

COMMISSION MEETING
Friday, September 15, 1989
9:00 A.M. - 5:00 P.M.
1121 Vermont Avenue, NW
Room 516
Washington, D.C. 20425

AGENDA

- I. Approval of Agenda
- II. Approval of Minutes of July Meeting
- III. Announcements
Bigotry and Violence in North Carolina
- IV. Briefing on Administration of Justice in Non-Violent Protest
- 11:00 A.M. Recess
- 12:30 P.M. Reconvene
- V. Executive Session
- VI. Draft Report on Economic Status of Black Women: An Exploratory Investigation
- VII. Draft Statement on Intimidation and Violence, Racial and Religious Bigotry in America
- VIII. SAC Reports and Recharters
Implementation in California of the Immigration Reform and Control Act: A Preliminary Review
Police Community Relations in Miami
Bigotry and Violence in Georgia
Bigotry and Violence in Minnesota
Hawaii and Ohio SAC Recharters
- IX. Commission Subcommittee Reports

- X. Staff Director's Report
 - A. FOIA Regulations
 - B. 504 Regulations
 - C. California Advisory Committee Request
- XI. Future Agenda Items

(OFFICIAL USE ONLY)
U.S. COMMISSION ON CIVIL RIGHTS
COMMISSION MEETING
July 28, 1989

The 57th meeting of the reconstituted U.S. Commission on Civil Rights was convened at 9:39 a.m. in room N-721-729, Nursing Building, 533 Parnassus St., San Francisco, California, with Chairman William B. Allen presiding. Present were Vice Chairman Murray Friedman and Commissioner Mary Frances Berry (via conference call) and Commissioners Esther G. Buckley, Sherwin T.S. Chan, Robert A. Destro, Francis S. Guess, and Blandina Cardenas Ramirez. Also present was Acting Staff Director Melvin L. Jenkins. Staff attending were Mary Baltimore, James Cunningham, John Eastman, William Gillers, Grace Hernandez, William Howard, Carol-Lee Hurley, Mary Mathews, and Philip Montez. Commissioners' assistants present were Laurie Gabriel, Laura Purswell, and Krishna Toolsie.

AGENDA AND MINUTES

Commissioner Guess moved that item IV, a resolution on police handling of Operation Rescue protesters, be stricken from the agenda. Commissioner Buckley seconded the motion.

Commissioner Destro stated that he would support the motion but would move that the issue be part of a September agenda item on the broader topic of police misconduct. Chairman Allen spoke in favor of retaining the item on the agenda, instancing other incidents. Commissioner Guess protested that the Chairman's remarks were not germane but was overruled. Vice Chairman Friedman urged that the item remain on the agenda so that matters of procedure might be addressed.

Supporting the motion to strike the item, Commissioner Ramirez said that the Commission should await a response from the Department of Justice to the Chairman's letter on the issue but that she was also willing to consider a future agenda item on the broader issue of administration of justice. Commissioner Berry also supported the motion to strike, arguing that the item was a backdoor way to discuss abortion and forbidden by the Commission's authorizing law. Commissioner Destro replied that the subject was police misconduct, not abortion.

Commissioner Guess then withdrew his motion in view of the lengthy discussion. His seconder, Commissioner Buckley, did not agree to withdrawal, and Commissioner Guess stated his intention to vote against the motion.

The motion carried by a vote of 5-3.

Commissioner Destro moved adoption of a substitute agenda, with discussion of the Immigration Reform and Control Act report as the first item of business and with item V deleted. Commissioner Buckley seconded the motion. Chairman Allen asked that individuals who wished to address the Commission be allowed to do so. Commissioners Ramirez and Berry opposed this suggestion. Commissioner Destro's motion carried by a vote of 7-0, with Chairman Allen abstaining.

The minutes of the June meeting were unanimously approved.

ANNOUNCEMENTS

Chairman Allen noted that a letter had been received from Representative Don Edwards with regard to the Commission's jurisdiction and that an informal response had been received from the Attorney General's office on police handling of Operation Rescue protestors.

DRAFT REPORT ON THE IMMIGRATION REFORM AND CONTROL ACT

Commissioner Ramirez moved that the report be adopted. Her motion was seconded by Commissioner Guess. Commissioners commended staff for their work. The motion passed unanimously.

DRAFT SUMMARY ON LOS ANGELES FORUM ON "CHANGING PERSPECTIVES ON CIVIL RIGHTS"

Commissioner Destro moved that the Commission adopt the draft summary, and Chairman Allen seconded the motion with a request for careful editing. Commissioner Guess asked for clarification of the term "editing." Chairman Allen suggested that the report be approved for publication subject to editing and that the edited copy be returned to each Commissioner for informal concurrence that the editing was routine and not substantive.

Commissioner Guess stated that he was prepared to vote for the report if the first footnote indicated that he was a member of the subcommittee and subsequently resigned when it held meetings without notifying him. Chairman Allen said that that should be done and that the note should also reflect the ex officio member of the subcommittee.

The report was adopted by a vote of 7-0, with Commissioner Ramirez not present.

STATE ADVISORY COMMITTEE REPORTS

The Arkansas report on Civil Rights Concerns of Older Americans was adopted by a vote of 5-0, with Chairman Allen and Commissioner Berry abstaining. Vice Chairman Friedman and Commissioners Buckley, Chan, Destro, and Guess voted for the report. Commissioner Destro commended the Advisory Committee for taking up the topic.

By a vote of 6-0, the Commission adopted the Colorado Committee's report, Nativism Rekindled: A Report on the Effort to Make English Colorado's Official Language. Vice Chairman Friedman and Commissioner Berry abstained from the vote.

Commissioner Destro moved for purposes of discussion to the adopt the report on Bigotry and Violence in Georgia. The motion was seconded by Commissioner Chan. Commissioner Guess questioned the Committee vote on the report. Commissioner Destro then moved to table his motion until the full Committee had met to consider the report. Commissioners Buckley and Ramirez seconded the tabling motion, which passed unanimously.

Adoption of the Ohio Committee's report Race Relations in Toledo was moved by Commissioner Destro and seconded by Commissioner Ramirez. The report was adopted by a vote of 7-0, with Commissioner Berry abstaining.

Commissioner Buckley moved, seconded by Commissioner Ramirez, that the Commission adopt the report Implementation in Texas of the Immigration Reform and Control Act: A Preliminary Review. The report was adopted by a vote of 7-0, with Chairman Allen abstaining.

Commissioner Guess moved that Minorities and Women in Higher Education in West Virginia and Civil Rights Issues in the Huntington Area be adopted by the Commission. Commissioner Chan seconded the motion, which carried by a vote of 7-0, with Commissioner Berry abstaining.

STATE ADVISORY COMMITTEE RECHARTERS

Commissioner Guess moved that the Alabama Advisory Committee be rechartered as presented. The Chairman seconded the motion, which passed by a vote of 6-2, with Commissioners Berry and Ramirez opposing.

Rechartering of the Hawaii Advisory Committee was moved by Commissioner Destro. Commissioner Chan seconded the motion. Commissioner Buckley asked whether the Solicitor had seen the rechartering package and expressed concern about the

advisability of having an employer and employee on the Committee. Discussion of this issue followed. The motion to recharter was withdrawn, with staff directed to take a further look and bring the recharter back in September.

Commissioner Buckley moved that the Iowa Advisory Committee be rechartered, and Commissioner Destro seconded the motion. The motion carried by a vote of 5-3, with Commissioners Berry, Guess, and Ramirez in opposition.

Commissioner Ramirez moved that all State Advisory Committee recharters, as a standard operating procedure, be reviewed by the Solicitor to certify that the appointments are ethical, legal, and appropriate before being presented to the Commission. The motion was seconded by Commissioner Guess. It carried unanimously.

SUBCOMMITTEE REPORTS

Commissioner Chan provided an update on the Asian Roundtables, reporting that there were 18 panelists at the New York Roundtable in June and noting that the third was scheduled for the next day.

Commissioner Destro said that the subcommittee on regional forums would be in touch with all Commissioners soon to discuss alternative ways of handling the third forum.

Commissioner Buckley asked what had been done with regard to the campus tension report. The Acting Staff Director reported that it was underway. Commissioner Buckley suggested that State Advisory Committee projects on the subject be considered as the report is developed.

STAFF DIRECTOR'S REPORT

The Acting Staff Director announced the departure of William Gillers, Solicitor. Commissioner Ramirez introduced a resolution, which passed by acclamation, commending Mr. Gillers for his work for the Commission.

The Acting Staff Director also announced the impending departures of John Eastman, Press and Congressional Liaison, and Robert Jeffrey, Civil Rights Evaluation Unit.

Commissioner Ramirez moved, seconded by Commissioner Destro, that the Commission meet in Executive Session to discuss a personnel matter. The Solicitor certified that such a session could be closed under 5 U.S.C. 522(b)(c)(2) and 45 CFR 702.53(a)(2). By a 7-1 vote, Chairman Allen in opposition, the Commissioners approved the holding of an executive session.

Commissioner Buckley reported on the Arizona Advisory Committee meeting and concerns about the continuation of the Commission. She also said that members are unclear about the policy on nonattendance. Regional Director Philip Montez said that he would ensure that the policy was clarified.

FUTURE AGENDA ITEMS

Commissioner Destro stated that the September agenda should include an item on administration of justice issues, placing the material removed from the agenda in a broader context. Commissioner Berry asked that the staff be asked to prepare something on the topic, and Commissioner Destro agreed.

Vice Chairman Friedman asked if an analysis of the recent Supreme Court cases on civil rights could be done. Acting Staff Director Jenkins said that that was underway.

EXECUTIVE SESSION

The Commission went into executive session at 12:30 p.m.

RESUMPTION OF PUBLIC SESSION

The public session resumed at 2:05 p.m. Chairman Allen announced that a motion was on the floor, made by Commissioner Guess and seconded by Commissioner Destro, that the Acting Staff Director appoint a new Solicitor or Acting Solicitor for the agency with the concurrence of the Commissioners. The motion passed unanimously.

The Chairman announced that the Commission had voted unanimously to seal the record of the executive session.

