sense that as far as potential complainants are concerned that there is a reluctance on the part of some to file a complaint not only because of the procedural difficulties, but because of a feeling on their part that if they do file a complaint there will be retaliation of one kind or the other?

MR. KRAMER. Yes, sir, I find that in almost every case that I handle. One case just came to mind. I cannot recall the name of the case, but if I do I will supply that to the Commission.

CHAIRMAN FLEMMING. That isn't necessary. You just—

MR. KRAMER. It involved a middle-aged woman and her family. I don't believe a civil action was filed in regard to the original events, but I met her several months afterwards—it may have been a year or so or even more than that—but she related to me a situation that after she filed her complaint in internal affairs and carried on the defense in the State courts that arose out of this incident—disorderly conduct, resisting arrest, a litany of events—that she noticed that the police officers who were involved and others would appear behind her at wrestling matches, cruise up and down her street, would follow her to different events and her family. That definitely had a chilling effect upon her filing a suit.

CHAIRMAN FLEMMING. We received earlier testimony in response to the question: What recommendations would you make to the Commission to the effect that in the minds of some of the witnesses that there should be an independent review board which would have the authority to review the disposition of complaints on the part of the internal group within the police department? Do you have any reaction to that kind of a suggestion growing out of your experiences?

MR. KRAMER. I think an independent review mechanism would be welcome, would be more effective, and would destroy the reluctance that I have seen.

As far as other things that could be implemented, if there were funds available in the civil spectrum very akin to the Criminal Justice Act to properly litigate these complaints under the Civil Rights Act, I think that would help. Perhaps taking them out of the Federal judiciary and putting them into some administrative hearing would speed up the process. I am not sure if I would like to limit the judicial role, but perhaps put another level underneath that for the time being to take some of the workload off and have an ultimate appeal right, *de novo*, to the district court would be helpful, I think.

CHAIRMAN FLEMMING. Do you think that there are possibilities for more class-action types of suits in the Federal court?

MR. KRAMER. With the restrictions that have been recently placed on class-action lawsuits, they are difficult and they are expensive. Sometimes in some of the cases that I have handled we have not gone

to class action because of notice requirements and because of the expense involved. But yet we have secured in one case a restraining order which was finally made into a permanent injunction against a practice, which has the same effect. Although the act or the injunction itself is limited to just one individual, it is broad enough that if the practice which the police department has agreed to discontinue is rejuvenated, we could go in and ask the court to enjoin that practice; it's an injunction against a practice rather than individual violation, so we accomplish the same result.

CHAIRMAN FLEMMING. Do you agree with the witnesses who have told us that by and large the leadership within the community is unaware of the magnitude of this problem in the area of police-community relations or, if aware of it, is not coming to grips with it?

MR. KRAMER. It is hard to get in someone else's mind to know whether or not they perceive the problem as drastically as I do.

CHAIRMAN FLEMMING. I can appreciate that.

MR. KRAMER. I would agree with the statement that the distrust in this community is of significant import, that the relationship of the establishment or the police department per se, this would be in the black community, is a significant problem. I haven't—I have seen more change, but they have been in style rather than in substance. I really don't think that the community, the people who are in a position to change the situation, see it as a high priority. If they do they haven't done anything about it. I am frequently told or I was recently by a Federal judge here that he couldn't get as upset as I was over a certain incident here, but maybe that is because I was on that level and he was sitting up on the bench. But I see it as a very real problem and a problem that is not going to go away until some very drastic changes are made.

CHAIRMAN FLEMMING. Mr. Saltzman?

COMMISSIONER SALTZMAN. Mr. Kramer, do you think the media, the print as well as the television media, have not only accurately attempted but fully covered the events relating to allegations about police abuse? I mean, does the community get an adequate level of information about the magnitude of this problem as it affects the minority community?

MR. KRAMER. There are certain papers and radio stations in this community that do give expanded coverage to the areas that concern their particular community. I think the media in totality gives adequate coverage.

These cases, except for one or two major incidents—the Elton Hayes matter, for instance, cases such as that receive good coverage, prominent coverage. But your everyday—and they do happen every day—incidents do not get the prominent coverage, perhaps rightfully so because there are other things that—

COMMISSIONER SALTZMAN. Well, but in the magnitude of every day there being this occurrence, doesn't that warrant some kind of observations by the press, not in the—

MR. KRAMER. I don't know if it is the role of the press to have an expose of this. Perhaps if some investigative reporter would like to go into this it would be very newsworthy and be interesting. That has never been done. The news media in this community has a vast amount of topics to cover. Perhaps a grand jury investigation should be determined. This Commission's role I see as doing just what should be done as far as exposing the situation.

It is very easy for the people who are in control—the mayor, the director of police—to say, “Yes this is a problem but we will get to it in the priorities.” They are not faced with it on a day-to-day basis.

I am connected with an organization in this community, the American Civil Liberties Union. We receive numerous complaints on a daily or weekly basis. There is just not the manpower to explore all of these.

To answer your question, Commissioner, I don't know if the people in this community would like to read about it every day. We put it in a column in the paper just like the statistics, we have had so many armed robberies, and put down we've had so many complaints about alleged police brutality. I don't know what effect that would have. But I think the people who are concerned with this and who are in a position to do something about it know the extent of the problem. Whether or not they want to take corrective action is another thing.

I have noticed in the past year or so various editorials, both in the printed media and in television and on the radio, calling for betterment of police-community relations. The problem is there. The awareness of the problem is there. Whether or not something is going to be done about it is the crucial problem.

CHAIRMAN FLEMMING. Thank you very much. We appreciate you being with us and appreciate your contribution.

The hearing will be recessed until 1 o'clock.

MONDAY AFTERNOON SESSION

MAY 9, 1977

CHAIRMAN FLEMMING. Call your next witness.

MR. STOCKS. Robert Wilkinson, Joseph Kent, and Eddie Adair.

[Mr. Robert Wilkinson was sworn.]

MR. THOMPSON. Mr. Chairman, if I may, I am Russell X. Thompson. I am an attorney. I represent Sergeant Kent. He just stepped out for a drink of water and he should be back in just a few moments.

CHAIRMAN FLEMMING. Okay. Counsel will proceed, with questioning Mr. Wilkinson.

**TESTIMONY OF ROBERT WILKINSON, INSPECTOR, INTERNAL AFFAIRS
BUREAU, MEMPHIS POLICE DEPARTMENT**

MR. SCHNEIDER. Inspector Wilkinson, will you please state your name, address, rank, and years of service with the Memphis Police Department, for the record?

INSP. WILKINSON. I am Robert H. Wilkinson. I am an inspector on the Memphis Police Department and I live at 3506 Sophia here in Memphis.

MR. SCHNEIDER. Are you an inspector in the internal affairs bureau (IAB)?

INSP. WILKINSON. Yes.

MR. SCHNEIDER. And how long have you been acting in that capacity?

INSP. WILKINSON. About 2 years. I have been in internal affairs once before but this particular time about 2 years.

MR. SCHNEIDER. Inspector Wilkinson, as you are aware, the bargaining agreement with the Memphis Police Association and the city of Memphis requires that: One, internal affairs bureau cannot investigate accusations of criminal misconduct against a police officer; two, that an accused officer cannot be required to take a polygraph examination at any time; and, three, that a complainant must sign an affidavit against the accused officer and that the officer must be given a copy of the complaint prior to investigation of the charge.

Will you describe the investigative process of the internal affairs bureau, particularly including how the internal affairs bureau adheres to the requirements of the Memphis Police Association bargaining agreement?

INSP. WILKINSON. Well, when a complainant comes to us we take an affidavit, sworn affidavit, and then a detailed statement in regard to the accusation. From this we attempt to make an investigation, find witnesses and evidence that they might be able to obtain. If, during the course of an investigation, it appears to be a criminal charge, we continue our investigation until we present ourselves with probable cause that a crime has been committed. Then we turn it over to the criminal investigation division.

MR. SCHNEIDER. Do you get the results of the criminal investigation?

INSP. WILKINSON. Yes, sir.

MR. SCHNEIDER. If no criminal charges are taken by the criminal investigation unit, do you yet continue your investigations further?

INSP. WILKINSON. Yes, sir. We take it back and look into departmental violations.

MR. SCHNEIDER. I see. In your opinion, Inspector Wilkinson, do the Memphis Police Association bargaining agreement provisions inhibit in

any respect the internal affairs bureau's ability to file a complete evidentiary record of the alleged police misconduct?

INSP. WILKINSON. No, sir, because, like I say, we make our investigation to a point where we feel that a criminal violation has occurred. Then after that we get the copies of everything that they have done.

MR. SCHNEIDER. I would like to follow that up for a minute, if I may, Inspector Wilkinson. The data subpoenaed from the Memphis Police Department with regards to the internal affairs bureau discloses that since January 1 of 1976, that there have been 191 cases of physical abuse investigated by your office, and yet there have been very few cases of actual discipline taken as a result of that investigation. Given those facts, do you think this may be a reflection of the internal affairs bureau's ability to build a proper evidentiary record?

INSP. WILKINSON. No, sir, I don't.

MR. SCHNEIDER. How do you account for the fact that there are so few disciplinary actions taken as a result of your investigations?

INSP. WILKINSON. Well, the internal affairs bureau doesn't make recommendations or recommend disciplinary action. We just make an investigation.

MR. SCHNEIDER. It is your opinion, then, that the majority of the cases that you investigated, particularly in regard to physical abuse, are unfounded—the complaints?

INSP. WILKINSON. Sir?

MR. SCHNEIDER. Are the complaints of physical abuse, the majority that you investigated—are these unfounded, in your opinion?

INSP. WILKINSON. I don't make the determination, whether they are founded or unfounded. We make an investigation and turn our investigation over to the director.

MR. SCHNEIDER. I see. But you are convinced that you do build a proper evidentiary record from which a superior officer can make a determination of discipline?

INSP. WILKINSON. Yes, sir.

MR. SCHNEIDER. Are citizens who sign an affidavit or complaint against the police officer informed that a copy of the affidavit will be given to the officer prior to the interrogation?

INSP. WILKINSON. We don't make a point, you know, a big deal out of telling them this; but I guess I just assume that everyone knows that you are going to use that to further your investigation and there is a purpose for taking it.

MR. SCHNEIDER. You don't feel they should be informed of that procedure?

INSP. WILKINSON. Well, everyone has got a right to know what they are being accused of. That was the purpose of having the sworn affidavit.

MR. SCHNEIDER. I see. Inspector Wilkinson, on what occasions are citizens requested to take a polygraph examination—citizens who complain to your office that is?

INSP. WILKINSON. Well, we ask some to take it and others we don't require it. There is no requirement that anyone take a polygraph.

MR. SCHNEIDER. A citizen does not take a polygraph exam—how does this affect the internal affairs bureau's ability to compile a complete evidentiary record?

INSP. WILKINSON. Well, in the event that their complaint is one where there is the officer and the witness present, the polygraph would lend some credence to their testimony in that there is one on one. But we would still take the complaint, whether they took the polygraph or not.

MR. SCHNEIDER. I see. Mr. Chairman, I would like to ask Sergeant Kent some questions. I don't believe he has been sworn yet.

[Sgt. Joseph Kent was sworn.]

TESTIMONY OF JOSEPH KENT, PRESIDENT, MEMPHIS POLICE ASSOCIATION

MR. SCHNEIDER. Sergeant Kent, would you please describe the purpose and function of the Memphis Police Association?

SGT. KENT. Okay. I think the reason, Mark [Schneider], that the Memphis Police Association ever got started to begin with was 4-1/2 years ago several of us got together and we decided that the lower rank and file were not getting a fair shake of everything that was happening around them, such as raises and better working conditions which would provide better living conditions. So we formed an association and this was the main objective of it at this time.

MR. SCHNEIDER. Sergeant Kent, would you please explain as president of the Memphis Police Association why you believe the provisions of the bargaining agreement with regard to IAB investigations of alleged police misconduct are necessary. I am speaking specifically of those provisions that I read earlier.

SGT. KENT. Okay. Are you asking, Mark, from the point where you feel like maybe it gets into the criminal matter and then the criminal bureau takes over?

MR. SCHNEIDER. Well, we would like to have your impression both with regard to criminal due process and any other reason why you feel those specific provisions are necessary.

SGT. KENT. Okay. I think first of all this is a safeguard for the individual police officer. You know and I know both, whether we want to accept it or not, that false accusations have been made against police officers. What we try to do is just get the police officer his due process of law. This is one safeguard against keeping a police officer from being brutal out there, so we can have somebody who doublechecks him at all times.

You are familiar not only with the internal affairs bureau, but we have the FBI and the U.S. Attorney General's Office and everybody else who watches these policemen.

From the point that Inspector Wilkinson and his squad makes his investigation and it gets to the point where it looks like it is dealing in criminal matters, at that point that bureau should take over. For instance, if you catch—if a policeman catches a civilian out here in the building, the burglary bureau should handle it. That is what we tell the internal affairs bureau: That when it gets to the point where it specializes in one particular crime, that particular area should be the one that investigates that crime.

MR. SCHNEIDER. Sergeant Kent, after, say, an accusation or a complaint alleges a criminal misconduct or an attack of criminal misconduct against an officer, after that has been investigated by the proper criminal division in the Memphis Police Department, why does the Memphis Police Association still feel it is necessary to keep a police officer from taking a polygraph, solely to determine whether or not a departmental order or regulation has been violated?

SGT. KENT. Okay. First of all, on this polygraph deal, we feel like that if you catch a man inside of a building you can't require this man who is a criminal, who is a burglar—you can't require him to take a polygraph. All we are asking is for the police officer to have the same rights that the burglar has. The polygraph to me is only as good as the person who is giving it. People have been arguing about it for years and years and it is not that we have any particular hangup with the polygraph; but we feel like if the police officers can make their own case on their own merits by not using the polygraph, why should they use the polygraph against their own fellow brothers.

MR. SCHNEIDER. Sergeant Kent, in many instances a citizen must take a polygraph examination if he or she wishes to substantiate his or her complaint against an officer. Why do you feel the police officer should be exempt from the similar requirement?

SGT. KENT. We don't feel like the police officer should be exempt. We feel like he should make his own opinion on whether or not he wants to take the polygraph or not. It is left up to the individual police officer.

MR. SCHNEIDER. Doesn't that amount to an exemption?

SGT. KENT. Well, in opinionating I would say, yes, it would, that 90 percent of our police officers would refuse to take them.

MR. SCHNEIDER. Is that your opinion, Inspector Wilkinson, of the number of officers who are asked to take the polygraph exam and refuse to take it?

INSP. WILKINSON. Well, most. It will be more than 90 out of 100. But then on the other hand, we do have officers that come up and they volunteer to take the polygraph. This is a rare occasion.

MR. SCHNEIDER. Sergeant Kent, you said that you feel that a citizen should have—I believe you indicated that a citizen must sign an affidavit in order to verify the truth of the charges. Is that correct?

SGT. KENT. That is correct, a sworn affidavit.

MR. SCHNEIDER. Wouldn't a polygraph examination also be probative as to the truth of the allegations that the police officer would be required to take?

SGT. KENT. Are you asking me for the police officer or for the citizen?

MR. SCHNEIDER. Police officer and citizen.

SGT. KENT. No, sir. You know, the citizen has the same right as the police officer. If he wants to refuse to take the polygraph, Mark, he has got that right; and the police officer has the same right as the citizen has.

MR. SCHNEIDER. What reasonable investigation techniques do you think the Memphis Police Department has to ferret out the physical abuse of citizens by Memphis police officers?

SGT. KENT. Exactly what they have right now. They have professionally trained people in the internal affairs bureau. Let me tell you: They don't whitewash these cases. All I hear is about how internal affairs whitewashes cases. They don't whitewash cases. They make thorough investigations. We have got a lot of our police officers who have been burnt from their investigations. All we are asking, Mark, is this: That the police officer gets the due process of law. We are not saying that we condone brutality, but we want him to have the same right as you would have or anybody else in this audience would have.

MR. SCHNEIDER. I see. Are you saying that the investigations by the Memphis Police Department of alleged police misconduct should be on the same evidentiary level as a criminal proceeding?

SGT. KENT. Yes. I think that the police officer himself has the same rights as anybody else has. You know, we have a situation right here and I need to throw this out, I guess, to everybody in this room. Every day when something happens to one of these policemen out here—I don't care if it is the sheriff's deputy or who it is—the newspapers and the television, they blow it up. That may be good. It may be wrong. I personally think it is wrong. I don't think it is right for the man's family to have to go through the misery of some alleged brutality when the facts haven't been brought out yet. I think the facts should speak for themselves. That is why we have court procedures and that is why you have safeguards such as the internal affairs bureau, the FBI, and anybody else over here. You have got your grand juries, your State and your Federal, and if you have been reading the papers lately you have been seeing where somebody has been doing a pretty good job on our police officers.

MR. SCHNEIDER. In what respect is that, Sergeant Kent?

SGT. KENT. Well, they have been getting a lot of them suspended. Some of them have been fired and—

MR. SCHNEIDER. I am speaking of physical abuse. The statistics disclose that there have only been three dismissals for physical abuse since January 1, 1976, to date.

SGT. KENT. How do you want me to respond to that question?

MR. SCHNEIDER. Well, in light of the statistics—

SGT. KENT. The three people that got dismissed because of that were proven to be guilty and they were dismissed.

MR. SCHNEIDER. Sergeant Kent, in regard to the citizen's sworn affidavit being given to the accused officer prior to the investigation of the complaint, do you feel that this has an inhibiting effect on citizens who may wish to file a complaint against an officer but fear, whether reasonable or not, reprisals by the accused officer?

SGT. KENT. No, I don't. I think that if a man or a lady, if they feel like an injustice has been done to them, it is their duty to come forward and speak out against the police officer. But it is also their duty at the same time—we, as police officers, have a responsibility to this community. But the community does have a responsibility to us and we are going to see that our people get the due process of law. But it is not asking them too much to have them swear out a statement against them because in some cases we have had in the past where citizens have been proven to be wrong. When we get through with the investigation we have not sued the individual, which I feel like the police officer does have this right. That is what the citizens are saying, that it is a false arrest; and it is not. It is proven not to be by our peers.

MR. SCHNEIDER. Sergeant Kent, do you think it is the nature of police work that police conduct should be brought under close scrutiny by not only the peers, but by elected officials?

SGT. KENT. Well, that is hard to say yes or no to. I think that in our particular situation—I believe in other municipalities the police department to be the same thing. Everybody does watch the police real close and we watch them and we have meetings such as this right here.

I would like to say right now that the person sitting on my right is Russell X. Thompson and he is our attorney. We are very pleased with Russell X. Thompson. He is a gifted man. That man has worked long, numerous hours for us.

We were willing to come forward today because we felt like this committee could maybe bring out something that the public needs to know. We are willing to work with you in any way possible in order to bring all the facts out, Mark.

MR. SCHNEIDER. Very good. We appreciate that.

Inspector Wilkinson, approximately what percentage of complaints received by the internal affairs bureau require investigation by the criminal unit as stated in the Memphis Police Association bargaining agreement?

INSP. WILKINSON. I don't have any basis for any answer that I would give to you on that, but I imagine about 5 percent.

MR. SCHNEIDER. Only 5 percent.

INSP. WILKINSON. Yes.

MR. SCHNEIDER. Has the total number of complaints, Inspector Wilkinson, received by the internal affairs bureau increased over the past year?

INSP. WILKINSON. Yes, sir.

MR. SCHNEIDER. If so, by how much?

INSP. WILKINSON. Percentagewise?

MR. SCHNEIDER. Approximately.

INSP. WILKINSON. I have a copy of the report that I have made on this. I don't have the percentage of it.

MR. SCHNEIDER. Would you say it has increased?

INSP. WILKINSON. Yes, sir.

MR. SCHNEIDER. Would you say it has increased to a large degree?

INSP. WILKINSON. Increased a considerable amount, yes.

MR. SCHNEIDER. What explanation do you have for that increase?

INSP. WILKINSON. Well, my explanation was that there had been so much publicity directed toward our office. We have had a new director of the Memphis Police Department which, of course, causes publicity toward the department. We have had the civil rights committee that has been here. Then during the last year we have handled some cases that have received some notoriety.

MR. SCHNEIDER. I see. From the information that I have in front of me, that we subpoenaed, it states that there have been 60 complaints of physical abuse this year. Does that sound correct?

INSP. WILKINSON. Yes, sir. That sound close to it.

MR. SCHNEIDER. And how would that compare with last year for this similar period?

INSP. WILKINSON. Last year we had 131.

MR. SCHNEIDER. Total year?

INSP. WILKINSON. Yes, sir.

MR. SCHNEIDER. All right. Thank you very much. Also, can you tell us approximately what percentage of complaints received, say, in the last year have included allegations of physical mistreatment by police officers?

