

POLICE-COMMUNITY RELATIONS IN MIAMI

FLORIDA ADVISORY COMMITTEE
TO THE UNITED STATES
COMMISSION ON CIVIL RIGHTS

This summary report of the Florida Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints should not be attributed to the Commission or to the Advisory Committee, but only to individual participants in the community forum where the information was gathered.

A SUMMARY REPORT

NOVEMBER 1989

**POLICE-COMMUNITY
RELATIONS
IN MIAMI**

FLORIDA ADVISORY COMMITTEE
TO THE UNITED STATES
COMMISSION ON CIVIL RIGHTS

A SUMMARY REPORT

NOVEMBER 1989

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957 and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent bipartisan agency of the Federal Government. By the terms of the act, the Commission is charged with the following duties pertaining to discrimination or denials of equal protection based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; the investigation of discriminatory denials of the right to vote; the study of legal developments with respect to discrimination or denials of equal protection; the appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection; the maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection; and the investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the United States Commission on Civil Rights Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

LETTER OF TRANSMITTAL

Florida Advisory Committee to the
U.S. Commission on Civil Rights
September 1989

MEMBERS OF THE COMMISSION

William B. Allen, Chairman
Murray Friedman, Vice Chairman
Mary Frances Berry
Esther G. Buckley
Sherwin T. S. Chan
Robert A. Destro
Francis S. Guess
Blandina C. Ramirez

Melvin L. Jenkins, Acting Staff Director

Attached is a summary report on a forum and on a briefing meeting held by the Florida Advisory Committee in Miami on June 25, 1988, and February 23, 1989, to obtain information on police/community relations in Miami. The Advisory Committee approved unanimously submission of this report to the Commissioners.

There was a general consensus among forum and briefing meeting participants that poor police-community relations and such attending issues of unemployment, lack of economic development, and poor housing conditions, which characterize the Overtown and Liberty City communities, are very serious and continue to plague the whole of Miami.

Although the information provided does not result from an exhaustive review, it will be of value to the Committee for further program planning and we hope of interest to the Commissioners.

Respectfully,

Michael Moorhead
Chair, Florida Advisory Committee

Florida Advisory Committee to the
U.S. Commission on Civil Rights

Michael J. Moorhead, Chairperson
Gainesville

Jackie L. Bell
Miami

Jonathan I. Kislak
Miami Lakes

Robert M. Brake
Coral Gables

June D. Littler
Gainesville

Kenneth Clarkson
Coral Gables

Gustavo Marin
Miami

Virgie H. Cone
Jasper

Roland Howard Rolle
Cooper City

Linda Garcia
Temple Terrace

Carolyn Ann Winston
Casselberry

Acknowledgments

The Florida Advisory Committee wishes to thank the staff of the Commission's Eastern Regional Division for its help in the preparation of this summary report. The forum and summary report were the principal assignment of Bobby D. Doctor with support from Linda Raufu and Edna Y. Nicholson. The project was carried out under the overall supervision of John I. Binkley, Director of the Eastern Regional Division.

TABLE OF CONTENTS

BACKGROUND	1
PURPOSE OF THE FORUM	4
THE PARTICIPANTS AND THE FORUM	5
AN UPDATE	9
POLICE-COMMUNITY CONFLICT	14
SUMMARY	17
APPENDICES	
A. FINDINGS AND RECOMMENDATIONS OF THE FLORIDA ADVISORY COMMITTEE REPORT, <u>POLICED BY THE WHITE MALE MINORITY - A STUDY OF POLICE COMMUNITY RELATIONS IN MIAMI AND DADE COUNTY, OCTOBER 1976</u>	20
B. FINDINGS AND RECOMMENDATIONS OF THE ADMINISTRATION OF JUSTICE CHAPTER OF THE COMMISSION REPORT, <u>CONFRONTING RACIAL ISOLATION IN MIAMI, JUNE 1982</u>	33
C. FORUM AGENDA	75
D. BRIEFING MEETING AGENDA	78

Background

Miami has a population of approximately 391,000--64 percent Hispanic, 25 percent black, and 11 percent white, and Dade County has a population of approximately 1,800,000--41 percent Hispanic, 19 percent black, and 40 percent white (Source: Research Division, Metro-Dade County Planning Department). The area is a rapidly growing and expanding urban center of some 300 square miles which is experiencing dramatic social and economic change. The downtown skyline is being transformed by mega-structures that move increasingly upwards. There is also a new mass rapid-transit system in place and functioning. In addition, Metro-Miami has become one of the major banking centers of the southeast region and a major governmental center of Florida with 27 municipalities and many State and Federal district offices. However, in spite of these apparent progressive developments the Greater Miami Area with its multiethnic, multicultural and multiracial makeup continues to pose new struggles and new challenges for many of its citizens.

Historically, there has been a long-standing problem of allegations of police mistreatment of minority residents in the Miami area. The allegations range from police insensitivity and lack of respect to the use of excessive force, brutality, and unnecessary shootings and beatings which sometimes result in death. This matter has been examined previously by both the Florida Advisory Committee and the Commission. The Committee held a factfinding meeting in 1975 and issued a report in 1976,

entitled, Policed by the White Male Minority - A Study of Police-Community Relations in Miami and Dade County. The report deals with the recruitment, hiring, training, and promotion of police officers; the internal review process dealing with complaints against police officers; and the relations between police and minority citizens. The report contains 31 critical findings and made recommendations for dealing with them (see appendix A). The report's title aptly described one of the critical problems: a miniscule number of minorities and women in the sworn officer ranks of the two departments.

After the Liberty City riot in 1980--which was an immediate reaction to the exoneration of white Dade County police officers who had beaten a black man to death--the Commission itself held a hearing in Miami. The result was a major statutory Commission report in 1982, entitled, Confronting Racial Isolation in Miami. The Commission report is a comprehensive study of the community, reviewing such subjects as education, housing, economic development, and juvenile justice. It also has a chapter on the administration of justice, subtitled, "A Continuing Sore Spot." The Commission report contains 13 recommendations in the chapter on the administration of justice (see appendix B), many of which are similar to those in the earlier Florida Advisory Committee report. In its report, the Commission found relatively little improvement in the 6 years since the publication of the Committee report in 1976.

For example, the Commission said that the Miami Police Department and the Dade County Public Safety Department had failed to maintain effective systems for receiving, investigating, and determining the validity of complaints about police misbehavior and for imposing appropriate sanctions. The Commission further concluded that without effective mechanisms for resolving allegations of police misconduct and for reducing friction between the black community and the criminal justice system, distrust and the potential for violent confrontation would remain.

More recently, in the 5-month period beginning in January 1987, 10 men were shot to death by the police in Dade County or Miami, 9 of whom were black, Hispanic, or Asian. The police involved have been exonerated in these cases and black leaders agree that while some of the shootings were justified, others were surrounded by dubious circumstances. However, they, and other witnesses to police behavior, contend that local police officers continue to use excessive force when dealing with black citizens. Leading proponents of this view are members of People United to Lead the Struggle for Equality (PULSE). PULSE is an organization founded in 1980 by more than 40 black ministers and other community leaders after the riot for the purpose of securing equal treatment of the black community.

In March 1987, PULSE invited then Commission Chairman Clarence M. Pendleton, Jr., to address its annual meeting in May. The Chairman made a commitment while there to follow up

on the charges of police misconduct in Miami and Tampa made by PULSE leaders. In response to that commitment, the Florida Advisory Committee held a forum on the issue in Miami in June 1988. More than 30 representatives of 25 community organizations and local, county, and State agencies were interviewed and 21 of the representatives participated in the forum. The remainder said they could not or would not participate publicly in a forum, but agreed that there was a significant problem and supported holding a forum. The Committee Chairman and staff reviewed extensive materials, such as the Committee and Commission reports mentioned above and information from police departments, in preparing for the forum.

Purpose of the Forum

The general purpose of the forum was to provide an opportunity for a public exchange of views between minority community representatives, who believe the police are mistreating minorities, and the police officials themselves. The goal of the exchange was to achieve better understanding on the part of both sides of this controversial issue.

The specific purposes of the forum were:

1. to provide the community organizations an opportunity to air grievances, explain attitudes, and describe perceptions;
2. to provide the police departments and other public officials an opportunity to describe and explain their operations, such as recruitment, employment, training, handling of grievances and complaints, and policies and experiences regarding the use of force;

3. to provide the Committee an opportunity to follow up and monitor the status of its and the Commission's recommendations contained in previous reports; and
4. to provide an ameliorating influence on the problems which were to be discussed.

The Participants and the Forum

A total of 24 participants appeared before the Florida Advisory Committee during its day-long forum. The participants in the forum from community organizations and groups described some past and current efforts to remedy the problem and public officials responded by describing their operations and efforts at safeguarding the public. The agenda, including the list of participants, is attached in appendix C.

Leaders of PULSE began the section on community organizations demonstrating the basic problem by listing the names and circumstances under which 15 black men or women were killed or beaten since 1979 surrounded by what they called "cloudy circumstances." All of the incidents were attributed by PULSE representatives to Dade County police officers. Dade County or Miami officials did not address these incidents during their presentation later in the forum.

PULSE was followed by spokesmen for the Miami Christian Improvement Association, the Southern Christian Leadership Conference, the four area NAACP branches, and the Police Community Relations Committee of the Dade County Community Relations Board (CRB). Representatives of all these groups underscored the concerns of PULSE and joined them in listing steps to correct the situation with the idea of preventing

future incidents of the use of excessive force by police officers in the Miami-Dade County area.

One agency singled out for criticism by most community groups was the Dade County Independent Review Panel (IRP). The panel is comprised of six members appointed by the Dade County Commission from a pool of nominees supplied by the Dade County Bar Association, the League of Women Voters, the Metro Dade County Community Relations Board, the Dade County Community Action Association, the Police Chiefs' Association, and the chief judge of the county. The role of the IRP is to review all charges and claims against the county by its employees and citizens, including charges of police misconduct. The community groups indicated that there should be a panel with sole responsibility for reviewing charges of police misconduct but that the IRP is an "establishment" agency without adequate community representation and that it should have subpoena powers.

Another need expressed by many and supported by all was to increase the number of black police officers, especially on the Metro Dade County Police Department and the Florida Highway Patrol. It was generally believed by most of the participants representing the community groups that black officers are less likely to use excessive or deadly force. Furthermore, according to these participants, many in the black community, a community which is up in arms over white and Hispanic police behavior in their neighborhoods, will and do accept black police officers

doing their duty sooner than they will accept white or Hispanic officers.

There has been improvement in the number of blacks and other minorities on the sworn forces, especially in Miami and Dade County, but not much in the ranks of the Florida Highway Patrol. For example, minority representation in the Miami Police Department has increased from 44 percent to 60 percent since 1980.^{1/} In the Metro Dade County Police Department, minority representation has increased from 15.8 percent to 36 percent since 1980.^{2/} A recent report by the Dade County CRB notes that the highway patrol has effectively avoided compliance with a court-ordered affirmative action plan. The report also notes that minorities and women are absent from the supervisory and command structure and that training with regard to human relations is minimal.^{3/}

The Florida Highway Patrol is also accused by many forum participants of using Dade County as a "dumping ground" for disciplining officers from other parts of the State; that is, if an officer's behavior and ratings indicate a need for

1/ Miami Police Department, Personnel Practices Governing the Recruitment, Selection, and Promotions of Police Officers in The City of Miami, Part One, June 1988, p. 3.

2/ Metro-Dade Police Department, Use of Force, Community Violence and Related Issues, Section III-D.

3/ Metro Dade Community Relations Board Report on Florida Highway Patrol, June 1988, p. 10.

disciplinary action, that action may be to assign him or her to Dade County, which by implication is an undesirable place to work because of poor race relations. (Invitations to officials of the Florida Highway Patrol to attend and participate in the forum were declined).

Another concern frequently expressed by community groups at the forum was the difficulty in obtaining information from police departments when a charge of police brutality had been made. Both the NAACP and PULSE representatives complained that they have had problems in this regard. A related complaint was that officers investigating a case and interviewing witnesses in connection with a crime or a charge, interview the witness in an intimidating, hostile manner. The result is that the witness sometimes fails to provide all the information that is known and feels harassed and intimidated.

Officials of the police departments in Miami, Dade County, and Opa-Locka accepted the invitations to participate in the forum. They told the Committee they all have rules and regulations and procedures to handle the use of force, investigative procedures for complaints, and hiring programs to improve racial and gender balance. Miami and Dade County have task forces which are designed to go into a community and calm it if a serious police-community incident has moved the community to a high level of tension. All have improved minority representation on their forces in the past 8-10 years. None of the

officials, however, addressed the charges made by the community organizations.

An Update

In the aftermath of the riots of January 1989, caused by community reaction to the shooting death by police of Clement Lloyd and the subsequent accidental death of his motorcycle partner Allan Blanchard, the Commission and the Committee were prompted to conduct additional field interviews in late January and held a Committee briefing meeting on February 23 with 13 local leaders to include: the mayor, police chief, a chamber of commerce official, community leaders, and others (see appendix D for meeting agenda) to update information concerning the volatile situation in Miami. The Committee and staff sought to obtain current information from these leaders relating to their perceptions, assessments, and evaluations of the current conflict, with an emphasis on police-community relations, facing the city of Miami. In this regard, answers to the following questions were sought.

1. What are the historic causes of the conflict?
2. What are the current causes (specific) of the conflict?
i.e.,
 - a. Police-community relations
 - b. Employment/Economic Development
 - c. Housing
 - d. Race Relations

3. What are the solutions to the conflict?

- a. Local
- b. State
- c. Federal

In responding to the above questions there was a consensus of opinion among the community leaders that the historic causes of the conflict were grounded in the institutional discrimination, segregation, and racism which has left most blacks in Miami confined to the densely populated areas of Liberty City and Overtown, areas of Miami which are characterized by long-standing high unemployment and underemployment, poor housing conditions, as well as by poor police-community relations.

In Dade County black unemployment increased more rapidly than white or Hispanic unemployment in the 1970s. Although they represented only 17 percent of the overall population, by 1980 blacks constituted 24 percent of Dade County's unemployment rolls. The unemployment rate for blacks between the ages of 16-19 in 1980 was 20.6 percent. The corresponding rate was 8.7 percent for whites and 8.5 percent for Hispanics.^{4/} Since 1980 unemployment rates for blacks in the Miami area have soared to new levels. The latest figures from the U.S. Department of Labor indicate that in 1987 the unemployment for blacks overall

^{4/}Profile of the Black Population, Research Division, Dade County Government, September 1984, p. 60.

was 10.4 percent compared to 4.7 for whites and 7.2 for Hispanics.

Community leaders, almost to a person, voiced concern that the unemployment crisis in Liberty City and Overtown represents not an economic recession but an economic depression. Bill Cullom, president of the Miami Chamber of Commerce, told the Committee that "we think that the [lack of] jobs are a part of the major problem that causes the tension that causes the disturbances." According to Milton Vickers, director of the Metro-Dade Minority Business Program, little economic development of note takes place inside the Liberty City and Overtown communities. Mr. Vickers indicated at the Committee briefing meeting that the "economic disparity in Dade County between the black community and other communities is widening."

Community leaders also expressed outrage at the housing conditions which characterized the predominantly black Liberty City and Overtown communities. Overcrowded and poor housing conditions, according to Mr. Vickers, Thomas Battles of the Community Relations Service of the U.S. Department of Justice, and Dade County Research Division officials, represent a particularly serious problem in the mostly black areas of Greater Miami. The 1980 census found about 74,000 overcrowded housing units overall in the Miami metropolitan area--about 12 percent of all occupied units. This represented a high incidence of overcrowding--more than twice the national average

(5 percent) for metropolitan areas. A high proportion (almost 30 percent) of the overcrowded units (20,600) were occupied by blacks in the densely populated areas of Liberty City and Overtown. Community leaders also expressed concern that poor enforcement of housing codes by county and city officials further exacerbates the problem and allows absentee landlords and others to promote dilapidated, poorly maintained and visually unattractive grounds and housing units in both Liberty City and Overtown. This development and the accompanying despair is said to affect adversely the morale of the people who live in these areas. In essence, voiced "Sonny" Santos, the director of Spanish American League Against Discrimination, they have "lost all hope," an "underlying cause of the disturbances." Miami Mayor Xavier Suarez suggested that "people who live in these conditions obviously have to resent the society that has allowed that to take place."

Race relations in the multiethnic, multicultural and multiracial community of Miami, according to community leaders, are at an all-time low. Both black and Latin leaders indicated that the level of trust, respect, and cooperation across racial lines has suffered tremendously in the past 10 years. This complex development is further complicated, according to the leaders, by a continuous influx of refugees. First, there were large numbers of Cubans, secondly, a steady but smaller stream of Haitians and now large numbers of Nicaraguans. Black leaders

maintain that there is the perception in the black community that refugees are accorded preferential treatment in housing, health, and employment that native blacks could use and feel they deserve. This perception is further compounded by another perception that Haitian refugees and would-be refugees are treated by Federal and local officials in a disparate manner than other refugees because of their race.

Some of the Latin leaders concluded that poor relations exist within both the Latin and black communities based on race or skin color and ethnicity. According to these leaders, darker Latins and to some extent Haitians are viewed more negatively within the broader Latin and black communities.

There also were expressions, by black and some of the Latin leaders, that bilingualism was being used by major employers (whites and Cubans) to exclude blacks from job opportunities. It was felt that this activity also adversely affected race relations.