The meeting was adjourned at 2:10 p.m.

III. Announcements

Bigotry and Violence in North Carolina

(No written material)

U.S. COMMISSION ON CIVIL RIGHTS COMMISSION
MEETING SCHEDULE FOR REMAINDER OF CY 1989

Friday, September 15, 1989

Thursday, October 26, 1989
Friday, October 27, 1989

Friday, November 17, 1989

Friday, December 15, 1989

U.S. COMMISSION ON CIVIL RIGHTS
PROPOSED 1990 COMMISSION MEETING SCHEDULE

Friday, January 19, 1990

Friday, February 16, 1990

Friday, March 16, 1990

Friday, April 20, 1990

Friday, May 18, 1990

Friday, June 22, 1990

Friday, July 20, 1990

NO MEETING IN AUGUST

Friday, September 21, 1990

Friday, October 19, 1990

Friday, November 16, 1990

Friday, December 14, 1990

IV. Briefing on Administration of Justice in
Non-Violent Protest

(Written material will be mailed separately)

V. Executive Session

(No written material)

VI. Draft Report on Economic Status of Black Women:
An Exploratory Investigation

(Report previously mailed)



UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425


OFFICE OF STAFF DIRECTOR

September 1, 1989

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: Draft Statement on Bigotry and Violence

The attached is for your review and action at the September 15, 1989 Commission meeting.


MELVIN L. JENKINS
Acting Staff Director

Attachment

Intimidation and

Violence

Racial and Religious Bigotry

in America

A Statement of the

United States Commission

on Civil Rights

September 1989

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and reestablished in 1983 and directed to:

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

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 Cardenas Ramirez

Melvin L. Jenkins, Acting Staff Director

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Chapter I

Introduction

In 1983 the U.S. Commission on Civil Rights published a statement entitled Intimidation and Violence--Racial and Religious Bigotry in America. That statement is now out of print. The Commission remains deeply concerned, however, about acts of violence perpetrated against racial and religious minorities. The media bring recurring accounts of intimidating and violent activities, which include cross burnings; defacement, destruction, and desecration of religious property, infliction of personal injury, and, in some cases, the deaths of human beings. In this statement, an updated reprint of the 1983 publication, the Commission seeks not only to express its continuing concern over the senseless and intimidating acts of violence motivated by racial and religious bigotry, but also to share its view of the nature and extent of the problem, to describe promising responses of public officials and community leaders to combat the problem, and to urge upon others a posture of condemnation against those who would violate the enduring values of a pluralistic society.

In preparing this statement, the Commission drew extensively upon information provided by some of its 51 State Advisory Committees, who have been monitoring related developments at State and local levels. 1/ Additional data were drawn from a variety of publications, reports, and the news media.

The Problem Illustrated

In Colorado on May 4, 1982, five persons were arrested for an alleged plot to kill two Federal judges and blow up Internal Revenue Service headquarters in downtown Denver. Police confiscated bombs, automatic weapons, and other firearms. One of those arrested was president of a local chapter of the United Klans of America. Media accounts alleged that all five persons had Klan connections. 2/

On March 10, 1982, a Jewish female student was shot five times with a BB gun on the University of Maryland campus at College Park, Maryland. The attacker shouted "Heil Hitler" as he fired and used other epithets that indicated anti-Jewish

1/ In each State and the District of Columbia, the Commission has established Advisory Committees that keep the Commission abreast of civil rights developments at the State and local levels.

2/ Rocky Mountain News, May 5, 1982, p. 1.

feelings. An underground campus newspaper hailed the assailant as a hero and suggested that next time he use a flamethrower on the victim. 3/

In 1984 a Massachusetts State official reported physical assaults, such as beatings and rock throwings, vandalism of cars, arson, intimidation, and the use of racial epithets and slogans, against Cambodian, Vietnamese, and Laotian refugees resettled in the State. 4/ The State attorney general said, "Often, these individuals cannot even walk along the public streets without being physically attacked and threatened because of their race or national origin." 5/

In 1986 five white cadets at the Citadel in South Carolina, masked and wrapped in white sheets, entered the room of a black cadet, uttered obscenities, and left a charred

3/ Baltimore Sun, May 18, 1982, p. 1.

4/ Diana Tanaka, assistant attorney general, Civil Rights Division, Massachusetts Department of the Attorney General, interview in Boston, Mass., Dec. 6, 1984, cited in U.S. Commission on Civil Rights, Recent Activities Against Citizens and Residents of Asian Descent (1986), p. 46 (hereafter cited as Commission Asian Report).

5/ Francis X. Bellotti, attorney general, "Bellotti Obtains Court Order Protecting Vietnamese Refugees," news release, Massachusetts Department of the Attorney General, Sept. 21, 1984, p. 1, cited in Commission Asian Report, p. 46.

paper cross. The black cadet subsequently withdrew from the school. 6/

In 1988 the Los Angeles County Human Relations Commission reported that hate crimes directed mostly at blacks and Jews reached the highest level since the agency began collecting data in 1980. 7/

These incidents illustrate the phenomenon of central concern in this statement, namely, intimidation and violence against racial and religious minorities that is rooted in unmitigated bigotry.

Working Definition

A bigot is "one obstinately or intolerantly devoted to his own church, party, belief, or opinion." 8/ Bigotry in the context of this statement is a rigid intolerance of differences

6/ Richard Green, Jr., "5 Citadel Cadets Indicted Under Mask Law," Charleston News and Courier, Oct. 7, 1987.

7/ The commission said it did not think the growing numbers were a result solely of improved reporting, but that "such crimes are actually increasing." Los Angeles County Commission on Human Relations report to the Los Angeles County board of Supervisors, Hate Crime in Los Angeles County 1988 (February 1989), p. 1.

8/ Webster's New Collegiate Dictionary (1979)

and of those who hold such differences. It is this blind, unreasoned intolerance that makes racial and religious bigotry a form of racial and religious discrimination. When manifested in violent or intimidating ways, racial and religious bigotry represent a desire to deny the rights and freedoms of persons of different creed, color, race, or national origin. In sum, racial and religious bigotry result frequently in tactics to destroy "enemies" who are perceived as enemies only because they are "different." These tactics include a variety of efforts to intimidate, frighten, injure, ridicule, and, on occasion, kill those who hold different religious beliefs, subscribe to different cultural values, or exhibit racial characteristics unlike those of the bigot.

The particular focus of this statement, therefore, is upon the potential and actual denials of civil rights by groups or individuals whose racial and religious bigotry foment violence and social disruption. This Commission is concerned when the promulgation of hate and hostility based on extremist concepts of racial purity or religious certitude leads to illegal acts of force and violence. Lest the vision of America as a democratic and pluralistic society becomes a nightmare of hatred and divisiveness, we urge a heightened public awareness of the threat to civil rights posed by proponents of racial and religious bigotry.

Chapter 2

Extent and Significance of the Problem

Although it is impossible to measure with precision the extent of the problem of racial and religious bigotry in the United States, this chapter reviews the limited statistical data and shares the perceptions of knowledgeable observers in various parts of the country. In addition, the chapter focuses on the relationship of the problem to persistent racism and anti-Semitism.

Extent of the Problem

Not all acts of religious discrimination and bigotry are anti-Semitic in character, but statistical reports of such incidents are available and instructive. The Anti-Defamation League (ADL) of B'nai B'rith has maintained over the past decade a count of anti-Semitic incidents reported to its regional offices across the country. 1/ ADL records show that

1/ The most recent of these annual reports is 1988 Audit of Anti-Semitic Incidents (Anti-Defamation League of B'nai B'rith, 1989) (hereafter cited as 1989 ADL Report).

since 1980 there has been a significant increase in reported episodes of anti-Semitic vandalism (377 in 1980, 715 in 1984, and 823 in 1988). 2/ In 1980 the ADL also began to compile statistics on reports of a more serious form of religious intimidation and violence, namely, "harassments, threats, and assaults." The number of such incidents reported in 1988 was more than quadruple the 1980 figure (458, up from 112). 3/

With respect to the national distribution of anti-Semitic vandalism, the ADL reports the following pattern:

The States of New York (208), California (121), Florida (89), and New Jersey (67) reported the most incidents in 1988.

The 1988 figure from Florida (89) shows a noticeable increase over 1987 and the most acts of such vandalism ever reported in an ADL audit for that State.

Maryland (36), Massachusetts (35), Pennsylvania (33), Illinois (29), Texas (23), and Georgia (22) constitute a second tier of States reporting 20 or more incidents of vandalism in 1988.

2/ Ibid., app. C, p. 40.

3/ Ibid.

The Northeast continued to be the region reporting the greatest number of incidents. 4/ The data also indicated that most of those arrested in connection with these incidents were young persons.

ADL went on to note that:

In 1988 police departments in 19 states reported 124 arrests in connection with 57 of the incidents. Of those arrested, 111--approximately 90%--were under 21 years of age. In 1987, 58 incidents in 15 States had resulted in the arrest of 78 individuals, nearly 22% of whom were 21 or older--the highest percentage of arrests in that age group noted in any ADL audit.

The fact that 1988 saw many more arrests than 1987, in connection with a comparable number of incidents, may indicate that many acts of anti-Semitic vandalism are being perpetrated by groups or gangs of youths, rather than by individual miscreants.

Among those arrested for vandalizing Jewish institutions in 1988 were a number of teenage members of local "Skinhead" groups. They were arrested in Mobile, Alabama; Dallas, Texas; Oklahoma City, Oklahoma; and in Ventura, and San Diego, California. 5/

While the ADL collects anti-Semitic bias incident data nationwide, there is no uniform, comprehensive data collection nationally with respect to incidents involving racial bias. It, therefore, is impossible to measure whether such incidents

4/ Ibid., pp. 8-10.