INSP. WILKINSON. You will have to say that again.

MR. SCHNEIDER. Well, the number of complaints that you get—say if you got 100 complaints, what percentage of those complaints would be alleging physical abuse? I understand you do investigate other things besides physical abuse.

INSP. WILKINSON. Yes, sir. It looks like it would be about 35 to 40 percent: 343 complaints and 131 of physical abuse.

MR. SCHNEIDER. Thank you, Inspector Wilkinson. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Inspector Wilkinson, in the process of investigation and questioning of complainants, are the rights of the complainants carefully guarded by the police department relative to possible intimidation after they make a complaint against a police person?

INSP. WILKINSON. We—and I am going to have to get that question straight in my mind.

COMMISSIONER SALTZMAN. Well, a person comes to you with a complaint.

INSP. WILKINSON. Yes.

COMMISSIONER SALTZMAN. At that point are his or her rights carefully guarded with respect to possible intimidation, because we have heard allegations that intimidation has occurred.

INSP. WILKINSON. Yes, sir.

COMMISSIONER SALTZMAN. Does your department take responsibility for carefully guarding them against possible intimidation?

INSP. WILKINSON. We don't tell people who made the complaint until we start questioning the officers and we have to produce an affidavit. Of course, this goes back to the fact that we can't watch people all of the time to make sure that they are not intimidated.

COMMISSIONER SALTZMAN. But is anything done?

INSP. WILKINSON. But if they are intimidated we will make an investigation into that too.

COMMISSIONER SALTZMAN. Have you ever had any such charges?

INSP. WILKINSON. Yes.

COMMISSIONER SALTZMAN. What were the disposition of those charges? Did you ever find any evidence of intimidation by policemen of a complainant?

INSP. WILKINSON. There have been cases where—now, if you call speaking to people on the street where—I don't mean they physically abused them after the complaint was made, but we have had complaints where they spoke to them on the street afterwards and this was called intimidation. Yes, sir, we have found where they did speak to them after they made a complaint.

COMMISSIONER SALTZMAN. Inspector Wilkinson, how many cases that you can give us when the complainant has refused a polygraph test has the internal affairs bureau pursued the investigation to the point of submitting the investigation to the director of the police?

INSP. WILKINSON. We submit all of our complaints to the director, even those that are dropped.

COMMISSIONER SALTZMAN. I see. They all go to him?

INSP. WILKINSON. Yes, sir.

COMMISSIONER SALTZMAN. And he is the only one that makes any recommendations on the basis of the evidentiary material. You do not make any recommendations?

INSP. WILKINSON. No, sir. Now, when, of course, when I give these complaints to him I tell him what I think about them, but I don't make his mind up for him or tell him what to do with them.

COMMISSIONER SALTZMAN. So you do submit a recommendation?

INSP. WILKINSON. I tell him what I think about them, yes, sir, if that is a recommendation.

COMMISSIONER SALTZMAN. Sergeant Kent, the U.S. attorney and others have indicated earlier that the success of law enforcement hinges upon good supportive attitudes toward law enforcement agencies. Is your police association in its work attempting or has it attempted to deal with the whole issue of police-community relations?

SGT. KENT. Yes, sir, I think that we have. I wouldn't say at this time—we are young and we are in our infancy right now. We are 4-1/2 years old right now. We haven't reached the goals that we would like to reach, you know, later. We are going through a lot of pressure from a lot of different things, such as the budget deficit, right now that's creating a lot of animosity toward a lot of people. I think that the overall morale of the police department is better right now than it has been a year ago at this time. But still, with the idea of knowing about the layoffs, there is a very good possibility that you can't go out and be happy, and wine and dine every night knowing that this may be tomorrow.

But I think that our association itself—we have 1,100 of the 1,262 police officers in our association and I think they feel it is a plus for them and I think the community as a whole—we get a lot of letters in our office and a lot of telephone calls from people who support our actions—so I like to think that it is a plus for the community, yes, sir.

COMMISSIONER SALTZMAN. It has been suggested to us earlier that there is a kind of high level of frustration, even perhaps bordering on hostility in the minority community toward the police department. Would you say that you perceive that high level of frustration in the minority community against the police department?

SGT. KENT. I have heard that, yes, sir. I have been on since 1961 and I have heard that saying since 1961 and have talked to officers who were on before me and they have said the same thing. I think it will always be there. I don't know to what degree it will be, and I hope that we are trying to improve the percentage of the degree right now. But I think it is something we are going to have to live with and accept for the rest of our lives.

COMMISSIONER SALTZMAN. Why, sir? I am not sure.

SGT. KENT. They write books about this all of the time, Commissioner, and I have no idea what the answer is to it. Reverend Jim Smith and myself are personal friends and we have got the same problems the community has got with our layoffs for our people right now, and I don't guess there could be a stronger bondage that anyone could possibly have. And yet I do think that certain minorities—and I don't think it is certain minorities, but I think a lot of people—the theory that I have is if you are out here and you stop a person for speeding—and I don't care if he is a businessman or a person from a minority group or whoever he is—and he has to pay \$45 for a speeding ticket, he is not going to pat you on the back when you leave there and I am not sure he is going to have a lot of respect for you later on when he has to have that \$45 to pay that ticket. You give enough of those tickets and make enough of those arrests and before long everybody is agitated. I think that this, in effect, this makes people a little paranoid about the police department; and, in fact, it has the same purpose on the police officer. It is a two-way street and it is sort of a checks and balance system.

COMMISSIONER SALTZMAN. Well, why the high level in particular amongst the minority community? Do they get more speeding tickets? Is that what you are suggesting?

SGT. KENT. No, sir. I didn't say it was a high level. I said there was a level there. I will agree that there is a level there, I don't know whether it is high or low, but I do agree that it is there.

COMMISSIONER SALTZMAN. Can the police association—are there possibilities of positive, constructive responses to ameliorate and lessen that sense of community frustration toward the police department and to secure greater cooperation, which I am sure that you as police want? Are there other things that your association can be doing?

SGT. KENT. Well, there may be things that we can be doing that we are not doing at the present time. For right now, our association is trying to look out for its own police officers, right now, who are white and black. I don't know. I think that every policeman, no matter if he is in uniform or not, he is in public affairs every day and public relations is here. We try to improve the union. We worked hard just to establish the credibility of a police union in Memphis, Tennessee. That's hard to do. Any union in the South is hard to be accepted, particularly a law enforcement union. We let the people know that our credibility is good. I think we are trying to do everything we possibly can at this time.

COMMISSIONER SALTZMAN. You indicated a moment earlier that you thought this hearing could be helpful. Could you suggest how we can be helpful to the police department or the police association—the Commission?

SGT. KENT. Well, I remember last year when you were here. I didn't get to sit in.

COMMISSIONER SALTZMAN. We weren't here.

SGT. KENT. Someone else?

COMMISSIONER SALTZMAN. The Tennessee State Advisory Committee to the United States Commission.

SGT. KENT. Okay. My apologies to you Commissioners.

COMMISSIONER SALTZMAN. Our first time.

SGT. KENT. I am sorry. But apparently that didn't set over too well with the public, the way it wasn't heard or the way it attempted to be heard. Our position is this: We have nothing to hide out here, Commissioner, and we are not trying to hide anything. We are trying to get an honest day's work for an honest day's dollar.

I don't know if our priorities—I don't know if we should be out here in public relations all the time or if we should be trying to look after these police officers. I feel like we have a strong commitment to the public out here and we try to be on these radio programs and TV programs as often as possible to let the people know that we are interested in them. It makes no difference to me whether they are white or black. People are always throwing up this stuff about the minorities and let me tell you something: I think police officers are a minority, in my own personal opinion.

We do everything in our power to try to get the people to believe in us; and when you find a police officer with his hand in the till, he should have his hand slapped and he should be no better or no different than anyone else. Then the law has to go through its process just like it would with you and me and everybody else. We do not let these police officers hide behind this union as if this is a protective shield. I have heard people mention, "Well, the policemen out there—they can do away with anything because they have got the union that supports them." That is a negative and a wrong approach because we do not support wrongdoing. We do not condone brutality. If a man is wrong, he is wrong and he stands on his own merits. That is the way I was taught since I was a child and that is the way I teach my children to this day.

CHAIRMAN FLEMMING. Mr. Wilkinson, I would appreciate it if you would kind of take me through the procedure that is followed when a complaint is filed. A citizen comes in and files a complaint against a member of the police department and let's assume the charge is brutality—what is the first thing that happens after that complaint is filed?

INSP. WILKINSON. We take a sworn affidavit; is the first thing we do.

CHAIRMAN FLEMMING. Does the complainant receive any assistance in connection with the development of that sworn affidavit or is the complainant on her or his own?

INSP. WILKINSON. One of our officers would sit down and interview them and then he will write the complaint out as he sees it. The complainant reads it and confirms that this is the way that I said it or it's not. Then they go before a notary of the public and it is sworn to.

CHAIRMAN FLEMMING. All right. Let's assume that the complainant has to have a lawyer sit with him or her during the development of the affidavit. What will be the response of your unit?

INSP. WILKINSON. They allow attorneys.

CHAIRMAN FLEMMING. All right. Now, the affidavit is completed. What is the next step then?

INSP. WILKINSON. We take an indepth statement from them trying to bring out points that we can use as evidence, where we might obtain evidence or witnesses.

CHAIRMAN FLEMMING. This is in addition to the affidavit?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. And is that statement taken under oath?

INSP. WILKINSON. No, sir.

CHAIRMAN FLEMMING. The affidavit is sworn to?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. All right.

Then what is the next step? Now, you conducted this indepth investigation—

INSP. WILKINSON. Then we will contact all of the witnesses that we have been able to produce through the statement and obtain any evidence that we might be able to obtain, you know, that is produced there.

CHAIRMAN FLEMMING. When you contact the witnesses and address certain questions to them, does the investigator make notes at that time, or are those verbatim notes, or simply his own notes?

INSP. WILKINSON. If possible we get them to come to the office where we can have a typed written statement taken. If not, we have tape recorders and we ask them questions, and they answer, and then we reproduce it in a written form.

CHAIRMAN FLEMMING. Let's assume that the witness makes a statement that reflects on the character of the complainant. Does the complainant have an opportunity of responding to that particular statement on the part of the witness?

INSP. WILKINSON. If it doesn't have anything to do with the complaint we are investigating we don't make a point of it. But if it discredits his testimony, you know, it would—the evidence he has given to us, then we would ask him about it, yes, sir.

CHAIRMAN FLEMMING. Does the complainant have access to the file that you develop in terms of evidence that you obtain from the witnesses that you interview?

INSP. WILKINSON. No, sir. He has access to his statement and his affidavit.

CHAIRMAN FLEMMING. So neither he nor his attorney would have any access to the material that goes into the file as a result of your investigation?

INSP. WILKINSON. No, sir.

CHAIRMAN FLEMMING. At what point is the complainant, as some have put it, given the opportunity of taking a polygraph test? You indicated earlier that you invited some to do it and others not. What is the line of demarcation here? Who is invited and who isn't? I mean generally speaking.

INSP. WILKINSON. Well, the investigating officer, you know, determines whether he wants the polygraph or not. It would usually be the same day he gives the affidavit and the statement.

CHAIRMAN FLEMMING. On the very same day that the affidavit is taken, on the same day that there is this indepth inquiry he made—

INSP. WILKINSON. Yes, sir—

CHAIRMAN FLEMMING. The officer decides whether he is going to ask the complainant to take a polygraph test?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. And on what basis does the officer make that determination?

INSP. WILKINSON. Well, if in questioning the complainant, if he says that it was only he and the officer there, well, then you would know that you needed to lend credence to his story.

CHAIRMAN FLEMMING. If the complainant refuses to take the polygraph test, what is the end result? What happens?

INSP. WILKINSON. Well, we continue the investigation.

CHAIRMAN FLEMMING. You will continue the investigation?

INSP. WILKINSON. Yes.

CHAIRMAN FLEMMING. It is not automatically stopped because of—

INSP. WILKINSON. No, sir—

CHAIRMAN FLEMMING. —the fact that the complainant refused to take the polygraph test?

INSP. WILKINSON. You see, we—they tell me because I don't know too much about this polygraph—but they tell me that if you have heart trouble that, you know, you can't take this test, and then if you have been taking certain medicines you can't take it.

CHAIRMAN FLEMMING. Who administers the test?

INSP. WILKINSON. We have two polygraph people with the police department and then sometimes we use a private—some of the guard services have the polygraph.

CHAIRMAN FLEMMING. All right.

Now, the officer has completed—let's assume he has completed the investigation. Then does that entire file come to you?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. Do you read the entire file?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. And then you evaluate the evidence in your own mind?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. Then, if I understand it, you make a recommendation to the police to correct it?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. Would you make that verbally or in writing?

INSP. WILKINSON. I make it in writing.

CHAIRMAN FLEMMING. So that it is a matter of record and the person representing the complainant could learn, then, about the nature of your recommendation?

INSP. WILKINSON. I didn't understand, sir.

CHAIRMAN FLEMMING. You make a recommendation to the police director?

INSP. WILKINSON. Yes.

CHAIRMAN FLEMMING. Let's say that the complainant or an attorney representing the complainant desires to know what your recommendation was. Can she or he obtain that information?

INSP. WILKINSON. The internal affairs files, according to what I have been told by the legal advisors, they are for the use of the police department. I wouldn't give him this without instructions from someone of higher rank.

CHAIRMAN FLEMMING. What percentage of your, roughly, of your recommendations are accepted by the police director?

INSP. WILKINSON. I don't have those figures, any figures to give you now. I had a file where I was keeping this, but we had been trying to keep our head above water and this fell by the wayside.

CHAIRMAN FLEMMING. Well, would you say that a large—that normally 90 percent of your recommendations would be accepted by the police director? Is that your general experience?

INSP. WILKINSON. No, sir. I wouldn't say it was that high—possibly 50.

CHAIRMAN FLEMMING. When did you stop keeping figures on this?

INSP. WILKINSON. Well, just to tell you the truth I tried to check it Friday, and from the time a complaint leaves our office and goes to the recommending officer and gets back to us, there has been a little delay. This just hadn't—we hadn't been keeping it as accurately as we should.

CHAIRMAN FLEMMING. But up to a point you were keeping it reasonably accurately?

INSP. WILKINSON. Yes.

CHAIRMAN FLEMMING. Are those figures up to that—the figures up to that point then, whatever that point might be, are they available?

INSP. WILKINSON. Yes, sir, they are available.

CHAIRMAN FLEMMING. I would like to request counsel to contact the inspector and make arrangements to get whatever information is available along that line.

When you have made a recommendation and when there has been a disposition of the recommendation, is the complainant notified immediately as to the disposition?

INSP. WILKINSON. We write them a letter, yes, sir.

CHAIRMAN FLEMMING. You write the complainant a letter?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. And this is in all cases?

INSP. WILKINSON. Yes, sir.

CHAIRMAN FLEMMING. And the complainant is told either your charges have been sustained or they have not been sustained, is that—

INSP. WILKINSON. No, sir. We tell them that the commanding officer has taken action that he considered proper.

CHAIRMAN FLEMMING. But the complainant never knows what that action is?

INSP. WILKINSON. If he comes to us, yes, sir. We have—the last paragraph says that if there is any further clauses that he would like to know about this complaint, he could come to our office and we would go into it with him.

CHAIRMAN FLEMMING. And if the complainant or his attorney comes to your office, you will tell the complainant what happened—that either the charges were sustained or they were not sustained?

INSP. WILKINSON. Right, yes.

CHAIRMAN FLEMMING. We have received some evidence to the effect that while this process is underway in some instances, charges are filed against the complainant. Now, if that takes place, who files those charges? Is it the policeman in question or is it the commanding officer of the policemen? Are you aware of those?

INSP. WILKINSON. Are you talking about a lawsuit or—

CHAIRMAN FLEMMING. Well, I am talking about the way the testimony came to us—arrest on disorderly conduct charge or something of that kind.

INSP. WILKINSON. No, sir. No criminal charges, to my knowledge, have come out of any person making a complaint to us.

CHAIRMAN FLEMMING. In other words, you know of no instance where a person who filed a complaint at some point before the complaint has been disposed of is confronted with some charges against the complainant?

INSP. WILKINSON. No, not to my knowledge, no, sir.

CHAIRMAN FLEMMING. Sergeant Kent, as a representative of the police force here in Memphis, do you feel that those who are on the force are given adequate opportunity for training in the area of human relationships, particularly as those relationships involve people of different cultures, different races?

SGT. KENT. I don't know if I can answer that question without—

CHAIRMAN FLEMMING. Let me put it to you this way: Is any training given along that line?

SGT. KENT. Yes, sir, it is.

CHAIRMAN FLEMMING. Who gives the training?

SGT. KENT. The training academy out there. Lieutenant Turner is in charge of it.

CHAIRMAN FLEMMING. And there is included in the curriculum work in the field of human relations?

SGT. KENT. Yes, sir, there is.

CHAIRMAN FLEMMING. With emphasis on the relationships between persons of different race and different culture?

SGT. KENT. Yes, sir.

CHAIRMAN FLEMMING. Does that training program include work in the area of police-community relationships?

SGT. KENT. Yes, sir.

CHAIRMAN FLEMMING. How much attention is given? Is that a course or is it a—

SGT. KENT. I can't give you the exact hours, but I am sure the people who would follow me could give you the exact hours to it.

CHAIRMAN FLEMMING. Have you gone through that program yourself?

SGT. KENT. Yes, sir, I have gone through it, but it was a few years back.

CHAIRMAN FLEMMING. How many years ago?

SGT. KENT. Sixteen.

CHAIRMAN FLEMMING. Are you given the opportunity for participating in refresher courses through the academy?

SGT. KENT. Yes, sir. Each year we have a 40-hour inservice training type of program.

CHAIRMAN FLEMMING. Forty hours?

SGT. KENT. Forty hours each year that all police officers are required to go back through, which is good. It keeps the police officer up with the latest Supreme Court rulings and tries to keep him abreast of what is happening in day by day activities. I can't recall how many

of the 40 hours goes to the community relations type, if any. If it is, it is very limited hours. I believe 2 hours.

CHAIRMAN FLEMMING. Well, you have been through a refresher course, I assume?

SGT. KENT. Yes, a year ago.

CHAIRMAN FLEMMING. A year ago? At that time was there any emphasis on human relationships and more specifically police-community relationships?

- SGT. KENT. No, sir, not at this time.

CHAIRMAN FLEMMING. Are the new members of the force required to take training at the academy when they go on the force?

SGT. KENT. Yes, sir, they are.

CHAIRMAN FLEMMING. How long a training period is this?

SGT. KENT. Well, I think that it really just depends on how quick you have got to have them out in the field. I think 90 days. We have had them from 120 days to 90 days. It fluctuates somewhere in there. I think that your top management people in the police department would answer this more effectively than I could.

CHAIRMAN FLEMMING. Let me shift to another one. I think I would like Inspector Wilkinson's view on this also. There have been some recommendations made to us during the course of the hearing—have been recommendations relative to the desirability of setting up an independent appeal board to whom a complainant or a policeman could appeal from the decision that is made as a result of the investigation. What is your reaction to that kind of a proposal?

SGT. KENT. On a professional level I am against it, because I think we have got capable, qualified police officers to do their own investigating.

CHAIRMAN FLEMMING. Inspector Wilkinson?

INSP. WILKINSON. I wouldn't be for that. I think the police department can take care of their own complaints.

CHAIRMAN FLEMMING. Sergeant Kent, again representing the police force, do you feel that relationships between the police force and the community could be improved if the representatives—representative leaders, representative organizations in the community—took more of an interest in the police department than is possibly the case at the present time?

SGT. KENT. Yes, sir. Okay. First of all, I would like to say that maybe 1 year or 2 years ago that we tried to form a committee. At that time I played a very small role in it and it seemed to me it didn't last too long. I think the merits behind forming this committee were good. Why it didn't last long, I don't know. That was out of my control and someone else made the decision to drop it. I think we have certain members of the audience out here right now who were on this committee, at this time, and they could be better qualified to speak for it than I could.

CHAIRMAN FLEMMING. Was this a committee that was appointed by the police department?

SGT. KENT. I think this was a committee that certain people, certain segments of people in this community, got together and went to the director of police, who at this time was Jay Hubbard, with the idea of forming a committee to better the relationship between policemen and the citizens out here. I think it is a good idea. I thought it was a good idea then. It was killed at that time. I didn't kill it. I just inherited the problem.

CHAIRMAN FLEMMING. Were members of the minority group, members of the black community, represented on that committee?

SGT. KENT. Yes, sir.