Police-Community Conflict

Miami, which has often in past years been described in chamber of commerce literature and other promotional materials as the "sun and fun capital of America," has more recently been described by community activists as America's "run and gun capital." In this connection, the State attorney's office currently has 17 questionable cases, extending back to 1986, involving the use of deadly force by Greater Miami police

officers. Among those are several controversial cases reported by the Miami Herald, January 18, 1989.

- The November 1988 shooting death of Todd Oliver by a Miami police officer after a brief auto chase. Witnesses said the officer put his gun to Oliver's head. When Oliver turned, the gun went off. Police officials initially said Oliver "bumped" the gun.
- The August 1988 shooting death of Larry Davis by a Miami police officer who has been charged in other incidents of misconduct.
- The January 1986 shooting death of Andrew Anthony during a wrong-house drug raid. And while Anthony was shot by a Florida City reserve police officer, Dade County Judge Alfred Nesbitt ruled in February 1986 at the inquest that there was "reasonable ground" to conclude that a supervisory officer, who improperly obtained search warrants [for Anthony's house], had committed manslaughter.

According to Miami Herald reports, the alleged pattern of police misconduct as outlined above has continued in the aftermath of the fatal incidents outlined below which led to the Miami Riots of 1980, 1982, and now 1989. (Source: Miami Herald, January 18, 1989.)

- The December 1979 beating death of Arthur McDuffie by Dade County police officers after a brief chase on a motorcycle. He was brutally attacked by some 6 to 10 officers using flashlights and clubs. Subsequently, an officer turned himself in, four officers were indicted for manslaughter and evidence tampering and a fifth officer was eventually indicted on a second-degree murder charge. All officers were acquitted in a trial in Tampa.
- The December 1982 shooting death of Nevell Johnson, Jr. after a confrontation with a Miami police officer in an Overtown video arcade. The officer was subsequently indicted on a manslaughter charge and later acquitted.

- The January 1989 shooting death of Clement Anthony Lloyd by a Miami police officer and the subsequent death of his motorcycle riding partner Allan Blanchard [The officer has been formally charged with two counts of manslaughter. A trial date has not been set].

In addition to the highly-publicized major incidents noted above, a number of unknown and relatively minor incidents occurred which added fuel to an already explosive situation. Most prominent among these incidents was the May 1987 effort by Miami police officers to apprehend a black off-duty police officer named Alfred Lee. Lee was finally taken into Miami police custody after his unsuccessful attempts to elude the officers in an automobile. Once in custody, Lee, according to five Dade County police officers on the scene, was punched in the face 20 times, hit in the body 12 times, and kicked at least 3 times. Other Dade County officers saw two Miami police officers punch and kick Lee several times in the face after he was handcuffed. Lee ended up in the intensive care unit of a local hospital in critical condition. According to officials in the State attorney's office in a meeting with the Committee Chair and Commission staff, Miami police officers involved reportedly claimed Lee received the injuries in the crash of his automobile and a subsequent fall over a fence.

Judge Norman Gerstein who later presided at the trial of Lee would offer "The method and the way you [Lee] got treated is not civilized and is unconscionable." (Source: Miami Herald, December 29, 1988). According to officials in the State

attorney's office in the meeting with the Committee and staff referred to above, there has been no punishment of the officers involved.

Poor police-community relations and more specifically incidents of alleged police misconduct like those outlined above were labeled by community leaders as the current causes or sparks which serve to ignite the explosive fuel of community unrest and/or riots. According to most of the community leaders, the incidents which led to the riots of 1980, 1982, and 1989 show a common pattern of abuse, disrespect, insensitivity, poor police practices and outright errors on the part of the affected police officers. Time and again, said the leaders, this has led to loss of lives, property, and respect from the black community for police departments all too often seen as the invading enemy. In the words of Mayor Suarez, "we obviously need more sensitivity training for our police officers." Good police-community relations demand such action, specifically, and good race relations demand this and other action, generally.

Summary

In the foregoing, several concerns were expressed by the representatives of the black community. These representatives even produced a list of alleged victims of police misconduct at the forum. And while police officials described their respective programs relating to community relations they did not refute the black community's charges of misconduct.

The Florida Advisory Committee and Commission staff were very impressed by the number of public, quasi-public, and private civil rights and community agencies and organizations in the Miami/Dade County area--more such organizations than we are aware of in any other community of comparable size. They comprise a wide range of interests and constituencies, but all seem to have a common goal of improving life for citizens in the Metro Miami/Dade area. These organizations number more than 20 and range from traditional organizations such as the NAACP to new and unique organizations established to deal with past riot-raised issues of police-community relations, employment and economic development, housing, immigration and race relations. These organizations find support from the Federal Government, through agencies like the Community Relations Service, down through the State, county, and local governments to the strictly private and business--but still community-oriented--organizations. In the latter category the Committee counted 28 Hispanic organizations. The proliferation of ethnic, racial, and community-oriented groups is supplemented by many public agency programs whose primary role or function is not community relations or civil rights; for example, the affirmative action and set-aside programs in Miami City and Dade County offices and agencies. These appear to be fully supported by the public officials responsible for their administration.

In interviews, and to a lesser extent at the forum and briefing meeting, community leaders expressed frustration over what they viewed as a lack of an appropriate response to the tense situation in Miami by local, State and Federal authorities. A number of recommendations for corrective action were suggested by some of the community leaders and public officials. Foremost among these suggestions was the need for the establishment of a task force, appointed by the city and county mayors, designed to evaluate and coordinate local resources, public and private, for a massive campaign to improve police-community relations, unemployment, housing, and economic development, in the Overtown and Liberty City communities. This task force should be representative of the public, business, civic, and civil rights communities as well as the affected communities of Overtown and Liberty City. Because of the urgency of the situation, advocates of this proposed solution believed that the task force should be established immediately. In addition, it was suggested that the task force should be charged with the responsibility of coordinating its efforts with a corresponding task force of Federal agencies with relevant oversight responsibilities such as: the Department of Justice; the Department of Housing and Urban Development; the Department of Labor; the Economic Development Administration of the Department of Commerce; the Department of Health and Human Services, and the Immigration and Naturalization Service.

Miami as a community comes together for a number of weeks every year to successfully produce the pageantry of the nationally acclaimed Orange Bowl. An even greater effort appears to be required by the community to promote effectively a higher level of inclusiveness and racial harmony every week of every year.

FINDINGS AND RECOMMENDATIONS OF THE FLORIDA
ADVISORY COMMITTEE REPORT, POLICED BY THE WHITE
MALE MINORITY - A STUDY OF POLICE COMMUNITY
RELATIONS IN MIAMI AND DADE COUNTY, OCTOBER 1976

**IX. FINDINGS AND RECOMMENDATIONS, MIAMI
POLICE DEPARTMENT**

On the basis of findings from the open meeting in June 20 and 21, 1975, that have been substantiated and compiled by the Advisory Committee members and liaison staff, the Florida Advisory Committee directs recommendations under the rubric "Eligibility for Employment: Latins" to the Attorney General of the State of Florida and to the U.S. Commission on Civil Rights for the consideration of the Attorney General, U.S. Department of Justice.

Recommendations are made to the Miami city commissioners and the Miami chief of police for specific action in three other categories: recruitment, selection, promotion; communication; and internal review.

Eligibility for Employment: Latins

Florida State Law (Fla. Stat. Ann. §943.13) restricts employment of police officers to citizens of the United States. The effect of this statute is to preclude any representation on the police force of the vast number of (particularly Cuban refugees) residing in Miami.

With regard to aliens lawfully admitted for permanent residence (i.e., resident aliens) the Florida Advisory Committee takes notice that any such alien is a "person" in the meaning of the 14th amendment and, as such, is entitled to equal protection of the law. The Florida Advisory Committee notes that the Supreme Court on two separate occasions has ruled both State and Federal civil rights regulations barring resident aliens from government employment unconstitutional.

Further, with regard to Cuban resident aliens, the Florida Advisory Committee notes that the Congress has exercised discretionary authority to the Attorney General of the United States to adjust the status of Cuban refugees to the status of aliens lawfully admitted for permanent residence. In view of this, the Advisory Committee is of the opinion that Congress, in specifically granting this extraordinary form of relief (i.e., circumventing ordinary

immigration procedures), did not intend that upon having achieved this status, Cuban resident aliens would be otherwise barred from equal access to any state public employment.

The Florida Advisory Committee finds that the employment of resident aliens by the Miami Police Department in proportions approximating their presence in their respective ethnic population in the city would be a positive factor in developing and maintaining healthy police-community relations in the city of Miami.

The Florida Advisory Committee wholeheartedly endorses the statement, and similarly finds with the court in *C.R.M. Enterprises, Ltd. v. Board of Education*, that:

The state has a duty to all its lawful residents, resident alien or citizen. It must try to see to it...that they have equal access to state public employment and that they have equal access to private employment. Its duty...is as such a duty to the alien as to the citizen.

Recommendations

The Advisory Committee recommends that the Attorney General of the State of Florida review Fla. Stat. Ann. §943.13 and render an opinion on its constitutionality. Further, the Committee recommends that the U.S. Commission on Civil Rights urge the U.S. Department of Justice to consider the advisability of challenging the statute in the appropriate Federal district court.

Recruitment, Selection, and Promotion

Finding 1

Minorities and women continue to constitute disproportionately small percentages of the Miami Police Department and continue to be even more underrepresented in the higher salaried positions within the department. A satisfactory goal to correct the situation is that goal already agreed to by the city of Miami in the Cohen consent decree (with regard to minorities) and the *U.S. v. Miami* consent decree (with regard to women as well as minorities).

e., that the city shall achieve, as a minimum, the participation at all levels in the police department of minorities and women in numbers approximating their respective proportions in the city's labor force. This goal is necessary not only to achieve the constitutional imperative of assuring minorities and women equal access to employment on the Miami Police Department but is also necessary to achieve and maintain a police force that reflects the culturally pluralistic constituency it is sworn to serve and protect.

Recommendations

The current status of the U.S. v. Miami consent decree notwithstanding, the Florida Advisory Committee recommends that the city of Miami, through its governing body, the city commission, continue to abide by its express commitment in the decree regarding hiring and promotion of women and that the city, as an expression of good faith, if not strictly as a court-ordered legal imperative, pursue and achieve, with specific timetables, its goal of proportional participation by women as well as minorities at all levels of the police department.

The Florida Advisory Committee recommends that the city of Miami, with regard to achievement of the goals mentioned above, recognize its commitment to those goals by seeking to aid the reinstatement of the U.S. v. Miami consent decree so that the specific provisions with regard to achievement of the hiring and promotion goals stated therein can be implemented as soon as possible.

To ensure that minorities and females become truly represented in the entire police department, the Florida Advisory Committee recommends to the Miami Police Department that provisions be made to assign minorities and females in a manner to achieve representation of minorities and females at all levels within the Miami Police Department.

Finding 2

The now defunct Tri-Cultural Program (i.e., Law Enforcement Community Outreach and Career Program) under the direction of the city manager was an effective tool for

recruitment of minorities and females for the Miami Police Department. Under the U.S. v. Miami consent decree, the city was charged with continuing the Tri-Cultural Program as long as Federal funds were available and, in absence of Federal funding, to develop a similar program to be submitted to the U.S. Department of Justice for approval prior to its commencement. These requirements were legally waived when the consent decree was temporarily set aside in April of 1976. Subsequently, all recruitment activity has been moved from the city manager's office to the police department. The U.S. Department of Justice was not consulted about the move. Because of the demonstrated past success of the Tri-Cultural Program in recruiting minorities and females and, conversely, because of the demonstrated past failure of the police department in this regard, the Florida Advisory Committee finds that minority and female recruitment efforts are likely to suffer due to the demise of the Tri-Cultural Program and the subsequent placement of recruitment efforts under the supervision of the police department.

Recommendations

As a demonstration of good faith regarding the recruitment of minorities and women and as a commitment to its agreement under the U.S. v. Miami consent decree, the Florida Advisory Committee recommends that the city of Miami develop a police officer recruiting program similar to that of the Tri-Cultural Program (under direction of the city manager). The Advisory Committee also recommends that the program be submitted to the U.S. Department of Justice for comment prior to its commencement.

Finding 3

Recruitment of minorities and women for the selection process is of little value unless significant numbers of minorities and women ultimately become police officers. Since the requirement is open for an independent organization to prepare, monitor, and score entrance exams, two such entrance exams have been administered under the direction of the Industrial Relations Center of the University of Chicago. Despite the overwhelming failure of the majority of those taking the tests, minorities and females have generally passed the exams in the same ratios as those who took the exams. One disturbing exception to

this is the fact that black males in both tests scored the lowest of any group tested.

Recommendation

The Florida Advisory Committee recommends that the city of Miami, through its contract with the industrial relations center, investigate the demonstrably higher rate of failure of black males to ensure that the exam in no way discriminates unfairly against black males.

Finding 4

In addition to being recruited and passing the entrance exam, all prospective police officers undergo a series of other requirements (i.e., polygraph, medical, physical agility and swimming, and supplementary psychological tests) before they can enter the Southeast Florida Institute of Criminal Justice. Of the 110 persons on the April 1975 register, nearly half were disqualified because of failure to meet the standards required under the other requirements listed above. While the numbers of minorities and females "washed" from the register are generally not disproportionate to the number of white males similarly disqualified, the effect is to drastically reduce the number of minorities and females (who have already passed the entrance exam) who can become police officers. It is understood that the industrial relations center has been instructed by the city of Miami to review all requirements for selection.

Recommendation

The Florida Advisory Committee recommends that the city of Miami, via the industrial relations center, place the same scrutiny upon all of the remaining selection requirements as has been done with the entrance exam itself to ensure that all selection requirements are rationally designed to measure potential job performance.

Finding 5

Each month the Miami Police Department issues a detailed analysis by race and sex of civilian and sworn personnel. Copies are distributed within the police department, to the city manager, to the director of

community affairs within the manager's office, and to the civil service commission. The Equal Employment Opportunity Program, which is prepared annually, contains a yearly analysis of personnel with a narrative outlining plans for correcting any imbalance by race or sex that exists in the department. The program has a more limited distribution, going to the chief, assistant chief, city manager, director of community affairs, and LEAA.

Recommendations

The Advisory Committee recommends that the chief of police make copies of the monthly analysis and the Equal Employment Opportunity Program available to the public by sending a copy to the public library and to the Dade County Community Relations Board as well as making a copy available at the department itself. The Advisory Committee also recommends that the EEOF be made available in Spanish.

Finding 6

Results of the Wechsler Adult Intelligence Test, given to identify psychopathic personality traits, are kept in the files of police officer candidates. The industrial relations center recommended using this test as a research tool to be examined in relation to the background check, performance at the police institute, and later job performance. The Advisory Committee realizes the need to develop tools which will allow a police department to identify persons who would be most suitable for police work. However, since the Wechsler test is not now recognized as a valid device for such screening, it is inappropriate to place the results of the test in a police officer candidate's or police officer's personnel file.

Recommendation

The Advisory Committee recommends to the city commissioners that, pending validation of the Wechsler test as a method of identifying psychopathic personality traits, the results of the test be excluded from personnel files.

Communication

Finding 7

The oral review board teams, which interview police officer candidates, aim at evaluating the variables of non-verbal and verbal communication, attitude, and motivation. Each team (five which rotate) includes three officers (minorities must be included) and a psychologist as a consultant. The board teams receive training for their duties. There is no provision to include women as team members.

Recommendations

The Advisory Committee recommends to the chief of police that provisions be made to include women on the oral review board teams. Expanding the teams to include four persons so that blacks, Latins, Anglos, and women will all be represented is also recommended.

Finding 8

The 14-question polygraph test administered to police officer candidates includes references to questions found in a lengthy pretest polygraph questionnaire. Several items on the questionnaire appear to bear no direct relationship to job performance as a police officer. The Advisory Committee recognizes the need to gather facts about the behavior and character of law enforcement officers and to work toward determining which screening techniques detect those traits that contribute to the development of a good or unfit police officer. However, the job-relatedness of some polygraph questions and references is still questionable. Candidates whose polygraphs show patterns of misconduct or deception are reviewed and the candidate may be retested. He or she is not automatically disqualified.

Recommendation

The Advisory Committee recommends that the chief of police, Miami Police Department, refer to the *U.S. v. Miami* consent decree and adopt the policy stated therein for the use of the polygraph, i.e., a polygraph examination would be administered only to applicants for positions requiring bonding and positions of trust or security. In no event would an applicant be asked any questions which are not directly job-related.

Finding 1

There is an uneasy tension between minorities and police. Many police are unable to communicate with Latins who speak only Spanish. Some Latins feel that police treat them as inferiors. Black and Latin men and women reported being harassed and intimidated by police. Reports of alleged brutality and verbal abuse by Miami police have not been resolved to the satisfaction of residents of the city.

The police community relations section and personnel training section do provide some training in human relations skills for officers. Both sections have other duties as well.

Recommendations

The Advisory Committee recommends to the city commission that the overall programs and responsibilities of the community relations and personnel training sections that relate to human relations training be reviewed by sources outside of the department with experience in interpersonal communication and human relations skills as related to police work. Further, the Committee recommends to the chief of police that a systematic, continuous, and compulsory inservice program to train all officers in human relations skills be established.

Finding 2

The department previously offered a 40-hour course in Spanish. An 8-hour course is currently available for personnel who have regular contact with Latins.

Recommendations

The Advisory Committee recommends to the chief of police that he institute: an increase in language instruction which will provide proficiency in conversational Spanish for all appropriate personnel; a systematic and continuous inservice training program to achieve this goal; and a provision that the ability to speak Spanish will be a factor in consideration for promotion.