5/ Ibid., p. 9.

are increasing generally. As the Los Angeles County Commission on Human Relations report indicates, such data now are being collected by some State or local agencies and organizations. 6/ The Commission has continued to rely also on monitoring of bias incidents by its State Advisory Committees, and other sources, such as the Community Relations Service of the U.S. Department of Justice. 7/

Information is available, therefore, on patterns of incidents in various States and the role of Ku Klux Klan and neo-Nazi type organizations in them. For example, the Idaho Advisory Committee informed the Commission in 1986 that it had been told by an Idaho police official that racial and religious harassment had become a potential problem because of the numbers of various groups and persons sharing their philosophies, and their ability to disseminate their message. 8/ This same official further noted that persons with criminal backgrounds reportedly had become involved with these

6/ See Hate Crime in Los Angeles County 1988, p. 8.

7/ Community Relations Service (CRS) staff reported that they responded to 276 racial incidents in 1986, compared to 166 incidents in 1982 and 44 in 1979. Dennis Wynn, media affairs officer, CRS, Department of Justice, letter to Tom Olson, press officer, U.S. Commission on Civil Rights, Jan. 21, 1987.

8/ Idaho Advisory Committee to the U.S. Commission on Civil Rights, Bigotry and Violence in Idaho (1986), p. 9.

groups, there was an increased presence of the Ku Klux Klan, and the groups had been conducting paramilitary activities. 9/

The Pennsylvania Advisory Committee informed the Commission in 1986 that it understood there had been a decline in incidents and rallies by extremist groups in most parts of the State. 10/ However, the regional director of the ADL noted that several incidents had occurred in western Pennsylvania, including the distribution of racist literature by Aryan Nations, a white supremacy group. 11/ Incidents including a firebombing of a black family's home in a predominantly white suburb of Pittsburgh also were reported. 12/

The Georgia Advisory Committee heard a report in 1987 from a close observer that Klan influence in the State was waning as a result of Federal probes but that an auxiliary group had increased its membership from 12 in 1985 to 385 in 1986. 13/

9/ Ibid.

10/ Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights, The Status of Bigotry and Violence in Southwestern and Southeastern Pennsylvania in the Mid-1980s, briefing memorandum to the Commission (March 1986), p. 5.

11/ Ibid., p. 6.

12/ Ibid., Aryan Nations flyers also had appeared in the Pittsburgh metropolitan area.

13/ Leonard Zeskind, research director, Center for Democratic Renewal, Atlanta, in Georgia Advisory Committee to the U.S. Commission on Civil Rights, Bigotry and Violence in Georgia (in progress).

A New Jersey State Police official told the New Jersey Advisory Committee in 1986 that racial and ethnic graffiti and vandalism were the types of incidents most often reported to the State police and that most such incidents were not the work of organized groups but juveniles. 14/

Further, the Illinois Advisory Committee reported activity by several categories of groups that espouse bigotry and violence, including the Ku Klux Klan, neo-Nazis, and the Christian Identity Movement and other church-related organizations. 15/

While the role of organizations and individuals in fomenting or carrying out bias incidents thus apparently varies from community to community, one relatively new hate organization has emerged as of particular concern. According to the Southern Poverty Law Center, neo-Nazi Skinheads represent a "unique and frightening phenomenon in the history of white supremacism in America." 16/ Originally teen gangs,

14/ New Jersey Advisory Committee to the U.S. Commission on Civil Rights, Incidents of Bigotry and Violence in Essex County (1988), pp. 9-10.

15/ Illinois Advisory Committee to the U.S. Commission on Civil Rights, Bigotry and Violence in Illinois (1988), p. 2.

16/ Southern Poverty Law Center, "Skinheads Blamed for Year's Worst Attacks," Klanwatch Intelligence Report, February 1989, p. 1.

they are now being organized into a national network by older white supremacist groups, such as the White Aryan Resistance and the Aryan Nations. "Not since the Ku Klux Klan of the 1950s has a white supremacist group been so obsessed with violence, and so reckless in its disregard for the law," the center observed. 17/ The targets of its violence were said to have included not only blacks and Jews but Asian Americans, American Indians, Hispanics, and some whites as well. 18/

According to the Anti-Defamation League:

The rise in the number of Skinheads has been paralleled by an increase in the amount of violent crime they have committed, including two homicides and numerous shootings, beatings and stabbings, mostly directed against members of minority groups. Skinheads have also been responsible for a significant number of vandalisms of synagogues and other Jewish institutions. 19/

Campus Bias Incidents

Bias-related incidents on college campuses have been the subject of numerous disturbing media reports in recent years. The ADL reported a sharp increase in incidents against Jews on campuses in 1988. 20/ For example, "spray-painted swastikas

17/ Ibid., p. 1.

18/ Ibid., p. 5.

19/ Anti-Defamation League of B'nai B'rith, Civil Rights Division, Young and Violent: The Growing Menace of America's Neo-Nazi Skinheads (1988), p. 1.

20/ 1989 ADL Report, p. 7.

and anti-Semitic slogans such as 'Kill the Kikes' and 'Zionazi racists' were found on the wall of the Jewish Student Center at SUNY at Binghamton." The report also noted that abusive remarks and slurs, "combining anti-Semitism and sexism, have proliferated on numerous campuses." 21/

A racial brawl was reported at Amherst University in October 1986; racial epithets reportedly were carved in desks at Providence (R.I.) College; a black woman cyclist was harassed at the University of California at Berkeley; the American Indian president of the student body at Macalester College in St. Paul, Minnesota, received threatening letters with racial slurs after she wrote a campus newspaper article on racism; and University of Michigan students staged a sit-in to protest racial incidents, including the telling of racist jokes on a campus radio station. 22/ The Southern Poverty Law Center

21/ Ibid., pp. 7-8.

22/ Hayes Johnson, "Racism Still Smolders on Campus," USA TODAY, May 10, 1988, p. 10. See also, e.g., Robert Barr, "Campus Unrest Sign of Racial Tensions," Binghamton Press and Sun-Bulletin, Apr. 19, 1988; Christopher Connell, "Campus Incidents Lead to New Push for Minority Enrollments," Washington Times, May 16, 1988; Michele N-K Collison, "Racial Incidents Worry Campus Officials, Prompt U. of Massachusetts Study," Chronicle of Higher Education, March 1987; Lee A. Daniels, "Prejudice on Campuses is Feared to be Rising," New York Times, Oct. 31, 1988; and Robert Zausner, "Racism Charges Trouble Penn State," Philadelphia Inquirer, Feb. 18, 1988, p. 1-A.

reported that white supremacist groups appear to have renewed attempts to recruit college youth, citing, for example, flyers distributed at Northwest Missouri State University asking students to join the Klan and warning that "The Knights of the Ku Klux Klan are watching you." 23/

As is the case with hate activity generally, it is not certain whether an actual increase in campus bias incidents has occurred in recent years or, rather, there is greater attention to such incidents. 24/ Nonetheless, as an ADL official observed, "These are the future leaders of our country, and it's disturbing to see on campuses, manifestations of the crudest form of bigotry and racism." 25/ A newspaper editorially pointed out that "Crude, overt racial bigotry has again come out of campus closets and onto the quads" when "[a]

23/ Adam Cohen, Southern Poverty Law Center, "White Supremacists Find Recruits on Campus," Klanwatch Intelligence Report, February 1989, p. 15.

24/ A Community Relations Service (CRS) official told the Commission in May 1989 that CRS casework on campus has "increased significantly," with the staff filings of "alerts" increasing from 48 in 1987 to 77 in 1988. Grace Flores-Hughes, Director, CRS, Department of Justice, remarks at May 18, 1989, briefing of U.S. Commission on Civil Rights, transcript, p. 9.

25/ "Anti-Semitic Incidents in 1988 Put at 5-Year High," New York Times, Jan. 29, 1989, p. 20, quoting Jeffrey P. Sinensky, director of ADL's civil rights division.

society's universities ought to be among its chief civilizing influences." 26/

Significance of the Problem

The significance of the problem does not lie exclusively in the existence and activity of particular organizations that promulgate spurious doctrines of racial superiority and advocate religious persecution. What is significant, however, is the fact that these groups advocate openly the racist and discriminatory beliefs that surface in individuals and institutions despite efforts at their eradication. Were hatred and violence based on race, religion, or national origin practiced only by members of such groups, the problem would pale in scope as well as significance. Not all anti-Semites join a neo-Nazi organization, but every anti-Semite is a threat to the religious freedom of others. Not all racists join a hooded order, but every person who holds his or her own race to be superior or inviolate denigrates another and threatens its survival. Not every person who believes his or her culture, race, or religion is in jeopardy takes to paramilitary training, but every person who does so and gains the weaponry and skills requisite to armed violence is a menace to social cohesion and tranquility. In the final analysis, the problem is the continuing existence of racism and anti-Semitism that

26/ "Racism: From Closet to Quad," New York Times, Apr. 1, 1987.

surface in the acts of some individuals and compose the rhetoric of a number of extremist organizations.

That an undercurrent of racism and religious prejudice persists is evidenced by the fact that groups espousing such views persist. Some have developed computer networks to communicate with each other, sophisticated telephone message systems, and cable television programs to spread their message. 27/ Prejudice and animosity survive, not just in organizations known for creating divisive tension and intimidation, but also in numerous acts of religious and racial violence committed by persons similarly infected. Although the organizations themselves and the ideas expressed by their spokespersons are repugnant to most Americans, their significance to the Commission rests in the fact that such ideas are often expressed in illegal acts of discrimination against racial and religious minorities. In the next chapter, an attempt is made to identify the probable causes and contributing circumstances of such behavior. By understanding the causes and precipitative mechanisms, it may be possible to identify some useful remedies.

27/ See, for example, Stephen Miller, "Hi-Tech Racism," Black Enterprise, October 1987, p. 22, and National Institute Against Prejudice and Violence, Bigotry and Cable TV, Legal Issues and Community Responses (1988).