CHAIRMAN FLEMMING. In other words, as far as you could see, it was representative of the life of the community?

SGT. KENT. Yes, sir. It was.

CHAIRMAN FLEMMING. Are you aware of any issues that they took up with the police department?

SGT. KENT. No, sir, I am not.

MR. NUNEZ. Inspector Wilkinson, in speaking, as I understand it, you are the chief of the—

INSP. WILKINSON. The commanding officer of the internal affairs bureau.

MR. NUNEZ. And you have the sole responsibility of making these recommendations to the police director? In your bureau there is no one else who makes these recommendations?

INSP. WILKINSON. I would like to straighten that out. As far as the recommendation of what disciplinary action should be taken against a police officer, I don't make that recommendation. I make—just like I would report to anyone that would be my commanding officer—I would say, "This report seems to be founded," or, "It is unfounded." If there is a report that comes in that is what I consider of an important nature, I would go directly to him before it is, you know, before we investigate it and report to him what we have. But, I don't submit a recommendation to him telling him, "This is what I think—this is the disciplinary action that I think should be taken."

MR. NUNEZ. But you do recommend, in effect, that he be found guilty or not guilty if there is merit to the complaint?

INSP. WILKINSON. Yes, sir. I would say that there is merit to the complaint or there is no merit too, yes, sir. That is what I am trying to say.

MR. NUNEZ. Well, a followup question on that. Did I hear you right in saying that only about 50 percent of your recommendations are accepted?

INSP. WILKINSON. Yes, sir, but I also said that we have fallen down on keeping up with this and that I have the incomplete record that we made that I am willing to let your attorneys see. But, as I tried to say, when our reports—when I submit the report to the director, sometimes there is a lapse of time before I get it back to record in this report.

MR. NUNEZ. But I am a little curious. You do an intensive investigation and you are the professional police officer who devotes 100 percent of his time to this activity and your supervisor, the director of police, would reject half of your recommendations in this very crucial area which you are going at in a very careful way? I am rather curious.

INSP. WILKINSON. Apparently this doesn't mean the same to you as it does to me. I am involved in investigating all of the time. The complaint of anyone—the judge at a trial, he sits back and makes his determination in the cool of the trial, where sometimes my determination of whether a complaint is justified or not is not under those conditions.

MR. NUNEZ. So you make them rather hurriedly and have to make your decisions very quickly, and you don't have time to reflect on the merits of each?

INSP. WILKINSON. I take time, yes, sir. But I am saying sometimes they are of a nature where I might be thinking about these things in a different view.

CHAIRMAN FLEMMING. How often do you see the director of the police on matters of this kind? Once a day or once a week?

INSP. WILKINSON. I see him about every other day, yes, sir.

CHAIRMAN FLEMMING. You have always got a number of cases that you then present to him? You indicate whether you feel the charges are founded or unfounded and in about 50 percent of the cases he will go along with you and in the other 50 percent he will go the other way?

INSP. WILKINSON. Yes, sir. That is the figure I used: 50 percent.

CHAIRMAN FLEMMING. Okay. Thank you.

COMMISSIONER SALTZMAN. Thank you.

MR. NUNEZ. Just one last question.

CHAIRMAN FLEMMING. Oh, I am sorry.

MR. NUNEZ. Sergeant Kent, you indicated that you were very interested in fostering better community relations and a better image of the police. I wanted to ask you rather specifically: Does your association have any specific programs to carry out that interest of your association?

SGT. KENT. Yes, sir. We have two types of programs right now that our association has started in the past, and one of them—last year we sponsored a dance, I mean a golf tournament out here for St. Jude Hospital, for the children's research hospital out there, and now I think that was one big asset to the police department. The other big asset we have—we have a promoter from out of town that we do sponsor a dance once a year. This is for the public, for the merchants, and just for the people who support the police department.

And I would like to say one more thing. There are a lot of people who talk about police brutality complaints and this and that. I found out that the citizens in this city, they support the police. Now, you have got certain segments who don't support the police, but the large

majority of people in Memphis, Tennessee, they support our police department and we are very proud of this.

COMMISSIONER SALTZMAN. Your association is integrated?

SGT. KENT. It certainly is.

CHAIRMAN FLEMMING. I notice there is an association of Afro-American policemen. Do a percentage of them or a large percentage of the members of that association also belong to your association?

SGT. KENT. Ninety-five percent of the Afro-American belong to ours.

CHAIRMAN FLEMMING. Well, thank you very much, both of you, for being here and presenting this testimony.

SGT. KENT. Commissioner, thank you all very much for giving us the time to appear here.

CHAIRMAN FLEMMING. Counsel will go on to the next panel.

MR. STOCKS. Robert Fargarson and Wade Hardy.

CHAIRMAN FLEMMING. Thank you. We appreciate both of you being here with us.

[Mr. Robert Fargarson and Mr. Wade Hardy were sworn.]

**TESTIMONY OF ROBERT FARGARSON, CHAIRMAN, MEMPHIS CIVIL SERVICE
COMMISSION, AND WADE HARDY, MEMBER, MEMPHIS CIVIL SERVICE
COMMISSION**

MR. SCHNEIDER. Will both of you please state your name, occupation, and address for the record and state your tenure with the civil service board.

MR. HARDY. Wade Hardy. Address: 342 West Fay. Occupation: personnel representative of Holiday Inns, Inc. Tenure on the civil service commission: 2 years.

MR. FARGARSON. I am Robert Fargarson. I live at 643 Anderson Place. I am an attorney and I have been on the civil service commission 5 years, I think.

MR. SCHNEIDER. Thank you, Mr. Fargarson. We would like to get some background on the civil service board process. How are civil service commissioners appointed?

MR. FARGARSON. They are appointed or they are designated by the mayor and they are approved by the local government.

MR. SCHNEIDER. What is the term of office?

MR. FARGARSON. Well, I suppose it is at the pleasure of the local government; but sometimes the pleasure gets rather extended, like in my case.

MR. SCHNEIDER. I see. How were you chosen as chairman of the civil service board?

MR. FARGARSON. Well, I don't really know. At first, when I first came on the commission there were three of us and that was not the three that are on there now. We first had a rotating type chairmanship and it ended up that I was the chairman and then the others resigned and it seems like I have been the chairman ever since. That is just the way it ended up.

MR. SCHNEIDER. How many civil service commissioners are there, Mr. Fargarson?

MR. FARGARSON. Three and there are some alternates.

MR. SCHNEIDER. How many alternates?

MR. FARGARSON. I don't really know. There are about two that sit regularly when one of us cannot sit.

MR. SCHNEIDER. Are the civil service commissioners paid for their services?

MR. FARGARSON. No, sir.

MR. SCHNEIDER. Is the position full time or part time?

MR. FARGARSON. Part time.

MR. SCHNEIDER. Approximately how much time does it require?

MR. HARDY. It is set up for 1 day a month, but—

MR. FARGARSON. A lot more than it ought to. It was designed for the civil service commission to meet once a month and that was what the rules and regulations called for, but here of late we have hearings almost every week.

MR. SCHNEIDER. Would you describe a typical hearing? What is the process like, a civil service board hearings?

MR. FARGARSON. You want me to talk or what?

MR. HARDY. Well, first there has to be a petition by an employee of the city who has been disciplined. Generally they petition for a hearing if they receive disciplinary action such as a suspension which exceeds 10 days or termination or any other loss of pay or things along this line. But it has to be a minimum of 10 days. Then it is set on the calendar by the secretary for the civil service commission and it is worked in depending upon if they usually have attorneys to represent them, depending upon times that are convenient for the commissioners and the attorneys. Then we meet and hear the case in its entirety. In other words, there is no break between when we first meet and we come back and render a decision.

MR. SCHNEIDER. I see. I would like to have both of you respond to this question: What, if any, powers do you believe that the civil service commission has beyond the civil service board exercise?

MR. FARGARSON. I am sorry, counsel. I am not real sure I understand. Do you mean what power we do have that we don't exercise or what power—

MR. SCHNEIDER. What powers do you perceive that the civil service commission has, including the ones that you don't exercise?

CHAIRMAN FLEMMING. Over and above the responsibility for hearing appeals from employees.

MR. SCHNEIDER. Right.

CHAIRMAN FLEMMING. What other functions does the civil service board discharge in the area of recruitment, examining, and so on?

MR. FARGARSON. Well, I will try to answer that as well as I can. The civil service commission is composed of lay individuals and not full-time staff and there is no full-time staff other than such personnel as

assigned to us by the personnel department of the city of Memphis. Now, within the rules of the civil service commission and within the powers set up, I would interpret the powers to be that the civil service commission could do more than it actually does. There is authority whereby the civil service commission could enter into certain investigative procedures to determine whether or not there is discrimination in hiring. That power seems to exist there. But, frankly, it is not—it is not going to be easy to use. I will be frank to say I don't intend to use it as long as I am on the civil service commission for the simple reason that time doesn't permit me to become involved in every aspect of city government that the power might permit, beyond what we are doing at this particular point, based on the physical, tangible setup that we operate under at this time.

But it is conceivable that the civil service commission could investigate hiring practices. It is conceivable that they could investigate matters in the market place—

CHAIRMAN FLEMMING. counsel, if I could interrupt you. As I get the picture, then, the day-by-day administration of personnel matters for the city of Memphis is in the hands of a personnel department of the city government?

MR. FARGARSON. Yes, sir.

CHAIRMAN FLEMMING. And the civil service board is in a position of being somewhat of an oversight board in relation to the personnel department, does consider appeals. Could you issue regulations in the area of recruitment and examining which would be binding on the personnel department of the city?

MR. FARGARSON. Yes, sir.

Now, it is a debatable point as to the existence and the breadth of the authority; but the civil service commission, in my opinion, does have the power and does have the authority to propose certain rules and regulations to be used in the personnel department of the city of Memphis. Now, it is likely that in some areas it would have to be approved by the council, by the governing council, but we do have that recommendation authority. And from time to time I have been asked to review and have reviewed regulations of the personnel department of the city of Memphis and made recommendations for changes, which they then took to the city council, the city commission, for such action as needed to be taken within the purview of the law.

CHAIRMAN FLEMMING. Mr. Schneider.

MR. SCHNEIDER. Thank you, Mr. Chairman.

Mr. Fargarson, during your tenure with the civil service board, approximately what percentage of the civil service board hearings have involved discipline of a police officer?

MR. FARGARSON. A fair amount. It would be impossible for me to say percentwise because I don't keep statistics in my mind.

MR. SCHNEIDER. I understand.

MR. FARGARSON. Nor do we keep a record, but the police department being in a sense a quasi-military body, you get more police cases, more fire cases, more fire department cases, than you do other kinds.

MR. SCHNEIDER. Of the hearings involving police officers, approximately what percentage of those hearings have been with regard to police officers who have been disciplined for physical or verbal abuse of citizens?

MR. FARGARSON. Well, again, statistically speaking I haven't kept any statistics, but—

MR. SCHNEIDER. Would you say you hear a lot of those?

MR. FARGARSON. I would say, in my opinion statistically speaking, that statistics would not run very high as compared to everything else that we have heard. Now, we've have had police involvement cases. Now, as far as sight and remembrance recall to mind, the majority of them that we have heard that came to us where there was citizen involvement, either by police officers striking a citizen or some such—we had one involving a dog and there was a great deal of furor about that. But I think in the majority of them the police officer that was involved was discharged.

MR. SCHNEIDER. By the department.

In those cases, what percentage have you either upheld or reduced the disciplinary action taken by the police department?

MR. FARGARSON. Well, I can remember two that we disagreed with the decision of the police department. One of them involved the shooting of a dog out here at an Esso service station; it's of recent vintage and got quite a bit of publicity in the newspaper. We disagreed with the punishment of the police officers in that case and changed the verdict of the administrative hearing.

Then there was another case of some notoriety and some note involving a police officer by the name of Larry Mannsville and the Clark Hotel—some involvement with citizenry at the Clark Hotel. Larry Mannsville, as I recall, was retained in police service. That was a difference of opinion. The majority of the others, if my memory serves me, were discharged.

MR. HARDY. If I could add something to that.

MR. SCHNEIDER. Certainly.

MR. HARDY. In my 2 years on the commission we have only had three cases, two that Mr. Fargarson has mentioned and the other one involving a case which happened in August of '74, and two officers struck a civilian who they stopped on the expressway. Those three cases where there was supposedly some brutality alleged.

MR. SCHNEIDER. Will both of you gentlemen state with regard to the cases involving the police brutality—are there very few or infrequent numbers of such disciplinary actions that come before the civil service board?

MR. HARDY. That we hear specifically where a police officer was discharged or disciplined or there was a loss of pay. Those relating to

police brutality, as I said, three within a 2-years period. Roughly about 60 percent of our cases—if you want a figure—60 percent of our cases involved police officers.

MR. SCHNEIDER. Would you agree with that assessment, Mr. Fargarson?

MR. FARGARSON. That seems right to me. I recall another case, Wade, where there was a police officer involved with his wife and there was, you know, some involvement there, but not direct citizenry. There was one other one at some drinking place, as I recall.

But, statistically, to answer your question as honestly as I know how to answer it, statistically speaking, cases of direct involvement of police officers striking or verbally abusing a citizen—it is relatively few that we hear compared to what we hear.

MR. SCHNEIDER. We have subpoenaed documents from the internal affairs bureau of the Memphis Police Department and those statistics reveal that from January 1, 1976, through April 29, 1977, there were 191 investigations of physical abuse alone by the internal affairs bureau. As civil service commissioners, have either of you ever inquired as to why so few cases of discipline result from the investigations taken?

MR. FARGARSON. I don't think I have, you know, to just answer you straight out. No, I don't think I have.

MR. SCHNEIDER. Mr. Hardy?

MR. HARDY. No, never inquired.

You have to understand that the commission, civil service commission, is primarily established to review disciplinary actions taken to those that are employed by the city to see to it that those who are employed, who, when they are disciplined, are given a fair administrative hearing by those that are primarily not associated with the city's day-to-day operations. We view the cases basically on a nonpartisan basis. So, again, unless the results of a police brutality charge requires the discharge or termination of an officer, if it is found in that particular case, then he has a right to petition and then we, in essence, would review the matters involved in that case.

MR. SCHNEIDER. Do you feel that such inquiry into the reason why so few police officers have been disciplined despite the large number of complaints of physical abuse—do you believe that inquiry is within your authority or responsibility?

MR. FARGARSON. I would say it is within our authority, sure. I believe that it could be. I believe that the powers of the civil service commission are broad enough to embrace investigations of that nature and other investigations from a citizen's complaint, if necessary. But I can only say that for myself, with the necessity of functioning and hearing the cases that we of necessity have to hear and of the time that it takes, then I don't see how the civil service commission in its present posture can become involved in that type of an inquiry.

Furthermore, we have no staff of investigators to independently investigate into the matter so that even the basic inquiry that you are speaking of and talking about has to be on a personal level. If we had a staff to investigate those matters and then if the job included a job description that was broader than it may be when we were called upon and asked to serve in that capacity, then the civil service commission might be able to function in that regard. But I am not capable of doing that in my own right at this time. When I say capable, I simply mean it is not a lack of mental assent on my part, but it is a matter of physical necessity. If I have to do what I am already required to do back in the office that I have, I cannot physically meet the test of time for the city in the job of a commissioner.

MR. SCHNEIDER. Well, then, do you feel that if not the civil service board, then there should be some other formal mechanism available to make such inquiry?

MR. FARGARSON. Well, my opinion is that that is a good, fair possibility unless someone wanted to restructure the civil service commission or do something along those lines, if it was determined, in fact, that the internal affairs bureau of the Memphis Police Department was not adequately and sufficiently and fairly and reasonably performing the function that it should be performing.

MR. SCHNEIDER. Mr. Hardy, how would you respond to that?

MR. HARDY. Well, if it can be shown—and I gather that the hearings here are to determine whether or not the internal affairs may be self-serving or may be trying to suppress items of this nature—then an independent body to review matters of this nature would definitely be of merit.

MR. SCHNEIDER. Just one last question, Mr. Chairman.

Mr. Hardy, in your opinion do you believe that the number of black officers disciplined by the Memphis Police Department for whatever reason has been disproportionately large compared to the number of disciplined white officers?

MR. HARDY. Well, when you review the fact that the numbers—you take one black officer and one white officer. Then automatically the proportion is greater for the black officer even though in numbers it is one to one. Based on the cases that we have had before, it is almost—it has been about 50–50, really, those that come before the commission.

MR. SCHNEIDER. By 50–50 do you mean 50 percent black and 50 percent white?

MR. HARDY. Fifty percent black and 50 percent white.

CHAIRMAN FLEMMING. We appreciate very much your being here and responding to the questions from the attorney. Thank you very much.

MR. FARGARSON. Thank you.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MR. STOCKS. Henry Evans, Joseph Sabatini, William Turner, and John Wright.

[Messrs. Henry Evans, Joseph Sabatini, William Turner, and John Wright were sworn.]

TESTIMONY OF HENRY EVANS, CHIEF ADMINISTRATIVE OFFICER, CITY OF MEMPHIS

MR. STOCKS. Mr. Evans, please state your name, your occupation, and address for the record.

MR. EVANS. My name is Henry Evans. My address is 1881 Thorncroft Drive, and I am chief administrative officer for the city of Memphis.

MR. STOCKS. How long have you held that position?

MR. EVANS. About 15 months—I am sorry, about 23 months. I took this position on June 16, 1975.

MR. STOCKS. And what were you doing prior to that?

MR. EVANS. Well, since 1971 I had been personnel director for the city of Memphis.

MR. STOCKS. Were you in any capacity a participant in the community negotiation team activity that took place some few years ago in Memphis?

MR. EVANS. Yes. I served as the city's chief spokesman in that effort.

MR. STOCKS. Were there any goals or agreements reached by that group?

MR. EVANS. There were a combination of agreements that were reached. Several had been initialed by the negotiating parties sitting on both sides of the table and had been concurred in by a representative from the Justice Department from the Atlanta office. The total package was never implemented, however, because the final issue that could not be resolved was the question of hiring goals for the Memphis police division. It was our feeling that—and I think shared by members of both sides of the table—that we should go ahead and implement those that had been agreed to. But there was a feeling by some members of the community team, as it was called, that if they could not get an agreement on the hiring goals then they were not willing to go forward with any of the compromises that had been reached, and as a result negotiations broke down and nothing was concluded.

MR. STOCKS. Is it your opinion that there might be some value in creating a similar type operation, since you seem to be of the opinion that there was something of value that came out of the first one?

MR. EVANS. There could be some value. I think many of the things that we agreed to have subsequently been implemented. Before giving a carte blanche yes to the value of future meetings along those lines, I would like to review the proposals that have been put forward and the recommendations that have been made.

I think some of the things that have been done and particularly those designed to open channels of communication between the police

division hierarchy and representatives of the community at large probably have already been implemented. In my way of thinking, that may be the greatest gain that could have come from the negotiations anyway.

MR. STOCKS. Thank you.

TESTIMONY OF JOSEPH SABATINI, DIRECTOR OF PERSONNEL, CITY OF MEMPHIS

MR. STOCKS. Mr. Sabatini, would you please state your name, address, and occupation for the record?

MR. SABATINI. My name is Joe Sabatini, 2811 Lynchberg Street, director of personnel for the city of Memphis.

MR. STOCKS. Now, do you, in your position as director of personnel for the city of Memphis, also direct the personnel for the police department?

MR. SABATINI. No, sir.

MR. STOCKS. Do you relate at all to the personnel operation inside the police department?

MR. SABATINI. There is a, shall I say, a liaison type of function with the police personnel officers with our central personnel division.

MR. STOCKS. Does your office have responsibility for developing employment and promotion guidelines and tests for city employees generally and for the police department in particular?

MR. SABATINI. For city employees generally, yes, the division of personnel would have that responsibility. Within the police division there again is a coordinated function where the administration of some of the tests that have been used in the past have been conducted by the police division.

MR. STOCKS. I take it you are familiar with the consent decree of *U.S. v. Memphis*?

MR. SABATINI. I am probably not as familiar with it as I should be; but I am aware of it, yes.

MR. STOCKS. Does your office, as you understand the consent decree, have any responsibilities to carry out under that decree?

MR. SABATINI. Yes, sir.

MR. STOCKS. What responsibilities do you understand that to include?

MR. SABATINI. There are certain requirements in the hiring process. There are certain requirements in the promotional process.

MR. STOCKS. Have you been able to fulfill those responsibilities?

MR. SABATINI. I believe—are you talking specifically of the police division?

MR. STOCKS. Well, the police division as it relates to those—

MR. SABATINI. Those particular requirements?

MR. STOCKS. Those particular requirements.