Internal Review

In general, the Advisory Committee believes that a new system for investigating complaints against police, a new system of recordkeeping, and a new system of decisionmaking need to be developed. It is strongly urged that the department seek assistance from knowledgeable persons who can develop a new system of internal review. The Committee, however, does not make some specific recommendations, which follow.

Finding 1

Few complaints that reach the internal review unit are sustained. The unit does not have sufficient personnel to adequately investigate complaints and has been cited for poor performance by the insurance attorney investigating civil complaints filed against the police. It is reasonable to assume that there may be some correlation between the unit's lack of adequate personnel on the one hand and its poor performance and inability to sustain the complaints of citizens on the other.

Recommendation

The Advisory Committee recommends to the chief of police that the number of personnel assigned to the internal review unit be increased so that comprehensive investigations of all complaints can be conducted. Such thoroughness would perhaps result in the lowering of insurance rates and would certainly improve the credibility of the police force with its community.

Finding 2

The procedures and records of investigations conducted by the internal review unit are not open to complainants or to the general public unless the case has been appealed to the civil service board.

Recommendations

The Advisory Committee recommends to the chief of police that the departmental disciplinary review board sessions should be open to the public. The President's Commission on Law Enforcement and Administration of Justice Task Force report, The Police (1967).

recommended such action. And, with some restrictions, Florida Attorney General Robert B. Shevin voiced the same opinion in 1973 (see appendix E). Specific procedures from the President's Commission report follow and are recommended by the Advisory Committee for adoption by the Miami Police Department:

- (1) The hearing should be open to the public.
- (2) The complainant and any witnesses he or she desires should be present.
- (3) Both the officer and the complainant should have subpoena powers, be represented by counsel, and be able to see the investigation report if they so desire.
- (4) There should be opportunity for cross-examination by both the officer and the complainant.
- (5) If desired by any party, a transcript should be made.
- (6) The decision should be prompt---probably no more than a month, except in unusual cases---after a complaint is filed.
- (7) The trial board should render an opinion containing findings of all important facts and explaining its reasoning.
- (8) Once the decision on a complaint has been made, the complainant should be notified of the...basis for it.
- (9) The public should have access to the facts of the case and the nature of the decision.

Finding 3

The representation of minorities and women on the civil service board is not ensured. The five-person board includes two city employees elected by their colleagues and

three appointees of the city commission. All serve concurrent 2-year terms.

Recommendations

The Advisory Committee recommends that the city commission revise its procedures for selecting members of the civil service board so that minorities and women will be represented, and that terms of members should be staggered rather than concurrent to ensure continuity.

Because the board is a source of appeal for complaints against police, the Advisory Committee recommends that city employees not be eligible for membership. The public's confidence in its police force is undermined when police are judged by their colleagues.

Finding 4

There is no printed material available that explains the complaint procedure.

Recommendation

The Advisory Committee recommends to the Miami chief of police that a brochure in English and Spanish, describing the internal review unit, places where complaints can be filed, procedures for investigation, rights of the complainant, rights to the records, disposition of the case, and rights of appeal be prepared and disseminated.

Finding 5

There have been a number of persons who related to the Advisory Committee alleged instances of police misconduct. In cases involving arrests, questions were sometimes raised concerning the credibility of the complainants. In two incidents referred to in the chapter "The Community Speaks," there were extraordinary witnesses or complainants: in one case an officer on duty was beaten; in the other, media and public utility staff persons were witnesses. In these situations, the department was slow to respond to the complaints. These incidents suggest that they were not isolated cases but that there are members of the FORCE who continue to act in a nonprofessional manner. The Miami

Police Department has not demonstrated that it is adequately dealing with this explosive situation.

Recommendation

The Advisory Committee recommends that the chief of police use the internal review process to identify officers who repeatedly have complaints lodged against them. These persons should receive special counseling and training that will help them learn to deal with community residents in a positive and constructive manner despite the tensions inherent in police work. Depending on the merit and severity of the complaints, disciplinary action, reassignment to positions with minimal public contact, or other measures should be employed when police officers continue to have such complaints lodged against them.

Notes to Chapter IX

1. The term "lawfully admitted for permanent residence" means the status of having been lawfully awarded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. (8 U.S.C. §1101(a)(20)).
2. *Graham v. Richardson*, 403 U.S. 365 (1971).
3. *Sugarman v. Douglass*, 413 U.S. 634 (1973).
4. *Hampton v. How Sun Wong*, no. 73-1596 (U.S., issued June 1, 1976; Stevens, J.).
5. Public Law 89-732, 88 Stat. 1161 (8 U.S.C.A., §1255 et.) allowing U.S. Attorney General discretion to adjust status of any alien who is a native or citizen of Cuba who has been inspected and admitted or paroled into the United States to the status of "alien lawfully admitted for permanent residence."
6. "[S]tate regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress" *De Canas v. Bica*, 44 U.S.L.W. 4235, 4237 n. 6 (U.S. 1976). See also, *C.D.R. Enterprises v. Bd. of Educ. of N.Y.C.*, 44 U.S.L.W. 2472 (USDC ENY, 1976) (three-judge court), which held (J. Platt, dissenting) that New York statute granting public works employment preference to citizens who have resided in New York for at least 12 months violates supremacy clause and equal protection clause.
7. 44 U.S.L.W. 2472, 2473.
8. *U.S.A. v. Miami*, 63(b) (appendix D).
9. *U.S.A. v. Miami*, 63(g) (ii) (appendix D).

X. FINDINGS AND RECOMMENDATIONS, DADE COUNTY
DEPARTMENT OF PUBLIC SAFETY

On the basis of findings from the open meeting in Miami, June 20 and 21, 1975, that have been substantiated by data compiled by the Advisory Committee members and the Commission staff, the Florida Advisory Committee directs recommendations under the rubric "Eligibility for Employment: Latins" to the Attorney General of the State of Florida and to the U.S. Commission on Civil Rights for the consideration of the Attorney General, U.S. Department of Justice.

Recommendations are directed to the Dade County commissioners, to the director of the department of public safety, and to the U.S. Commission on Civil Rights for the consideration of the U.S. Law Enforcement Assistance Administration for specific actions in three other categories: recruitment, selection, and promotion; communication; and internal review.

Eligibility for Employment: Latins

Findings

Florida State Law (Fla. Stat. Ann. §943.13) restricts employment of police officers to citizens of the United States. The effect of this statute is to preclude any representation on the police force of the vast number of aliens (particularly Cuban refugees) residing in Dade County.

With regard to aliens lawfully admitted for permanent residence (i.e., resident aliens), the Florida Advisory Committee takes notice that any such alien is a "person" within the meaning of the 14th amendment and, as such, is entitled to equal protection of the law." The Florida Advisory Committee notes that the Supreme Court on two separate occasions has ruled both State² and Federal³ civil service regulations barring resident aliens from government employment unconstitutional.

Further, with regard to Cuban resident aliens, the Florida Advisory Committee takes notice that the Congress of the United States has granted discretionary authority to the Attorney General of the United States to adjust the status

of Cuban refugees to the status of aliens lawfully admitted for permanent residence.⁶ In view of this, the Advisory Committee is of the opinion that Congress in specifically granting this extraordinary form of relief (i.e., circumventing ordinary immigration procedures) did not intend that upon having achieved this status, Cuban resident aliens would be otherwise barred from equal access to any State public employment.⁶

The Florida Advisory Committee finds that the employment of resident aliens by the Dade County Department of Public Safety in proportions approximating their presence in their respective ethnic population in the county would be a positive factor in developing and maintaining healthy police-community relations in Dade County.

The Florida Advisory Committee wholeheartedly endorses the statement, and similarly finds with the court in G.D.R. Enterprises, Ltd. v. Board of Education, that:

The state has a duty to all its lawful residents, resident alien or citizen. It must try to see to it...that they have equal access to state public employment and that they have equal access to private employment. Its duty...is as much a duty to the alien as to the citizen.⁷

Recommendations

The Advisory Committee recommends that the Attorney General of the State of Florida review Fla. Stat. Ann. §943.13 and render an opinion on its constitutionality. Further, the Committee recommends that the U.S. Commission on Civil Rights urge the Attorney General, U.S. Department of Justice, to consider the advisability of challenging the statute in the appropriate Federal district court.

Recruitment, Selection and Promotion

Finding 1

Minorities and women continue to constitute disproportionately small percentages of the Dade County Department of Public Safety and continue to be even more

underrepresented in the higher salaried positions within the department. A satisfactory goal to correct this situation is that the department of public safety shall achieve the participation, at all levels of the police department, of minorities and women in numbers approximating their respective proportions in the labor force of the department's service area. This goal is necessary not only to achieve the constitutional imperative of assuring minorities and women equal access to employment in the Dade County Department of Public Safety, but is also necessary to achieve and maintain a police force that reflects the culturally pluralistic constituency it is sworn to serve and protect.

Finding 2

The department's Equal Employment Opportunity Program (EEO) presently establishes a minority composition goal that is the bare minimum necessary to avoid a possible post-award compliance review by the Law Enforcement Assistance Administration. The department has established a 7-year period in which to achieve this minimum goal. With regard to hiring of women (where there is no LEAA regulation defining what constitutes a "significant disparity" of women employed by a recipient agency) the department's EEO establishes a goal of 10.5 percent female composition to also be achieved in a 7-year time period. This goal of 10.5 percent is far below the actual percentage of women in the department's service area. The establishment of such minimum goals and the 7-year period in which to achieve such minimum representation is simply not acceptable to ensure adequate and timely representation of minorities and women in the Dade County Department of Public Safety.

Recommendations

The Advisory Committee recommends to the director, department of public safety, that the ultimate goal for employment be nothing less than participation, at all levels of the department, of minorities and females in numbers approximating their respective proportions in the labor force of the department's service area. To achieve this goal, the director is further urged to establish yearly goals of minority and female hiring that will achieve this ultimate goal of full minority and female representation in the department within the shortest time frame administratively feasible.

To ensure that minorities and females become truly represented in all areas of the department, the Advisory Committee recommends to the director, department of public safety, that provisions be made to assign minorities and women in a manner to achieve their representation at all levels within the department.

Finding 3

At the end of the first year of operation of the Equal Employment Opportunity Program (June 30, 1976), the department had nearly tripled the projected annual 100-person increase in the size of the force. No adjustment was made in the EEOE minority and female hiring goals to conform with the increase in the size of the force. In the first year the Equal Employment Opportunity Program was in effect, the department, therefore, had fallen significantly behind in minority and female representation based upon the actual size of the force.

Recommendations

The Advisory Committee recommends that the U.S. Commission on Civil Rights (through the U.S. Attorney General) urge the Law Enforcement Assistance Administration to conduct a review of the Dade County Department of Public Safety's Equal Employment Opportunity Program and exercise whatever appropriate authority is under its jurisdiction to ensure that the department has an EEOE that is accurately and meaningfully designed to overcome the ongoing disparity of minority and female representation on the force.

Finding 4

Statistics for fiscal year 1975 illustrate that both the numbers of minority members and women taking the written entrance exam and the numbers of those passing the exam are disproportionately low in terms of the numbers of minorities and women in the labor force served by the department of public safety. Despite the past efforts by the department, therefore, effective recruitment of minorities and women has not been substantial. With Miami's Tri-Cultural Program as an example, the Advisory Committee finds that a recruitment program independent of the police agency is a better vehicle

to recruit minorities and women for employment in the department.

Recommendations

The Advisory Committee recommends that the Dade County commissioners establish a program independent of the department of public safety within the office of the county manager devoted entirely to the recruitment of persons for the department and to providing assistance to applicants (particularly minorities and women) regarding selection procedures and training at the police institute. When the present hiring freeze is lifted, the Advisory Committee further recommends that the recruitment program be accelerated accordingly in order to ensure that sufficient numbers of minorities and women will be attracted to careers in law enforcement.

Finding 5

Applicants are required to take a written examination for the position of police officer in the department of public safety. The exam is academically oriented and designed to evaluate the applicant's ability to complete training at the police institute. The police institute's program, which emphasizes academic skills, has not been validated for job-relatedness. Despite whatever past efforts may have been made regarding validation of the written exam, the fact that during fiscal year 1975, 80.5 percent of the white males tested passed the exam while only 17.7 percent of the black males tested passed renders the accuracy of such validation suspect.

Recommendation

The Advisory Committee recommends that the county commissioners require that all selection procedures, including the written exam, be validated by an independent organization to ensure that all selection procedures are designed solely to measure ability to perform as a police officer.

Finding 6

Neither a minority person nor a female holds an administrative rank in the sworn force. Out of a sworn

Communication

Finding 1

There is an uneasy tension between minorities and police. Both black and Latin men and women reported being harassed and intimidated by police. The department does operate a community services section responsible for educating police in community affairs, among other duties.

Recommendations

The Advisory Committee recommends to the county commission that the overall program and responsibilities of the community services section be reviewed by sources outside of the department that are experienced in interpersonal communication and human relations skills as related to police work. The committee recommends that the director, department of public safety, establish systematic, continuous, and compulsory inservice programs to train all officers in human relations skills.

Finding 2

Some problems between police and Latins exist because many police officers do not speak Spanish and many of the county residents do not speak English. Dade County police can be reimbursed for taking a college course in Spanish. The county itself offers a course in Spanish. The number of sworn personnel that has participated in the Spanish classes is insignificant in relation to the size of the force.

Recommendation

Provisions for police officers to be reimbursed for taking a college course in Spanish notwithstanding, the Advisory Committee recommends to the director that he institute an increase in language instruction that will provide proficiency in conversational Spanish for all appropriate personnel; a systematic and continuous inservice training program to achieve this goal; and a provision that the ability to speak Spanish will be a factor in consideration for promotion.

of 1,370 persons, one black male and one Latin male the rank of lieutenant, the highest rank held by a minority member; sergeant is the highest rank held by a white male.

Recommendations

The Advisory Committee recommends to the director, department of public safety, that immediate appointments of minorities and females be made to decisionmaking positions with the rank of major and above.

The Advisory Committee further recommends that the director develop a program that will ensure the promotion of minorities and women to supervisory positions commensurate with their numbers in the department.

Findings

The department of public safety makes an analysis of civilian and sworn personnel by race and sex only once a year. The analysis is included in the department's required Equal Employment Opportunity Program. A more frequent analysis would enable the director, the county manager, and county commissioners, as well as the public, to monitor movement toward compliance with the EEOP. Twelve copies of the plan are distributed within the department and other copies go to the county manager, the personnel director, the county information office, and the municipal library.

Recommendations

The Advisory Committee recommends that the director, department of public safety, begin on a monthly basis a detailed analysis of civilian and sworn personnel with a breakdown by race, sex, and position or rank.

The Advisory Committee further recommends that copies of the monthly analysis of the EEOP be sent to all of the current recipients of the EEOP and also (along with the EEOP) to the Dade County Community Relations Board. The Advisory Committee also recommends that the EEOP and the analysis be available in Spanish at all points of distribution.

Internal Review

Finding 1

In the department of public safety over 600 complaints were received in 1974, and approximately 54 of those were sustained. Representatives of the multiracial, multiethnic community served by that police department alleged rude, unfair, and brutal treatment by police officers. Investigations of complaints are conducted by the staff of the internal review unit, and decisions are rendered by supervisors on the police force. Only when the accused officer appeals the decision is a hearing that includes the complainant held.

Despite some good procedures in the internal review process, e.g., a bilingual brochure that explains the process and the use of a private attorney to preside at hearings, the need to reform internal review procedures is still evident.

Recommendations

The Advisory Committee recommends to the director, department of public safety, that the investigations conducted by the internal review section staff and any subsequent hearings that result from appeal of the initial findings be open to the complainants and that the investigative records be available to the public. The President's Commission on Law Enforcement and Administration of Justice Task Force report, *The Police* (1967), recommended such action. And, with some restrictions, Florida Attorney General Robert B. Shevin voiced the same opinion in 1973 (see appendix E). Specific procedures from the President's Commission report follow and are recommended for adoption by the department of public safety.

- (1) The hearing should be open to the public.
- (2) The complainant and any witnesses he or she desires should be present.
- (3) Both the officer and the complainant should have subpoena powers, be represented by counsel,

and be able to see the investigation report if they so desire.

- (4) There should be opportunity for cross-examination by both the officer and the complainant.
- (5) If desired by any party, a transcript should be made.
- (6) The decision should be prompt---probably no more than a month, except in unusual cases---after a complaint is filed.
- (7) The trial board should render an opinion containing findings of all important facts and explaining its reasoning.
- (8) Once the decision on a complaint has been made, the complainant should be notified of the basis for it.
- (9) The public should have access to the facts of the case and the nature of the decision.

Finding 2

Among 170 police officers against whom complaints were lodged and later investigated by the internal review section, 55 percent had previously had at least one complaint against them; 27 percent had three or more complaints against them.

Recommendation

The Advisory Committee recommends that the director of the department of public safety use the internal review process to identify those officers who repeatedly have complaints lodged against them. These persons should receive special counseling and training that will help them learn to deal with community residents in a positive and constructive manner despite the tensions inherent in police work. Depending on the merit and severity of the complaints, disciplinary action, reassignment to positions with minimal public contact, or other measures should be employed when police

officers continue to have each complaints lodged
against them.