Chapter 3

Probable Causes and Contributing Circumstances

A number of explanations have been offered for the acts of bigotry and intimidation, reports of which have become so commonplace. For example, some believe that racial integration of neighborhoods is an important factor in bias incidents. The Southern Poverty Law Center reported that "move-in violence," such as arson attempts and cross burnings at the homes of minorities who had recently moved into mostly white areas, has been a serious problem in many metropolitan areas, such as Baltimore, Chicago, Cleveland, and Philadelphia, as well as Atlanta. 1/ By the same token, there is a school of thought that suggests that campus bias incidents tend to reflect white

1/ See generally Southern Poverty Law Center, Klanwatch, "Move-In" Violence: White Resistance to Neighborhood Integration in the 1980's (1987). A Justice Department official also suggested that racial incidents are the "unfortunate by-product of an essentially positive underlying development, the increasing integration of neighborhoods across the country." John Bolton, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, letter to Susan J. Prado, Acting Staff Director, U.S. Commission on Civil Rights, Mar. 30, 1987.

backlash in the face of increased minority student enrollments on formerly white campuses and resentment by some white students at what they consider "preferential" treatment of minority persons through "set asides," "affirmative action," and other "race conscious," college-endorsed programs. 2/

A fundamental cause of bigotry-bred violence in the United States, according to some who have studied the problem, is the continuing presence and tenacious survival of deep-seated racism and anti-Semitism. One author, a Roman Catholic theologian, documents in scholarly detail the persistence through history of anti-Semitism and traces its manifestations from the classical Greek period to the present time. 3/ Edward H. Flannery's historical analysis of religious bigotry suggests

2/ See, for example, Shelby Steele, "The Recoloring of Campus Life," Harper's Magazine, February 1989, pp. 47-55, and John Adams Wettergreen, "The New Bigotry on Campus," in U.S. Commission on Civil Rights, Perspectives, Spring/Summer 1989, forthcoming. Dr. Wettergreen argues that such programs actually are divisive in that they place high value on "cultural pluralism," rather than unity. "In other words, the greatly heightened racial and ethnic consciousness of the American university means both that there will be more incidents of bigotry and that many incidents which are not racially or ethnically bigoted will be thought to be so." Ibid., p. 13. See also Joseph Berger, "Campus Racial Strains Show 2 Perspectives on Inequality," New York Times, May 22, 1989.

3/ Edward H. Flannery, The Anguish of the Jews (New York: Macmillan, 1965).

that all forms of hostile prejudice against members of a particular group are often rooted in narrow theological concepts. These theological underpinnings account for the fact that institutionalized forms of racism and anti-Semitism frequently take on the appearance of religion itself, as well as the fact that acts of intimidation and violence are encouraged and perpetrated at times with zealous devotion to a contrived and convoluted set of racist beliefs.

The foregoing insights are illustrated in two major and infamous historical developments: the treatment of Jews in Nazi Germany and the perpetuation by the colonial settlers of America of the institution of slavery. The fanaticism of the Holocaust and the dehumanizing bondage of blacks in the United States provide evidence of the depths of degradation to which humanity can descend when bigotry and intolerance are institutionalized and officially condoned. In these situations the zeal of the racial and religious bigot can be seen clearly as ultimately antireligious, antidemocratic, and a perversion of humanistic as well as theological ideals.

Though contemporary America will never become a latter-day Nazi state or repeat the ignominy of slavery, the inescapable fact remains that the perverse traits of racism and anti-Semitism exist and are expressed in alarming, sometimes

violent, ways by individuals and groups who make no secret of their prejudice against racial and religious minorities. It should also be clear that racism and anti-Semitism are not caused by Klan and Nazi-like organizations; these groups simply attract persons whose antiblack, anti-Jewish, and antiforeigner beliefs are already developed. The organizations provide an enclave of support for expressing and implementing ideas that are formed by a host of other influences encountered in the family, schools, and other situations.

This observation is not made to minimize concern over the groups themselves and the crucial role they play. Some reported acts of racial and religious intimidation are committed by persons who are said to have, or profess to have, past or present connections with organizations that preach hatred and advocate violence to vent that hatred. Even the perpetrators with no known or professed connection with such groups are clearly imitators of them and adopt their symbols of terror--the swastika, the burning cross, and the graffiti of hate and intimidation. In all cases, however, a major role of extremist groups is to provide the rhetoric of justification for acts perpetrated either by the groups themselves or individual imitators. As far as the victims are concerned, it matters little whether a group or an individual is responsible for the act; the terrorizing effects are the same.

Another role of hate groups, more ominous than the rhetoric of hate and advocacy of violence, has emerged in the past decade. Paramilitary training sites have been established where persons are trained in the use of sophisticated weapons, the manufacture of bombs, and the skills of guerrilla warfare. It has been claimed that these tactics are intended to prepare members to defend "the faith" from the enemies of "White Christian America" or to ensure survival in an anticipated race war. 4/

Ted Gurr, an authority on violence in America, gave still another reason for taking these groups seriously when, before a congressional subcommittee on crime of the House Judiciary Committee, he identified a characteristic that runs directly counter to the American political tradition. Professor Gurr said:

The contemporary Ku Klux Klan, National Socialist Party, and similar extremist groups are distinctively anti-democratic in their political beliefs and practices. The victims of anti-democratic violence have included, but were not limited to, ethnic minorities (blacks, Mexican-Americans) and religious minorities (Catholics, Jews). Whites of Protestant background also were often victimized because of their alleged criminality, immorality, or radical political views. Black Americans

4/ Georgia Advisory Committee to the U.S. Commission on Civil Rights, Perceptions of Hate Group Activity in Georgia (1982), pp. 2, 3.

are not the only ones who need fear the resurgence of anti-democratic groups. 5/

Although one cause of racial and religious terrorism is widely acknowledged as being the persistence of racism and anti-Semitism, many observers appear in general agreement in identifying a number of circumstances and perceptions that contribute to the precipitation and exacerbation of overt acts of violence. In addition to the resentment by some whites of gains for minorities in housing and higher education, contributing circumstances are economic conditions, the mechanism of scapegoating, media treatment of advocates of violence, perceptions of retrenchment in civil rights enforcement, and failure on the part of law enforcement agencies to respond appropriately to specific incidents. 6/

5/ Professor Gurr characterizes these groups as "anti-democratic" because of "two characteristics that set them sharply apart from almost all other groups on the right of the American political spectrum. First, they reject some basic principles of democratic American society. They are prepared to deny equality of treatment or opportunity to ethnic and religious minorities, and they oppose the free expression of political and social opinions which contradict their own views. Second, they are prepared, collectively, if not in all individual instances, to use violence and to provoke violent confrontations in order to promote their objectives." The total statement and oral testimony appear in U.S. Congress, House, Committee on the Judiciary, Subcommittee on Crime, Increasing Violence Against Minorities, 96th Cong., 2nd sess. (Dec. 9, 1980), pp. 2, 4-23 (hereafter cited as Increasing Violence Against Minorities).

6/ See, for example, Abt Associates, "Research Application Review--The Response of the Criminal Justice System to Bias Crime," Oct. 5, 1987, citing "increased economic competition from minorities...ethnic neighborhood transition, and a perceived decrease in government efforts to prevent discrimination in education, housing, and employment" as reasons behind bias crimes, p. 1 (hereafter cited as Abt Associates).

Economic Conditions and Scapegoating

Rising unemployment, business failures, cuts in government programs and subsidies, increases in mortgage defaults, shrinking retail sales, declines in housing starts, and troubles in the auto and oil industries--these have been among components of the daily litany of economic news in some regions of this Nation. Although these conditions adversely affect a wide segment of the population, they have particularly severe repercussions on the poor and on racial minorities. Such circumstances do not create bigots or cause acts of violence against racial and religious minorities, but coupled with the human propensity to find someone to blame, these conditions give rise to scapegoating, wherein negative and retaliatory feelings toward those perceived as causing economic difficulties are heightened. Under such circumstances, some whites severely affected by economic hardships believe that their hard times result from "reverse discrimination" in employment and a tax burden imposed upon them to support government programs that in their view provide undeserved advantages to minorities. Immigrants may also be perceived as threatening the economic well-being of such persons.

The report of the Commission's Advisory Committee in Michigan expanded on the theme that economic difficulties intensify the appeal of extremist groups to some whites who

feel they must compete unfairly with blacks and other minorities for fewer jobs and shrinking resources:

Private organizations in Michigan ranging from New Detroit to the Detroit Urban League have drawn similar conclusions. Public officials including U.S. Attorney Gilman, Wayne County Sheriff Lucas and representatives of the Detroit Department of Human Rights, the Saginaw Human Relations Department, and the Detroit Mayor's office have also pointed to the depressed economy. As Alexander Luvall, Special Assistant to the Mayor of Detroit observed, "when the economy is bad, it seems like the Klan starts marching again." 7/

Professor Gurr also described the role of economic conditions and added additional insight:

We know that most of the historical episodes of anti-democratic action occurred in times, in places and among people who suffered from economic dislocation....

The evidence suggests that people who hold anti-democratic beliefs today are more likely than not to be economically marginal. They also tend to live in rural and small town America, areas where wages tend to be lower and economic opportunities fewer. These are the people who are most likely to be especially hard-pressed by inflation, by rising unemployment, and by static or declining real wages.

Their grievances in those circumstances tend to focus on the Federal Government and on minorities: on the Federal Government because of tax policies, and because they believe Federal spending policies have contributed to inflation; and minorities because they are believed to receive unfair advantage from Government programs. 8/

7/ Michigan Advisory Committee to the U.S. Commission on Civil Rights, Hate Groups in Michigan: A Sham or a Shame (1982), p. 16 (hereafter cited as Michigan Report).

8/ Increasing Violence Against Minorities, pp. 7-8. See also U.S. Commission on Civil Rights, Recent Activities Against Citizens and Residents of Asian Descent (1986), p. 39, in which the Commission found that factors contributing to anti-Asian sentiments in the U.S. included "competition between low-income refugees and other low-income groups for jobs and housing."

Media Treatment

White robes, masked hoods, storm trooper uniforms, swastika arm bands, and visible automatic weapons understandably attract media attention. Furthermore, the wearers of such regalia are hungry for press coverage and not beyond staging media events in an effort to spread the message of hostility and intimidation.