MR. SABATINI. In the hiring process, to the best of my knowledge, there have been one, maybe two classes that have been added to the police division since the consent decree. To the best of my knowledge, in both classes better than 50 percent of the recruits were of a minority group, which the consent decree does call for. In terms of the promotional process, there has been no promotional selection process, to the best of my knowledge, since the consent decree was entered into.

MR. STOCKS. Thank you.

**TESTIMONY OF JOHN H. WRIGHT, COMMANDER OF PERSONNEL, MEMPHIS
POLICE DEPARTMENT**

MR. STOCKS. Would you please state your full name, address, and occupation for the record?

MR. WRIGHT. John H. Wright, Commander of personnel, 4967 Kimball, police officer in charge of personnel, manager of administrative services.

MR. STOCKS. How long have you held that position?

MR. WRIGHT. I have been in personnel a little over 4 years and the commander of the personnel bureau for 2.

MR. STOCKS. Does the Memphis Police Department have an equal opportunity program?

MR. WRIGHT. Yes, sir, as are set out in the consent decree and also as with the appropriate Federal guidelines that cover the EEOC.

MR. STOCKS. Do you have an affirmative action plan other than the consent decree?

MR. WRIGHT. Under LEAA, if this is what you have reference to, we are well aware of what these stipulations are under LEAA and we try to comply with all of those requirements.

MR. STOCKS. What I was referring to, Mr. Wright: Do you have the documents if the citizens were to ask to see the affirmative action plan of the Memphis Police Department? Most institutions or organizations will have a plan which spells out their affirmative action program in the agency which includes employment, promotion, and other aspects of that operation. Do you have such a plan?

MR. WRIGHT. No, sir. We would refer to the consent decree.

MR. STOCKS. Does the city or your office keep records which indicate the numbers of charges of misconduct or abuse against a particular officer?

MR. WRIGHT. Yes, sir, we do.

MR. STOCKS. For what purpose do you keep those records?

MR. WRIGHT. For evaluation, placement of people, determination of any violation of any good common sense management violations.

MR. STOCKS. Are the records ever used to determine whether an officer is suited by training or temperament for his present assignment?

MR. WRIGHT. Well, we are somewhat restricted in the bargaining unit under the police association contact because of the bid system. We can exercise more discretionary avenues in this direction where the ranks are lieutenants and above. We have done that in trying to establish the right person for the right job.

MR. STOCKS. Perhaps you would clarify for us how the bidding system that you referred to affects or deters your ability to manage the police officers.

MR. WRIGHT. We have to go in the bargaining unit, sergeants and below, basically on the most qualified where we cannot objectively attack this position, for once a bid is open and most senior—if we can't attack that, we would just about have to wind up taking one out of the first three for one job position.

MR. STOCKS. Am I correct in saying that the person with the longest time and greatest seniority gets the first opportunity to bid on the job?

MR. WRIGHT. Should he make the bid. He would be number one on the list based on his seniority.

MR. STOCKS. Would that apply whether or not that person has had any special training for that particular job?

MR. WRIGHT. Well, in certain job bids we make various specifications which would require that certain people have certain types of training. But for the field division, no additional specialized training other than that training that is exposed to every member of the police department. We assume they have those qualifications in the field division.

MR. STOCKS. Does the department do any testing of its officers to determine their psychological suitability for service in the Memphis Police Department?

MR. WRIGHT. We do under minimum standards. Originally in 1971 under the minimum standards, the State minimum standards, everybody prior to this date was "grandfathered." After '71 they were to receive certification, psychological certification. We were doing this under a grant through the LEAA and doing it at Murfreesboro. Since this time we found the Murfreesboro psychological to be unacceptable. We have gone to inhouse public health and gotten a better psychological.

So the answer to your question is everybody employed after '71 has been psychologically tested. However, it is not a continuous thing. We have tested other individuals more than once.

MR. STOCKS. Is it possible for an officer who joined the force prior to 1971 to be required to take a psychological exam?

MR. WRIGHT. Yes, under certain conditions if we determine that his behavior is such that would indicate that he should be psychologically tested. We are not psychologically testing a number. We would like to—we have got an ongoing evaluation program that we have just gotten started in the Memphis Police Department. It is our goal and our hope that at some point all people can be psychologically tested.

MR. STOCKS. Let me ask you one final question, Mr. Wright. Does the department provide any other kind of counseling to members of the department?

MR. WRIGHT. Well, I act as a counsel in the case of certain types of maladjusted behavior in the area of alcoholism. Commanding officers serve as counselors for their units and I have at times counseled other police officers regardless of where they were stationed throughout the organization.

MR. STOCKS. Thank you.

**TESTIMONY OF WILLIAM TURNER, POLICE TRAINING OFFICER, MEMPHIS
POLICE DEPARTMENT**

MR. STOCKS. Mr. Turner—Lieutenant Turner, would you please state your name, address, and occupation for the record?

LT. TURNER. William Turner, 1247 Bristol, police training officer.

MR. STOCKS. How long have you had the primary responsibility for the training of police in Memphis?

LT. TURNER. I have been at the training academy since '73 and at the present time a temporary commander for the past 2 months.

MR. STOCKS. What training programs are you presently administering at the academy?

LT. TURNER. We have an inservice training program going on at the present time.

MR. STOCKS. Am I correct in saying you do not have any recruit training going on currently?

LT. TURNER. No, sir, we do not.

MR. STOCKS. When was the last time you had recruit training?

LT. TURNER. I would say approximately '76.

MR. STOCKS. How much of that recruit training program in '76, going backwards, involved a human relations component—that is, helping officers to understand people's different cultures or races or dealing with stressful situations in certain kinds of communities?

LT. TURNER. Well, I would like to make this point: This last recruit class we had in '76 was a cadet class, which was a 6-week class, which was unique. But the classes prior to that normally were 12-week classes. So, do you want both or one?

MR. STOCKS. I would be interested—how many people were in that 6-week recruit class?

LT. TURNER. Six.

MR. STOCKS. All right. How many were in the normal 12-week class?

LT. TURNER. The normal 12-week classes we run anywhere from 85 up to—we have had as high as 96.

MR. STOCKS. Well, let's take a look at the normal one. How much training involves human relations?

LT. TURNER. I would say approximately out of 480 hours, approximately 44 hours.

MR. STOCKS. Out of that 400 and something hours, what aspect of the training is emphasized? Is it physical fitness, or is it academic, or is it law, or is it physical combat or firearms or protection?

LT. TURNER. Well, of course, we try to give a sampling of each one. I would have to refer to the actual curriculum to give you a designated number of hours for each area.

MR. STOCKS. Well, would you say any one area is significantly larger than another?

LT. TURNER. I would say the highest concentration, of course, would be for patrol procedures, which is the primary job that these people would go into upon graduating from the academy.

MR. STOCKS. Now, I understand you run an inservice training program now for all officers: 40 hours a week per year?

LT. TURNER. Yes, sir.

MR. STOCKS. Forty hours per year?

LT. TURNER. Yes, sir.

MR. STOCKS. In that 40 hours do you include any human relations' component?

LT. TURNER. Well, it is not labeled human relations as such. However, it is mixed in and intermingled with such topics as news media, also our investigative areas, how to deal with people when you are interviewing them, epilepsy—things like this—how to deal with people who are afflicted with things of this nature.

MR. STOCKS. How do you develop the components of the training program?

LT. TURNER. Last year we sent out questionnaires, a sampling of questionnaires throughout the department in order that we would receive some feedback from the men in the field of all and various ranks and assignments, so that we could better determine what these people feel are the priorities, and then base our decisions upon their request and then try to make the best value judgment. And, of course, we submit this for approval.

MR. STOCKS. Lieutenant Turner, what recommendations would you make to improve the recruit and inservice programs in the area of human relations?

LT. TURNER. Well, of course, ideally we would like to have more people to come into the academy to talk in this area who are well versed in it, but sometimes we don't have much success.

MR. STOCKS. Now, what is the reason for your lack of success?

LT. TURNER. Well, a great many people, especially people who are professional people—and, of course, this takes time away from their primary occupation and some do expect some type of honorarium or payment for coming out.

MR. STOCKS. Thank you.

I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Mr. Evans, one of our witnesses today who responded to a request for a suggestion as to what might bring about

improvement in police-community relations put a great deal of emphasis upon affirmative action plans.

As you undoubtedly know, Congress, in passing the general revenue sharing law last year and also in extending the Law Enforcement Assistance Administration (LEAA) law, included in both instances what are undoubtedly the most sweeping civil rights provisions that have been included in any legislation that has been passed by the Congress up to now. First of all, I assume that you are getting general revenue sharing funds. Are any of those funds utilized in connection with the work of the police department?

MR. EVANS. Yes, sir. We have approximately \$3 million of our revenue sharing funds allocated to salaries in the police division. We have an additional \$45,000 that is currently in the CIB [criminal investigation branch] for renovation of the South Precinct facilities, so together we have roughly \$3,100,000.

CHAIRMAN FLEMMING. In addition you do get funds from the Law Enforcement Assistance Administration?

MR. EVANS. That is correct.

CHAIRMAN FLEMMING. Has the passage of those two provisions resulted in any change in policy as far as the city is concerned in relation to the police department, seeing we are focusing on that?

MR. EVANS. I would have to say that they have not reflected any changes because our consent decree that was negotiated with the Justice Department 3 years ago, I think, goes considerably further than most affirmative action plans that I have seen developed on a local level. We were in the process of trying to develop a citywide affirmative action plan at the time we entered into the negotiations with the Justice Department.

As we looked at the scope of the consent decree as was originally proposed and as we proceeded in those negotiations, it became apparent to us that that was going to go considerably further than any affirmative action plan and have considerably more weight given to it than any affirmative action plan that might be developed by the city. I frankly consider that to be our affirmative action plan because of the goals in there are specifically stated and enforceable by the court.

CHAIRMAN FLEMMING. Have the attorneys, your attorneys, checked the new provisions in general revenue sharing and the Law Enforcement Assistance Administration against the consent decree?

MR. EVANS. Yes sir. It is our opinion that we are in compliance.

CHAIRMAN FLEMMING. In other words, that the consent decree goes at least as far as the new legislation?

MR. EVANS. Yes, sir.

CHAIRMAN FLEMMING. As you look at the area of police-community relations I am sure you might differ with other persons as to just what the situation is at the present time, but I also assume that you recognize room for improvement. What kind of steps do you think could be taken that have not been taken up to the present time to bring about an improvement in police-community relations?

MR. EVANS. Well, first of all, I don't believe that the improvement is a one-sided step. I think that it has to be earnestly sought by both parties, both the community at large as well as the management structure of the police division. I think our responsibilities for it is the management structure to the police division in making sure that an attitude exists within that structure to make change possible, first of all, and to open the doors of communication with those elements in the community—all elements of the community, I might add—to prevent problems and to address those problems. I think that attitude does exist today and I think that we have taken steps in the last several months or certainly over the last 3 or 4 years to bring about that type of attitude change in the police division.

The police director, who was in the job at the time our negotiations occurred with the community, was not someone who had come through the ranks. He was aware of the need for change and through those negotiations sought to bring some changes. I think that is the reason we had some of the agreements reached. I think our current police director, who will be speaking to you later today, has that same type of attitude, and that we are willing to sit down and to address those problems that are brought to us and to try to resolve those problems. I don't believe that the solution to that problem is any type of review board that can supersede itself on the management structure of the city or of the police department.

CHAIRMAN FLEMMING. What steps that you have described as significant from the other discussion here in the community—can you identify those for us?

MR. EVANS. We had the doors of the training academy open during those discussions to members of the community negotiating team—and this represented a broad spectrum of organizations from the NAACP, Operation Push, League of Women Voters, Chamber of Commerce, and others. We invited those people out to the training academy, went through the curriculum, and I believe, they had an opportunity to sit in on lectures that were being given at that time on human relations and other types of subject matter. It was my general feeling at that time that members of that group came away feeling that there was better quality to the police curriculum than they had thought there was.

I think that door is still open and we would keep it open to anyone and to everyone who wanted to take advantage of it.

Secondly, we did create a vehicle through which an informal committee would meet with the police director and would make him aware of problems and to which he would provide feedback. We had put this committee on a precinct level so that there could be direct input to the precinct commanders and so that problems that were associated with one precinct and not citywide might be associated only with that precinct. We have no reservations today about that same type of structure being implemented. I think those two were perhaps the key moves

that could have, should have been made. And I think that to some degree we have followed through to make them, even in the absence of a formal agreement being reached.

CHAIRMAN FLEMMING. You indicate that you do not agree with those that recommend an independent board. The police officer against whom disciplinary action is taken does have appeal to an independent board, namely, the civil service board?

MR. EVANS. Correct.

CHAIRMAN FLEMMING. Do you think that the existing procedures can or should be changed in such a way as to give the complainant an appeal to some kind of independent board so that the complainant would be on all fours with the police officer?

MR. EVANS. I think the complainant, in any event, has such a board already. He has the court system available to him.

CHAIRMAN FLEMMING. You don't see the need for an administrative body, such as the civil service board is in relation to the police, for the purpose of giving an appeal channel short of the court to the complainant.

MR. EVANS. No, sir. At this time I don't because I do have confidence in the internal affairs bureau of the police department.

CHAIRMAN FLEMMING. Do you feel that the appeal procedure as it relates to the police officer in relation to the civil service board or commission is working satisfactorily?

MR. EVANS. I believe it is.

My first exposure to the civil service board came with my original experience with the city in 1971. The first such case that I had an opportunity to sit in on was a police officer who had been disciplined because of some action that had been taken against some black youths as the result of a rock-throwing incident. In that case and in all of the ones that I have sat in since then, I felt that the commission has basically followed the rules of evidence in making their decision.

I think there is a tendency occasionally to require those of us involved with the management of the city to go a step farther than half-way in proving our case and I think that is proper to safeguard the employment status of the employee. I believe the civil service commission has been very fair and equitable in hearing the cases. They have supported the disciplinary action taken in a great many of the cases, probably a majority of the cases. I think that probably says that we have done our homework in preparing the case for the commission and they have been fair in rendering their decision.

CHAIRMAN FLEMMING. Are there any recommendations that you would make for an improvement in the present procedures for handling complaints that are addressed against a police officer?

MR. EVANS. As I said, I do have confidence in the internal affairs bureau of the city. We opened this bureau to scrutiny by those members of the community relations committee 2 years ago, 3 years, and and I at this time would have no recommendation. I do believe that

they are processing those complaints and that they are taking action all the many times it is not made public against such officers, against whom the complaints are directed.

CHAIRMAN FLEMMING. Mr. Wright and Mr. Turner: In connection with your training program, do you feel that there are improvements that could be made in the training program in the area of human relations' training and also in the general area of police-community relations, or do you feel that as much is being done along that line as can be done?

MR. WRIGHT. Well, we are in the process right now of looking at our entire curriculum. I was out at the training academy, the academic affairs out there for several years, and I know what the problems are at the training academy. We would like to go into quite a bit about behavioral modification. We would like courses in this direction. We would like courses in curriculum design and those things that the educative process has taught us would be most beneficial to us regardless of what our services are.

We are working towards that goal right now by trying to sophisticate our curriculum, getting course design, so that we can come in with a package. Should we have remedial problems on the Memphis Police Department, we would address those individually or collectively. Whatever the problems are, we will start to, of course, find a solution to this problem.

CHAIRMAN FLEMMING. I notice your reference to the fact that you had had a relationship to one institution of higher education. Are there any other institutions of higher education in this area that work with your cooperatively in these areas?

MR. WRIGHT. We are doing a study with the University of Tennessee right now trying to get our data collected. Hopefully this will reflect some of our problems in the area of selection. Memphis State works well with us. We work with several different organizations.

CHAIRMAN FLEMMING. Do any of the institutions offer courses so that you can make it possible for the police officer to attend by handling their tuition charges?

MR. WRIGHT. Yes, sir. They can be reimbursed through LEAA or the city reimbursement plan. We have large numbers of people, as you know. We have a standard 2-year scholarship now for people coming on and we encourage them to get more education.

CHAIRMAN FLEMMING. If I can go back to the procedure that was followed in the handling of complaints—I think you heard the testimony from the earlier panel. Do you, as the personnel officer of the Memphis Police Department, become involved in that process at any point?

MR. WRIGHT. No, sir. I get the dispositions in personnel minus the narrative form as they are referred to personnel and becomes a disposition of which I see none of the work product. I see the disposition of the matter.

CHAIRMAN FLEMMING. In other words, after the police director makes a decision, then you know what that decision was?

MR. WRIGHT. I get the final disposition minus the narrative matter on the IAB complaints. I get all dispositions with the narrative matters on internal disciplinary matters.

CHAIRMAN FLEMMING. And are those disposition reports made a part of the personnel folder of the police officer in question?

MR. WRIGHT. Yes, sir. Each one of them is entered individually and logged in the person's file.

CHAIRMAN FLEMMING. Growing out of your experiences, do you see any possibilities or opportunities for improvement in the process that is now followed when a complaint is filed?

MR. WRIGHT. Oh, there is always room for improvement. I have no input into what decisions are reached in the area of disciplinary matters except in small cases that involve problem drinking of an employee or lost time, violations of basic personnel policies. I have very little decision into what comes into the disposition in that regard.

CHAIRMAN FLEMMING. Assume that the head of the department was giving consideration for the possibility of some changes in procedure. Would you be consulted in connection with that process as the personnel director?

MR. WRIGHT. Yes, sir. I am consulted daily about personnel matters. I would like to, you know, I wish I had more time and I was consulted more; but I am consulted. I know what goes on in the Memphis Police Department.

CHAIRMAN FLEMMING. In other words, if they were thinking about making some changes, you would have an opportunity for an input before the decision was made?

MR. WRIGHT. If it relates to what you consider personnel affairs. Operational affairs, I would have no relation to that. However, sometimes I do have input as to the placement of people.

CHAIRMAN FLEMMING. Mr. Sabatini, do you have any— You watch the police department from a distance then, I gather, I gather from your earlier testimony, not having any direct operative responsibility. As you have observed the operations, as you have been aware of the issues that have arisen in the community, can you think of any changes in procedure that might be made that possibly would bring about improvement?

MR. SABATINI. Commissioner, I can't think of anything that hasn't been mentioned. I do echo the praise of what I consider to be an efficient and effective operation of the internal affairs bureau. I do believe that those investigations do belong in that area.

And I would have to say that I think that there is also some confidence in the current police director that might also assist in areas of concerns that are being assessed today. I believe, at least as I know him, that his intent is to correct some problems and to take action and to see that disciplinary action is taken. I see a timely, effective addressing of concerns that are brought to his attention, whether it be the discipline of an officer or whatever. I see a genuine interest and

concern on his part for a proper and positive police image within the city.

CHAIRMAN FLEMMING. Mr. Evans, in your comments you identified what you feel is the management responsibility of the city and particularly the police department and then you identified what you feel is a responsibility of the community to bring about more effective police-community relations. Do you feel that those who are in a position of leadership in city government have an obligation to take the initiative in endeavoring to bring together representatives of various organizations, representatives of various cultures and races, for the purpose of encouraging them to address themselves to this issue and for the purpose of expressing the hope that they will become rather deeply involved and concerned about the whole area of police-community relations?

MR. EVANS. I think there is a role that should and could be played and, frankly, I think has been played by the city administration. The Justice Department study that resulted in those negotiations 2 years ago was actually done at the invitation of the city. I believe it was our stepping forward to ask for the study and to subsequently follow up the study with those negotiations that led to them in the first place. Now, we came away from those negotiations feeling somewhat that we had sat down across the table with people in good faith and agreed to what I felt like were some pretty meaningful agreements. Because we weren't willing to go on one particular agreement, they were willing to wash their hands and say we don't want any of it. I am not sure that it created and has left in its wake an atmosphere that says we should go back to the table and try it all over again.

CHAIRMAN FLEMMING. Isn't that possible that that suggests the need for continuing dialogue in order to overcome whatever obstacle, obstacles might be—

MR. EVANS. Since that same obstacle, I think, had lasted for the better part of 6 weeks in our particular settlement negotiations and since we had reached a genuine impasse on that singular point alone, I don't see that there would be any reason to go back and try to overcome that obstacle. Our position is still as solid as it was at that time.

CHAIRMAN FLEMMING. Would you identify that obstacle?

MR. EVANS. That obstacle was on hiring goals. Their particular request, I believe, was for a hiring quota that would guarantee to that group that we would have a 50 percent hiring quota of black versus white in subsequent police classes. The consent decree that we had negotiated had a formula in there for a goal, in essence, attaining a percentage of the total employment of the police division and the commissioned ranks over the 5-year period of the consent decree.

We were not willing to go to a one-to-one hiring quota on every class, since the percentage that we had already agreed to with the Justice Department provided, one, basically that same thing for which they were demanding and, secondly, a much more meaningful goal

because if we failed to meet it in one class, it increased the goal commitment in the following class.