APPENDIX B

FINDINGS AND RECOMMENDATIONS OF THE ADMINISTRATION
OF JUSTICE CHAPTER OF THE COMMISSION REPORT,
CONFRONTING RACIAL ISOLATION IN MIAMI, JUNE 1982

Part VII
 SITUATION OF JUSTICE: A CONTINUING BONE SPOT
 Dade County's criminal justice system has been a continual
 source of abrasion to the black community. Robert Simms,
 Executive Director of the Dade County Community Relations
 Council, testified before the Commission:

[T]here is a feeling with the black
 community that there is an internal conflict
 occurring within certain [police department]
 enforcement jurisdictions between officers
 that want to righteously enforce the law
 with justice and others who would do
 otherwise; that when this conflict arises,
 those who would choose to righteously
 enforce the law are either intimidated,
 chastised [or] ostracized.... 1/

members of Miami-Dade's black community occurred. 2/
 Simms noted,

It is perceived that there is unequal
 treatment of enforcement to the black

1/ Robert Simms, testimony, Hearing before the U.S. Commission
 on Civil Rights, Miami, Fla., Dec. 8-11, 1980, unpublished
 transcript (hereafter cited as Hearing Transcript), p. 1168.

2/ See, e.g., Otis Pitts, Executive Director,
 Monte-Tecoloy Center, testimony, Ibid., pp. 1204-05.

community, especially in certain enforcement
 jurisdictions. Whether this be true or not
 does not necessarily matter. It is
 perceived to be that way. Therefore, for
 the perceiver, I suspect that is the
 truth. 3/

The Miami riots of 1969 directly resulted from a harsh
 police crackdown, and the fatal beating of a black Miamian by
 local police officers led to the riots of 1980. In this
 regard, Miami's civil disturbances have been similar to those
 in other American cities. Although there is no typical riot
 and no typical riot pattern, racial violence in America almost
 invariably has occurred when an encounter between law
 enforcement officers and a member of the black community
 escalates to physical confrontation. 4/

The 1980 disturbances in Miami did not immediately follow
 such an incident; the riots occurred only after police officers
 were arrested, prosecuted, tried, and acquitted for their role
 in the beating death of Arthur McDuffie. Nor did the riots

3/ Simms Testimony, pp. 1167-68.

4/ See, e.g., Report of the National Advisory Commission on
 Civil Disorders (Washington, D.C.: Government Printing Office,
 1968), p. 137. This Commission is usually identified as the
 Kerner Commission, after its Chairman, former Illinois Governor
 Otto Kerner.

arily result from a series of incidents involving the
inal justice system and the black community, although there
been such a series of incidents. Anger and frustration had
mulated within large segments of the black population as a
lt of years of pervasive and institutionalized exclusion
full participation in the economic and social life of the
. Mistreatment and unequal treatment of blacks by the Dade
ty criminal justice system are but one part of this larger
era of discrimination and exclusion.

Steps to improve the caliber of policing in the black
community and to control racism in the courthouse can reduce
likelihood that the criminal justice system will trigger a
, but they cannot remove such risks entirely until
rying problems are resolved. Both before and since the
riots, Dade County's two principal law enforcement
ries made administrative and policy changes designed to
ce tensions and improve relations between the police and
black community. Yet, as the chiefs of each department
nowledged, unless Miami addresses and resolves the root
es of the riots, the police and the black community will
e again to confrontation. 3/

Kenneth Harms, Chief, Miami Police Department and Bobby
e, director, Dade County Public Safety Department,
timony, Hearing before the U.S. Commission on Civil Rights,
mi, Fla., Dec. 8-11, 1980, unpublished transcript,
1126-32 (hereafter cited as Hearing Transcript).

Finding 7.1: For almost 2 years before the Miami disturbances, a series of incidents involving the black community and law enforcement officials increased racial tension which culminated in the 1980 riots. The incidents reinforced the black community's belief that a dual system of justice prevailed in Dade County—a system in which blacks received unequal treatment before the law.

In early May 1980, after five white police officers were acquitted of brutally murdering Arthur McDuffie, a black insurance executive, the Miami-Dade black community exploded with violence and anger. In the minds of many blacks, the verdict in the McDuffie case was one more outrage against the community by law enforcement officials. The McDuffie case sparked the rioting in Miami's Liberty City community and the violence that occurred in black enclaves throughout Dade County for several days in May.

On May 23, 1980, immediately after the riots, Governor Robert Graham appointed a citizen's committee to find the causes of the violent civil disturbances. 6/ The committee also was asked specifically to look into the Dade County State Attorney's Office and its handling of five racially sensitive cases. 7/ All but one involved altercations between police and members of the black community. The Dade County State

6/ Report of Governor's Dade County Citizens' Committee (October, 1980), p. 1 (hereafter cited as Citizens' Committee Report).

7/ Ibid., p. 2.

may's Office had been the subject of considerable public controversy, and its handling of the five cases was perceived as exacerbating the racial tension in Miami. 9/

The first case involved the Dade County Public Safety Department. 9/ In February 1979, the department served a search warrant on the wrong house. The police erroneously entered and searched the home of Mathaniel LaFleur, a 49-year-old black school teacher. 10/ The police officers involved testified that they believed they were executing a valid search warrant for drugs at the correct address. 11/ However, according to Mr. LaFleur, when he refused to submit to the unauthorized search, he was forcibly arrested and beaten up by police. His residence was ransacked and left in total shambles. 12/ Medical reports show that Mr. LaFleur received a scalp laceration, a contusion of the head above the

9/ Miami Herald, Apr. 1, 1980, p. 2-B; Washington Post, Apr. 23, 1980, p. A12.

10/ The Dade County Public Safety Department was officially renamed the Metro-Dade Police Department on July 21, 1981.

11/ Citizens' Committee Report, p. 29.

12/ Supplement to the Final Report of the Dade County Grand Jury - Fall Term 1978 (May 8, 1979), p. 3 (hereafter cited as Supplement to Grand Jury Report).

13/ Miami Herald, Feb. 14, 1979, pp. 1A, 16A; Feb. 17, 1979, pp. 1B, 2B.

right eye, swelling on the back of the head, multiple bruises on the shoulder, elbow, left hand, left chest, lower right cheek and right flank, back injuries, right chest injuries, and a fracture of the ribs. 13/ His son, who arrived home during the altercation, was also arrested and allegedly assaulted by the police without cause. 14/

The incident was widely reported in the news media as "The Wrong House Drug Raid" or "The LaFleur Case." 15/ The State Attorney, however, found no cause to prosecute the officers involved, 16/ and the grand jury, although critical of the "inexcusable" acts of negligence of the officers and of the widespread use of profane language and racial slurs by police, subsequently decided that criminal charges were not warranted. 17/

13/ Citizens' Committee Report, pp. 32-33.

14/ Miami Herald, Feb. 14, 1979, p. 16A; Miami Herald, Feb. 17, 1979, p. 1B.

15/ Miami Herald, Feb. 14, 1979, p. 1A; Feb. 17, 1979, p. 1B; April 11, 1979, pp. 1C, 2C; April 12, 1979, p. 3C; April 20, 1979, p. 3D; April 21, 1979, p. 3E.

16/ Citizens' Committee Report, p. 34; Miami Herald, April 11, 1979, pp. 1C, 2C.

17/ Supplement to Grand Jury Report, pp. 2, 5.

second case involved an 11-year old black female who that she had been sexually molested by a Florida patrolman. 18/ The initial investigation by the Highway Patrol concluded that the incident did not involve a highway patrolman, 19/ despite information provided by the victim identifying the patrolman. When the case was reopened, Trooper Willie Jones was charged as the offender. 20/ Prior to the trial, Jones was willing to plead guilty in return for no jail sentence after plea discussions with the State Attorney's Office. 21/ Judge Gordon, the judge before whom the case was first brought, the State Attorney, John I. Gordon, said that if Jones would plead guilty he would sentence him to the mentally disordered sex offender program.

Id., pp. 37-43.

Id., pp. 37-38.

Id., p. 38.

State v. Jones, No. 79-2078 (11th Cir. Fla. 1979), Hearing by Judge Gordon, Apr. 4, 1979. But see Reno letter, dated June 8, 1979, p. 3., noting that prior to July 1, 1979 the State Attorney's Office refused to negotiate a plea to no jail time (with community treatment) because it construed the pertinent statute as not authorizing a commitment to the mentally disordered sex offender program unless the offender was convicted.

offender's program for a 2-year commitment. 22/ He also seriously questioned the State Attorney's handling of the case:

I will just be as candid with you, as I can.

To me, this case in some manner smacks of racism, and I am not so certain that the State Attorney's Office would be asking the same arrangement if this defendant was black and the victim was a young white girl, and it appeared to me to be in part some sort of sweetheart deal that I would not be a party to....

You must understand me. I do not assert that the defendant, his conduct, is in any way race related. What I do feel uncomfortable with, however, is the manner in which this case was originally presented to me and the fact that the State Attorney's Office would...not object to the plea, would not stand up in court and affirmatively state that this was a negotiated plea. I have serious questions whether this defendant was black and this young victim

22/ Id., p. 11.

was white, whether the State Attorney's Office, the Public Safety Department and the Highway Patrol would, in fact, be making the same representation to me now as they are for this defendant, and that is what upsets me. 23/

The assistant state attorney, however, denied that race was a consideration in the handling of the case. 24/ The patrolman's defense counsel told the court that his client received special consideration, not because of his race, but because of his occupation, a consideration that Judge Gordon found just as indefensible:

Defense Counsel. Judge, the reason that everyone wants to stick up for the man is because he is a police officer, not because he is white.

The Court. That is equally as bad. That is protecting one's own and that is because he is in law enforcement. Perhaps the State Attorney, with their connection with law enforcement, and even PSD—who I wholly

23/ Id., pp. 10-11, 13-14.

24/ Id., p. 14.

admire—feel as though in this case they want to protect their own and perhaps their recommendations would not be what they are now if this man had been a civilian, and I just do not think that is proper. I just do not think it is proper. 25/

Because the judge intended to sentence him to a sexual offender's program, which included incarceration, the patrolman decided not to plead guilty. Judge Gordon subsequently removed himself from the case. 26/

The case was then reassigned to Judge David L. Levy who was unaware of the prior negotiations. Judge Levy accepted a nolo contendere (no contest) plea and placed Officer Jones on probation for 3 years with the special condition that he "seek and receive psychiatric treatment as an outpatient for as long as and in such manner as deemed appropriate by the treating doctors." 27/

25/ Id., p. 15.

26/ Id., pp. 16-24.

27/ Citizens' Committee Report, p. 40.

the case was widely publicized and raised serious questions about the administration of justice in the county. 28/ In this case, Judge Levy appointed a special Acting State Attorney to investigate how the State Attorney's Office handled the case. The Acting State Attorney's report was highly critical of both the police investigation and the handling of the case by the State Attorney's Office. 29/ The third case that troubled the black community was the untimely death of a 21-year old black male, Randy Heath, by an on-duty Mialeah police officer. Heath was shot in the back of the head at close range while standing pressed against a wall. 30/ A county judge at the inquest found probable cause to believe the homicide was criminal and referred the case to the State Attorney's Office. 31/ After an inordinately

Ibid. See also Dade County Community Relations Board, Report and Action Community Review of the Criminal Justice System as Reported in the Case of Sexual Molestation by Florida Highway Patrolman (February 1980), (June, 1980); Miami Courier, Feb. 2, 1980, p. 1; The Miami Herald, Jan. 24, 1980, p. 1A.

Report of the Acting State Attorney, Crim. Div. No. 1078 (11th Cir. Fla.) (May, 1980) (hereafter cited as Report of the Acting State Attorney) (maintained in Commission files).

Citizens' Committee Report, p. 42; The Miami News, Apr. 2, 1980, p. 1A.

Citizens' Committee Report, p. 42; The Miami Herald, Feb. 2, 1980, p. 1A.

delayed investigation, 32/ the State Attorney's Office determined that the killing was not criminal. 33/ A later investigation, however, compelled the State Attorney's Office to reverse its decision. 34/

During the interim, the grand jury independently requested that the case be presented. 35/ Although the State Attorney's Office decided that criminal charges were appropriate, the office declined to file them and presented the case to the grand jury as it had requested. The grand jury later refused to indict the officer. 36/

32/ After the inquest in September, 1979 there followed "an untoward delay of more than six months...which the State Attorney's Office did nothing to prevent. This delay was inexcusable...." Citizens' Committee Report, p. 42; Charles Mays, Assistant City Attorney for the City of Miami, testimony, Hearing Transcript, p. 1427.

33/ Janet Reno, State Attorney for the 11th Judicial Circuit, Florida, testimony, Hearing Transcript, p. 1413; Mays Testimony, Ibid., p. 1429.

34/ Reno Testimony, Hearing Transcript, p. 1413; Mays Testimony, Hearing Transcript, p. 1429.

35/ Citizens' Committee Report, p. 43 states, "The State Attorney testified that she did not ask the Grand Jury to take over the investigation, but that, in fact, the Grand Jury took the investigation away from her."

36/ Interim Report of the Dade County Grand Jury--Fall Term 1979 (Apr. 1, 1980).

the fourth case that the Governor's citizen's committee investigated was the prosecution of Johnny Jones, the black superintendent of schools in Dade County. Dr. Jones first was charged with grand theft for using public monies under his control for his personal benefit 37/ and later was charged with soliciting perjury, tampering with a witness and soliciting bribery from a contractor who did business with the school system. 38/ Dr. Jones, a nationally known educator, was the highest ranking black public official in Dade County. His case generated considerable public interest and, under the supervision of the Florida Supreme Court, was televised. 39/ Compared to the handling of the other highly publicized and nationally sensitive cases, the State's prosecution of Dr. Jones appeared to the black community to be particularly sensitive. 40/ The prosecution filed the second criminal charge on the eve of the first trial and excluded black

New York Times, May 19, 1980, p. B-10.

The Miami Herald, Sept. 16, 1980, p. 11-B.

Petition of the Post Newweek Stations, Florida, Inc., 370 So.2d 764 (Fla. 1979); 33 FLA. STAT. ANN., Code of Jud. Proc. Can. 3(A)(7)(Most 1980).

Ferry Testimony, Hearing Transcript, pp. 1176-1177; Doc. "The Question Is Due Process...Not Guilt or Innocence," Miami Times, Feb. 28, 1980, p. 3.

panelists from the jury. 41/ Less than 3 weeks before the riots, the all-white jury convicted Dr. Jones of attempting to use public funds for his personal use. 42/

The fifth case was the McDuffie case. 43/ In the early morning hours of December 17, 1979, Arthur McDuffie, a 33-year-old black insurance executive, led law officers on an 8-minute, high-speed chase through the streets of Miami and Dade County. When he was apprehended, Dade County Department of Public Safety officers allegedly beat him, using nightsticks and "Kal-lite" heavy-duty police flashlights; 44/ he died 4 days later. 45/ Manslaughter and murder charges were filed against three officers, 46/ and two other officers were

41/ Citizens' Committee Report, pp. 45-47.

42/ New York Times, May 19, 1980, p. B-10. The second trial, held after the riots, resulted in an acquittal on the bribery charge and a conviction on a misdemeanor charge for witness tampering. Miami Herald, Oct. 18, 1980, p. 1A.

43/ Citizens' Committee Report, pp. 47-51.

44/ Offense Report, Dade County Public Safety Department Case No. 369734-2 (hereafter cited as Offense Report) (maintained in Commission files).

45/ Report of the Dade County Medical Examiner, Case No. 79-3434 (Dec. 23, 1979) (maintained in Commission files).

46/ State v. Diggs, Cr. Case No. 79-21601A (11th Cir. Fla. 1980). On December 28, 1979, Officer Alex Marrero, Sgt. Ira Diggs, Officer Michael Watts and Officer William F. Hanlon, all from the Dade County Department of Public Safety, were charged

and 47/ with participating in an attempt to cover up the
incident by making it appear accidental. 48/ At the trial,
McDuffie was moved from Miami to Tampa, Florida, evidence was
presented that Mr. McDuffie was jumped upon and beaten

(Con.t) with manslaughter. Offense Report. Two other
officers, Charles B. Vevecka and Mark Meier, were granted
immunity from prosecution and later testified for the State
Attorney's Office at the trial. The New York Times, July 29,
p. A11. On January 4, 1980, Officer Hanson was granted
immunity from prosecution in exchange for his testimony.
Investigative Files, Dade County Department of Public
Safety-Internal Review, Memorandum of Investigation from Sgt.
Lundberg to Bobby L. Jones, Director (undated) S.I. 879-521,
7 (maintained in Commission files). On February 1, 1980,
first degree murder charges were filed against Officer
Hanson. Ibid., addendum of Feb. 5, 1980 (maintained in
Commission files).

State v. Diggs, Cr. Case No. 79-21601A (11th Cir. Fla.
1980). On December 28, 1979, Sgt. Herbert Evans of the Dade
County Public Safety Department was charged with tampering with
evidence and orchestrating the coverup. Offense Report. On
January 1, 1980, Officer Ubaldo Del Toro of the Dade County
Public Safety Department was charged with being an accessory
to the fact for his involvement in the coverup.
Investigative Files, Dade County Department of Public
Safety-Internal Review, Memorandum of Investigation from Sgt.
Lundberg to Bobby L. Jones, Director (addendum of Feb. 5,
1980) S.I. 879-521 (maintained in Commission files).

The first police reports of the incident stated that Mr.
McDuffie's injuries were sustained when he fell from his
motorcycle after running into a curb. It was thereafter
determined that no such accident had occurred, but that police
officers had vandalized the motorcycle with nightsticks and, in
an attempt to create the appearance of an accident, had driven
over it with a police squad car and scraped up the street with
fire iron. Offense Report.

after calling out, "I give up." 49/ As he was lying on the
ground handcuffed, an officer allegedly straddled him and swung
a Kel-lite flashlight or baton with both hands from behind his
back over his head and delivered two or three full-force blows
to Mr. McDuffie's skull. 50/ Dr. Ronald Wright, Dade County's
chief deputy medical examiner, testified that the blows
received were equivalent in force to a fall from a four-story
building. Dr. Wright also stated that Mr. McDuffie suffered
the worst brain damage he had ever seen in 3,600 autopsies. 51/

At the conclusion of the 49-day trial, the all-white jury
deliberated less than 3 hours and acquitted all five defendants
of all charges. 52/ Coming as it did in the wake of the
LaFleur, Heath, and Jones cases, the McDuffie verdict was
perceived as more than just an isolated failure of the criminal

49/ The New York Times, July 29, 1980, p. A11. Conflicting
evidence attributing different actions to various officers was
reportedly a contributing factor in the acquittal. Ibid.