Journalist Dean Calbreath, writing for the Columbia Journalism Review, admits that he himself was used by the Klan and unwittingly served its publicity purposes on many occasions. He also describes how other elements of the mass media have been similarly duped. Calbreath quotes one former Klan official as having claimed: "We used the press. We lied and did anything we could to make reporters happy. We intentionally staged things just to get coverage." 9/

Although the press has a responsibility to report the news, it has not always done so with accuracy and appropriate perspective. Often statements, patently false, go unchallenged by interviewers of hate group spokespersons, thereby perpetuating stereotypic myths about racial and religious

9/ "Kovering the Klan: How the Press Gets Tricked into Boosting the KKK," Columbia Journalism Review, March/April 1981, pp. 42-45.

minorities. When the significance of events is exaggerated or inordinate attention is paid to minor side issues, the coverage is distorted. An example cited by the Michigan Advisory Committee illustrates the problem: "While over 3,000 attended the celebration [of the thirty-third anniversary of Israel] most of the media attention went to fewer than 20 Nazis who briefly demonstrated." 10/ In Missouri, a television report of racial tensions at a college included an interview with a Klan representative, sandwiched between other campus interviews, conveying the erroneous impression that the Klan was active on the campus and leading to a deluge of calls to the school from frightened parents. 11/

Perceived Retrenchments in Civil Rights Enforcement

There is a widespread perception that the Federal Government in recent years relaxed its enforcement posture in the area of civil rights and cut back on social programs that have benefited many Americans. Bigots, reportedly, have been quick to interpret these initiatives as a lack of government

10/ Michigan Report, p. 20

11/ Missouri Advisory Committee to the U.S. Commission on Civil Rights, Campus Bias in Missouri, transcript of community forum in Columbia, Mar. 22, 1989.

concern for minorities who are now fair game for attacks that are expected to go unchallenged. 12/

In addition to the perception that government authority will not be imposed upon violators of civil rights, there may be those who assume that the perceived shift toward a conservative political philosophy in recent years provided license to express and act out their racial and religious hostility. These people frequently describe themselves as true (white) patriots who place (white) America first and are prepared to defend (white) democracy from its enemies.

Professor Gurr pointed out:

I want to make it very clear that anti-democratic attitudes of the kinds I have identified are not part of the American conservative philosophy.

...In general it has become more widely acceptable to oppose equal rights for women, to support legislation against forced busing, to restrict affirmative action programs and to oppose government intervention in social and economic affairs. These policy preferences all are associated in the public's eye with conservatism. Why not go several steps further and retaliate against the liberals, the blacks, the public officials who are responsible for, or who benefit from, these kinds of programs and activities?

I am suggesting that this is the kind of mental process going on among people whom I have called anti-democratic. Right wing anti-democratic views probably are not more common now than they were 15 years ago. What has changed

12/ Michigan Report, pp. 16-17. See also Minnesota Advisory Committee to the U.S. Commission on Civil Rights, Bigotry and Violence in Minnesota (presentation by Elaine Valadez, chair, Governor's Task Force on Prejudice and Violence) (1989), forthcoming. For a more comprehensive statement of this view, see Frederick A. Hurst, commissioner, Massachusetts Commission Against Discrimination, "Racism in the Reagan Years, Resurgence or Reaffirmation?" in U.S. Commission on Civil Rights, Perspectives, Spring/Summer 1989, forthcoming.

is that the shift in general public opinion has led extremists to feel that it has become more acceptable to express their views openly and to act upon them. 13/

Law Enforcement Response

Effective police responses to incidents of racial and religious violence are necessary to keep such incidents from spreading. If the police fail to respond, or respond in ways that clearly demonstrate a lack of sensitivity, perpetrators can interpret the police inactivity as official sympathy or even sanction. A knowledgeable observer expressed the importance of effective official response well when he said:

What is problematic, at least for members of anti-democratic organizations, is how much the police, prosecutors, judges, and juries are prepared to let them accomplish without imposing legal sanctions. What the Klans and the neo-Nazis are doing now can be regarded as a kind of testing, both of public opinion and of official response. Official responses which are tolerant, apathetic, or simply ineffective are likely to encourage more extremist action. 14/

13/ Increasing Violence Against Minorities, p. 8.

14/ Ibid. It should be noted that the U.S. Justice Department has vigorously prosecuted cases involving racial violence. One observer said the Department in recent years had the best record in this regard in three decades. Morris Dees, Southern Poverty Law Center, remarks at Northeast Regional Conference on Prejudice and Violence, National Institute Against Prejudice and Violence, New York City, Mar. 3, 1988, as quoted in John C. Eastman, staff memorandum to Melvin L. Jenkins, Acting Staff Director, U.S. Commission on Civil Rights, Oct. 13, 1988. Attorney General Richard Thornburgh cited the ADL's assessment of the Department's "superb job" in attacking the hate movement and pledged that this "unrelenting effort will continue." 1989 ADL Report (frontispiece).

The effectiveness of police response is enhanced when the racial, ethnic, and religious composition of the force reflects the community it serves. Although writing about factors that may precipitate urban race riots, Morris Janowitz cites a study that sheds light on this contributing factor to effective police response. The carefully matched comparison of riot and nonriot cities by Lieberman and Silverman, covering 76 race riots between 1913 and 1963, revealed that riots are less likely to occur in "cities with more racially integrated police forces." 15/

The Commission's Michigan Advisory Committee highlighted the importance of integrated police forces in responding effectively to incidents of racial and religious violence. Among the Committee's major findings was: "The Detroit Police Department has been particularly effective in responding promptly to reported incidents, in part because the racial and ethnic composition of the personnel reflects that of the community." 16/

15/ Morris Janowitz, "Collective Racial Violence," in R. Graham & T.R. Gurr, eds., Violence in America (Beverly Hills & London: Sage Publications, 1979), chap. 9, p. 263.

16/ Michigan Report, p. 35.

Another factor that affects police response is the widespread lack of hard, comprehensive, and comparative data concerning the number, location, and types of crime that are motivated by racial or religious bigotry. The slaying of a spouse in a domestic quarrel and the murder of a black person for "race-mixing" are both reflected in crime statistics as homicides. This Commission has learned of the existence of few statewide efforts to gather and report discretely those crimes apparently motivated by racial and religious bigotry. 17/ Police and community response can be affected adversely by the absence of reliable data on criminal violence motivated by bigotry because this gap in knowledge makes it difficult for police to measure trends, develop enforcement strategies, and allocate personnel. The lack of data also impairs the ability of policymakers and other concerned groups and individuals to assess the extent of the problem and develop adequate measures of prevention. 18/

17/ Such States include Connecticut, Illinois, Maryland, Minnesota, New Jersey, New York, Pennsylvania, and Virginia. Adele Terrell, program director, National Institute Against Prejudice and Violence, telephone interview, Apr. 3, 1989.

18/ Col. Leonard Suppenski, Baltimore County Police Department, remarks at briefing of the U.S. Commission on Civil Rights, Feb. 13, 1987.

Finally, some question whether bias crimes are vigorously prosecuted at State and local levels. For example, it has been argued that:

For the most part, the criminal justice system--like the rest of society--has not recognized the seriousness of the hate violence problem. Police officers, prosecutors, and judges tend to regard most incidents as juvenile pranks, harmless vandalism, private matters between the involved parties, or acceptable behavior against disliked groups. Many criminal justice system personnel do not believe that hate violence exists in their community. Others are aware it exists but are reluctant to publicize the fact for fear their communities will be branded as racist or hotbeds of violence. Lack of police and prosecutor attention to bias crime often reflects the attitude of local residents who do not want minorities in their community. 19/

19/ Abt Associates, p. 2. See also Center for Democratic Renewal, They Don't All Wear Sheets: A Chronology of Racist and Far Right Violence--1980-1986, which concluded that "Bigoted violence has become a critical criminal justice issue of the late 1980s...[s]ections of our society remain unconvinced of the necessity to redress immediately the violence directed at some classes of victims...[I]n the overwhelming majority of instances, bigoted violence is simply ignored, dismissed as the work of young 'pranksters' or simply left unexplained." p. 18.

Chapter 4

Promising Responses

With respect to the fundamental cause of acts of bigotry and intimidation, the persistence of racism and anti-Semitism, there are no easy or quick solutions. Some State and local government and community leaders, however, have undertaken important steps to counter the influence of extremist groups and to minimize the incidence of bias-motivated acts. For example, in 1981 the Governor of Maryland established a task force on violence and extremism, which was the counterpart of the private sector Coalition Opposed to Violence and Extremism. During 6 years of meetings and public hearings, the Governor's task force led, among other things, to the establishment in Baltimore of the National Institute Against Prejudice and Violence to conduct relatively comprehensive research in this area. ^{1/} Similar task forces and coalitions have been established by government officials or community

^{1/} State of Maryland, Office of the Governor, Final Report of the Governor's Task Force on Violence and Extremism (1987), p. 149.

leaders elsewhere to air the problem and prepare strategies against it. 2/

Further, various State and local governments have strengthened laws against bias-motivated crimes and amended or passed new laws prohibiting, among other things, paramilitary training, cross burnings, and the wearing of hoods or masks. 3/ In addition, various State agencies and higher education institutions have reacted to incidents of bigotry and violence on campus by studying apparent causes and proposing possible remedies. 4/

2/ See, for example, the discussion of the Kootenai County Task Force on Human Relations in the Idaho Advisory Committee to the United States Commission on Civil Rights, Bigotry and Violence in Idaho (1986), pp. 39-44.

3/ For a recent, detailed compilation of such State-by-State legal initiatives, as well as related Federal laws, see National Institute Against Prejudice and Violence, Striking Back at Bigotry: Remedies Under Federal and State Law for Violence Motivated by Racial, Religious, and Ethnic Prejudice (1986) and the 1988 Supplement (1988).

4/ See, for example, South Carolina State Human Affairs Commission, A Report on Hazing/Race Relations at the Citadel (1987), which reported that most black cadets found that forms of racial intimidation by white cadets, including name calling and ethnic jokes, "were not uncommon" (p. 21) and that the lack of black role models, such as black executives or professors, created "an environment lacking in ethnic diversity and cultural sensitivity." (p. 25). See also "Racism Report Praises Penn State But Outlines Room for Improvement," Philadelphia Inquirer, Mar. 9, 1989, which noted that a group of social scientists recommended, among other things, establishing a committee to define racial and sexual intolerance and to develop sanctions and consideration of a "crime stoppers" program with cash incentives for anonymous information on racial crimes. Another study, by the National Institute Against Prejudice and Violence, surveyed the frequency and awareness of "ethnoviolence" at the University of Maryland Baltimore County campus. Ethnoviolence on Campus, The UMBC Study (1987).