CHAIRMAN FLEMMING. The consent decree is now how old?

MR. EVANS. The consent decree will be 3 years old in November.

CHAIRMAN FLEMMING. Commissioner Saltzman?

Mr. Nunez?

We appreciate you very, very much for being here and we appreciate your providing us with your assistance.

CHAIRMAN FLEMMING. Counsel will call the next witnesses, counsel.

MR. STOCKS. Robert James, Patrick Halloran, and A.D. Alissandratos.

CHAIRMAN FLEMMING. I would appreciate it, gentlemen, if you would stand and raise your right hand.

[Mr. Robert B. James and Mr. Patrick W. Halloran were sworn.]

**TESTIMONY OF ROBERT B. JAMES, MEMBER, MEMPHIS CITY COUNCIL, AND
PATRICK HALLORAN, CHAIRMAN, LAW ENFORCEMENT COMMITTEE,
MEMPHIS CITY COUNCIL**

MR. STOCKS. Councilman James, would you please state your name and address and occupation for the record and would you tell us how long you have been a member of the city council?

MR. JAMES. I am Robert B. James, 1866 Harbert, Memphis, Tennessee. I am retired. I have been on the council 10 years.

MR. STOCKS. Mr. Halloran, would you do the same?

MR. HALLORAN. Patrick W. Halloran, 2996 Wood Thrush, a councilman for the second year.

MR. STOCKS. Mr. James, I understand you are the chairman of the law enforcement committee within the city council?

MR. JAMES. That's correct.

MR. STOCKS. How are members to that committee selected and what are the duties of that committee?

MR. JAMES. They are appointed by the chairman and we have a new chairman each year.

MR. STOCKS. That is the chairman of the council?

MR. JAMES. Right. Our duties are simply to hear the administration—they might have a problem and they want an amendment to an ordinance or a new ordinance or any other matter pertaining to the courts, city courts, or the police department.

We will hear their case and if there are outsiders such as, for instance, like last fall we had a matter that came up that involved all the people in burglar alarm systems, selling and installing. We were getting so many false alarms that it created a problem that bogged the police department down. We had—I don't know how many thousand it was.

Pat?

It was an outstanding number. We had to pass an ordinance that would make it, that would discourage poor installation and cheap sets. We established a charge for after three false alarms and we also set a fee for registering each set. That is the example of the kind of problems that we have.

MR. STOCKS. How often does the law enforcement committee meet?

MR. JAMES. Oh, probably—oh, I would say half—2 weeks out of the month.

MR. STOCKS. For how long?

MR. JAMES. Whatever it takes. Usually not over an hour.

MR. STOCKS. In addition to the burglar alarm matter, could you fill us in on what other kinds of issues the committee has been dealing with recently?

MR. JAMES. Well, we had a matter that concerns you people several years ago. We had—

MR. STOCKS. By “you people” whom are you referring to—the U.S. Commission on Civil Rights?

MR. JAMES. Yes. We were getting a lot of complaints and the council took the initiative to set up a special group of three attorneys and they held hearings and took testimony for, oh, several weeks and then they reported back to us.

MR. STOCKS. What was the subject of this hearing?

MR. JAMES. Misconduct of the police department.

MR. STOCKS. Oh, thank you.

Do you have a copy of the record of those hearings?

MR. JAMES. No.

MR. STOCKS. Who does?

MR. JAMES. I imagine it is in the city council files.

MR. STOCKS. We weren't aware of that and we would like to get a copy of it in the record.

CHAIRMAN FLEMMING. We would request you to make contact and to insert it in the record at this point.

MR. STOCKS. Let me ask you, Mr. James, you have been on the council for 10 years. Are you aware of any instances of alleged police brutality or police misconduct that occurred within the last 6 months?

MR. JAMES. We have had a, I would say, a dwindling number of alleged cases reported by the NAACP. We get a copy of their report to the mayor and to the police department. The number of these cases has dwindled, however, over the last few years.

MR. STOCKS. Mr. Halloran, are you aware of—

MR. JAMES. Also the seriousness of the alleged cases has lessened.

MR. STOCKS. Are you aware of any such complaints?

MR. HALLORAN. Yes, I am.

MR. STOCKS. How is it that you are aware? Is it as a councilman or as a citizen?

MR. HALLORAN. Both. I think in the past, I guess, 6 to 8 weeks, by being a member of the council we receive reports from the president,

the executive director of the NAACP. Those are written reports that are mailed to, I would assume, all councilmen or maybe just those of us who serve on the law enforcement committee. I am not sure.

And, secondly, it is very obvious by reading the daily newspapers that there have been a number of incidents over the past as well. There have been at least three cases that I recall over the last 6 or 8 weeks where the director has taken some effective action in certain cases where there have been brutality charges.

MR. STOCKS. What has the law enforcement committee of the city council done with regard to these allegations of police abuse?

MR. JAMES. I would like to point out something that you might not know. The city charter specifically prohibits members of the council to interfere directly in any way to the conduct, the favoring or disfavoring of city employees. It is an entirely administrative matter.

MR. STOCKS. Does the city charter prohibit the city council from holding hearings?

MR. JAMES. No, it does not.

MR. STOCKS. It does not?

MR. JAMES. And we held hearings, as I told you.

MR. STOCKS. You have the power to conduct investigations?

MR. JAMES. Yes, such as we did.

MR. STOCKS. Mr. Halloran, how effective do you believe the present complaint system is for an individual who wishes to register his complaint against the police department?

MR. HALLORAN. Well, I don't know how you would evaluate the effectiveness of the system. It appears that people are coming forward when they feel that they genuinely have a complaint. I don't—I am not in a position to grade its effectiveness. I haven't—I am not familiar with the statistics that would determine whether or not there are more or less of them, whether or not there are more or less severe charges. But I would imagine that when enough brutality charges continue to rise to the surface that there is probably people on both sides of the fence, those that feel less likely or less inclined to pursue charges if they feel they have been wronged, and at the same time there are probably those that are eager to bring this matter to the public's attention when they think there has been a case of brutality. I really have no way of knowing. I just—from different instances, individuals, twice on very minor matters has anyone ever called me about police misconduct; but then there are reports that, like I said earlier, have been forwarded to us on some pretty specific charges.

Then the ones that have been publicized in the paper where the director has in fact fired policemen and suspended them, I think, demonstrates that this type of thing does go on and that they are handling these matters as they come to them.

But I am not familiar with the figures, whether or not we are increasing or decreasing as a whole; and it doesn't look to me like we are decreasing the problem. But I don't really have the statistics and

I don't know anything about the effectiveness of the internal affairs division or department.

MR. STOCKS. Thank you.

MR. JAMES, I believe in 1972 the city council held a hearing which you have referred to earlier and which they appointed three Memphians, a former FBI agent, a former city attorney, and a former criminal court judge, to investigate the misconduct of the MPD. That was a \$50,000 study with 90 days to complete. I would be interested to know what your opinion was of that study.

MR. JAMES. Well, they—the conclusion was that there was considerable evidence that there was some mishandled cases but very little hard evidence that could be taken before the grand jury and very little, if any, was.

MR. STOCKS. Can you tell me—

MR. JAMES. In other words, there was not a provable case. It usually boils down to one person's word against another's.

MR. STOCKS. To your knowledge, were there any changes made in the policies and procedures of the Memphis Police Department as a result of that study?

MR. JAMES. The internal affairs bureau was beefed up and given a separate location over in an office building and they are now holding forth over there in the 100 North Main Building.

MR. STOCKS. Okay. Again, Mr. James, in 1974 through an exchange program, the New York Police Department conducted a study of the Memphis Police Department with a lengthy report and some suggestions for changes. Please give us your opinion of that study and tell us which, if any, of those changes were accepted in Memphis.

MR. JAMES. I am not—I can't recall enough of that. That was not ours. It was the administration's. There were some favorable comparisons made and some unfavorable, but I am not familiar enough to comment on that.

MR. STOCKS. Finally, Mr. Halloran, what is your opinion as an elected official—and I would like Mr. James to also answer this when you get through—as to the stage of the police-community relations in Memphis today?

MR. HALLORAN. My overall impression, I guess, is that we have a good police department. I think that the majority of the community feels positive about them.

They are that unique group of city employees and city servants that are most often confronted with some very tense moments and situations and I think there is a percentage in the police department of individuals that do not react in a very favorable or humane way. I don't know how our force would stack up with other forces across the country. Certainly that doesn't make any incident right. But I have spent time with the police department. I have patrolled with them in the evenings. I have gone into homes with them when shotguns were ready to go both ways. I have found them to be a very, very effective

department in those ways that a relatively inexperienced law enforcement observer such as myself would evaluate such a department.

But I have my concerns about the police department just like, I guess, everybody does. The whole question of police brutality is something that bothers me because it just continues to happen, I guess, and there doesn't seem to be anything that I can see happening that is putting the lid on this particular problem. I don't know whether it is just because of the constant stress and the total number of situations where a confrontation like this arises. But, when individuals are apprehended and incarcerated and there are problems inside the jails where some of these brutality charges have come from, I think that that is the kind of problem that shouldn't occur, regardless. I don't think that there is a place for any of the brutality charges that have ever been made, but I think the clear demonstration of the fact that a very small percentage of individuals have let this authority consume them is the incidents that have happened within the police jail itself.

MR. STOCKS. Thank you.

Councilman James, could we get your opinion?

MR. JAMES. Well, I think you are naive if you think that the rising crimes and particularly the crimes of brutality, in unbelievable ferocity—if you have over a period of years such as we have experienced here and everywhere else, that kind of a trend—if you think that there is not going to be an equal and opposite reaction in the minds of the citizens and in the behavior of the police, I just think you are whistling “Dixie.” I think it is a normal thing that should almost expect it—not condone it, but expect it. How can the kind of an environment that we have today inspire anything but some sort of a violent reaction? The marvel is that the police restrain themselves to the extent that they do.

I think police work attracts a few sadistic people. That is the nature of it. It is one of the hazards of the occupation. I am not a psychiatrist or a psychologist, but it seems common sense to me that if you are looking for a sadistic people, you will always find a few in any police department. I think, if we are getting the right kind of reports from the NAACP, there is definitely a decline in the incidents over the last 5 or 6 years.

MR. STOCKS. Thank you.

I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Councilman James, I would like to go back to the hearings that your committee conducted, in 1972 was it? Those hearings were based, if I understand it, on investigative work by persons identified by counsel.

You indicated that as a result of those hearings or as a result of the investigation that you, as a member of the committee, recognized that there was a problem, that these investigators identified a problem and then apparently they went on to say that it is difficult to prove the case in terms of possible court action. Now, as a result of the investigations

and as a result of the hearings that you have held, did your committee make any recommendations to the full council and did the council make any recommendations to the executive branch of the Memphis city government? In other words, did you develop a report?

MR. JAMES. Yes, we did. But, I can't recall the details of it except that we did ask them to enlarge and improve the internal affairs bureau, which they did.

CHAIRMAN FLEMMING. You don't recall any other recommendations?

MR. JAMES. No.

CHAIRMAN FLEMMING. That were made by the committee at that time?

MR. JAMES. Well, it was—we had general suggestions that they should, that council wanted brutality to stop.

CHAIRMAN FLEMMING. Now, did you recognize that the facts presented to you pointed to brutality on the part of the members of the police department?

MR. JAMES. Yes.

CHAIRMAN FLEMMING. You reached that conclusion on the basis of—

MR. JAMES. Well, yes. It was obvious. It is still there. We are only talking about a degree. It has been there ever since time, I guess, but it wasn't any great major discovery. But it was serious enough for us to want to do something about it and we still do, naturally.

CHAIRMAN FLEMMING. Were there any other specific suggestions that you recall at this point?

MR. JAMES. No. Wait a minute. We did suggest that, oh, three or four cases or two or three cases to be submitted to the grand jury if the complainers so desired. I can't recall whether—maybe one or two made it.

CHAIRMAN FLEMMING. In other words, you received enough evidence as an investigative body to convince you that three or four complainants had a real case and that their cases should be submitted to the grand jury?

MR. JAMES. As I recall it, that is the case.

CHAIRMAN FLEMMING. Do we have a copy of that report?

MR. STOCKS. We have a copy of the report in the file, of the recommendations. There is no transcript.

CHAIRMAN FLEMMING. But we do have a copy of the finding of the recommendations?

MR. STOCKS. Yes.

CHAIRMAN FLEMMING. Without objection, then, I would like to have the report with the findings and recommendations inserted in the record of the hearing at this point. Then I would like counsel to arrange to get a report as to what has happened in connection with each one of the recommendations that were made at that time.

I gather, Mr. Halloran, that you were not a member of the committee at the time of this report.

MR. HALLORAN. That is right, sir.

CHAIRMAN FLEMMING. I guess I will ask first of all, Councilman James: Based on your long experience on the council and based on the experience that you had in connection with this investigative report, do you have any recommendations as an individual now that you feel, if implemented, would improve the handling of this particular problem of police brutality and would improve the relationship between the police department and the community as a whole? I know you are obviously concerned about it and I am just wondering as an individual citizen—

MR. JAMES. Well, my recommendations are a little bit more far reaching perhaps than what you are looking for. It seems to me that there is way too much slackness between apprehension and the ultimate disposition of cases. So many of the frustrations of the police department are the result of seeing these people coming in and out of the police doors like they were revolving doors and I can sympathize with them because of these things. There has been a recent law that you are familiar with that is supposed to speed up these repeat felonies cases. I don't know how it is working. I hope it is working better than these attempts sometimes do.

I would like the—I would like to see perhaps an improvement, if it is possible to make an improvement, in the screening of police applicants to weed out those few that do slip in that are inclined towards sadism. That is not an easy matter, I am sure. I am sure that they make some sort of attempt. If there's a better attempt—if we could intensify that, I think that we should.

The great majority of the police are not in this category and we see, in fact, that quite a few of the police that are accused of brutality have had questionable behavior sometime in the past on their record, warnings and that sort of thing. Maybe a more intense, specialized, selective—that is the word I want—a more selective treatment of these borderline cases would be better. ✓

I hate to see the whole police department get a black eye and become paranoid because of all the negative criticism just because of a few of their number. We can't afford to have a paranoid police department.

Their work is the kind of work that could result in paranoia because they feel like they're citizens apart. They just don't—their work with the general population, I am sure, makes them very cynical and they just feel like they are apart. I think a lot of it is actually unfounded. I don't think—that the average citizen feels towards him at all like he thinks they do. If we could pull them back, their thinking back into the mainstream of thought, it would help and there wouldn't be the frustrations on them. But, as far as eliminating it, it never will—

I know that you realize that in a tight situation a policeman has got to be wiser than a judge, he has got to be a psychologist, he has got to be almost a superhuman detective; and just the burden on a policeman in a very tight situation with all the possibilities that could

ensue from the wrong reaction is enormous. I just hate to castigate the police department the way they have been castigated in general. We need to—if we have cases that are questionable, then we need to work on them. Let's don't work on the whole shebang.

CHAIRMAN FLEMMING. In other words, you feel that there should be in effect a procedure that would result in the identification of a violation of civil rights so that whatever number may be involved, few or quite a number, can be dealt with—

MR. JAMES. Localized.

CHAIRMAN FLEMMING. So that that doesn't become kind of a cancer sore that affects the whole department?

MR. JAMES. Right, that is right.

CHAIRMAN FLEMMING. Mr. Halloran, do you have any suggestions that you would like to make?

I recognize that you are concerned about the problem and you are concerned about the fact that it seems to be kind of at least a plateau and that—do you think that either administrative action or changes could be made in procedures that might help deal with any who feel that they are above the law, in the sense that they can violate the civil rights of persons because they are law enforcement officers?

MR. HALLORAN. Well, I think very definitely there are a couple of things that could be done. One of them I have asked to be done for many, many months now and seemingly it is no further along than when I first suggested it. That was that the department submit an application to have an evaluation or study done of the entire department by the, I think it is the International Association of Chiefs of Police. A number of members of the community have discussed this with me and I asked the director of the department prior to his appointment that if appointed would he be willing to do this. I was assured at that time that in a short period of time thereafter that if appointed he would. Since then I have asked the question and it doesn't seem to—we don't seem to be moving along, at least not to my knowledge. That is one thing.

I think the advantage to that has many benefits. Chief benefits would include—I think it would give the department the confidence that Councilman James is talking about because I do think it is a good police department. I have spent time with them and I do think that the very few that have caused the trouble have given the whole department a black eye.

I also think it would help an almost completely new administration in the police department understand better what the function of other departments has produced over the years and how they might improve since many of the—well, almost everyone at the top in the administration, from the director down, has either been reassigned, taken on new responsibilities, or is completely new to the whole operation of a law enforcement agency. So, I think that those are the two chief advantages of having that evaluation done.

I also think that a secondary asset might be that it might give the community a significant amount of confidence to see that the department has *X* number of strengths and it now has identified *Y* number of weaknesses.

The second suggestion that I would make—and I guess these hearings have brought this to my mind because I am on the law enforcement committee and I always felt that we were dealing with the problems of the department when they would come to us—but, after hearing much of the testimony and reading many of the things in the newspaper and thinking about it a little more in depth myself, I can't help but feel that there is a total lack of communication between the council and the council committee, both, and the department. This is as much our fault as it is theirs, but it doesn't seem to me that they have kept us advised of their needs, their progress, or their special problems. We can read about it in the paper. So, I guess we should be asking them, How can we help you? What are your problems? What do you need? Why did this happen? How are you going to see that it doesn't happen again?

Then we get back to the complicated relationship between the legislative body and the administrative body that Councilman James alluded to earlier.

But I do think that if we had a good working relationship between the administration of the department and the council, since we are funding every penny's worth of tax dollars that goes to implementing the department's activities, that we ought to be, I think, a little bit more in tandem than we have been at least since I have been on the council, which has been a very long 15 months.

But I think those are the two things that I honestly feel that are important to me and might help resolve a lot of the problems that exist now and we would have a better department as a result of it.

CHAIRMAN FLEMMING. Appreciate it very much.

Commissioner Saltzman?

COMMISSIONER SALTZMAN. I only have one point for clarification. Councilman James, did you say that you thought the number of complaints has declined relative to allegations of police assault?

MR. JAMES. The number of complaints that the copies of which I have received from NAACP has declined.

COMMISSIONER SALTZMAN. Could I have, counsel—as I understood it, the number of complaints has doubled.

MR. BACA. The number of complaints that has been filed with the internal affairs bureau has doubled.

MR. JAMES. Well, they are bypassing us.

MR. BACA. Well, that may be what you were—

COMMISSIONER SALTZMAN. Well, I just wanted to clarify that.

CHAIRMAN FLEMMING. Has the NAACP furnished us with a copy of one of their reports or a number of their reports that go to the city council committee?

MR. STOCKS. We have copies of some of the items that they have sent, copies of the carbons indicating a formal letter was sent to the city council, to the police department, to the mayor's office, and others.

CHAIRMAN FLEMMING. It might be interesting to put in as an exhibit the number of complaints received in, let's say, in the month of April 1977 and the number of complaints received in January or December, something of that kind for comparative purposes.

MR. STOCKS. Okay. We can do that.

COMMISSIONER SALTZMAN. One additional question. I am sorry, another thought. Do you think there is excessive or overreaction to the issue of police abuse in the minority community?

MR. JAMES. Yes, I do and I can understand why.

COMMISSIONER SALTZMAN. Can you tell me why you think that is there?

MR. JAMES. Well, their frustrations. Many of them lead a frustrated life, and if there is a chance to unload, that gives—that is well known as a psychological safety valve, to unload on somebody else in the form of a complaint or resentment. They have a good excuse for being frustrated.

COMMISSIONER SALTZMAN. And do you think this happens irrespective of whether the minority person is in any given economic level, that they have that high level of frustration and they let out that frustration against the police department in excessive complaints?

MR. JAMES. Bound to be. I am not an expert and I am not making a profound statement. I am merely giving you my gut feeling on the subject. You see that, you see—you get a little piece of that very thing I am talking about in many ways: in the way that they express themselves and the way that you—letters to the editors and complaints that we get at budget time. Many of the complaints they have are valid. Some of them are not.

COMMISSIONER SALTZMAN. Is that true of the majority community too?

MR. JAMES. Not the same kind nor the—yes, sir. Everybody is human and they all react the same. But I don't think that the white people have the frustrations that the blacks do because they have low income and have got inflation and unemployment.

COMMISSIONER SALTZMAN. Are the number of economically low people, low economic level, in Memphis primarily minority people or are there some white—

MR. JAMES. Primarily minority.

COMMISSIONER SALTZMAN. Very few poor whites?