50/ Miami Herald, April 30, 1980, p. 4B.

51/ The New York Times, May 9, 1980, p. A20.

52/ New York Times, July 29, 1980, p. A11. The judge had
earlier directed an acquittal verdict as to the charges against
defendant Del Toro. Ibid.

justice system. To the black community and many others in Miami and elsewhere, the McDuffie verdict appeared to be the final proof that the criminal justice system in Dade County was incapable of condemning official violence against blacks. 53/

The Governor's citizens' committee explicitly recognized that the major problem confronting the Dade County criminal justice system was its lack of credibility in the black community. 54/ Credibility, the committee noted, is largely a function of appearance, and that events and not ignorance convinced many that Dade County operated a racist justice system. 55/ The justice system, the committee found, is severely hampered without the confidence of the community:

The Committee was deeply moved by the statement of one of the speakers appearing before it. He described plaintively his conclusions about several incidents in language approximately as follows: "A group

53/ New York Times, May 19, 1980, p. A1; Washington Post, May 19, 1980, p. A1, A10.

54/ Citizens' Committee Report, pp. 25-29.

55/ Ibid., p. 67.

of white police officers break into the wrong house, beat up a Black man and his son, and they are still on the force; a White highway patrolman makes sexual advances upon a Black girl in his car, and nothing happens to him; a White policeman shoots a young Black man in the back of the head and is charged with nothing; another group of White policemen beat a Black man to death and are turned loose."

. . . .

So perceptions are really important. They constitute signals flashing the danger of rising emotions and frustrations. They indicate that in the minds of the perceivers something is radically wrong. Further, whether borne out by fact or not, poor perceptions reveal a lack of confidence on the part of many citizens in the criminal justice system, a condition that does not lead to the proper functioning of the system. 56/

56/ Ibid., pp. 26-27.

minimizing the importance of community attitudes and
ceptions by ascribing them to ignorance, the committee said,
not dispel the belief that a dual system of justice
exists. 57/ What remained was a criminal justice system
incapable of clearly condemning excessive physical force
used against black citizens and unable to dispel the belief that the
system is unfair and racist.

Finding 7.2: Independent official investigators who have
examined the administration of justice in Dade County have been
highly critical of police investigations and of the State
Attorney's handling of highly publicized and racially sensitive
cases.

Both the Governor's citizens committee and the specially
appointed Acting State Attorney in the Willie T. Jones case
identified particular actions and decisions of law enforcement
officials that were troubling. Major findings of these two
reports on the administration of justice in the five cases
reviewed focused on inadequacies in investigations,
proprieties in the relationship between the State Attorney's
office and the police, and repeated failures of the State
Attorney to be straightforward and forthright about her
office's handling of those highly publicized incidents. 58/

Ibid., pp. 28-29.

Ibid., p. 30.

With regard to the investigation conducted by the Dade
County Department of Public Safety in the LaFleur case, the
committee concluded:

Our review of the Internal Review Section's
investigation of its own officers leads to
the inescapable conclusion that the Internal
Review Section's review was totally
unsatisfactory.

A critical examination of the Public Safety
Department's investigation gives the
distinct impression that it was conducted,
not for the purpose of ferreting out the
truth, but for the purpose of clearing the
officers involved of criminal wrongdoing. 59/

The committee was particularly critical of the failure of the
internal review investigator to account for the documented
injuries sustained by Mr. LaFleur. 60/ The investigator
focused instead on inconsistencies in the victim's statement
while "turn[ing] a blind eye on...material inconsistencies" in
the officers' statements. 61/

59/ Ibid., pp. 29-30.

60/ Ibid., pp. 32-33.

61/ Ibid., p. 33.

The committee found the Florida Highway Patrol investigation of the Willie T. Jones case "so grossly inadequate for the offense involved and the evidence available that it actually amounted to criminal negligence." 62/

The committee described the Public Safety Department's investigation and handling of the Willie T. Jones case as "allowing" and "another example of police agencies trying to protect their own people by investigating themselves." The committee found that internal review in such cases "has proven to be totally unsatisfactory in the State of Florida." 63/ The Governor's committee also questioned the practices and procedures of the State Attorney's Office, in particular the relationship between the State Attorney's Office and the police agencies when complaints allege improper police action and conduct. According to the committee, "[t]he State Attorney appears to have aligned herself on the side of the police even when such an alignment is insupportable," 64/ which the committee considered "improper and inappropriate." 65/

62/ Ibid., p. 37.

63/ Ibid., p. 38.

64/ Ibid., p. 61.

65/ Ibid., pp. 34-35.

With regard to the State Attorney's Office handling of the Willie T. Jones case, the committee observed:

The Judgment rendered in this case is not unusual for a first offender, with the psychiatric problems evidenced here and in light of the difficulties that the State would have had in securing a conviction under circumstances where the testimony consists of an eleven year old female testifying against a Florida Highway Patrol Officer with an unblemished record. 66/

The committee chastised the State Attorney's Office, however, for "internal confusion" and "mishandling of the plea negotiations" 67/ and found that a principal cause of this

66/ Ibid., pp. 41-42. A subsequent review by the State Attorney's Office of all "lewd and lascivious" charges brought during the period 1976 through 1979 supports the Committee's finding. Ninety cases were filed during that period where the defendant had no prior criminal record and was charged with a lewd and lascivious assault on a minor. In 99 cases the defendant received probation. In only two cases did the sentence include incarceration; one defendant was incarcerated for 6 months, another for 60 days. Seven defendants were placed in "in-custody" psychiatric programs and others were placed in either outpatient or residential programs as recommended by the examining psychiatrist. Memorandum from the Office of the State Attorney (undated) (maintained in Commission files).

67/ Citizen's Committee Report, p. 43. The committee report further stated that "we do not find that the State Attorney's office actions in this case were in any way racially motivated." Ibid.

fusion was that "so many different Assistant State Attorneys
e involved over a period of time that they could not agree
ng themselves on what, if anything, had been agreed to by
State." 68/ The committee was also critical of the State
orney's unwillingness to be straightforward about the plea
negotiating:

[There developed] a dispute over whether or
not the State Attorney's Office agreed to
and participated in the plea negotiations....
[I]nstead of accepting responsibility for
what had occurred and properly explaining
the appropriateness of the result, the State
suggested that it was the action of the
Court and not the State Attorney's Office
that caused the Judgment of probation to be
entered in this case....[T]he State
Attorney's suggestion that the Judge in this
case had erred was totally improper and
without foundation. Nothing could be
further from the truth. The Court acted
properly on the knowledge and information
before it. 69/

68/ Ibid., p. 41.

69/ Ibid., pp. 40-41.

The Governor's committee also criticized the State
Attorney's decision in the Randy Heath case to neither file
criminal charges before the grand jury acted nor to inform the
grand jury of her intention to do so:

This Committee...cannot understand the
manner in which this case was processed by
the State Attorney and her office. Since
the State Attorney acts as a one-person
Grand Jury under the law of the State of
Florida and since it is unnecessary to
obtain Grand Jury action to charge a person
with a crime less than capital, we are
unable to understand why she did not charge
Larry Shockley with the crime of
manslaughter if she honestly and
conscientiously believed that probable cause
existed to so charge him. Officer Larry
Shockley is still employed by the Mialeah
Police Department as a police officer. This
is appalling and unconscionable to this
Committee. 70/

70/ Ibid., pp. 44-45.

In reviewing the State Attorney's handling of the prosecution of Dr. Jones, the Governor's committee found no justification for filing a second set of criminal charges on the eve of the first trial:

(T)he explanation offered by the State Attorney for returning the second charge against Johnny Jones on the eve of his first trial, i.e., that it was the only way to make Mr. Jones aware of certain evidence that the State intended to use at the first trial, has no basis in fact or law. The Rules of Criminal Procedure provide many means of disclosing evidence to defense counsel without the necessity of having to file additional charges against the defendant. We will not speculate on other possible reasons this action was taken by the State Attorney's Office, but suggest that she reexamine this practice in the interests of justice. 71/

Ibid., p. 47.

The committee also reviewed the State Attorney Office's handling of the LaFleur case but independently concluded that the officers' behavior had been excessive and unjustified. 72/ Based on the State Attorney's testimony, no charges were brought because it was not possible to determine which officer or officers were responsible and under what circumstances the injuries were sustained. The committee, nevertheless, castigated the State Attorney for "going into the black community and trying to convince it that the officers...were not guilty of any wrongdoing." 73/ In its review of the McDuffie case, the committee report emphasized that "nothing will erase the ugly and shocking blemish that this case has placed on our criminal justice system." 74/ The committee's criticisms about the handling of the McDuffie case included noting that charges were filed hastily without sufficient time to investigate and evaluate the case, 75/

72/ Ibid., pp. 33, 36.

73/ Ibid., p. 34.

74/ Ibid., p. 47.

75/ The committee report stated: "We believe that the State Attorney's Office acted in haste in this matter. The facts were so repulsive and the incident so shocking as to catapult the State Attorney's Office into filing the charges approximately one week from the time that the matter came to its attention. We believe such haste did not allow an adequate amount of time to properly investigate and evaluate all of the parties and all of the evidence. Ibid., pp. 48-49.

that the prosecution did not vigorously contest the change venue from Miami to Tampa. 76/ The committee also criticized the prosecution's decision to ask no questions of impaneled jury that might have elicited prejudice. 77/ The report of the judicially appointed Acting State Attorney concerns only one case, the prosecution of the highway salesman, Willie T. Jones, for sexually molesting a young girl. The Acting State Attorney termed it a clear error in judgment to have three uniformed white male police officers detain a child who alleged that she was sexually molested by other white male policemen. 78/ The report to the court demonstrated that there were other available options ignored by

79/ "[W]e do not believe that the State Attorney vigorously opposed the Defendant's application for change of venue, nor did she present any evidence in opposition to the motion for a change of venue. We do not know whether or not venue would have been changed regardless of the opposition of the State, but this case demanded a personal appearance by the State Attorney and a vigorous opposition to the application for change of venue; this she failed to do." *Ibid.*, p. 49.

80/ "This committee was also surprised to hear that the State Attorney's office did not engage in a complete and thorough examination of prospective jurors by personal questions of the type designed to ferret out any prejudices against the type of evidence that the State knew it would have to present. It is the State Attorney's position that the Court asked all of the necessary questions and that, as a strategic or tactical maneuver, their actions in this regard were appropriate." *Ibid.*, pp. 49-50.

81/ Report of the Acting State Attorney, p. 5.

the police such as the Dade County rape treatment center which has facilities for both physical and mental examinations. The report concluded that the lack of such examinations, in essence, forced the Court into the position of sentencing without the benefit of being presented with all the facts. Subsequent psychological and physical examinations of the victim, undertaken at the behest of the victim's mother, revealed that the child was still withholding additional facts and that there was evidence of genital injury, although the time lapse precluded a positive finding that the injury occurred as a result of the assault. The author noted:

Had the child been timely taken by the police to the Dade County Rape Treatment Center, we might now know whether [an injury discovered during the physical examination] resulted from Jones' assault and the facts subsequently ascertained by Drs. Haber and King would have been available to the Court prior to sentencing. Instead, this Court was left unaware of the full facts of the assault and its physical and psychological effect upon [the victim]. 79/

79/ *Id.*, pp. 5-6 (footnote omitted).

Acting State Attorney's report also disclosed that the
 ion had failed to update its investigation after
 charges were filed and had permitted the victim to
 statements without the assistance or presence of an
 at State Attorney and without her own counsel:
 The police and State Attorneys Office
 expended more effort to assure the comfort
 of the defendant Jones than it did to
 comfort [the victim]. Something is wrong
 when the defendant is accorded preferential
 treatment and his victim is denied even the
 most basic of attention. 90/

7.3: The Duval County State Attorney's Office has no
 written policies pertaining to the filing of criminal
 or to negotiated settlements in criminal cases. The
 Attorney's Office also challenges potential jurors on the
 race in the jury selection process. The practices of
 the Attorney's Office reinforces the widespread belief
 the office lacks consistent policies regarding the use of
 jury, engages in covert plea negotiations when
 it, and systematically excludes blacks from juries.

the Attorney's Office and the Grand Jury
 Florida, the State Attorney is a constitutional officer
 elected for a 4-year term to prosecute all criminal
 81/ Felony charges, except in capital cases, may

p. 10.
 A. CONST. art. V, §17.

be filed directly by the State Attorney or may be lodged by an
 indictment from the grand jury, under Florida law. 82/ The
 Governor's committee was particularly perplexed by the fact
 that certain cases involving police misconduct were initiated
 by direct filing of criminal charges, while others were
 presented to the grand jury:

This Committee finds it strangely
 disconcerting that there are no standard
 procedures governing the presentation of
 cases involving police misconduct to the
 Grand Jury. In some instances, such cases
 are presented to the Grand Jury for action,
 while in other cases they are not. It is
 also interesting to note that, in each of
 the recent cases of purported police
 wrongdoing which were reviewed by the Grand
 Jury, not a single indictment has been
 returned. We suspect that this lack of
 standard procedures creates confusion and
 concern in the minds of the public. This
 Committee further concludes that a standard
 policy or operating procedure should be

82/ FLA. STAT. ANN. B. CRIM. PR. 3.140(a)(West 1980).

adopted with reference to complaints against the police. 83/
testifying before the United States Commission on Civil Rights, State Attorney Janet Reno conceded that her office has a long-standing policy on the use of the grand jury but maintained that such a policy does exist:

Ms. Reno. [The State Attorney's Office] does not have any written policies because I think our charging decisions are governed by the decision of the Florida Supreme Court which says that if you had probable cause plus the belief that there is a possibility that you can prove the case beyond and to the exclusion of a reasonable doubt, then charges should be filed. 84/

I think I should charge in all non-capital cases where I believe there is probable

Citizens' Committee Report, p. 35 (footnote omitted).

In re Rules 3.131(b), Florida Rules of Criminal Procedure, D. 233 (1974) to which the State Attorney was presumably referring. Cf. Reno Testimony, Hearing Transcript, p. 1453, where she stated: "Before filing information every state attorney should not only seek probable cause in his investigations but also consider the possibility of proving the case beyond and to the exclusion of every doubt", but offers no guidance as to whether charges should be brought by indictment or information.

cause to believe that the crime was committed and the defendant committed the crime, and there is a possibility of proving that crime beyond and to the exclusion of every reasonable doubt.

In sensitive cases where I don't believe that exists, I think I should refer it to the Grand Jury, and point out that if they don't want to they should get a special prosecutor so they can act as a check and balance on my decisions.

Counsel. So you would only go to the Grand Jury if you yourself were not convinced that the essential elements for prosecution were present?

Ms. Reno. I think I should consider the Grand Jury as a check and balance on me with full knowledge that each Grand Jury is advised on a continuing basis that if they don't want our legal advice and want to get a special prosecutor that they are free to do so. 85/

85/ Reno Testimony, Hearing Transcript, pp. 1414-15.

State Attorney also said that cases are presented to the grand jury when requested, and that in two of the five cases mentioned, those involving Randy Heath and Johnny Jones, the grand jury did make such requests. 86/

Under the law the State Attorney has discretion in initiating criminal charges. The Governor's committee suggested that she exercise greater use of the grand jury, noting that charges in the above case were lodged by direct filings.

A presentation to the grand jury of the facts of this case might have assisted the State Attorney's Office by having the insights of a civilian body, thereby assisting her in determining who should have been charged and what the charges should have been. 87/

The State Attorney differed. As an elected prosecutor, she is responsible for personally making the decision to file charges whenever possible. To leave it to the grand jury, she would be to "pass the buck":

86/ Reno Testimony, Hearing Transcript, pp. 1414-17. See Citizen's Committee Report, p. 43.

87/ Citizens' Committee Report, p. 48.

I somehow feel that that's intellectually dishonest. I have an obligation to this community to prosecute when I am supposed to and when I can't, say why I can't. 88/

The law, however, does not limit the State Attorney's discretion. Her limitations are self-imposed. The "five infamous cases," as the Governor's committee dubbed them, show that lengthy preparation of highly publicized cases can cause the grand jury to exercise its independent authority and request that evidence be presented to it. When inordinate delays in completing publicized criminal investigations create political and community pressures to which the grand jury responds the oral policies of the State Attorney are circumvented.

Clearly written policies describing the handling of sensitive cases with a minimum of publicity, especially felony cases involving law enforcement officers and cases in which race is an issue, would be responsive to the concerns of the Governor's committee and other critics. 89/ They would

88/ Reno Testimony, Hearing Transcript, p. 1457.

89/ The State Attorney's Office has developed a policy manual for its attorneys. The manual does not provide standards for plea bargaining and/or settling cases without trial, nor instructions in the use of peremptory challenges.

to focus public discussion on legitimate issues raised by the overlapping roles of the State Attorney and the grand jury, palliating the perception that the State Attorney develops policy on a case-by-case.

A clear policy of referring noncapital cases to the grand jury only when a charge cannot in good conscience be filed correctly does, however, create additional problems. In the LaFleur case, the State Attorney followed that policy.