Improving Police Intervention

A number of police departments have responded to acts of racial and religious violence by forming specialized units. These units are responsible for gathering intelligence, preventing illegal acts and conspiracies, and swiftly apprehending persons who commit racially or religiously motivated crimes. In Boston a community disorders unit was created by special order of the police commissioner. The New England Regional Office described its work:

The unit works closely with district police personnel, assisting them in identifying and investigating crimes which are racially motivated....[It] has been successful in educating the rest of the department about the seriousness of racially motivated crimes [and]...diligent in investigating [them]...[It also] works closely with the Civil Rights Division of the State Attorney General's Office and the local district attorney in prosecuting these cases. According to the director of the unit, in neighborhoods where civil rights violations have been successfully prosecuted, the number of such incidents has decreased. 5/

In Providence, Rhode Island, a somewhat different approach was taken:

An undercover police unit called the Terrorist-Extremist Suppression Team was formed by the Mayor and the Police Chief to track the Klan, neo-Nazis and other extremist

5/ U.S. Commission on Civil Rights, New England Regional Office, Regional Response, Nov. 13, 1981, p. 4-5. For a discussion of how Massachusetts uses its Civil Rights Act to prosecute hate crimes, see Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, Stemming Violence and Intimidation through the Massachusetts Civil Rights Act (1988).

groups. Formed in May [1981], the Mayor explained that its members are experienced officers who would work full-time to obtain information. In July, evidence against five members of extremist groups was presented to a jury....The unit functions as an independent unit within the department to investigate all complaints of harassment which fall under both new and old laws. The unit is under the direct supervision of the chief of police....Thus far the unit has generated evidence presented to the grand jury based on old laws as well as the recent statute. [The police chief] believes that the long-term success of the unit depends on the public's awareness and utilization of it. He reported that the unit is in contact with ADL and is working with other community groups to encourage community support. 6/

Another police strategy was employed to respond to a planned Klan rally in Windham, Connecticut. Since earlier rallies in the State led to violence, the State's chief attorney and the head of the State department of public safety were able to obtain a court order banning weapons and allowing the State police to search persons going to the site and their vehicles. As a result of this authority and the announced intention to use it, violence was avoided. 7/ Similarly, police and the State bureau of investigation's handling of counterdemonstrations against civil rights marches in Forsyth County, Georgia, was praised by observers before the Georgia Advisory Committee. 8/

6/ Ibid., p. 11.

7/ Ibid., p. 12.

8/ The bureau's antiterrorism task force handled security for the marchers during the counterdemonstrations. Georgia Advisory Committee to the U.S. Commission on Civil Rights, Bigotry and Violence in Georgia (forthcoming).

Prompt and effective police response to reported incidents requires careful, detailed planning. The Michigan Advisory Committee described the process used in Saginaw:

In anticipation of potential disruptions, the city of Saginaw drew together representatives of the Human Relations Commission, law enforcement agencies, business leaders, media representatives and other community leaders to develop an appropriate response. An emergency mobilization plan for police personnel was created which spelled out lines of authority, operational procedures, use-of-force policies, procedures for arresting juveniles and adults, where individuals would be temporarily held, and guidelines governing other contingencies. 9/

Further, several States now collect and report information on hate incidents. State Advisory Committees have reported how these efforts are working. 10/

It is conceivable that some of these attempts to improve law enforcement, i.e., those having to do with heightened surveillance and undercover operations, could border on questionable or illegal invasions of privacy. In the Providence situation, for example, the American Civil Liberties Union expressed concern that the undercover team posed a

9/ Michigan Report, p. 23.

10/ See, for example, Connecticut Advisory Committee to the U.S. Commission on Civil Rights, Collecting Data on Bias-Related Incidents in Connecticut (1987); New York Advisory Committee to the U.S. Commission on Civil Rights, Reporting on Bias-Related Incidents in New York State (1988); and Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights, Reporting on Bias-Related Incidents in Pennsylvania (1988).

possible threat to first amendment rights. 11/ Similiar questions were raised about the State police searches connected with a Klan rally in Windham, Connecticut. 12/ In any event, care must be exercised to ensure that all measures taken are proper and lawful. To violate constitutional liberties in order to protect civil rights would be self-defeating. It is improper to fight extremism with extremism. 13/

Education and Public Awareness

As noted earlier in this statement, the Anti-Defamation League monitors anti-Semitic activities through its regional offices and issues periodic reports. 14/ Klanwatch of the Southern Poverty Law Center is engaged primarily in factfinding activities and the provision of legal services. 15/ Further, the Center for Democratic Renewal in Atlanta publishes various reports on hate groups and activities, as well as a bimonthly

11/ New England Regional Office, Regional Response, Nov. 13, 1981, p. 15.

12/ Ibid., p. 12

13/ See also National Institute Against Prejudice and Violence, Bigotry and Cable TV (1988), for an analysis of first amendment rights and the efforts of communities, including Cincinnati, Ohio, the East Bay area of California, and Pocatello, Idaho, to fight racist TV programs.

14/ ADL is headquartered at 823 United Nations Plaza, N.Y., N.Y. 10017.

15/ The Southern Poverty Law Center is located at 400 Washington Avenue, Montgomery, Ala. 36104.

newsletter on the activities of the Ku Klux Klan, the Aryan Nations, and other such groups. 16/

Media Response

Sensitive and nonsensational news coverage of acts of racial and religious violence and intimidation should be encouraged. One way of doing so is reflected in earlier descriptions of public and private commissions, coalitions, or task forces." In most of these cases, newspaper editors, television producers, and other media representatives serve on such bodies established to examine the problem and recommend solutions. On other occasions, community organizations with civil rights interests have taken the initiative to contact opinionmakers to suggest existing or potential programs that provide factual and historical information about hate group activity and the ways in which it is best countered.

The television industry has a code that sets forth standards of responsible programming. In the treatment of news and public events, the code calls for reporting that is factual, fair, and unbiased. It advocates against the airing of "morbid, sensational or alarming details not essential to

16/ The center's mailing address is P.O. Box 50469, Atlanta, GA 30302. The address of the National Institute Against Prejudice and Violence, whose studies have been cited in this report, is 525 West Redwood Street, Baltimore, MD 21201.

the factual reports" and states further that "pictorial material should be chosen with care and not presented in a misleading manner." The code acknowledges that "television provides a valuable forum for the expression of responsible views on public issues" and urges broadcasters to "seek out and develop with accountable individuals, groups and organizations, programs relating to controversial public issues of import to his/her fellow citizens." 17/ Were relevant portions of this code followed circumspectly by the electronic media, and similar principles by the print media, many of the problems arising in coverage of hate group activity might be eliminated.

Speaking Out

Running through virtually all the material on the subject of racial and religious violence is a belief in the indispensable need for strong and unambiguous statements from community leaders and elected officials that acts of racial and religious intimidation will not be tolerated. Members of hate groups of the kind discussed here view themselves as true patriots who stand as the last defenders of the American way. They must learn from repeated public statements, as well as the determined enforcement of law, that they are the most anti-American among us. Were they to succeed in having a

17/ Broadcasting/Cablecasting Yearbook 1982, pp. D-15 to D-17.

one-race, one-ancestry Nation, then any semblance of the pluralism that is America would be destroyed.

Then-President Reagan emphasized his own opposition to racial and religious intimidation and violence by visiting a black family that fell victim to a cross burning upon moving into a white neighborhood in Prince Georges County, Maryland. 18/ What is needed, according to most observers, is for more public officials to take repeated opportunities to express their disapproval in increasingly strong terms and definitive action. At the annual convention of the National Association for the Advancement of Colored People, President Reagan expressed in clear terms his own indignation over extremist groups and the determination of his administration to deal forcefully with those who attempt to deny the rights of other Americans:

A few isolated groups in the backwater of American life still hold perverted notions of what America is all about. Recently in some places in the Nation there's been a disturbing reoccurrence of bigotry and violence. If I may, from the platform of this organization, known for its tolerance, I would like to address a few remarks to those groups who still adhere to senseless racism and religious prejudice, to those individuals who persist in such hateful behavior.

If I were speaking to them instead of to you, I would say to them, "You are the ones who are out of step with our

18/ U.S. Executive Office, Weekly Compilation of Presidential Documents, vol. 18, May 10, 1982, p. 699.

society. You are the ones who willfully violate the meaning of the dream that is America. And this country, because of what it stands for, will not stand for your conduct." My administration will vigorously investigate and prosecute those who, by violence or intimidation, would attempt to deny Americans their constitutional rights. 19/

19/ Ibid., vol. 17, June 29, 1981, p. 699.

Chapter 5

Conclusion

The U.S. Commission on Civil Rights concludes that the phenomenon of racial and religious violence and harassment is a continuing threat to the maintenance of a peaceful, democratic, and pluralistic society. Bigotry-bred violence and intimidation are manifestations of racism and anti-Semitism that still survive even after the years of effort spent on their eradication. The basic cause, the complex network of contributing circumstances, and the social and psychological dimensions that surround the increasing display of racial and religious violence and intimidation are easily understood in broad outline:

- o When persons or groups derive primary satisfaction or esteem in thinking themselves superior to others;

- o when a sense of group racial or religious superiority is evoked to advance the group itself at the expense, disadvantage, or persecution of another group;

- o when religious doctrine is wittingly or unwittingly used to place guilt or to establish hostility toward another group;
- o when competition increases or is perceived to increase for limited numbers of jobs, economic resources, government assistance, and college admissions;
- o when government is perceived as either covertly supporting or unwilling to take punitive action with respect to entrenched discrimination;
- o when some segments of society believe that the "American way of life" is about to be destroyed by internal and external "enemies";

then the circumstances are right for hatred and bigotry that can result in confrontations of serious proportions. Furthermore, when these are perpetrated in a spirit of righteous indignation and fueled by an expectation of media exposure and public tolerance, violence or harassment is not surprising.