MR. JAMES. No. There are probably lots of them in absolute numbers, but percentagewise the blacks are in the majority of the hardship cases economically.

COMMISSIONER SALTZMAN. Is most of the city becoming—I am not acquainted with the demographic factors—is the city and the core city essentially a black city?

MR. JAMES. More all the time.

COMMISSIONER SALTZMAN. Do you have any idea of the percentage?

MR. JAMES. Well, the only reasons that they probably don't have the majority is because we have annexed some rather large white sections in the last 10 years. We have annexed Frayser, oh, 15 years ago and Whitehaven about 8 or 9 years ago and Bartlett and Releigh—not Bartlett—but Raleigh and Scenic Hills, which is all white, and fragments of other parts in the last few years. The balance has been maintained by that annexation—not for that purpose, but we are unique in that we have laws that enable Tennessee cities to annex without referendum.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Halloran might want to comment on that.

COMMISSIONER SALTZMAN. Mr. Halloran, do you want to make any comment?

MR. HALLORAN. The initial question was, as I remember it, do I think there is overreaction in the minority—

COMMISSIONER SALTZMAN. Do you find that, yes.

MR. HALLORAN. Was your question specifically of the minority?

COMMISSIONER SALTZMAN. What do you think of the relationship to the stimuli, which is alleged police abuse, that there is overreaction because every black member, every black person who has testified to us today has implied, I think, or has stated explicitly that there is police brutality experienced by the minority community.

MR. HALLORAN. Well, I don't think there is an overreaction to that charge, no. I think, in fact, I guess the only two calls that I have received directly have come from individuals that I know, that happened to be white individuals, that were concerned about what they thought were questionable conduct of patrolmen at the time. So, I don't think, based on the fact that much of what we learn about these things comes to us via the newspaper and then through some reports we see where there has been rather severe restrictions and/or dispositions of individuals on some of these cases—so I think that the department has realized that there have been a large number of brutality cases.

There were three of them reported in one of the daily newspapers about 10 days ago. Two individuals were beaten in the jail and one of them on the same page of the newspaper—I don't remember where that incident took place—but it seems that the department has their hands full with these incidents.

I think everyone should probably realize that we ought to let people cry out as long as there is any possibility of any brutality charges going on. I guess when we don't have any, then the slightest cry will be overreaction; but until then, I think we have got a long way to go.

COMMISSIONER SALTZMAN. Okay. I will just like to comment to Mr. Halloran, Councilman Halloran, that I am impressed and I think we, no less than you or Councilman James, feel that we are not interested

in tearing down the law enforcement agencies in the community to any degree, but to assuring that citizens, as you say, have full protection of their civil rights.

MR. HALLORAN. All right. That is my, you know, I understand that, fully. And I understand the nature and the reasons for these hearings and think this is going to be a great benefit to the community as a result of our being here today, I hope.

CHAIRMAN FLEMMING. Anything else?

MR. NUNEZ. Oh, one last question if I may.

We have heard quite a bit of testimony today which would lead us to indicate, to feel that perhaps many of the citizens of Memphis do not feel that the current internal review procedures of the police department, moving on through the civil service board, are adequate. Perhaps, have you given any thought to perhaps the city council law enforcement committee perhaps playing an oversight, a more direct role in the whole procedure of reviewing the police brutality complaints more directly rather than just observing them from afar? Would you feel that that might be a more appropriate role for your committee? I raise the question with both of you gentlemen.

MR. JAMES. I see—I don't see why not. We are the direct representative of the people and we would certainly be glad to do what we could. I think that it would be a mistake to get still another board to have questionable authority and perhaps too much authority in some direction and not enough in others; it would confuse the thing. I think that if there is any other group in the city government that it should be the council because we are elected.

CHAIRMAN FLEMMING. Mr. Halloran, I think you have already responded to the question.

MR. HALLORAN. I think I have.

CHAIRMAN FLEMMING. Thank you both very, very much.

Counsel will call the next witness.

MR. STOCKS. E. Winslow Chapman and John Holt.

[Mr. E. Winslow Chapman and Mr. John D. Holt were sworn.]

TESTIMONY OF E. WINSLOW CHAPMAN, DIRECTOR, MEMPHIS POLICE DEPARTMENT, AND JOHN D. HOLT, ACTING CHIEF, MEMPHIS POLICE DEPARTMENT

MR. STOCKS. Mr. Chapman, would you please state your name, address, and occupation for the record?

MR. CHAPMAN. E. W. Chapman, 1766 N. Parkway. I'm the director of police, city of Memphis.

MR. STOCKS. Mr. Holt, would you do likewise.

CHIEF HOLT. John D. Holt, 5231 Sherwin, Apt. 9. I'm the acting chief.

MR. STOCKS. Mr. Chapman, do you perceive that there is a problem in the police-community relations in Memphis?

MR. CHAPMAN. Yes, there is.

MR. STOCKS. How would you define that problem?

MR. CHAPMAN. I would define the problem as a basic built-in defensive attitude on the part of the department and the officers therein and a feeling of frustration plus some sense of misunderstanding on the part of the community, I think, as a whole. I wouldn't limit it to the minority community.

MR. STOCKS. Do you perceive that the black community in particular has a lack of confidence in the police department?

MR. CHAPMAN. No question about it.

MR. STOCKS. Chief Holt, how do you perceive the police-community relations problem in Memphis?

CHIEF HOLT. Well, I think it is pretty much as the director stated, that there is a problem, although after 24 years with the police department I feel that it is a problem that is of much less gravity than it was a number of years ago. I see constant indicators of improvement.

MR. STOCKS. Well, as acting chief of police what things can you do, do you believe that you can do, to increase the rate of improvement?

CHIEF HOLT. Well, within the department I think there are numerous programs that we can inaugurate that the director and I have discussed at length and that we have actually started work on, addressing the problem solely from the aspect of the department as opposed to the responsibility of the community. I think we must, of necessity, institute programs that will improve the incentive and morale of the officers, which in turn will improve their morale and their attitudes in dealing with the public on a day-to-day basis. I think that is where not only community relations or race relations, but human relations, is going to be determined insofar as the department is concerned, is on a day-to-day contact by the officer in the street.

MR. STOCKS. Thank you. Mr. Chapman, what do you as director of the Memphis Police Department plan to do regarding police-community relations?

MR. CHAPMAN. Well, I would plan to take, first of all, those steps which I feel I have already taken to ensure that every officer of this department understands quite clearly that physical abuse will not be tolerated; overreaction will not be tolerated. I think that I have taken certain steps in those directions or in that regard to ensure that they do understand this, I think, better by the day.

In regard to the other half of the problem, I think it's my responsibility as director of police to establish rapport with the black community, to hear their problems, and to respond to these problems so that they feel that they are getting proper attention to those things which concern them.

Now I might note here that neither of these is a simple thing to approach. When you talk in terms of the department, you are talking in terms of human behavior, and human behavior and attitudes are very difficult to adjust. When you talk about the community you are talking about a deep-seated and long set feeling that the police department is

unfair, that it is biased against particularly the minority community. And so you have two very deep-seated problems, and I don't think there is any quick solution to either.

MR. STOCKS. Mr. Chapman, you have committed yourself publicly to the concept of citizen input or citizens' advisory groups. Have you made any effort to establish any citizen input in the Memphis Police Department?

MR. CHAPMAN. I have not. I have considered, and we have discussed, the reestablishment of the citizens' advisory board, which once was in existence and which Mr. Evans covered. The reason this has not been done is that, as he also covered, there were some basic points of disagreement, a basic impasse so to speak, and I have felt that until we could have some reasonable assurance that the reestablishment of the committee would result in some solid and meaningful rapport in conversation, then there has not been any need to do so.

Also, not as an excuse but as an explanation, since my appointment as police director we have had several very serious problems that have faced the department, not in terms of community relations, but in terms of restaffing at the top, in terms of the inception of zero-based budget, and in terms of the upcoming total renegotiation of the police contract. So I felt that myself and my immediate staff have had really as much as we could face right now, and that this would be a project which we could face later on in the year, after these things were past.

MR. STOCKS. Last fall I believe you also stated your intent to ensure the review of the Memphis Police Department by an outside agency such as the International Association of Chiefs of Police. What action have you taken to carry that out?

MR. CHAPMAN. I have joined the organization as a first action. Secondly, I have discussed with them this concept at several meetings which I have attended relative to this type of approach to police departments. They felt, as I did, that until the restructure of the department was completed, the budgetary process in particular was completed, which will have a major impact on what the department consists of, that there would be relatively little value in a review at this time.

MR. STOCKS. What role do you play in the present citizen complaint process, when the complaint is against a police officer?

MR. CHAPMAN. I think Inspector Wilkinson pretty well covered that, although there were some misunderstandings on some of the points that he made. Citizens may make a complaint to me, which I refer to internal affairs. Citizens may make a complaint directly to internal affairs, or I may see something, either an article in the newspaper or a letter to the editor or anything else, that I feel warrants an investigation by internal affairs, and I have employed all three of these means.

The complaint is then sent through internal affairs basically as the inspector described it. There was one basic misconception on what he

sends back to me. He sends the entire file plus a written resume, so that I don't have to read the entire file, of what it consists of plus his feeling as to whether the complaint is founded or unfounded. Now that does not represent a recommendation on his part as to what should be done with the complainant. It's merely whether he feels the incident actually took place. And his feelings as to whether the incident took place are a very long way from being able to prove that that incident took place. Therefore, I think what he referred to in terms of rejection, although I would question his 50 percent figure—I would say it's probably more like a 20 to 25 percent incident rate where he felt the incident was founded and yet no action was taken—would be based on two factors: One would be mitigating circumstances where you had an incident that was not too severe, the complaint was against an officer who had many years, 10, 12, 15 years of unblemished service. This might account for some of them.

The others would fall in the category of—really, I think what is the basis of the problem that you have heard here today where a citizen has a complaint against an officer, and the only person present when that incident took place was either the one officer against whom the complaint is being made or that one officer plus some other officers. We are faced in the vast majority of the cases where the citizen said, "This happened to me." The officer or the officers say, "That did not happen," or, "It didn't happen that way." You really have no basis upon which to make any substantive decision as to what you should do. This also accounts for what has obviously been inferred or referred to here today, the vast number of complaints and yet the relatively small ratio of action taken. The reason is not that we are trying to cover up the incident. It's not that we don't believe it happened, but very simply that we can't prove it happened. I think when faced with a case like that we have no choice but to take no action when we can't prove that anything did happen.

MR. STOCKS. All right. You are obviously quite familiar with the internal operations of the IAB. How would you change it to improve it, if at all?

MR. CHAPMAN. Well, there is no way to change it until we can convince the officers themselves that it's in their best interest to tell us the truth about what happened or to, in fact, tell us that one of their fellow officers committed an offense. I think this is a matter of attitude which I hit on earlier. I think that all the review boards, judicial proceedings, or anything else won't go to solve this because if a man says, "I didn't see what happened," there is very little you can do to prove that he—you know, "Well, I just happened to have my back turned when that happened." You can't prove that he did or he didn't.

MR. STOCKS. Does the provision in the contract between the Memphis Police Association and the city which gives an officer the right not to take a polygraph exam inhibit you in any way in this process?

MR. CHAPMAN. I am glad you asked that because the polygraph thing has been totally blown out of proportion. First of all, one of the initial steps that I took with internal affairs, in addition to bringing them under my direct control and command, was to indicate to them that they would follow each complaint to the fullest, polygraph or no polygraph. I have had occasions—I have had several here in just the last few weeks—where a polygraph might perhaps have given me additional information to go on, but I don't feel that it would be a decisive factor because, as was pointed out by someone here earlier today, a polygraph is not permissible as evidence in court.

I might also note that we do frequently refer these complaints to other entities. I know the U.S. attorney is considering two cases right now, and I think there are three before the attorney general. So they don't just go by the wayside.

MR. STOCKS. Finally, what priorities have you set for yourself in your job as director of the Memphis Police Department?

MR. CHAPMAN. Well, my foremost priority would be obviously to have the most efficient police department for the welfare and the safety of the citizens of the community. Followed closely thereon and giving me the ability to accomplish that first goal would be to establish a sense of confidence on the part of the community in the department itself. Now, as also been mentioned here earlier, that is a two-edged sword because the police do have a very defensive attitude. They feel that people don't believe in them. They feel that they are on the defensive. Therefore, you do have a basic confrontation type situation between the police and much of the community. And as I say, I wouldn't limit it to the black community. But I would say those are my two primary responsibilities, and I think one is really concurrent with the other.

MR. STOCKS. Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. Mr. Chapman, in response to the first question or two addressed to you by counsel, you very frankly said that you thought that you did have a problem in terms of the whole issue of police brutality, the issue of the relationship between the police department and the community. Earlier today the president of the chamber of commerce and the president of the bar association were here as witnesses, and I think I am reflecting accurately their testimony when I say that they didn't seem to recognize the existence of the problem which you say does exist. Does that in and of itself suggest a problem in terms of relationships between the police department and leaders within the community?

MR. CHAPMAN. Mr. Chairman, I have been here during today's entire hearing, and I think that the answer to your question could not be summed up better than Mr. Cody put it. I think that he covered that, and I would concur completely with what he said in that regard.

CHAIRMAN FLEMMING. All right.

On this question of the citizens' advisory committee, I am very much interested in the earlier testimony on that and your testimony. Do you feel that whether it's through a citizens' advisory committee or some other way, that you do need to create a situation under which there is what I like to think of as continuous mediation between the department and the community and are there other ways that you think of whereby this could be accomplished?

MR. CHAPMAN. Well, no, sir. I can't think of any other ways, and I think probably some form of citizen advisory group would be the best vehicle for this. As I say—it's not meant as an excuse, it's just meant as a matter of fact—you can only face so many things at any one time. And as citizen participation I have at least one active citizen participatory agency, which is the National Council on Crime and Juvenile Delinquency, which is working with me at this time. They take a great deal of time, and time is one commodity which I have very little of these days. But I think it is a good concept, and I think the whole problem of the former committee, if you will, as outlined by Mr. Evans, could probably be overcome with some work in the setup of the board or the method of operation. Just quite frankly I haven't had time to get into it, but do intend to get into it when we have the budget and negotiations out of the way. I think it is most important. I concur with you on that.

CHAIRMAN FLEMMING. I am interested in your setup. How many staff members do you have as the director of the police department, separate and apart from the police department; that is, separate and apart from those who report to the chief of police? Do you have your own independent staff?

MR. CHAPMAN. Well, actually the department is broken down to a one on two the entire way down. This is a restructure which I also was involved in at first. Directly under me is the chief of police and a chief of administration, who is a civilian individual. Under him come all the civilian entities of the police department, or those nonenforcement entities such as personnel training and this type thing.

Then under the chief it's broken down in regular operating agencies which would be your investigatory agencies and your uniformed patrol functions. My personal staff, if you will, would consist—at least as I consider them—would consist of the chief and this civilian head.

CHAIRMAN FLEMMING. Going now to the processing of the civilian complaints, you obviously have given a good deal of time to this because of the nature of the workload, and I gather you do look at them on a case-by-case basis. Do you have any staff aside from the internal affairs staff that helps you take a look at these cases and then also, along the same line, is the chief of police involved in making any recommendations regarding those cases?

MR. CHAPMAN. Yes, sir. He is directly involved. When Inspector Wilkinson passes the cases to me, what I basically do, and this is the reason I instituted what you have called a recommendation but I call

it really a summary, I look at those. I see what the case is involved with, whether he thinks it's founded or unfounded, how serious it is. All right. That gives me a flag on those cases which I think are extremely serious or I think would warrant something that is going to come back to me for my review.

I then pass it on down to him, and he takes the remainder. And I would indicate those cases which I wanted to know. In other words, after what was done internally, I wanted to know what happened to them. Then he would do basically the same thing.

CHAIRMAN FLEMMING. He, being the chief of police?

MR. CHAPMAN. Yes. He would then make the same type of decision on the remaining cases as to whether he felt they should be decided at precinct level or at the deputy chief's level or at his level. He might even disagree with me and say, "I think this is more serious than you considered it. I think that you ought to hear it, or we ought to hear it." We hear quite a few of the serious cases together. I think in this way—

CHAIRMAN FLEMMING. When you say "hear the cases"—

MR. CHAPMAN. This is the final administrative hearing wherein—when it gets to me, and the chief and I hear it or I hear it myself, that is the final line of appeal or the final hearing. It might be that I hear it first, and normally a case that would result in a possible dismissal would be heard either by the chief or myself, or the two of us together.

CHAIRMAN FLEMMING. When you say "hear it," who participates in the hearing, the complainant and the—

MR. CHAPMAN. Well, it would be myself, or myself and the chief, or possibly the police legal advisor. On the other side it would be the individual officer who was accused plus a union representative—that is a part of the contract. And I have allowed them to bring the union attorney in on those cases.

CHAIRMAN FLEMMING. Is the complainant represented at all in those hearings?

MR. CHAPMAN. No, sir.

CHAIRMAN FLEMMING. Have you given any consideration to the possibility of the complainant being there or being represented in those hearings?

MR. CHAPMAN. Well, sir, I can't really see the advantage of that because if there is anything in his complaint that we have the least question about, prior to my hearing it I would send it back to internal affairs or to possibly one of the investigative bureaus for additional information on what I didn't understand or any questions. So I really feel that I am representing the complainant, if you will. I hold a dual capacity. I am representing the complainants, but really more than that I am representing the police department relative to an infringement of our rules.

Now remember that these apply only to cases—this is only administratively. This is only administrative action because I might dismiss a man, which has been done in the past, and we have some possibly coming up in the future that might result in dismissal administratively. But in addition, it would result in judicial action, criminal action. In other words, I might dismiss him, but also at the same time the case would be referred to the attorney general or the U.S. attorney for criminal action.

So at that point on the criminal side—in other words, I am looking at it strictly from a violation of departmental regulations, of which brutality or overreaction would be one. Brutality could also be the criminal offense of assault or assault to murder.

CHAIRMAN FLEMMING. Well, you have been here during the day and you know that we have received testimony from the NAACP and the American Civil Liberties Union and so on, which is to the effect that in their judgment civil rights of some of the citizens are being violated. What I am reaching for is any suggestions on your part that might involve the complainant or representative to a greater degree.

I was going to follow with—you heard me ask a question about how the complainant is notified. Have you given consideration to notifying the complainant and at that time saying what happened to the complaint with even a brief reason for what happened?

MR. CHAPMAN. Let me answer both of those questions because they are relevant and they do fit in.

First of all, the testimony that you have heard that individuals never know what happened to a case is not true. They may not know the full details. In other words, they may not have the explanation of what happened and why, but they do know that we receive the case.

I could produce letters to Mrs. Smith indicating that we received the case and are processing it. In addition to that, Mrs. Smith has on frequent occasions come and discussed individual cases with me. “Why did this happen? I don’t think it was right. You only did this much,” or, “You didn’t investigate it far enough.” I have also had other individuals do that.

The reason for not putting it in writing and the reason for not having the complainant present at the hearing is that in the course of our individual investigation we carry out certain—it’s been brought up here before today—in certain cases we require an officer to give an answer. And it is within this—and there is a legal term for it which I don’t have right at hand—but he is assured that this statement or these answers will not be used against him in a criminal action. I think if you either put in writing too much detail in regard to these cases or if you had a complainant sit in on it, you would run a very severe risk of legal action. This has been confirmed by my legal staff. They have said that we would run a severe risk of, first of all, violating the officer’s rights by what might be brought against him in a civil action. Or, you might be giving someone the actual grounds for a suit against the city.

I am not completely happy with it, Mr. Chairman. I recognize that this represents a gap, but I still say, and anyone who doesn't know it is simply because they haven't paid attention or they don't realize it for some reason, is that anyone who has any question on action that I take has the right to question me in regard to that action. And I answer these questions all the time, some by phone very summarily. If a person has a real serious question, such as I can think of one case involving the NAACP, where they wanted to know some very major details in regard to a case, they can come and sit down with me and I will go over every point, what I did, why I did it, and what thought process went into this.

When I first took over and brought IAB under my direct control, I questioned Inspector Wilkinson on the wording of these letters because they are very vague. They say that appropriate action has been taken. What does that mean? You don't know whether the man has been fired or given a day or nothing happened. But he explained that there was a legal basis for this wording. I checked it, and I was advised that there also was a legal basis. I have not been able to come up with any halfway point, but I suppose I could advertise, if you will, or publicize the fact that anyone could come in and get a detailed explanation.

CHAIRMAN FLEMMING. Do you think there would be anything gained by asking a small group of people who have some expertise, in what I like to think of as administrative due process, to counsel with you on this and possibly to provide some recommendations that might help to build a bridge between the perception certainly that has been revealed to us in the testimony and your own perception?