I did not defer to the Grand Jury on LaFleur. I made a decision myself on LaFleur and announced that decision. I announced that decision because I felt I could not in good conscience prosecute based on the charging standards announced by the Florida Supreme Court.

I then went to the community and I also went to the Grand Jury. The Grand Jury issued a report noting that I had urged them to appoint a special prosecutor if they felt necessary.

9/ (Con.t) Instead of giving minimum standards as guidelines for prosecutors, the manual is largely concerned with which are the appropriate forms to be completed and where they are to be filed. State Attorney's Office, 11th Jud. Cir. Fla., Policies and Procedures Manual (Second draft, May 9, 1980) (maintained in Commission files).

Let me point out that seven of eighteen members were blacks. They examined the circumstances of the LaFleur case and they determined charges should not be filed. 90/

Charles Mays, formerly a chief attorney in the felony division of the State Attorney's Office, explained the difficulties of such a procedure:

I have a tremendous amount of respect for the present State's Attorney. However, she made a mistake...in that she publicly announced her finding before taking the case to the Grand Jury. To an extent that probably aggravated the problem in that people were probably saying, and maybe rightfully so, that, "Gee, why take it to the Grand Jury? She has spoken, and the Grand Jury is controlled by the State Attorney." 91/

90/ Reno Testimony, Hearing Transcript, pp. 1412-13.

91/ Mays Testimony, *Ibid.*, pp. 1430-31.

Ms. Reno and Mr. Mays testified that it was common and procedure for the State Attorney's Office to act as an advisor to the grand jury and to present available evidence, but not to recommend that the grand jury take any action.^{92/} The black community, however, does not see the grand jury as an independent body with full review powers. The public understands the respective roles of the State Attorney and the grand jury; review of cases by the grand jury appears meaningless.^{93/} Nevertheless, grand jury review of a determination not to charge, particularly in cases involving abrasive police behavior in the black community, is an oversight of otherwise unrestrained prosecutorial discretion by the State Attorney's Office. The focus on the question of how to charge, however, is not the decision of whether to charge. A prosecutor has ample discretion to decide not to prosecute. Such a decision is based on several reasons, which may be only partially related. As one commentator noted:

^{92/} Reno Testimony, Hearing Transcript, p. 1415; Mays Testimony, *Ibid.*, pp. 1434-35.

^{93/} The Governor's committee recommended a clear, public delineation of the separate roles of the State Attorney's Office and the grand jury in the criminal charging process. *Committee Report*, pp. 27-29.

Decisions not to charge—or not to charge as fully as the evidence would technically permit—are made for two quite different kinds of reasons. In some instances, a negative charging decision is made because prosecutors believe that conviction is unlikely even though there is probable cause for charging. In others, the negative decision reflects, instead, a judgment that full enforcement would not be in the overall community interest.^{94/}

The State Attorney testified that full enforcement of the law whenever police misbehavior constitutes a crime is the policy of her office:

My records of our prosecution of police officers (show that) we prosecuted some...thirty-two law enforcement or criminal justice personnel total in the less than three years (since) I have taken

^{94/} Frank W. Miller, *Prosecution: The Decision To Charge A Suspect With A Crime* (Little, Brown & Co.: Boston, 1969), p. 293. On the charging function, see also, W. Boyd Littrell, *Bureaucratic Justice: Police, Prosecutors and Plea Bargaining* (Sage Publications, Beverly Hills, 1979), pp. 31-35.

office. I think any type of police abuse or police corruption is inappropriate. If I can prove a crime I am going to prosecute. 95/

The State Attorney maintains that the decisions not to charge in the LaFleur case, or originally in the Neath case, were based on her decision that the available evidence did not meet the standard for charging as articulated by the Florida Supreme Court. 96/ The standard, however, is inherently subjective. Based upon an interpretation of the available evidence at the charging stage, the prosecutor may conclude that a crime was committed by a particular individual.

If, as part of a clearly written policy, the grand jury reviewed decisions not to charge in important cases, it would provide a check and balance to the State Attorney's decision, which would benefit both the State Attorney and the community. As the eminent legal scholar Kenneth Culp Davis points out:

Viewed in broad perspective, the American legal system seems to be shot through with many excessive and uncontrolled discretionary powers but the one that stands

95/ Reno Testimony, Hearing Transcript, p. 1410.

96/ *Ibid.*, pp. 1412-1413.

out above all others is the power to prosecute or not prosecute. The affirmative power to prosecute is enormous, but the negative power to withhold prosecution may be even greater, because it is less protected against abuse. 97/

Plea Negotiations

Plea negotiations are an established and constitutionally accepted part of the criminal justice system. In Dade County, as elsewhere, many more cases are settled by negotiation than by trial.

One criticism of the State Attorney for her handling of the Jones case concerned the sentence imposed through a plea bargain, and another concerned the openness of the negotiation process itself. The State Attorney's Office maintains that the probationary sentence was entirely consistent with other similar cases; 98/ the Governor's committee concurred but felt that the plea negotiations were mishandled and then

97/ Kenneth Culp Davis, *Discretionary Justice*, (Urbana: University of Illinois Press, 1971), p. 188.

98/ Memorandum from the Office of the State Attorney (undated) (maintained in Commission files).

inadequately explained after they became the subject of public scrutiny. 99/

The State Attorney's fears about the public perception of plea negotiations led her to say:

[A]nytime you negotiate a case in Dade County someone thinks that something was wrong and somebody made a deal and the sentence was not right....[A] negotiation to me is a situation where you say, "Look, if I plead him guilty, I will give you this deal." There was none of that [in the Willie Jones' case]. 100/

She admitted that, despite her aversion to the process, her office regularly engages in plea bargaining:

Counsel. I take it that there are occasions where your office does engage in normal plea negotiations that result in a plea bargain; is that correct?

Ms. Reno. Normal and abnormal, sometimes.

99/ Citizens' Committee Report, pp. 41-42.

100/ Reno Testimony, Hearing Transcript, pp. 1419-20.

Counsel. When that does occur, do you believe that the terms of that plea bargain should be made public, should be made part of the public records?

Ms. Reno. Yes, I do. But there are various types of plea negotiations that go on in Dade County.

In some sentences you have the prosecutor and the defense attorney negotiating the case outside the courtroom, come in and present it to the court with no chamber discussion whatsoever, which the court can accept or reject.

In the other sentences the court will declare a recess and ask the prosecutor and his attorney to come into the chambers. In this instance, he says, "What is the State's will?"

"The State only wants five years."

The court, "Would you agree to less?"

The defense, "What about two?"

"I tell you what. If you plead him guilty, I will give him two."

There are various forms of negotiation in order to extract that guilty plea.

I wish with all my heart that we could do away with that type of negotiation, but we can't because of our Speedy Trial Rules and our caseload. 101/

In the Willie Jones case, the defense counsel expressed his client's unwillingness to plead guilty if that would result in incarceration. 100/ The State Attorney maintains that, although "there were conferences in chambers with other people present at which sentence was discussed" and "[t]here had been discussion back and forth," there were "explicit instructions" not to negotiate the case. 103/ Following these discussions, the State Attorney's Office informed the court that it had "no objection" to a probationary sentence. The distinctions between not objecting to a proposed sentence and agreeing that a sentence is appropriate were discussed at the Commission hearing:

1/ Ibid., p. 1421.

2/ State v. Jones, No. 79-2078 (11th Cir. Fla. 1979) Hearing before Judge Gordon, Apr. 4, 1979, pp. 23-24.

3/ Reno Testimony, Hearing Transcript, pp. 1419-20.

Counsel. In an adversary system such as we have, what distinction do you think there is between the prosecutor agreeing to a plea bargained sentence and a prosecutor requesting or not opposing a sentence?

Ms. Reno. I don't know that there is any distinction between saying, "I have no objection," and "I agree, your Honor, that is a good sentence."

Negotiation, however, does have a connotation in this community of some deal having been made which would give the person involved a lighter sentence by virtue of his pleading guilty, and that was not the case here. 104/

Negotiations and pleas do not occur solely because of pressure to expedite court calendars. Prosecutors and defense counsel in numerous cases often prefer to forego the uncertainties of jury trials for strategic and tactical reasons and do so even when limited resources are not a concern. 105/ A few jurisdictions have experimented with

104/ Ibid., p. 1421.

105/ The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts (Washington, D.C.: Government Printing Office, 1967), p. 10 (hereafter cited as Task Force Report: The Courts).

plea negotiations. Although these experiments have
as successful by some, other reviewers have noted
plea bargaining is prohibited, negotiations do not
surface at other discretionary stages in the
process. 106/

1973 report on courts, the National Advisory
on Criminal Justice Standards and Goals recommended
bargaining in criminal cases be eliminated. 107/
still permits plea negotiations. 108/ The Florida
Commission on Criminal Justice Standards and Goals,
agency that drafted standards for Florida's criminal
system, specifically rejected the national commission's
eliminating plea negotiations. The Florida commission
the legal authority for such negotiations and
that prosecutors formulate written policies
their practices of plea negotiations. 109/ The
American Bar Association's Standards for Criminal

erman, Criminal Violence, Criminal Justice (New
Stage Books, 1980), pp. 378-79.

National Advisory Commission on Criminal Justice
and Goals, Courts (1973), pp. 44-49.

FLA. STAT. ANN. R. Crim. Pr. 3.171(a) (West 1980).

Governor's Commission on Criminal Justice Standards and
Goals for Florida's Criminal Justice
(1976), Std. Cr. 2.01-.02.

Justice 110/ and the National District Attorneys' Association
Prosecution Standards 111/ also encourage prosecutors to engage
in plea negotiations. When the Florida Rules of Criminal
Procedure were revised in 1973, the American Bar Association's
standard supporting plea bargaining was adopted and
incorporated as law. Rule 3.171(a) of the Florida Rules of
Criminal Procedure states:

Ultimate responsibility for sentence
determination rests with the trial judge.
However, the prosecuting attorney, the
defense attorney, or the defendant, when
representing himself, are encouraged to
discuss and to agree on pleas which may be
entered by a defendant. Such discussion and
agreement must be conducted with the
defendant's counsel. If the defendant
represents himself, all such discussions
between him and the prosecuting attorney
shall be of record. 112/

110/ American Bar Association, III, Standards for Criminal
Justice (Boston: Little Brown, 1980), Vol. III, Std. 14-3.1.

111/ National District Attorneys' Association, National
Prosecution Standards (1977), Std. 16.1.

112/ FLA. STAT. ANN. R. Crim. Pr. 3.171(a) (West 1980).

50

resident's Commission on Law Enforcement and
ation of Justice, in its report exploring the problems
by plea bargaining, noted that the system operates
y and invisibly with often no formal recognition that
that has been offered as inducement to plead

113/
Commission added that "plea bargaining takes place at a
n the parties' knowledge of their own and each other's
likely to be fragmentary." 114/

the State Attorney offered "no objection" to a
ary sentence in the Willie Jones case, she was
a position specifically permitted by the Florida Rules
al Procedure. 115/ What is unclear is how and why the
orney's Office changed its position on the sentence.

to the Acting State Attorney's report, the
ng Assistant State Attorney "would not entertain plea
ons involving less than in-custody treatment," but the
t who handled the case following its reassignment was

113/ Task Force Report: The Courts, pp.9-10.

114/ Ibid., p. 11.

115/ A. STAT. ANN. B. Crim. Pr. 3.171(b)(1)(i)(B)(West

unaware of this limitation and actively lobbied for a
probationary sentence requiring only outpatient psychiatric
care. 116/

Clearly, one of the causes for confusion in the prosecution
of this case was the number of assistant district attorneys
handling it and the communication breakdowns. The full course
of negotiations was unknown by all parties and could not be
communicated to the judge. 117/ A written policy for the
conduct of plea negotiations and a requirement that the
negotiations be made part of the court record would make the
entire process more formal and visible, aiding community
understanding and acceptance of criminal adjudicatory
procedures.

116/ Report of the Acting State Attorney, p. 7. The report,
however, goes on to state: "All evidence which we have
reviewed supports the finding...that, from the outset, the
State Attorney's Office was actively attempting to covertly
convince a judge to accept a plea negotiation involving only
probation and outpatient psychiatric care." Ibid., p. 8.

117/ "[T]he investigation and prosecution of the [Willie T.]
Jones case displays 'malevolent indifference' for indecent
criminal behavior by a white public official against the person
of an innocent black child. The record of this case bespeaks
an incomplete, half-hearted investigation and a prosecution
which expressed greater concern for the defendant than his
victim. The quality of the investigation and prosecution of
Willie Thomas Jones left...[the]...Court ill-informed on
crucial issues which could have been determinative of the
defendant's sentence." Ibid., p. 12.

peremptory Challenges: Excluding Black Jurors Because of Race
 In any criminal case, prospective jurors can be dismissed
 for cause, but also upon the peremptory challenge of
 either party. The distinguishing feature of the peremptory
 challenge has always been that no explanation is needed.
 In non-capital felony cases in Florida generally
 six peremptory challenges, which it can use to exclude any
 prospective jurors who have not been discharged for

118/
 Jury lists in Florida are culled from voter registration
 119/ Registration of black voters is roughly
 proportionate to black representation in the population. 120/
 The relatively small size of the black community and the
 state's six-person jury system in non-capital cases 121/

FLA. STAT. ANN. §913.08 (1974). See also, Fla. R. Crim.
 3.350 (West 1980).

FLA. STAT. ANN. §140.01 (Supp. 1980).

Janet Feagans Lancelot, Report on the Development of
 Political and Program Structure of Dade County, Florida (1980)
 prepared for the U.S. Commission on Civil Rights (hereafter
 cited as Political and Program Structure of Dade County,
 IV, p. 3.

FLA. STAT. ANN. § 913.10 (1974).

make it relatively easy for either party to employ its
 peremptory challenges so as to select an all-white jury. 122/

The Governor's committee, aware that much of the public
 controversy surrounding the Johnny Jones case involved the
 exclusion of black jurors, said that the guilty verdict would
 have been far more acceptable to the community had a black
 juror been seated. 123/ The fact that the State Attorney's
 Office has used peremptory challenges to exclude black jurors
 has become, particularly since the Johnny Jones trial, a focal
 point of criticism in Dade County.

Harold Long testified that, in his experience as a private
 criminal defense attorney in Miami, he found that Assistant
 State Attorneys used their peremptory challenges to
 systematically exclude black jurors. 124/

Bennett Brummer, the Public Defender whose office defends a
 majority of the cases prosecuted in Dade County, also testified
 that Dade County prosecutors regularly exclude black jurors:

122/ Bennett Brummer, Public Defender, 11th Judicial Circuit
 of Florida, testimony, Hearing Transcript, p. 1441.

123/ Citizen's Committee Report, p. 45.

124/ Harold Long, testimony, Hearing Transcript, p. 1403.

Counsel. In your experience does the State Attorney's Office systematically exclude blacks from juries in cases where blacks are defendants?

Mr. Brummer. Yes.

Counsel. Is it a policy that began with the present State Attorney or do you know whether it existed under her predecessor?

Mr. Brummer. I am not really in a position to say. I have first become aware of it under the present administration. I am not in a position to say whether it precedes this administration. 125/

Mr. Brummer believed that black as well as white prosecutors had in such exclusions. 126/

The Supreme Court of the United States in Swain v. Alabama, 127/ held that using peremptory challenges to exclude prospective black jurors in a particular case, is not, in and of itself, a violation of the equal protection clause of the Constitution.

Mr. Brummer Testimony, Hearing Transcript, p. 1437 - 1440.

380 U.S. 202 (1965).

the 14th amendment. 128/ The Court added, however, that a record of continuing and systematic exclusion of black jurors could constitute such a violation. 129/ The defendant attempting to establish such systematic exclusion must meet virtually insurmountable standards of proof set by the Court. 130/ Recently, a number of State supreme courts have considered the use of racially motivated peremptory challenges

128/ Id. at 221.

129/ "[W]hen the prosecutor in a county, in case after case, whatever the circumstance, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of Negroes who have been selected as qualified jurors by the jury commissioners and who have survived challenges for cause, with the result that no Negroes ever serve on petit juries, the Fourteenth Amendment claim takes on added significance." Id. at 223.

130/ Id. at 224-26. Courts have affirmed themselves to the literal language of Swain to determine if there has been systematic exclusion. First, courts have required the defendant to prove that the state excluded blacks in case after case. United States v. Carter, 528 F.2d 844 (8th Cir. 1975), cert. denied, 425 U.S. 961 (1976). (Exclusion of black jurors in seven of fifteen cases insufficient). Second, courts have not distinguished the defendant's race in determining whether there was systematic exclusion. State v. Baker, 524 S.W. 2d 122 (Mo. 1975) (en banc) (no systematic exclusion when blacks are excluded only in cases with black defendants). Third, courts have required almost total exclusion of blacks. Id. Only one defendant on record has ever met this burden. State v. Brown, 371 So. 2d 751 (La. 1979).

... cases and have prohibited such practices, 131/ but
... Supreme Court has not yet addressed the issue. 132/
... told the Commission that defense counsels have
... combat such practices in Dade County by making the
... are of the problem and by establishing the record to
... systematic exclusion:

One of the primary [mechanisms] that we
... have attempted to utilize, [is that] even
... prior to the jury selection process, motions
... are filed in advance to prevent the State
... from systematically excluding black people
... from the jury in the jury selection
... process. Each time that the State
... peremptorily excuses a black person from the
... prospective jury panel, an objection must be

... v. Wheeler, 148 Cal. Rptr. 890, 503 P.2d 748
... Commonwealth v. Soares, 387 N.E.2d 499 (Mass. 1979)
... upon due process protections arising from their
... state constitutions).