The Commission further concludes that:

1. Precise measures of the extent of racial and religious violence and intimidation do not exist primarily because most

Federal, State, and local law enforcement agencies have not devised methods for reporting and compiling statistics on crimes that involve clear signs of racial and religious motivation. Such data are needed to measure trends, develop preventive programs, allocate resources, and adjust public policy. 1/

2. The criminal justice system is more likely to inspire confidence that it will respond swiftly and effectively to apprehend offenders, press for prosecutions, and exact appropriate punishments when the racial, ethnic, and religious composition of criminal justice work forces reflects that of the community.

3. Some national, State, and local leaders have not been as vocal as they should be in expressing outrage over criminal acts that deny constitutional rights to persons because of their color, creed, or national origin. Whether this is due to unintentional insensitivity, or to a deliberate conspiracy of silence, it too becomes the ground for believing that illegal

1/ The Commission has called for legislation to require the Justice Department to collect such data. See, for example, U.S. Commission on Civil Rights, news release, "Civil Rights Commission Endorses National Collection of Hate Crimes Statistics," May 15, 1987.

acts of racial or religious violence will not be challenged seriously.

4. Although antidemocratic extremist groups contribute much of the rhetoric of hatred and provide an enclave of emotional support for those who act out the hatred, the groups themselves are not always directly responsible for acts of racial and religious violence. Many of these acts are carried out by unthinking imitators; others are committed by individuals who happen to hold the same views espoused by group members.

5. Education is one key element in efforts to eradicate racism and prevent violence. Effective educational strategies can be developed by public and private school systems, police training academies, the mass media, universities, religious institutions, and a host of community-based organizations.

6. New legislative initiatives aimed at outlawing specific tactics of racial and religious bigots have been taken by a number of State and local legislative bodies in apparent recognition that adequate legal tools as well as improved educational strategies are important in the fight against overt bigotry.

On the basis of these conclusions, the Commission urges:

1. The Federal Government should develop a mandatory, national reporting system that will produce an accurate and comprehensive measurement of the extent of criminal activity that is clearly based on racial and/or religious motivations.

Implementing this suggestion is no easy task. Uniform definitions, guidelines, and procedures must be developed if the data are to be reliable, comparable, and useful. Until this difficult step is taken, however, some public policy decisions and program development strategies will not be made or will be undertaken in the absence of adequate information.

2. The criminal justice system, especially law enforcement components, should intensify efforts to ensure that staff who confront incidents of racial and religious terrorism are broadly representative of the racial, ethnic, and religious makeup of the communities they serve.

As this Commission has noted before, confidence in the cause of justice is served best when it involves personnel who by training, background, and minority status are personally sensitive to the dynamics of life in a multiracial society.

3. The President of the United States should continue to take the lead in denouncing overt acts of racism and anti-Semitism as being the epitome of intolerable and irresponsible behavior on the part of any American.

The President is in a unique position to exert the power of moral suasion and reinforce the abiding values of democratic traditions. Reviews of the history of violence in America indicate that outbreaks subside when officials make it clear that anti-American behavior is repugnant and subject to full enforcement of the law and constitutional guarantees. President Bush should issue forthright, powerful, and clear statements on this issue.

4. Parents, educators, leaders of religious institutions, and other opinionmakers should work together to develop educational programs designed to produce cognitive and emotional change with respect to racism and anti-Semitism.

Promising efforts in this regard are underway in a number of communities. What may be needed to intensify educational activity is leadership and seed money from the National Endowment for the Humanities and private philanthropies. The need for such education and training on the part of law enforcement officers, who stand as the first line of defense in dangerous and explosive situations, should not be overlooked.

5. The Civil Rights Division of the U.S. Department of Justice should maintain intense prosecution of racially and religiously motivated violence.

The Commission notes with satisfaction that prosecutions of cases involving racial violence have been vigorous in recent years. The U.S. Department of Justice should continue to treat such prosecutions as one of the most critical responsibilities of its Civil Rights Division.

We urge upon all Americans a cooperative and relentless effort, by all legal means, to excise from American life the roots of bigotry and violence that deny the rights of racial, religious, and ethnic minorities. We believe swift and effective action is needed, but conclude with a caution against the use of extreme measures wherein the government's interest is not balanced against the deprivation of individual rights.



UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425


OFFICE OF STAFF DIRECTOR

September 1, 1989

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: California SAC Report

I am submitting for your review and action at the September Commission meeting the attached California SAC report on immigration reform. The SAC approved this report by a 9-0 vote. I recommend Commission approval of this report.



MELVIN L. JENKINS
Acting Staff Director

Attachment

September 1989

. Implementation in California of the
Immigration Reform and Control Act: A Preliminary Review

California Advisory Committee
to the United States Commission
on Civil Rights

This report of the California Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report 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. The Committee recognizes that since it held its forum, there may have been developments that affect the timeliness of some of the points made by forum participants. The Committee hopes the Commission and the public will find this report of interest and value in terms of its identification of civil rights concerns surrounding the early stages of implementation of the Immigration Reform and Control Act and of the role of these concerns as benchmarks against which subsequent changes in the law or the manner in which it is enforced may be measured.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, 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 the equal protection of the laws 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; 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 COMMITTEE

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 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.

CALIFORNIA ADVISORY COMMITTEE

Deborah M. Hesse, Chairperson *
Sacramento

Michael C. Carney *
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Dr. Julian J. Lee *
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Thomas S. Sayles *
Los Angeles

Herman Sillas
Glendale

John A. Wettergreen * +
San Jose

* Not a member at the time this forum was conducted but reviewed and approved the draft.

+ Deceased

Acknowledgments

The Advisory Committee wishes to acknowledge the efforts expended by its immigration subcommittee. The Committee also thanks the staff of the Commission's Western Regional Division, Los Angeles, California, for its help in the preparation of these proceedings. The project was the chief assignment of Philip Montez with assistance from John Dulles. Support services were provided by Grace Hernandez and Priscilla Herring. Overall supervision was the responsibility of Philip Montez, Director, Western Regional Division.

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

LETTER OF TRANSMITTAL

MEMBERS OF THE COMMISSION

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

Melvin L. Jenkins, Acting Staff Director

Attached is an edited transcript of a community forum held by the California Advisory Committee on September 11, 1987, in Los Angeles. The purpose of the forum was to gather information concerning implementation in California of the Immigration Reform and Control Act of 1986. The specific focus was on the employer sanctions provisions of the new law.

The Advisory Committee sought a balanced perspective on this vital legislation by inviting participation by a cross-section of the community. This included immigration attorneys, employer representatives, social service and minority group organizations, as well as Federal enforcement officials.

The Advisory Committee voted (9-0, 2 absent) to submit this report to the Commission and hopes it will add useful information to the body of material on the implementation of this law.

Respectfully,

Deborah M. Hesse, Chairperson
California Advisory Committee

Summary

Following 5 years of debate, the Congress, in 1986, enacted the most comprehensive reform of United States immigration law since 1952. The Immigration Reform and Control Act of 1986 (IRCA)¹ was signed into law by President Ronald Reagan on November 6, 1986.

The IRCA has two provisions relevant to civil rights; employer sanctions for hiring aliens not authorized to work in the United States and amnesty for undocumented aliens who have resided in the United States continuously since January 1, 1982, or who have worked in agriculture for a requisite period of time. The law also contains an amendment outlawing employment discrimination on the basis of national origin or citizenship status.

Under the IRCA, it is unlawful to knowingly hire, recruit, or refer for a fee an "unauthorized alien,"² or to continue to employ a person hired after November 6, 1986, knowing the person is not authorized to work in the United States.³ A key element of assuring compliance with the new law is the employment verification procedure and recordkeeping requirements. Employers are required to examine certain types of documents to verify that the job applicant is

¹Also known as the Simpson-Rodino Immigration Act, Pub. L. No. 99-603, 100 Stat. 3359.

²8 U.S.C. § 1324a(a)(1).

³8 U.S.C. § 1324a(a)(2).

eligible to work in the United States.⁴ The employer then is required to complete a one-page form (I-9) which attests that it has examined the necessary documents. The applicant must also sign the form, stating that he is either a U.S. citizen, permanent resident, or otherwise authorized to work.⁵

Employer sanctions for unlawful employment of unauthorized aliens may result in fines ranging from \$240 to \$2,000 for each unauthorized alien; for the second violation, from 2,000 to \$5,000 for each illegal employee; and for the third and subsequent violations, from \$3,000 to \$10,000 for each unauthorized alien.⁶

Two classes of undocumented aliens are entitled to the benefits of legalization (amnesty): aliens who resided unlawfully in the U.S. prior to January 1, 1982, and special agricultural workers. Under the first category, an alien must establish that he entered the U.S. prior to January 1, 1982, and has resided continuously in the U.S. in an unlawful status since that date.⁷ Eligible applicants must apply no later than May 4, 1988.⁸

Agricultural workers who can establish that they

 48 U.S.C. S 1324a(b)(1).
 58 U.S.C. S 1324a(b)(2).
 68 U.S.C. S 1324a(e)(4).
 78 U.S.C. S 1255a(a)(2)(A).
 88 U.S.C. S 1255a(a)(1)(A).

performed seasonal agricultural services in the U.S. for at least 90 days during the 12-month period ending on May 1, 1986, are also eligible for legalization.⁹ They must apply for amnesty no later than November 30, 1988.

Another provision in the new law provides protection for certain U.S. citizens and intending citizens who have been discriminated against based on their national origin or citizenship status. This section applies to employers of four or more persons and prohibits discrimination in both hiring and firing.¹⁰ Penalties may include orders to hire, backpay, civil penalties up to \$2,000 and attorneys' fees.¹¹

According to 1980 census figures, California had a total population of 23,667,902. Estimates for 1986 place the population at 26,981,000.¹² The 1980 figure includes: 18,031,000 white; 4,544,129 Hispanic; 1,819,000 black; 1,192,900 Asian; 201,400 American Indian; and, 2,423,400 other.