MR. CHAPMAN. I would certainly be willing to sit down with a committee as to what procedure we might follow. I would just oppose very much anyone being a party to the documents which I look at because I feel that they are taken—even if not under pressure from your job obviously, if I have an individual in the department who fails in one degree or another to cooperate with me on an internal investigation, then, you know, when the time comes up for promotion or reassignment or something, I am going to remember that he was less than cooperative. So I feel that the officers in some degree are under pressure to answer the questions which I want answered, even though I will be the first to tell you that in many cases these questions are unanswered or possibly the thing about, well, "I didn't see what happened." And I don't like this, but we do have more and more police officers coming to the fore, I think, and saying, you know, "I care what people think about me, and I care what people think about the department; I am not going to stand by and see this type of activity." We have had a case such as this in the last few days where we had officers lay out for us what happened. This has got to be indicative of a change in attitude.

CHAIRMAN FLEMMING. When an officer appeals from your decision to the civil service board, what part of the record are you required to make available to the civil service board?

MR. CHAPMAN. Well, they get the record presented, but they do not get the IAB file. They get the details of the case. They get a legal argument as to why we took the action that we did, but they don't peruse the documents as such. We consider the IAB files to be totally internal and confidential, totally confidential.

CHAIRMAN FLEMMING. Does it trouble you at all that the police officer has an appeal to the civil service board whereas there isn't a comparable appeal administratively speaking on the part of the complainant?

MR. CHAPMAN. Well, sir—

CHAIRMAN FLEMMING. To an independent board.

MR. CHAPMAN. Well, I feel that actually the complainant does have sufficient appeal to the courts and with the, you know, the entities you have heard from here today, the legal services and that type of thing, we have the ability—or even a person who is indigent, they have the ability to appeal to court.

No, it doesn't because I think on the one case you are talking about, in the officer's case, you are talking about a job. You are talking about a strictly administrative action. Should he keep his job, should he have been laid off for 30 days; this is job related. Therefore, it's strictly administrative.

In the case of the complainant if it's that severe, if it's severe enough to be past the point of the complainant merely saying, "Look, you have a sorry police department, and he didn't handle this right when he wrote up my accident report." If it's more severe than that, then it borders on the criminal and the civil type things, which should probably be heard in a court under all the rules that apply to a court. So, no, that does not bother me, and I think on that point we are probably in the shape we should be.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Chapman, do you think—I mean, this is perhaps subjective and in that sense unfair, but at least in your impression do you have the support, the growing support, as a result of what you are attempting to do with the minority community, or is that—

MR. CHAPMAN. I thought I had, Mr. Commissioner, until I came in here today. But I really believe that I do. I have got to believe that they know the situation is better now than it has been. I recognize from what I have heard today that there are some misunderstandings, and perhaps I had better be sure that everyone understands what I am doing more. But I have been like the man sort of trying to drain the swamps with the alligators, and I perhaps have not—at first I put a great deal of emphasis on letting the community, particularly the minority community, know what I was doing in this respect. Perhaps I have fallen down in that category, and we will certainly correct it.

But I feel that the community overall, and I think in specific the minority community, has got to feel that things are better. One of the newspapers here in town has mentioned in regard that they publicize complaints against police and blatant abuses. When I came in as director every single edition of that paper had a blatant thing on the front of it, some horrible incident that had happened. Over the past few months we have had some. We have had some issues come out with not the first bad word about the police department. We have had two good editorials, and a complimentary article toward myself. So that has also, I feel, got to be indicative.

COMMISSIONER SALTZMAN. Chief Holt, I know with the police department only, I think, 4 months at this point—as chief.

CHIEF HOLT. Since September.

COMMISSIONER SALTZMAN. Since September?

CHIEF HOLT. Yes, sir.

COMMISSIONER SALTZMAN. As the chief. But do you feel confident that you have the support of your men on the line, that they have confidence in you and your direction and your authority? Is there a good morale between your level and the man on the street, in other words?

CHIEF HOLT. Yes, sir. I think so.

The director and I take every opportunity to get out at night to meet the men personally.

I think Mr. Kent, president of the association, mentioned earlier that he also felt that the morale was good. I have got to agree. I think that the union leadership have basically the same objectives that we do, and that is the overall improvement of the department. And through the improvement of the department then I think of necessity the situation that we are discussing today has also got to improve. I think, as I stated a little earlier, in 24 years with the department I have seen some very drastic changes, and I think they are speeding up daily. I can really believe, sincerely believe, that the day will come where this sort of thing will be unnecessary.

COMMISSIONER SALTZMAN. How about the relationship between the black policemen and the white policemen? Do you find that that is a wholesome kind of situation at this point?

CHIEF HOLT. Overall, yes.

I think it is more a case of human relations now rather than race relations. I think the—whether Joe and Sam are black and white or whether they are just two different individuals is the important criteria. We have some white officers that have black officers that they prefer to ride with. Conversely, some black prefer to ride with white. Some of each prefer to ride with certain individuals of their own race. But, as I say, I really don't believe that this is a race problem. I believe it is a human problem. Some people like some people better than others.

COMMISSIONER SALTZMAN. Assignments are made by the personal choices of the officers and not in accordance with any other—

CHIEF HOLT. Within certain limits. Now under the union contract the individual officer through exercise of seniority is able to select his general area of work, such as a precinct if we are talking about uniform patrol. That is, his precinct and his work hours. Now the assignments within that particular shift are made at the discretion of the commanding officers. On a particular shift or in a given precinct, the number of cars on the street would vary from 9 to maybe 15, 18. And then the assignments within those cars would be left to the commanding officer's discretion based on the workload, compatibility of the people involved, and so forth.

COMMISSIONER SALTZMAN. Mr. Chapman, do you think Memphis is a growing, vigorous city?

MR. CHAPMAN. Not as much as I would like for it to be.

COMMISSIONER SALTZMAN. And is the downtown, the health and vigor of the downtown, crucial from your point of view to achieving the kind of growth you want to?

MR. CHAPMAN. No question about that.

COMMISSIONER SALTZMAN. And are things being done in terms of the downtown area to, like other cities, that might be to—

MR. CHAPMAN. Well, that brings us off into another very long and involved subject, but there are many areas where I would like to see Memphis move ahead much faster than it is. One of those areas is race relations. I intend to do my part as far as the police department is concerned. That is why I wanted to—one of the reasons I wanted so much to be director of police. I think that there are many things Memphians could do to make it a better city. I think we have done some. We haven't done others. We have done others halfway. So that is a pretty involved subject.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Just one thing. You heard my dialogue with Mr. Evans on the new antidiscrimination provision of the general revenue sharing. Do you feel that by hearings of the consent decree you will be in compliance with those antidiscrimination provisions?

MR. CHAPMAN. I don't pretend for one moment to be an expert in that area, but I am advised that the consent decree goes a great deal further than any requirements put on us by the—

CHAIRMAN FLEMMING. I appreciate both of you being here with us.
[Mr. Wyeth Chandler was sworn.]

TESTIMONY OF WYETH CHANDLER, MAYOR, CITY OF MEMPHIS

MR. BACA. Mr. Mayor, would you state for the record your name, address, and how long you have been mayor of Memphis?

MAYOR CHANDLER. My name is Wyeth Chandler. I live at 4805 Hanock in Memphis, and I have been mayor—this is 5-1/2 years.

MR. BACA. There have been a number of studies, evaluations, of the Memphis Police Department under discussion today: one done by the

New York Police Department, one done at the instigation of the city council, one done in conjunction with community relations service, our own State Advisory Committee recently performed one. Do you share the conclusion reached by the director of police that there is in fact a police-community relations problem in Memphis?

MAYOR CHANDLER. I do. I think it's perhaps the same in every major city in the country, but I think we do have a problem.

MR. BACA. Could you describe some of the efforts that you have made in the years you have been mayor to deal with the problem?

MAYOR CHANDLER. Well, I have made many. I guess one of the things that was brought to my attention earlier in my tenure was the fact that there were very few black policemen in the police department to begin with, certainly not holding any ranks. I think that the black citizenry of Memphis felt that this was not a place to go, not a place that they were a part of, and that their opportunities in that line did not lie in that direction: We did a lot to try to change that.

As you probably have heard, we went abroad into all over the Southeast particularly to solicit and to enlist capable black officers, and did. We promoted black officers, having recently promoted, as I am sure has also been pointed out, a man to very high status. He deserved to be promoted. He was very qualified.

This was true not only with blacks but with women. We had for a while a community relations division of the police department which had some pros and cons. We had mixed feelings about it. It seemed to work for a while in the immediate areas. I think, at the same time, it kept some of the officers from feeling they were part of that scheme or part of that plan to develop a good relationship between the police officer on the beat and the community. They let Joe do it, the community relations group do it.

MR. BACA. If I could interrupt briefly, I think we have heard testimony that the community relations division has been recently disbanded or reduced significantly—

MAYOR CHANDLER. That's right.

MR. BACA. It might help all of us understand: How was that decision made and what part did you play in making it?

MAYOR CHANDLER. Well, I didn't play any major part in it. This was primarily the decision of the director at the time. I think Bill Crumby was the director. He felt that, as I stated, it was not serving any great purpose. We had a couple of those operations that seemed to be working fairly well. For example, the boxing program was working very well. Some of the part-time activities where policemen devoted themselves to coaching athletic teams, etc., seemed to work then and I think are still going on outside of that operation.

But he determined it was more important, especially during a time of high crime—which we were high in the Nation in crime—to put everybody back into operation as police officers rather than in community relations and to try to make community relations officers out

of every policeman on every beat. And that is what he thought, and that is what has been done. Very frankly, I think probably it needed to be done.

MR. BACA. Do you believe it's been successful then? Is there a better attitude by the citizenry generally and by the black community specifically as regards the local police?

MAYOR CHANDLER. I am not sure that the attitude has changed dramatically one way or the other. It is our effort to change it for the best, but I can't say that it has one way or the other. I am not sure that that played any great part.

Now the people that participated in the program, I am sure, feel worse. They feel like we put in the community relations program and then withdrew it. Probably feel ill toward the police.

In my opinion, the requirements of serving the community from a police protection standpoint at this point outweighed that small loss, and we try, as I said, to convince every police to be a community relations man himself.

MR. BACA. How do you go about doing that? Was there additional training offered in the area of community relations? Was there some sort of incentive?

MAYOR CHANDLER. There was no incentive except for the fact that we explained to every policeman and I'm sure that every policeman—in service training, number one, has been instructed on how to act. They have certainly been told that we are not interested in anything but fair treatment to all citizens of the city.

The incentive is if a man steps out of line he is fired. He is demoted. He is sent home. And eventually if it happens more than once, if it recurs and the evidence is there, he is removed from the police department and finds employment elsewhere. That is the incentive to try to make everybody behave themselves and do whatever should be done.

MR. BACA. Do you play any active part in the disciplinary process of the police department?

MAYOR CHANDLER. Absolutely none.

MR. BACA. Do you have any role in the formal complaint procedure; that is, from the time it leaves the police department until the time the civil service department deals with it?

MAYOR CHANDLER. Absolutely none.

MR. BACA. You have no input into personnel decisions?

MAYOR CHANDLER. No; except for the fact that I choose both the director, who obviously knows how I feel about disciplinary activity and knows how I feel about the investigation of complaints, and also I appoint the civil service board which know how I feel about the fact that if a man acts unseemly or in a way that is outside of the guidelines of our department, they will back up his firing unless there is some legal reason not to do so.

MR. BACA. Have you had occasion to evaluate the performance of the internal affairs bureau of the police department whether formally or informally?

MAYOR CHANDLER. I have not made any formal evaluation of it. Informally, of course, I know those people that are members of it, and I felt that for a time there was a certain laxity. They were not able to accomplish all that they should accomplish.

Specifically, I recall some of the objections by the people in that division that, for example, if you had an officer who had had—let's just say—5 years of good, solid service and, all of a sudden, he had two or three brutality complaints. These would be ones that really couldn't be proven. They were head-to-head, man-to-man type things, but were a distinct change from his usual operation, that there was not any action taken. But we would at least want to sit down with him and try to find out what is the matter with him. He may have family problems or had troubles or whatever, and we want to find out if any of this was playing a part in his activities or his change in the way he was conducting himself.

That was pointed out to the director and he assures me and still assures me that that will be done. And then we will hopefully eliminate any great mistreatment.

MR. BACA. In your estimation, then, the internal affairs bureau as presently structured is doing what an organization of its type should be doing effectively?

MAYOR CHANDLER. Well, I think it's effective. As I say, it could perhaps be more effective. I don't know. But I think it's made up of very highly trained, highly skilled people. I know that they get the brunt of the bad feelings from the police department themselves, which I think speaks perhaps well of their investigative activities. They are not the highest, best-liked crowd in town by a long shot. I think they are on the right track, and I think under Mr. Chapman they will make great progress.

MR. BACA. Thank you.

You may or may not have heard Director Chapman say that within a reasonable period of time, after certain other matters were taken care of, he intended to request an outside evaluation of the police department. He referred to one possible group to do this as the International Association of Chiefs of Police. Do you agree with that?

MAYOR CHANDLER. I would have no objection to any evaluation by anybody, especially by the international chiefs of police.

MR. BACA. One final question. Do you believe there is sufficient citizen input into the present structure, the present policies of the Memphis Police Department?

MAYOR CHANDLER. I don't know what you mean by citizen input. They have a council elected by the citizens who represent the citizens. They have me, who was elected by the citizens, who represents the citizens. Both the council and my own personal office are in touch with the citizens, and they certainly can have any input they want into what is going on to the advantage of the police department or to its disadvantage.

MR. BACA. Would you be opposed to a group of citizens selected, in whatever way it seems fair, who would have a specific responsibility for assisting the director of police in setting the police policies?

MAYOR CHANDLER. Well, I am not sure about it when you say set policy—no. I would not mind a group that would like to come down and discuss policy and have an input in the policy with either criticisms or praise. They wouldn't be given any power legally to set policy.

MR. BACA. Beyond anything that you may have heard today or—what solutions do you see or what approaches to solutions could you recommend to the Commission as regards the Memphis Police Department?

MAYOR CHANDLER. Well, I haven't heard anything today. I don't know one word that has been spoken. I don't know; I think a little more patience perhaps on both sides, the side of the police department and the side of the citizens, in particular the black citizens.

I have picked up papers here in the city, black newspaper, in which they have already tried, convicted, and hung members of the police department where the matter hasn't even been heard before anybody. I think that is imprudent, and I think it adds greatly to our trials and tribulations.

On the other hand, I have seen statements made by people in authority in the police department, who try and condemn perhaps other people that have been before them. I think a little less quick reaction and overreaction on both sides would help. I think a lot more cooperation, perhaps more communication obviously, between the black leadership, instead of coming out with wild statements about the whole police department are a bunch of racist fanatics on the one hand, and some statements from the police that they have never done anything wrong on the other hand, would probably help to alleviate it.

We have had a number of other things. I might just mention, for example, we called together a group of preachers in the city to try to ask them to interact and help us. Obviously we have worked in these neighborhood watch programs which have been reasonably effective in the black areas. Certainly we have tried to involve all the black citizenship and leaders in cooperating with the police department. I think it's moving forward. It hasn't reached the millenium. It's going to take a lot of education and a lot of cooperation.

The way this matter has been conducted from what I have seen, this particular investigation or what-have-you, lends itself, in my opinion, to things that might help the city rather than harm it. We have not had the great hue and cry. We have not had the great personal publicity involved that we had heretofore. This has been in my opinion a group of people—I don't know these gentlemen at all, but I am speaking to them and to the members of the council—that they have come, and they have investigated. They will make their reports based on their opinions, and that will be that. We don't mind that a bit. We think

that is good, and we feel—at least I have felt up to this point—at all times that this body comes down here to work with the city toward a common goal, and that is better relations between the community, particularly the black community, and the police department. I am happy to see it.

MR. BACA. Thank you, Mr. Mayor.

Mr. Chairman?

CHAIRMAN FLEMMING. Mayor Chandler, earlier today we did receive testimony from leaders, such as the president of the chamber of commerce and the president of the bar association, which indicated that they were not too aware of the existence of a problem in this particular area. Your police director has very frankly said there is a problem, and you concur on the statement made by him. This, of course, would suggest that there is an opportunity to build some bridges between the city administration and leaders in the life of the community.

I noted your statement just a few minutes ago that clergymen had been called together to take a look at the situation. Did I understand correctly that you called them together for that purpose?

MAYOR CHANDLER. We called them down to the city hall, and we offered them the opportunity, for example, to have meetings with police leadership wherever their churches were located, to try to bring them together, black and white and a large number of both, to have the police officers appear, for example, at their churches to speak with the people in the community. We did mention while we were there that we needed their cooperation in bringing information forward because at times it had been withheld because there was this feeling of antipathy between the police and the community. It worked to some degree. I think perhaps many of these people returned. I am not sure it worked formally. It was an informal thing.

Some of the preachers had a great interest. They went out and rode in police cars and met with the police officers and became familiar with them by name, etc. Some took little interest if any, and some, I am sure, quietly went about the job of trying to instill in their congregation that the police department was very interested in them, wanted to work with them, and wanted to get their confidence.

CHAIRMAN FLEMMING. How long ago did that meeting take place?

MAYOR CHANDLER. I think that was probably 2 or 2-1/2 years ago.

CHAIRMAN FLEMMING. Has that been followed up at all?

MAYOR CHANDLER. It was followed up, but not formally. As I say, it was simply a chance to get through to leaders. We have not only done it with preachers, but with the business community. Whenever they call me, I go in an effort to try to make them feel that the police department is their police department. I think most of the leadership now believes that. It's tough sometimes to filter it down to the man on the street.

CHAIRMAN FLEMMING. Trying as we understand it, for a period of time there was a citizen advisory committee in existence to the police

department, and that is no longer true. But some consideration apparently is being given by Mr. Chapman to the reestablishment of such a committee. Do you think a committee of that kind could help to build the bridges between the department and leadership in the community?

MAYOR CHANDLER. Of course that committee was established when General Hubbard was here, the ex-marine general. It was made up of a broad, sweeping segment of the community. As far as I know, they worked very well with the general public.

I have tried to point out to Mr. Baca—I assume that is his name, excuse me if I mispronounce it—that the reason for their being, I believe, came from the Justice Department. Someone from Atlanta came up and suggested they get together and form this group and have meetings and work together and so forth and so on. I think it was very good.

As I say, they have certainly no legal stance. They are simply a group of citizens representing every segment of this city who make their feelings known and become a sounding board for him in operating the police department. As such, certainly it's acceptable. We have boards with regard to every operation we have in the city. We have no trouble with them at all. If they take a particular stance on one particular issue that we don't agree with and say we are not going to talk any more, well, that is that on that. Then obviously they will be short-lived. But if they take the position that they are bringing to our attention the things that they think ought to be brought to our attention, if they are constructively critical, then that is fine.

CHAIRMAN FLEMMING. We have had a good deal of testimony on both sides relative to the procedure that is followed in handling individual complaints. An assumption on the part of representative organizations such as the ACLU and NAACP is that complaints are filed and then they often just don't hear anything about them at all.

Now, the department indicates that they have spelled out in some detail the procedure that they have followed. They indicate that a notification is sent, but the notification does not indicate what disposition has been made of the complaint. We have raised the question with witnesses as to whether there might be a better understanding developed between the minority community and the department, if the persons filing the complaint or their representatives were made aware of why the complaint was disposed of in a particular manner. Do you have any comments to make on that part of the procedure?

MAYOR CHANDLER. Well, that is a rather involved question. I have, for example, no absolutely—for example, if the disciplinary action that is taken is certainly a noteworthy action like a removal, of course they are informed of that, I am sure. If we have a situation where there is legal activity, legal action being taken, and the disciplinary action of the police might go to the harm of the policeman, I am not sure where that fits into the overall picture.

I have no qualms about telling people what we did, good or bad, or why we did it. It doesn't bother me at all. I thought frankly that they were being informed of what transpired. Not certainly the facts, not the whole deal in details, but certainly if a man writes and say this and so happened to me and we go out and take statements from the policemen, and they say we don't know what you are talking about, we weren't in that neighborhood, and thus and so, and we have no evidence whatsoever to substantiate any charge, then we ought to write him back and say we have investigated and we don't find any evidence, it was denied by the two policemen, etc., there was a witness saying he saw them somewhere else or what-have-you.

I don't think it should necessarily go into a long explanation, but I think everybody that complains should be told why the complaint was dismissed or what happened, basically.

CHAIRMAN FLEMMING. You indicated in the beginning that you realized there were problems between the police department and the community and, in many instances, members of the minority community. Do you have a feeling that some of that tension, if I may use that particular word, grows out of a perception on the part of members of minority groups or their representatives that there is taking place a violation of some of their civil rights? Do you feel that that is at the heart of the tension?