... lower Florida state appellate courts have relied upon
... systematic exclusion equal protection standards of Bain-
... v. Simpson, 326 So.2d 54 (Fla. 4th Dist. Ct. App.
... v. State, 388 So. 2d 1094 (Fla. 5th Dist. Ct. App.
... see, Cornett v. City of Miami, Civ. No. 79-453
... 1st Cir. Dec. 17, 1980) (order on motion for new trial)
... of black jurors denied right to fair trial).

... lodged and you must state that the objection
... is based upon the systematic exclusion of an
... identifiable minority, most specifically a
... black person. 133/

The State Attorney denied that her office systematically
... excludes black jurors, but there has been no attempt to
... formulate a written office policy designed to prohibit
... systematic exclusion by Assistant State Attorneys.

Ms. Reno. [The attorneys on my staff] have
... exercised peremptory challenges to exclude
... black jurors through the use of peremptory
... challenges but I know of no instance over
... which they have done it on the grounds of
... race. And I disapprove of that.

Counsel. Have you been explicit in
... instructing them not to exclude jurors on
... the basis of race?

Ms. Reno. Yes.

Counsel. By written directive or by oral
... directive or what?

Ms. Reno. By oral directive.

Counsel. When would this be?

133/ Long Testimony, Hearing Transcript, pp. 1404-05.

Ms. Reno. It was raised, I think,
initially, after—probably in late
April. 134/

In a sworn deposition, Assistant State Attorney George
Posey, Chief of the Organized Crime/Public Corruption Unit
of the State Attorney's Office, testified that he knew of no
policy specifically to exclude or to include black
jurors. 135/

In July 1980, in the criminal prosecution of another black
public official, the judge, who ordinarily presides in a
neighboring circuit, was critical of the prosecution's use of
peremptory challenges to exclude black jurors. He specifically
contrasted such prosecutorial practices with those which he was
accustomed to experiencing in his own circuit. 136/

Neither criminal defense attorneys nor, more importantly,
the community at large believe that the State Attorney's Office
has an effective policy prohibiting racially motivated

134/ Reno Testimony, Hearing Transcript, pp. 1418-19.

135/ State v. Jones, Cr. Case No. 80-3039 (Fla. 11th Cir.),
deposition of George dePosey (Nov. 4, 1980), p. 14
(maintained in Commission files).

136/ Citizen's Committee Report, p. 61. The case involved the
prosecution of Solomon Barnes, a school principal charged with
misuse of public funds.

peremptory challenges. The perception endures that a dual
system of justice operates in the county—one for whites and
one for blacks.

Finding 7.4: The Miami Police Department and the Dade County
Public Safety Department have failed to maintain effective
systems for receiving, investigating, and determining the
validity of complaints about police misbehavior and for
imposing appropriate sanctions.

Miami is no different from many other American cities where
the relationship between the police and minority communities is
one of continuing conflict, despite efforts from both to
resolve their problems. 137/ As the only visible
representative of the predominantly white power structure,
police officers are often the lightning rod for grievances
unrelated to their performance. Yet precisely because of this
constant abrasion, even the most trivial incident can develop
into a major disorder. While law enforcement cannot alleviate
tension by solving the problems of poverty and racism, the
police can develop programs and policies to reduce the
incidence of police misbehavior.

Under Dade County's metropolitan government, law
enforcement services are provided by the 25 distinct

137/ Otis Pitts, Executive Director, Belafonte-Taooley Center
Testimony, Hearing Transcript, p. 1238; Capt. Douglas Hughes,
Commander PBD Central District, testimony, Ibid., p. 1218.

municipalities within their particular jurisdictions and by the county in the unincorporated areas. 138/ The largest force is the Dade County Public Safety Department (PSD), and the largest municipal department is the Miami Police Department (MPD). In addition to having different jurisdictions, MPD and PSD differ in a number of other important respects. In recent years MPD has been a leader in designing and promulgating important departmental policies on the use of deadly force 139/ and on the identification of officers who generate an excessive number of complaints. 140/

138/ Political and Program Structure Development of Dade County, Sec. III, pp. 28-29. Two small municipalities, Islamia and Farnsuo, do not have their own police forces.

139/ Both MPD and PSD have adopted departmental regulations governing the use of deadly force by officers that are more restrictive than Florida's "fleeing felon" statute. FLA. STAT. ANN. §776.05 (1981). The Miami Police Department's policy, which was implemented during the riots, allows the use of deadly force "only as a last resort when the officer has reasonable belief that deadly force action is required to (a) prevent death or substantial harm to the officer or another person or (b) to prevent the escape of a fleeing felon who would pose a real threat of death or substantial harm to the community or police officers. Departmental Order 7, §13.0 (1980). The Public Safety Department's policy is less restrictive. Administrative Order No. 20-75 (1975) Director Jones testified that efforts are underway to make the two departments' policies identical. Jones testimony, Hearing Transcript, p. 1331.

140/ Barnes Testimony, Hearing Transcript, pp. 1327, 1345-46; Jones Testimony, Ibid., pp. 1337-38; Michael Coogrove, Asst. Chief Police, Miami Police Department, testimony, Ibid., pp. 1282-85.

The Commission reviewed evidence supporting complaints that police officers in both MPD and PSD often physically abuse and harass black citizens. 141/ A number of knowledgeable witnesses testified that complaints of police abuse and the level of police community tension in Dade County remain as high since the riots as it was before. 142/ The anger and frustration in Miami's black neighborhoods, particularly Liberty City and Overtown, have not abated. Consequently, police insensitivity or abuse of authority could again have devastating repercussions.

141/ Citizens' Committee Report, pp. 51-53, 57; NAACP Hearing on Police Brutality (Miami, Fla., Mar. 22, 1979); Florida Advisory Committee to the United States Commission on Civil Rights, Policed by the White Male Minority: A Study of Police-Community Relations in Miami and Dade County, Florida (1976); Metropolitan Dade County Community Relations Board, A Report on the Level of Community Trust in the Accountability of Law Enforcement in Dade County (March 1978); Metropolitan Dade County Community Relations Board, Alleged Police Misconduct: A Chronological Account of CCR's Role (February 1978); Board of County Commissioners, Dade County, Memorandum and Minutes of Special Meeting (Feb. 26, 1979); The Miami Herald, "Police Brutality: The Violent Few," a five-part series, July 22-July 26, 1979; Perry Testimony, Hearing Transcript, pp. 1152-54; Brumar Testimony, Ibid., p. 1461. Mays Testimony, Ibid., p. 1460; Michael Ray Greenwood, testimony, Ibid., pp. 1523-24.

142/ Perry Testimony, Hearing Transcript, pp. 1154, 1168; Pitts Testimony, Ibid., pp. 1240-41; Willard Testimony, Ibid., p. 73; Sims Testimony, Ibid., p. 1175.

Broad administrative measures that could reduce friction between the police and the community include better training, directives for handling specific situations, redeployment of personnel, and sensitive community relations programs. 143/ Identifying and disciplining those officers who engage in misconduct, a police department earns the trust of the community it serves. 144/

Officer misconduct rarely occurs in the presence of police supervisors; thorough investigation of citizen complaints is often the only way a department will learn of officer abuse. Such complaints, however, will be forthcoming only when citizens believe that their complaints will receive a fair and thorough review. The Governor's committee, while commending both PBD and MFD officers as sincere and dedicated professionals, noted that the absence of a credible internal review of citizen complaints can itself justify and support claims of police brutality. 145/

143/ U.S., Commission on Civil Rights, Who is Guarding the Guardians? A Report on Police Practices (hereafter cited as Who is Guarding the Guardians?) (1981) pp. 23-29.

144/ Many of the PBD officers involved in the McDuffie beating had established histories of physical altercations with black arrestees and had been the focus of numerous complaints of brutality and misconduct. The Washington Post, Aug. 1, 1980, p. A21; The New York Times, July 29, 1980, p. A11.

145/ Citizens' Committee Report, pp. 52, 57.

In its recently released report on police practices this Commission noted that an effective internal complaint processing system is essential to ensure officer compliance with departmental directives and to establish police credibility with the public. 146/ Any such system consists of four separate stages: receiving and processing complaints; 147/ investigating alleged officer misconduct notifying the officer and complainant of the results of the investigation; determining whether the allegation has been sustained by the facts; and imposing fair, swift and certain sanctions in cases of proven officer misconduct. 148/

Because the internal investigations procedures in both the Miami Police Department and the Public Safety Department were demonstrably inadequate, 149/ both departments have

146/ Who is Guarding the Guardians?, pp. 50-51.

147/ William Perry, President of the Greater Miami Branch of the National Association for the Advancement of Colored People, testified before the Commission that on two separate occasions he attempted to file complaints against officers of the Department of Public Safety. He was unsuccessful, despite having persisted for more than five hours on one occasion. Perry Testimony, Hearing Transcript, pp. 1153-56.

148/ Who is Guarding the Guardians? p. 35.

149/ Citizens' Committee Report, pp. 37, 57.

revised their complaint processing systems. 150/ In respects, the newly designed systems are in accord with recommendations made by the Commission in its national 151/ They have been in place too briefly, however, to their effectiveness.

7.5: Blacks are underrepresented throughout the justice system in Dade County, particularly in entry positions.

Miami Police Department presently is hiring under the a consent decree resulting from employment nation litigation, 152/ as well as a specific city establishing minority hiring goals higher than those under the consent decree. 153/ The Public Safety unit now has an affirmative action plan, which also has incorporated into a consent decree to increase minority

Dade County Public Safety Department, Internal Review—Standard Operating Procedures, (Oct. 1, 1980); City Police Department, Internal Security Unit—Standard Operating Procedures, (June 17, 1980); Jones Testimony, Hearing Transcript, pp. 1332, 1346-47.

Who is Guarding the Guardians?, pp. 154-60.

United States v. Miami, C.A. No. 75-3096, CIV JE (D.S.D. March 29, 1977) (consent decree).

Robert Krause, Director, Human Resources, City of Miami, Transcript, pp. 596, 599.

representation on its force, 154/ and the State Attorney's Office has actively begun to recruit black attorneys for staff positions. 155/ Nevertheless, each of these three agencies still has a work force that does not represent the racial makeup of the constituency it serves. Underemployment of black officers and attorneys is substantial, and blacks are underrepresented in both the Public Defenders Office and the judiciary.

Since 1974, the Miami Police Department has hired 467 new officers, 28.7 percent of whom are black, 156/ although blacks remain underrepresented. Blacks comprise 33 percent of the Miami population, but the Miami Police Department in 1980 had only one black major, two black lieutenants, and no black captains. 157/ In addition, only thirteen of the 124

154/ Progressive Officers Club v. Florida Dept. of Administration, C.A. No. 76-957 CIV JCP (D.S.D. Fla. Jan. 22, 1980) (stipulation of settlement); Sam Williams, Human Resources Coordinator, Dade County Department of Public Safety, testimony, Hearing Transcript, pp. 1254-55.

155/ Thomas Petersen, Chief Assistant State Attorney, testimony, Hearing Transcript, pp. 1339-1401.

156/ Coogrove testimony, *Ibid.*, p. 1251. MPD is presently augmenting its force and plans to have an additional 260 more personnel by November 1981.

157/ Chart Showing Employment Statistics of Police Officers of the Miami Police Department 1975-1980, prepared by the Miami Police Department (maintained in Commission files).

(approximately 10 percent) and 64 of the 446 police (14.3 percent) in the Department were black. 158/ Officers are also underrepresented in MPD's specialized units. For instance, in October 1980, 113 officers were assigned to the criminal investigations and special operations sections. Only ten, or 8.8 percent, of these officers were black. 159/ Also indicative of the lasting effects of prior discrimination is that 35.9 percent of black officers of the Miami police department in non-clerical positions earn less than \$16,000 annually while only 3.7 percent of white non-clerical employees earn less than

160/

161/ Ibid. MPD reports that since November of 1980, the Department has made additional progress toward hiring and promoting black law enforcement officers. According to MPD, as of 1981, the Department has one black deputy chief, one black major, one black lieutenant, sixteen black sergeants and one hundred black police officers. Kenneth I. Burns, Chief of the Commission on the Draft Miami Report Prepared by the Commission on Civil Rights, Apr. 26, 1982 (maintained in Commission files).

162/ Chart Showing Police Personnel by Organizational Unit, July 1980, prepared by the Miami Police Department (maintained in Commission files).

163/ Equal Employment Opportunity Commission, State and Local Government Information for the City of Miami, Police Department, (MEMO-4) (1980).

The Public Safety Department, which adopted its present affirmative action plan in 1980, 161/ also fails to reflect the community it serves. Only 122, or slightly over 8 percent, of MPD's 1,466 sworn personnel are black, 162/ although 15 percent of Dade County's residents are black. The absence of black officers in supervisory positions is even greater; MPD has only one black division chief, one black lieutenant, and no black captains. 163/ Fewer than 4 percent of all officers holding the rank of sergeant in the Public Safety Department are black. 164/

Dade County State Attorney's Office employs 117 attorneys, only 8 of whom are black and none of whom has any supervisory responsibility. 165/ Similarly, approximately 8 percent of the attorneys in the Public Defender's Office are black, including one of the eight supervising attorneys. 166/

161/ Williams Testimony, Hearing Transcript, pp. 1254-55. That plan requires that one-third of all new hires be black, one-third Latin and one-third white.

162/ Ibid., p. 1253.

163/ Rick Holton, President, Progressive Officers Club, Metro-Dade Public Safety Department, interview in Miami, Fla., Sept. 11, 1980.

164/ Williams Testimony, Hearing Transcript, pp. 1269.

165/ Peterson Testimony, Hearing Transcript, pp. 1398-1400.

166/ Brummer Testimony, Hearing Transcript, p. 1436.

County, an essentially white system administers a defendant and victim population that is largely black and lacks of minorities throughout the criminal justice system. This maintains the perception of a dual system of justice.

The Dade County Public Safety Department recently changed its hiring process to include psychological screening tests. This screening, which consists of tests known to be culturally biased, disqualifies black applicants at a significantly higher rate than that of white applicants.

In a national study of police practices, this Commission found that law enforcement agencies include, as an integral part of the selection process, psychological screening of applicants for employment. 167/

In January 1980, the Dade County Board of Commissioners passed an ordinance requiring psychological testing for all applicants at the Public Safety Department. 168/ A list of characteristics that department officials thought should be tested included evidence of psychosis, character disorders, neurosis, mood disorders, poor impulse control, a tendency to be very aggressive under stress, and strong racial,

Is Guarding the Guardians? (1981), Recommendation 5.

Dade County, Fla., Ordinance Requiring Adoption of Psychological Testing of Police Officers (Jan. 8,

religious or ethnic prejudices. 169/ Two independent psychologists, highly regarded for their work in stress management, subsequently developed tests to identify these traits. 170/

During the interim, PSD had hired a new class of recruits, who were receiving classroom training in the academy. Under the terms of the ordinance, the recruits had to pass the psychological tests to be accepted permanently on the force. The screening process, however, excluded 33 percent of the black male candidates and only 17 percent of the white male candidates. 171/

Dr. Larry Capp, a clinical psychologist and president of the South Florida Association of Black Psychologists, testified that the tests were inappropriate because they were culturally biased and included experimental components that had not been validated through research. 172/

169/ Dade County Board of Commissioners, Ordinance No. 80-5 (Jan. 1, 1980). Fred Taylor, chief administrative division, Dade County Department of Public Safety, testimony, Hearing Transcript, p. 1299.

170/ Mr. John A. Sample, Director, Professional Development Specialists, Inc., interview in Miami, Fla., Oct. 17, 1980.

171/ Larry Capp, director, Center for Family and Child Enrichment, testimony, Hearing Transcript, p. 1302.

172/ Ibid., pp. 1301, 1316.

I have some very serious concerns about the battery of tests that are used. The research literature surrounding some of those tests indicates they might not be appropriate for some ethnic groups....One of the major tests an extremely old test, a test that is 40 years old, is a test that has a very controversial history in the research literature. There are some who say the test should not be used for blacks because there are certain scales...where blacks historically and traditionally score much higher than whites. They score into ranges that are considered pathological, and unless there is some sensitivity to that kind of issue, then you are going to have more blacks excluded because of the bias of the instrument. 173/

Association of Black Psychologists was excluded from participating in all stages of the development of the tests during the original development of the bid specifications,

Ibid., pp. 1301, 1315-16.

the review of the various bids that were submitted, and the selection of the group of psychologists to administer the test. 174/

A recent grant from the Law Enforcement Assistance Administration of the U.S. Justice Department allows the Southeast Florida Institute of Criminal Justice to establish a model assessment center in Dade County to screen applicants for both the Miami and Dade County police forces. The \$230,000 project includes extensive analysis of police functions, role-playing and simulation exercises, and the training and supervision of assessors. 175/

Finding 7.7: The Dade County Public Safety Department and the Dade County government have not effectively used the citizen advisory committees in each of the P&D's six districts.

The Commission on Civil Rights has noted the inherent difficulties of nonexpert citizen panels reviewing police policy and procedure. 176/ Metropolitan police forces are paramilitary organizations engaged in specialized tasks that

174/ Ibid., p. 1303.

175/ Edward Samuelsen, Director, Division of Public Service Southeast Florida Institute of Criminal Justice, testimony, Hearing Transcript, p. 1318.

176/ Who is Guarding the Guardians?, pp. 124-27.

isens understand. Consequently, such committees are more expert or influential in shaping police policy by other group of concerned private citizens.