MAYOR CHANDLER. Well, I am not sure that they would put it that way, but I am sure some of them, many blacks in the city, and I am sure some whites too, feel like their civil rights—they wouldn't put it in that language. They feel like they don't get a fair shake. They put it in those words.

No matter how much we try to alleviate it, no matter how hard we work to change that attitude, there are a lot of people who purport to try to change it for the better who are working to keep it just the way it is. We have that type of activity going on in the city as well as in the Nation. There are a lot of people who talk a good game about trying to eliminate the feelings that blacks have toward whites who are out here, as I said earlier, making untrue statements about particular cases. I think arousing unjustifiably the ire of the average black citizen.

As I say, when I pick up a headline in a paper that says last Thursday policeman *X* beat citizen *Y* to the ground and did thus and so, unprovoked, etc., etc., etc., and there hasn't even been a trial or hearing or anything else—this is just out of the mouth of the accuser—then certainly no matter what happens later, if the matter turns out to be absolutely fictional, great damage has been done. This is something that we, of course, in government can't do anything about. It's not only true in Memphis. It's true in every city in this country.

CHAIRMAN FLEMMING. The fact that things like that can happen makes it, it seems to me and I would be glad to have your comment on it, all the more necessary to try to inject into the picture what I

like to think of as administrative due process so that it's clear that when a situation of this kind develops there is going to be fair, impartial, objective evaluation of the situation and a conclusion reached on the basis of the evidence.

MAYOR CHANDLER. Well, we think we have administrative due process. We think we are certainly dedicated to the proposition that we continue to have it. We are dedicated to the proposition that every citizen in Memphis should be treated the same, equal, justly, constitutionally, with all their rights.

But, as I say, there are haranguers. Certainly I am not referring to anybody here present, as far as I know. I don't who all is here. But there are people that for their own purposes, political purposes generally, will say "nay" to that no matter how much we do or how just the process is. Our situation is, we are going to do what we think is correct and which is in line with the law, with the civil rights of the citizens of this city. That is the word that he has given to the police leadership. That is the word that has been given to the policemen on the beat. If they violate it, we will get rid of them. That is all I can say to you as far as what we will do about the situation. We don't intend to defend those who violate the civil rights of the citizens of the city no matter what their race may be or what the race of the policeman may be. That is our whole intent, and that is what we intend to do.

Now when you perhaps get to the heart of it, even if and when this is done perfectly, is that going to eliminate the feeling among all the black citizens that it's not being done at all? And I say that it will if and when all of the black leaders, who are now given entree into the police department, can examine it themselves, if they find that this is true and we are doing this job, will go abroad and let the world know that we are, rather than continuing to state that it's not going on. Then, of course, it will be very different.

CHAIRMAN FLEMMING. That is one of the reasons I raise the question of possibly working out a procedure where people would have a more adequate notification of what happened in the effort to deal with the complaint in an objective manner.

MAYOR CHANDLER. I know that Mrs. Smith, during my administration when General Hubbard was there, wrote me a letter one time stating how thankful she was that General Hubbard was sending her all the information on all the charges. I thought that was still being done, and if it's not being done I just don't know about it. I have not heard from her since.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mayor Chandler, what would you like to see happen in this city by way of improving race relations? Do you have an idea of some kind of effort?

MAYOR CHANDLER. Well, I would like to see every citizen of the city proud of its police department as they should be, happy with it, work-

ing with it, cooperating with it, helping eliminate the criminal in this city. That is what I would like to see.

COMMISSIONER SALTZMAN. Were you suggesting earlier that the media have sometimes, by the way they have covered the news relative to the police department, aroused or been responsible for the arousal of negative attitudes toward the police department?

MAYOR CHANDLER. I think there is no question about that. At times I think it's primarily—there is a black newspaper that when I pick it up and the headlines searingly state as facts, allegations, I think it's—I am told by Mr. Chapman that that has diminished greatly under his administration, that he is in touch with that group and hopefully has eliminated that problem.

COMMISSIONER SALTZMAN. On the other hand, does the media adequately cover the cases where there are valid charges?

MAYOR CHANDLER. As far as I know they do. I read about—you are talking about cases, not just allegations, where the matters actually go to court or something happened? As far as I know, they do. I read from time to time, too often as a matter of fact, where someone has been sued or received a judgment for being mistreated by the police on the one hand or criminal charges have been brought on the other, far too many times. But they seem to be adequately covering those.

COMMISSIONER SALTZMAN. Then in general your impression of the media is that they are giving fair treatment, everyone a fair shake?

MAYOR CHANDLER. I don't have any objection to the general media of the city. Lately I haven't had much objection to any of them. I object to them, but not on this score.

COMMISSIONER SALTZMAN. Well, I guess everyone in public life has a problem.

MAYOR CHANDLER. The cartoonists are bad.

COMMISSIONER SALTZMAN. What is your general evaluation of the condition of race relations in the city of Memphis?

MAYOR CHANDLER. Of course, it's hard for me to judge. I go—I am a member of the board of directors of the Mayors' Conference. I have been in almost every major city in the country in the last 6 years. I certainly don't find anything unique here. I don't find that we are alone. I don't particularly think that we are really in bad shape. I think it's more or less like our financial situation; we are not in good shape, but certainly we are not alone there. I feel like it's improved.

In '68 we had perhaps the worst situation that existed in any city in the country. It was magnificently handled by our police department. We, of course, were the start of all the trouble, and yet, I think, as I remember there was one serious injury in the whole of the riots that we had. We had nights with curfew, etc., opportunities for something really to break loose in the city, something tragic. We have come a long way from that time.

We see it everywhere in the city government, not just in the police department, but everywhere. We see, as I say, high-ranking officers are

black, promotions are being given. We have worked out with the Justice Department and are one of the few cities in the country that were able to come to a conclusive agreement with the Department of Justice on hiring and promotional policies without any resort to any litigation, but simply to sit down once the lawsuit was filed and work it out.

We are not, as I say, perfect. I think it's about—I would like to see it better and strive daily to see it better.

COMMISSIONER SALTZMAN. In what specific ways, if there are any, can the moral authority of your office be used to advance not only community relations but the community's attitude toward the police department, the police department's attitude toward the community, and the minority community in specific?

MAYOR CHANDLER. Well, as I indicated earlier, the moral direction that I stand for—I not only do it here, but I do it wherever I am—I don't stand for anything one place and not another. We tell the members of the police department to do that which is right. If you don't, you are gone. That is all I can do.

They follow up on it, and as far as I am concerned, that is being done. Now if the citizens believe that, then I think relationships between the citizens and the police department will be different. Many do believe that, some do. More do now than did in '68. I think more do now than did in '76.

But it is a constant problem that needs to be worked on by the police and by the citizens to bring it to a point where the citizens have true faith that they are being—that they go with their problems to the police and it will be solved, and solved honestly and equitably. It's not easy.

CHAIRMAN FLEMMING. I was very much interested in your description of the evolution of the effort to have the police department accept definite responsibility in the area of community relations. At one time you had a unit that was charged with that responsibility and decided to disband that unit and place the responsibility on each member of the police force. From the standpoint of an administrative philosophy, I happen to feel that we do at times set up special units and then everybody else says it's none of my business; it's that unit's and that unit's alone.

MAYOR CHANDLER. And the reverse is true, I might add, Mr. Flemming. The citizens get to where they like the officers in that community relations group, but they still differentiate between that man and the man out in the patrol car. It really hasn't brought them together.

CHAIRMAN FLEMMING. What I was interested in, we did ask some questions about the inservice training program that is put on by the academy. If my recollection is correct each officer has to go through a 40-hour recharging type of program, retraining type of program. But again if my recollection is correct about 2 of that 40 hours is on po-

lice-community relations. Do you feel that efforts might be made to get additional resources from LEAA or some other similar place that would enable you to invest more time and resources in the police-community relations training for each member of the force?

MAYOR CHANDLER. I don't think certainly we would object to having more money to have more training in police and community relations. We think that is an important element of being a policeman. You know, a policeman today has to be about everything, a psychiatrist, a social worker, and everything else. And all the training he can get in his relationship with the community generally is obviously going to make him a better officer and cause the city and the citizenry and the city a lot less trouble.

MR. NUNEZ. One question, mayor. This morning we heard testimony that black police officers had risen to the captain level, but that—

MAYOR CHANDLER. Inspector, I believe.

MR. NUNEZ. Inspector. Well, that none of them were at the decision-making level. The question I wanted to raise with you is that at some future point in time would you consider the possibility of appointing a qualified black police official or a citizen as a director of the police department?

MAYOR CHANDLER. Well, I have no plans to do that. I will just be honest with you. We have a man appointed and he will be there for the rest of my term. If I am reelected, that is another day. But I am very satisfied with the man we have, and to say that an inspector has no decisionmaking is about as erroneous as some of the things we read in the paper. An inspector in the city of Memphis makes more decisions than anybody I know. He is the man who is actually in charge. For example, the man you were talking about is the inspector who is in charge of the West Precinct, one-fourth of this city; he is in charge of every major decision made in one-fourth of the city of Memphis, which is a pretty good size city, over about 700,000 now, so divide that by four and that's how much decisionmaking power? He is actually chief of police of that area; that is a pretty strong position.

CHAIRMAN FLEMMING. We are very appreciative of your coming and presenting your testimony and responding to our questions.

MAYOR CHANDLER. I appreciate being asked, and I appreciate the way and manner that this whole matter has been handled by your group.

CHAIRMAN FLEMMING. As I indicated at the beginning of the hearing, we reserve time at the end of a hearing to listen to unscheduled witnesses. These are persons who have indicated to our staff, by this time, that they desire to be heard.

They have been told that they will be heard for 5 minutes, but that they can file a statement which expands on their views and which will be made a part of the record of the hearing. Those who make the 5-minutes statements are not questioned by staff or by the members of the Commission.

It is my understanding that some persons have indicated their desire. Do we have a list?

MR. STOCKS. Yes.

CHAIRMAN FLEMMING. I will be able to listen to this for a few moments, but then it will be necessary for me to leave to get a plane. But Commissioner Saltzman will be here until this testimony has been presented.

There are just four, so I am going to suggest that all four be called at once and they can come up to the witness table. I can swear them, and then each one can take 5 minutes, if you will call their names.

MR. STOCKS. Frances Wilkins, Edwin Owens, Ira Sachs, and Cornelia Crenshaw.

CHAIRMAN FLEMMING. If you will just come up to the witness table and remain standing, I will swear you in.

[Ms. Frances Wilkins, Mr. Edwin Owens, Mr. Ira Sachs, and Ms. Cornelia Crenshaw were sworn.]

CHAIRMAN FLEMMING. Thank you very much. We are very happy to have you and very happy to have your testimony.

MR. STOCKS. We will proceed in the order that the witnesses indicated their desire to participate.

CHAIRMAN FLEMMING. Are the witnesses advised as to some of the rules that govern the testimony?

MR. STOCKS. Yes, they have been so advised. As the Chairman has indicated, each witness is allotted 5 minutes.

Frances Wilkins was the first to sign up.

CHAIRMAN FLEMMING. Counsel keeps time, and he will say your time is out. If it's in the middle of a sentence, you can finish the sentence, provided it isn't too long a sentence. But if you will, give warning at the end of 3 minutes?

MR. STOCKS. At the end of 4 minutes.

CHAIRMAN FLEMMING. At the end of 4 minutes he will give warning, and Commissioner Saltzman will preside.

TESTIMONY OF FRANCES WILKINS

MS. WILKINS. I took my mother to the City of Memphis Hospital on March 26, on a Saturday. She was in a very disturbed state of mind. She is a diabetic. She was hypertensive, and she is also a mental patient.

We were in the process of getting her admitted into the hospital. A psychiatrist had interviewed her and decided she needed medical attention. While we were waiting for someone to take to the psychiatric ward, we were sitting in the hallway in the emergency room treatment area. An officer walked by. My mother called him. He didn't hear, didn't seem to hear her at first. She called him again louder. He stopped, and she asked him where was he going. He didn't answer; he just looked at her and turned to walk away. This upset her. She

jumped up and asked him didn't he hear her talking to him; couldn't he answer her—she started, you know, harassing him more or less, asking him couldn't he talk.

I told him that she was sick, that she was already admitted in the hospital and someone was going to take her up to the floor. He told me I had better sit her down, or he would throw her in the tank.

I tried to talk to my mother and get her to sit down. But she was really upset by now. She kept telling him that that's why they were being shot down in the street, because they didn't know how to treat people.

He took off his handcuffs and went to handcuff her, and my mother jumped back and told him not to touch her. When she did, he attacked her. He knocked her to the floor. I went over to try to stop him. Two nurses grabbed me and said not to get upset.

In the meantime, I saw him kick her in the stomach. He stomped her, and she was on the floor the whole time. He jerked her by her hair and dragged her into the police office at the hospital. Once inside there he was joined by other officers. I couldn't see what happened. I heard a lot of commotion. My mother was cursing, and I heard noises as if there was fighting or something. I tried to get up. I heard a loud noise, and I asked what happened. Someone said, "Your mother fell."

But later she was charged. He charged her with disorderly conduct and assault and battery. He said that she slapped him and so forth, but I didn't see this.

Well, you know, she remained in the hospital. She was placed in the prison ward out there. We paid bond and got her released into the psychiatric ward, where she remained for almost a month. She was being treated for a diabetic and her mental problem.

We went to court on the 25th of April and the charges were dropped against her, with request from her doctor and the social worker at the hospital because she was very ill at the time.

MR. STOCKS. Thank you.

All right. Edwin Owens.

TESTIMONY OF EDWIN OWENS, JR.

MR. OWENS. My name is Edwin Owens, Jr. I live at 1408 North Bellevue, which is a predominantly black neighborhood, an area of the city that has been grossly neglected by the city. We have no recreational facilities in that area. So in our pass time we congregate and talk at the corner of Bellevue and Smith. At this corner there is a constant harassment by police officers.

One day about a week and a half or two weeks ago I was arrested by police officers for public drunk, which I wasn't drunk. I filed a complaint with the internal affairs bureau, and I don't know whether or not they are going to act on it or what they are going to do. But there is supposed to be action taken.

The officers that arrested me that night came back through and saw me again coming out of the store about 10 p.m. one night. I went in the store to buy a drink and was coming out. On mere sight of me, told me to go somewhere, or he will arrest me for disorderly conduct.

When we were arrested the first night there were four of us—excuse me, there were four of us. And for no reason at all they stopped and told us to put our hands on the car and started searching us and just put handcuffs on us and put us in a car, and said some words like “nigger, nigger, nigger,” and things of this sort. And they took us downtown and arrested us for no reason at all.

There is constant undue harrassment in the neighborhood by police. They ask us to get off the corner and go inside. When you go inside, you are still subject to harassment on the inside of a public business. They come in and talk to you any kind of way and treat you any kind of way.

MR. STOCKS. Thank you, Mr. Owens.
Ira Sachs.

TESTIMONY OF IRA SACHS

MR. SACHS. I live at 679 Adams. My name is Ira Sachs.

A couple of things I would like to make sure that comes across here. I was on the police-community negotiating team. I would like to say that the police side and the citizen side worked very well together.

I think if anything comes out of this hearing, that we should try—and I chatted with several of the people here, and they indicated that they would also like to see the police-community negotiating team started up again, perhaps under the auspices of the Justice Department, which was done before, their Community Relations Division.

There is, under the community relations charter, under the city of Memphis, a subcommittee called police-community relations. The mayor has never seen fit to appoint a chairman of that subcommittee. If he, as he has indicated here, thinks it is a good idea, I know that Joe Kent and some of the others have indicated that it would be helpful—Director Chapman—it would be a simple matter for the mayor to show that he is sincere in what he’s saying by going ahead and appointing a chairman and getting the CRC commission to act as a support facility for it. It would be a very easy thing to get started.

Another thing is the psychological evaluation on an ongoing basis based upon the IBM personnel reports of the individual officer’s records. They easily know who it is that is a problem.

We were involved with one case where a man had a confession beaten out of him. Three months later the officer committed suicide.

There are a lot of stress-related problems with police officers, and I think the city owes them the facilities to reduce some of this stress. Certainly a city of this size has it available.

Another factor is the PILCOP [phonetic] in Philadelphia where under an LEAA grant there is an organization set up to handle brutality cases. It's separate from the police department, and the ACLU, which I am active with, is going to, along with several other organizations, file for such a grant and we hope will get support from the city so that this can be an ongoing situation. We will be happy to get into the record the Philadelphia PILCOP [phonetic] proposal.

In addition we would like to make sure that we get into the record the New York Police Department study that was done. I think that is a very important study. In fact, we had a difficult time in getting it. I would like to recommend to Mr. Saltzman to ask that that be placed into the record.

COMMISSIONER SALTZMAN. I think it is in the record.

MR. STOCKS. The New York one, I am not sure we have it.

MR. SACHS. I seriously doubt—

MR. STOCKS. We have a copy, but you can formally move it into the record.

COMMISSIONER SALTZMAN. I move that the New York Police Department review of the Memphis Police Department be entered into the record at this point.

MR. SACHS. Lastly, I would like to mention that right now the timing is right, the city and the union, the police association, should get together and come up with what is fair so that the future contract won't have these built-in problems for the city because it's a fallback position for too many people right now, right down from the attorney general's office—If this is taken out, whatever is done in other areas—I am sure the Justice Department can give us some positive action that has been taken in other cities to handle this particular problem—we can benefit by it. I am sure the union would like to think in an equitable way. I know they have done a marvelous job in the 4-1/2 years that they have been here. I think very positively about it.

Thank you.

MR. STOCKS. Thank you, Mr. Sachs.

Cornelia Crenshaw.

TESTIMONY OF CORNELIA CRENSHAW

MS. CRENSHAW. I am Mrs. Cornelia Crenshaw. I reside at 603 Vance Avenue. I have had a lot of trouble with the police, not because I am a criminal, but because I am a human rights activist. I have been arrested many times. I have been maced. I have been beaten. I have become bitter naturally because of the injustice to myself and to my people.

But as I have recognized and analyzed the situation in Memphis since 1968, the year of our strike here, I realize that it is not totally the police department. At this point I would like to charge the mayor of the city; and all of us who are here are here at great risk, I assure you of that.

From 1968 up until the present time I have been harassed. I have had every type of reprisal that a person can have. Most of the rights guaranteed me under the Constitution have been violated, not only through the police, but through the courts, through the health department, through many other departments. So my trouble doesn't always come from the police department.

I would like to say at this time that I believe that the Memphis City Council in 1968 and the mayor at that time, Mayor Henry Loeb, had a great amount to do with the problem here in the city of Memphis because of them being so obstinate. I do know that at that time, gentlemen, the police were used to carry out the will of the obstinate members of the city council and the mayor. To show you what I am trying to say, many of the policemen did not wish to be a part of that situation that maced us and jailed us. Many of them gave us information which might have to do with some of us being around here to testify today.

So let me say that a great amount of money was raised during the 1968 garbage strike by placing an improper fee, a garbage tax, and a lot of money was raised out of this. It went to pay the overtime for the policemen. So they made a lot of money out of the situation. I have been in protest of that fee since 1968. In fact, at my home where I live, 603 Vance Avenue, I have had no lights, gas, and water or city utilities since that time. And I always make the reference that I am very clean.

Let me say to you that the police carried out what these people, the city council and these folks, wanted done. Some of them were rats; I know that. But some of them were not. Some of them were decent people who didn't want to be in all of this sort of thing.

All right.

At that time when I saw policemen I just became angry because of what I had gone through. I was one of those who in the first days of things when we had the first march, the police cars pushed us over to the curb. That was the very first time. And every time—all right.

Well, let me tell you one thing. At city hall the gentlemen of city hall had a pressure type situation where I was concerned because they did not want to be present to hear council business, which is any citizen's right at this time. The police were brought in in order to put pressure on me and make a public example out of a person who dares to dissent.

Let me sum this up very quickly. Each instance that I have had serious problems with the police—and there are about six other that I could mention, and I am going to put them in writing for you, if you don't mind, and mail them up to you—have been incidents that I feel could have been avoided if we had had a city government a little bit more sensitive to the needs. I think that to put it all on the policemen is unfair. And you must let me say this: I told them at one of the meetings at city hall in 1968, during the garbage strike, I stood there

and I told the policemen, I said, "You all aren't doing too well yourselves; you had better try to get yourselves a union."

I just wanted to say to Mr. Kent, I told you so. You are getting your union now, and you are about to strike. I will help you when you get ready to strike.

Thank you.

COMMISSIONER SALTZMAN. May I just remind you of the rules of the Commission with which we opened this morning. Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses.

I think with that we will call this session adjourned.