1979, attempting to improve relations between the community, the county manager established advisory committees in each of the six Public Safety districts in Dade County. The county manager members of these committees, who meet regularly personnel from their districts to discuss community

177/
Kilpatrick, chairman of the citizens advisory for the Department of Public Safety's Central which includes most of the unincorporated area of ee, succinctly summed up the committee's role: The only thing we do, we discuss whatever the issues are, and we send it in the records to the county manager. We have no power. 178/ to the advisory committees have no power, but they rely on the individual district commanders to information about police policy because the

George W. Kilpatrick, President, Public Safety Department District Citizens Advisory Committee, testimony, transcript, p. 1209.
Kilpatrick Testimony, Hearing Transcript, pp. 1209-10.

department does not require the commanders to provide any specific information to their advisory committees. PSD policies are written and codified, yet the advisory committees do not have copies of these regulations. 179/ While the advisory committees have proved a useful forum for police-community discussion, 180/ lack of information unnecessarily limits their potential influence on departmental policy. Even when the Central District advisory committee has considered issues and made recommendations, it has gotten no response from the county officials.

Commissioner Saltman. Has your committee made recommendations that have brought about any changes?

Mr. Kilpatrick. We advise the county management of what has happened at every meeting. We take minutes of what is happening; whatever we discussed, what we vote on, we send to county management. So far, we haven't had any feedback from county management.

179/ Minutes of the Central District Advisory Committee, September 1979-October 1980 (maintained in Commission files).

180/ Captain Douglas Hughes, district commander, Public Safety Department, testimony, Hearing Transcript, pp. 1221-24.

Commissioner Saltman. There has been no response to any of the recommendations?

Mr. Kilpatrick. None whatsoever from the county manager, not to the committee....I feel if the county manager would give me some feedback as to what direction we should take once we feed him the information, I would feel that we would be empowered to give him—whoever is in charge—some direction. 181/

7.8: Training for officer candidates and officers in state.

Although each of the 25 police departments in Dade County sometimes do provide training for their own officers and recruits regarding particular departmental policy, 182/ the Southeast Florida Institute of Criminal Justice (ICJ) conducts most of the training. Although ICJ provides a basic law enforcement program that exceeds the minimum standards

Kilpatrick Testimony, Hearing Transcript, pp. 1241-42.

Rasmussen Testimony, Hearing Transcript, p. 1320. ICJ is a consortium of the participating departments and Miami-Dade Community College. Memorandum of Understanding As to the Role and Functions of the Criminal Justice Advisory Council, (July 1974) (maintained in Commission files); Rasmussen Testimony, Hearing Transcript, p. 1304.

established by the Florida Police Standards and Training Commission, according to its director, the program does not have sufficient time to adequately prepare and train police officers and recruits. 183/

One of the most pressing problems at ICJ is the lack of full-time faculty, which affects curriculum continuity and quality control. 184/ Although since the Commission hearing in December 1980 two full-time faculty positions were established to teach the law and human skills blocks of the curriculum, 185/ most instructors are active duty police officers who are compensated for actual classroom time only. Consequently, those instructors who plan and prepare lesson plans and counsel individual students do so strictly because of their own demands for professionalism. 186/ In an effort to correct this situation, since the summer of 1981 ICJ has

183/ Rasmussen Testimony, Hearing Transcript, p. 1321.

184/ Edward Rasmussen, interview in Miami, Fla., Oct. 15, 1980.

185/ James D. Stinchcomb, Director, Southeast Florida Institute of Criminal Justice, letter to Paul Alexander, Mar. 31, 1982 (hereafter cited as Stinchcomb letter).

186/ Sheila Foster, program coordinator, Southeast Florida Institute of Criminal Justice, interview in Miami, Fla., Oct. 17, 1980.

1-time college curriculum development specialist who
 responsibility of preparing lesson plans and course
 7/
 most police training programs, 188/ ICU emphasizes
 related to law enforcement, although police officers
 considerably more time on social service functions than
 training and apprehending criminals. 189/ The ICU
 consists of 840 hours of instruction over a 20-week

Administration (testing etc.)	100 hours
Introduction to Criminal Justice	25 hours
Law & Legal Procedures	80 hours
Investigation	106 hours
Procedural Procedures	174 hours
Traffic Control	54 hours
Human Skills	105 hours
Efficiency Skills (Arrest techniques & firearms training, etc.)	196 hours <u>190/</u>

Samuelson, former director of ICU, believes that the
 Human Skills component should be expanded. 191/

Wachob letter.

is Guarding the Guardians? pp. 24-28.

Sam Goldstein, Policing a Free Society (Cambridge,
 Ballinger, 1977), pp. 24-25.

theast Florida Institute of Criminal Justice, Basic
 Component Curriculum (maintained in Commission files).

Samuelson Testimony, Hearing Transcript, p. 1321.

ICJ reviewed its basic law enforcement program in 1980 and
 found that in the area of Human Skills qualified instructors
 were difficult to find, and that those who were chosen did not
 understand the program's philosophy and objectives. 192/
 Captain Douglas Hughes, Commander of PSD's Central District,
 which includes most of Model Cities, testified that a more
 experiential and self-evaluative training program would be
 preferable:

Captain Hughes. What we wind up with is
 middle class white police officers who come
 from suburbia, and they enter a minority
 community, and have a cultural shock. That
 is not their world....

We don't have what the psychologists and
 counselors call "processing." We have a
 system where we will take people and expose
 them to a drug center, say, "That is a drug
 center," but, then, we don't sit down for
 hours and say, "What was your reaction to
 that?" "Why did you feel that that affected
 you?" "What are your assumptions, based on

192/ ILE Curriculum Review Task Force Report (1980), p. 4
 (maintained in Commission files).

how people should live and how they live in a drug center." 193/

9: Although Dade County Independent Review Panel is authorized to investigate complaints of misconduct against the Department of Public Safety, the panel lacks investigative resources and subpoena power.

report on national police practices, the Commission on the history of independent external review of officer misconduct, noting that many attempts to institute civilian review of police departments have

24/ Citizen advisory bodies do not usually have the authority to decide cases or impose punishment, and they often lack sufficient staff and adequate resources to conduct a thorough investigation, criteria crucial to success. 195/

In February 1980, before the riots, Dade County established an independent review panel (IRP) to investigate serious complaints against any "employee, agency or instrumentality" of the county and to make recommendations. 196/

Witness Testimony, Hearing Transcript, p. 1220.

is Guarding the Guardians? pp. 134-37.

3. The County Board of Commissioners Ordinance No. 80-8, §3 (1980) (maintained in Commission files); Jeffrey L. Berkowitz, executive secretary, Dade County Independent Review Panel, Hearing Transcript, pp. 1349-50.

The IRP has authority to investigate complaints against all Dade County employees and departments, including officers in the Dade County Public Safety Department, but not against members of the Miami Police Department or any other municipal department. A review of the complaints the panel received in the first 8 months of its existence reveals its jurisdictional problems. Of the first 49 complaints received, 9 were against police officers from municipal departments over which the IRP has no jurisdiction, and 19 were against non-police county agencies within the panel's jurisdiction. 197/ Although the panel's expanded jurisdiction apparently is fulfilling a real need, acting as countywide ombudsman limits the panel's

197/ Independent Review Panel Complaint Summary (Nov. 25, 1980) (maintained in Commission files). The non-police county agencies included the Dade County Animal Service, the Property Appraiser's Office, the Corrections Department, the County Commissioners' Office, the Aviation Department, the County Clerk's Office, the Architectural Inspection Division, Jackson Memorial Hospital, the Summer Youth Employment Program, and the Department of Traffic and Transportation, and the Office of Transportation Administration.

Of the complaints received by IRP to date, 186 involved various municipal police departments and Florida law enforcement agencies over which IRP has no jurisdiction. See Jeffrey L. Berkowitz, Executive Director, Dade County Independent Review Panel, letter to Paul Alexander, Apr. 13, 1982 (hereafter cited as Berkowitz letter), Appendix C, p. 2.

to develop the specific expertise for conducting
independent reviews of alleged police misconduct. 196/
Since its inception, the panel members, particularly its
executive secretary, have strived to be independent and to
investigate citizen complaints objectively. 197/ The panel has
a set of rules governing its proceedings, has attempted
to preserve its existence, and has received and processed
complaints expeditiously. 200/ Nevertheless, the absence of
adequate legal and personnel resources severely hampers the
panel and limits its support in Miami's black community. 201/
There are six permanent members of the panel and three
temporary members, who participate whenever four of the
permanent members determine that a complaint is serious enough

But see Berkowitz letter, Appendix C, p. 2, noting that
the present IIR includes the president of the Dade County
Association of Chiefs of Police and a prominent criminal
defense counsel who was previously chief trial counsel for the
Attorney's Office.

Berkowitz Testimony, Hearing Transcript, pp. 1349,
1352, 1357.

Metropolitan Dade County Independent Review Panel, Rules
and Procedure (June 10, 1980) (maintained in Commission files);
FEL Testimony, Hearing Transcript, pp. 1363-64;
Independent Review Panel Complaint Summary (November 25, 1980)
(maintained in Commission files).

William Perry, President, Greater Miami NAACP, testimony,
Hearing Transcript, pp. 1156-57.

to merit review by the full panel. 202/ The county
commissioners appoint five of the permanent panelists, and the
county manager appoints the sixth. 203/ When the panel expands
for a full investigation, the county commissioners appoint
three temporary panelists, two of whom must be "representative
of the pertinent geographical area and ethnic group most
closely associated with the complaint." 204/ The third is
selected from a list of three nominees submitted either by the
bargaining unit that represents the alleged wrongdoer or, if no
bargaining unit is involved, from a list of three nominees
submitted by the Management Association Council. 205/ The
Chief Judge of the Eleventh Judicial Circuit (Dade County)
appoints an executive secretary who manages the daily

202/ Dade County Board of Commissioners Ordinance No. 80-8
(Feb. 5, 1980) (maintained in Commission files); Berkowitz
Testimony, Hearing Transcript, pp. 1351, 1352.

203/ Ordinance No. 80-8, §4. Each of the five panelists
selected by the County Commission is originally nominated along
with two other nominees from the following organizations: (a)
the Dade County Community Relations Board, (b) the Dade County
Community Action Agency, (c) the Dade County League of Women
Voters, (d) the Dade County Bar Association and (e) the Dade
County Police Chiefs' Association. Id., §4(1).

204/ Id., §4(4).

205/ Id.

ations of the panel and conducts investigations. 206/
or county agencies provide clerical assistance and legal
counsel, but the panel must request investigative and research
support from the county manager, who does not have to provide
support. 207/

Jeffrey Berkowitz, ISF executive secretary, testified
before the Commission on the panel's need to increase its staff:

[We] are in the process of trying to hire
an administrative assistant. We have been
advertising....When I found out that the
advertisement had not been placed in the
black or Latin newspapers, I asked that the
deadline be extended so that we could
advertise the position in those papers....
Obviously, I would like to see more staff.
I was given this job on a part-time basis
where I was going to be paid for 6 1/2

/ Id., §10(2).

/ Id., §10.

hours a week. The job is taking in excess
of 20 to 30 hours a week. 208/

The panel has also had to rely upon outside legal counsel.
More significantly, the ISF has neither the authority to
subpoena witnesses or documents for its investigations nor the
authority to impose penalties, should the panel determine that
an officer acted improperly.

Mr. Berkowitz also testified that the ISF needs subpoena
powers. Because he assumed that the Public Safety Department
would cooperate and administratively compel officers to appear
before the panel at its request, he initially did not believe
that such authority was necessary. PSD's refusal to cooperate,
however, changed his mind:

With respect to subpoena power, it has
always been my position...that it was not
necessary....I have always assumed that I
would have the full cooperation of the
various county agencies in forcing their
officers or directing their officers or
employees to appear before us.

208/ Berkowitz Testimony, Hearing Transcript, pp. 1350, 1357.
But see Berkowitz letter, Appendix C, p. 3, noting that shortly
after his appearance in the Commission hearing, a full-time
administrative assistant was hired by ISF.

had a meeting, [Public Safety Department] Director Jones and I, this week. I was informed that the Public Safety Department was going to take the position that they would not compel an accused employee to testify before the panel...That statement and that position was forced me to reassess my position and I think that I am left with basically no alternative if external independent review is going to work in this county but to ask for subpoena powers. 209/

Irwin Block, chairman of the Governor's Dade County Committee that investigated the underlying causes of the 1980 riots, testified before the Commission: The Independent Review Board should, in our opinion, have its own staff, should have subpoena power, should have its own investigators, and they do not have that at

pp. 1358-59. But see Berkowitz letter, Appendix stating that "the legal and political implications of the efforts to obtain subpoena power would be counterproductive to the police department's efforts to maintain its own image and might serve to diminish the respectability which the department has been striving hard to

this time. We feel that until they have that they are not going to be able to function as well as they should....[Y]ou are going to find that voluntary appearances and cooperation are going to gradually disappear. 210/

Dade County's criminal justice system has been a continual source of abrasion to the black community. A series of incidents involving misconduct and unequal treatment contributed to the May 1980 civil disturbances by underscoring the larger pattern of discrimination and exclusion. Distrust of the criminal justice system is fostered by a widespread perception that blacks are excluded from the ranks of judges, jurors, prosecutors, supervisory police officers, and other decisionmakers. Without effective mechanisms for resolving allegations of police misconduct and for reducing friction between the black community and the criminal justice system, distrust and the potential for violent confrontation will remain.

210/ Irwin Block, testimony, Hearing Transcript, p. 1161.



76
UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue N.W.
Washington D.C. 20425

Florida State Advisory Committee
to the
U.S. Commission on Civil Rights
Police-Community Relations Forum

June 25, 1988

9:00 a.m. - 5:00 p.m.

Jury Assembly Room
U.S. District Court House
Federal Court House Square
301 North Miami Avenue
Miami, Florida

AGENDA

- 9:00 a.m. Opening Remarks
Michael J. Moorhead, Chair,
Florida Advisory Committee
- Community Panels
- 9:10 a.m. People United To Lead the Struggle for Equality
Willie Williams
Rev. Nathaniel Graham
Rev. J.W. Stepherson
Rev. Arthur Jackson, Jr.
- Miami Christian Improvement Association
Rev. Willie E. Sims, Jr.
- Southern Christian Leadership Conference
Ray Fauntroy
- 10:20 a.m. National Association for the Advancement of
Colored People
- Greater Miami Branch
Willie Lawson, President
- South Dade Branch
John Due, President

North Dade Branch
 Johnnie McMillan, President

Liberty City Branch
 Richard Powell, President

Agency Panel

11:20 a.m. Dade County Community Relations Board
 Ari Sosa, Executive Director
 Bradford Brown, Chair, Police Community
 Relations Committee

Metro-Miami Action Plan
 Larry Capp, Director

LUNCH BREAK

1:30 p.m. U.S. Justice Department, Community Relations
 Service
 Thomas Battles

2:00 p.m. Dade County Police Benevolent Association
 Richard Lober

Fraternal Order of Police
 Lodge 20, Miami

Law Enforcement Agencies

2:30 p.m. Metro-Dade Police Department
 Fred Taylor, Director of Public Safety

Miami Police Department
 Larry Boemler, Assistant Chief

Opa Locka Police Department
 Floyd Reaves, Chief

Review Boards

3:50 p.m. Dade County Independent Review Panel
 Wesley Pomeroy, Director
 Joseph Serota, Board Member

Miami Office of Internal Audits
 and Reviews
 Hattie Daniels, Director

4:00 p.m. Closing Remarks, Adjourn

Meeting of the Florida State Advisory Committee
to the
U.S. Commission on Civil Rights

February 23, 1989
1:00 p.m. - 5:00 p.m.
Inter-Continental Hotel
(Gusman Room)
100 Chopin Plaza
Miami, Florida 33121

PROPOSED AGENDA

- 1:00 p.m. Open Meeting Welcome, Introductions
Michael Moorehead, Chair, Florida SAC
- William Allen, Chair
U.S. Commission on Civil Rights
- Robert Destro, Commissioner
U.S. Commission on Civil Rights
- Esther Buckley, Commissioner
U.S. Commission on Civil Rights
- Melvin Jenkins, Acting Staff Director
U.S. Commission on Civil Rights
- 1:25 p.m. Xavier Suarez, Mayor
City of Miami
- 1:40 p.m. Discussion of Civil Rights Progress and/or Problems
in Miami
- Thomas Battles
Community Relations Service
U.S. Department of Justice
- Perry Anderson, Chief
Miami Police Department
- 2:15 p.m. William Perry, President
Overtown Advisory Committee
- Rev. Richard Barry
Citizens Review Investigation Panel

- 2:15 p.m. Johnnie McMillan, President
National Association for the Advancement of Colored
People (NAACP)
- Rev. Jean Juste, Director
Haitian Refugee Center
- Rev. Nathaniel Graham, Chair
Committee to End Discrimination
People United to Lead Struggle for Equality (PULSE)
- 3:20 p.m. Guarione Diaz, Director
Cuban National Planning Council
- Betzaida Ferrer, Director
National Puerto Rican Forum
- Reydell "Sonny" Santos, Director
Spanish American League Against Discrimination (SALAD)
- 4:00 p.m. Bill Cullon, President
Miami Chamber of Commerce
- 4:15 p.m. Report on Update of Miami Project
- Michael Moorhead, Chair
Florida SAC
- John Binkley, Director
Eastern Regional Division
U.S. Commission on Civil Rights
- 4:30 p.m. Report on Regional SAC Chairs Conference
- Jackie Bell, member SAC
- 4:40 p.m. Discussion of Topics for Future SAC Projects
- Michael Moorehead, Chair
Florida SAC
- Bobby Doctor, CCR Staff
- 5:00 p.m. Adjourn