On September 11, 1987, the California Advisory Committee to the United States Commission on Civil Rights convened a public forum in Los Angeles to obtain information on the

⁹8 U.S.C. S 1160(a)(1).

¹⁰8 U.S.C. S 1324b(a).

¹¹8 U.S.C. S 1324b(g)(h).

¹²Edith R. Horner, editor, Almanac of the Fifty States: Basic Data Profiles with Comparative Tables. Information Publications, 1988, p. 35. The figures do not reflect the total due to double counting of Hispanics and confusion in self-identification.

employer sanctions provisions of the IRCA. Specifically, the Committee was interested in determining how these provisions were being implemented in the southern California area and the extent to which problems of discrimination were occurring.

Highlights of this forum provided information to the Committee suggesting the following:

--Surname discrimination - Spanish or Asian surnames may be discriminated against because of the confusion of the law and fear of employers that they may be fined.

--Disruption of family life - employees fear separation may occur within families because certain family members can become documented and not others. The INS forms require the names and addresses of all family members, whether they are documented or not. Many people are forgoing legalization in order to protect other members of their family not eligible for amnesty.

--English-only forms - all INS forms are in English and most people who apply for amnesty are literate only in Spanish or various Asian languages such as Korean or Chinese. Forum participants suggested the forms should have been translated into other languages in order to assist employers and employees in filling them out.

--Proof of residency - the law provides that those who have lived illegally in the United States since 1982 are eligible for amnesty, providing they can prove they have been here

continuously. According to presenters, most individuals who qualify have always paid in cash. They have returned to previous landlords for letters stating that they have resided in the United States and landlords are charging exorbitant prices for these letters causing hardships to many amnesty applicants.

A summary of the presentations follows:

Mr. Bernard Brown, Vice President of Koret of California

I am chairman of the political action committee for the Coalition of Apparel Industries in California (CAIC).¹³

In the State of California, the apparel industry does over \$3.5 billion a year in business and hires 125,000 employees. We are vital to the State's economy in that we are about seventh in the State as far as dollars produced here, and we are also the second largest producing apparel in the country.

The new immigration law has caused a great deal of upheaval in the apparel industry. As a direct result of this law, some of our people are telling us they have lost as much as 40 percent of their work force and they have not been able to replace them. It has created confusion, fear, and even panic among industry workers. Most of them happen to be foreign born and are unclear on whether they are legal because

¹³CAIC is a statewide organization of 600 manufacturers, contractors, and suppliers within the apparel industry.

of the way the law is written.

We believe that the law is discriminatory to both the industry employees and employers. In our opinion, the law has created more problems than it was intended to solve.

Linda Wong - Attorney, MALDEF

I am Linda Wong, associate counsel for the Los Angeles Regional Office of the Mexican American Legal Defense and Education Fund (MALDEF) and also national director for its immigration civil rights program.

What I would like to do is focus my remarks specifically on the employer sanctions and antidiscrimination provisions of the new immigration law, and give you an overview of the effects that this new law has had on job opportunities for minorities, particularly noncitizen workers.

I feel it is important to focus on that particular issue because most of the public attention for the last 6 months has been on amnesty and the numbers of people who are now coming forward to apply for legalization, whereas very little has been done with regard to employer sanctions and the consequences that have flowed from the implementation of the enforcement provisions of the new law.

For the last 6 1/2 months, MALDEF in California has operated a statewide, toll-free hot line. From January 20 through July 31, 1987, we have responded to over 7,000 inquiries through that hot line on a wide range of issues. They range from amnesty to employer sanctions to other issues that have arisen in the implementation of the Immigration Reform and Control Act.

Although the bulk of the questions that we received dealt with the amnesty program, a good percentage of other calls were questions and concerns surrounding employer sanctions, and employer discrimination.

We found a great deal of confusion over the provisions of the new law. The confusion extended from the immigrant community into the business community.

Employers had no idea what sanctions entailed. They knew nothing more than what they read in the newspaper or heard on television and radio news reports.

As a consequence, there was a great deal of misunderstanding and misapplication of the law to the detriment of working people. A great many of these workers lost their jobs over the last 6 months and have been refused employment, even though they are qualified for the work for which they applied.

Contrary to what the Immigration and Naturalization Service has indicated, there has been a great deal of employment discrimination. In the 7 months of the hot line operation, we received 286 inquiries from both citizen and noncitizen workers dealing with some aspect of employer sanctions. Of those 286 incoming calls, roughly 174 dealt with employment discrimination complaints. Over 112 calls came from employers who did not know what was going on with regard to employer sanctions.

We received complaints from people who were eligible for amnesty who were refused employment because employers were afraid of hiring them under the belief that they might not be granted amnesty. Obviously that was an issue that was outside their control. Only the Immigration and Naturalization Service can determine whether or not these people are going to be granted temporary legal status, but even though they made a good faith effort to apply for amnesty, employers were still reluctant to hire them.

One of the difficulties that we have encountered over the several months is the lack of public information for employers and working people about their rights under Federal and State civil rights laws.

In those States that do not have local offices of the Equal Employment Opportunity Commission, there is no immediate avenue available to people if they are denied employment or fired illegally because of employer misunderstanding, misapplication of the law, or intentional efforts on the part of the employers to avoid hiring minorities because of the fear of liability under the employer sanctions provisions.

Initially, the Immigration and Naturalization Service has estimated that anywhere from 3 to 4 million undocumented people across the country would be eligible for amnesty. Since that original estimate was provided, the INS has scaled back the numbers from 4 to roughly 2 million. Of those 2 million estimated undocumented individuals who are eligible for amnesty, roughly half reside in the State of California, and the vast majority are going to be applying for amnesty here in the county of Los Angeles.

The State of California estimates that at least 800,000 people living in L.A. County will be coming forward to apply for amnesty in the course of the year until May 4, 1988. Statistics coming from the Immigration Service so far have indicated that approximately 550,000 have applied across the country, about half of those in California, so the actual numbers are falling below the initial and scaled down estimates suggested by the INS.

Dr. Robert Valdez - Research Analyst - Rand Corporation

I am Robert Valdez, professor of public health at UCLA and a resident consultant for the economic and statistics department of the Rand Corporation, a private, nonprofit research organization in Santa Monica.

I would like to briefly describe the results of the Rand study on the current and future effects of Mexican immigration on the State of California and then to raise some issues about the future. Most of us have been very concerned about the Immigration Reform and Control Act and the problems of today. What we should not forget is that IRCA was passed and implemented under the assumption that it would remedy some problems for the future. The research which led to the Rand report came about as a result of an inquiry by the California Round Table, a group of business executives in the State of California. These executives represent the Fortune 500 companies of California and they are influential businessmen.

In 1983 the Round Table began a discussion on immigration. There was a great deal of confusion among that body regarding the current situation in California. They did not know whether to believe news reports on the national level

that there was an immigration crisis because many of them saw no crisis in California. Many of them obviously saw large scale immigration in California but had a perception different from the national view. Others believed the situation had gotten out of control, was a detriment to society, and to California's economic development. The California Round Table tried to get some answers to these problems.

My colleague, Kevin McCarthy, and I tried to give them some answers to some very fundamental questions. First of all, there was a very strange perception about who the Mexican immigrants were. East of the Mississippi in particular, the notion of Mexican immigrants is that they are young males who come across the border to work in the fields, put a little bankroll together, and then run back across to Mexico or else they get caught by the INS at the border.

We tried to show that Mexican immigrants were not a homogeneous group. There were, in fact, at least three distinct groups of immigrants or migrants from Mexico coming to California. They included the short termers, young males who were coming across and who gave this perception because they are largely the people who are captured by the border patrol.

There was a second group, a more cyclical group that tended to work in the industrial base of California who tended to be here for longer periods of time, 1 to 3 years, maybe even longer, and who eventually did return. Those in this group who decided to make a very different kind of move became a third type of migrant, permanent resident migrant, who has the intention of staying permanently and either seeking to correct their immigration status or to continue living undocumented in the States.

The real question that was posed by the Round Table businessmen and by others in the community was whether or not immigration was an economic detriment. My comments are restricted at this point to Mexican immigration because I did not study other groups. Our study suggested that Mexican immigration has probably been an economic asset to the State of California, particularly during the 1970s. It appears to have stimulated economic growth through stimulating employment growth and by keeping the industrial base of California competitive in a global economic environment.

There has, however, been some negative effects of Mexican immigration. They have been minor from our estimates. The worry that Mexican immigrants were displacing

American workers, in our estimate, was very often [the perception of] first or second generation Americans.

The second major issue that these individuals were interested in was whether or not immigrants were a real public charge. Were they draining the coffers of public resources beyond the level of any entitlement? Our results showed that immigrants, in fact, were using an increasing number of services but their contributions to public revenues exceeded the cost of the services that they used, with one exception, perhaps, education. On the other hand, a lot of the education costs were for their native-born children. Certainly, from the societal point of view, it is something that all of us would want to encourage.

The third major issue was the belief that immigrants, particularly Mexican immigrants, were resisting becoming Americans. In a sense, the notion was they were creating a separate society outside of the mainstream. Our analysis and other reports show that Mexican immigrants have continued to follow the historical pattern of integration into U.S. mainstream society, the same sort of pattern that European immigrants followed throughout this century that is largely tied to occupational mobility across generations.

This occupational mobility, of course, is also tied to educational advancement and achievement. It is in this area that there are discrepancies for the Mexican immigrant. Although there has been considerable educational advancement and occupational advancement today, much more so than 30 years ago, the amount of programs by native-born Mexican Americans may not be fast enough. Given changes in California's industrial structure, the kinds of jobs that have historically enabled mobility appear to be growing at a much slower rate than one would expect or need for the process to continue in a very orderly fashion.

As a result, although the Latino community and others recognized education as an important component for social and economic advancement, not only for the immigrant stock population, the immigrant and his native-born child, but also of the second and third generation Mexican American, the educational advancement has not been as great as one would hope.

Certainly given the changes that are going on in California today, it causes some distress. If educational advancement is not achieved, then what we create or continue to create is competition among native-born, low-skilled, low-educated workers and future immigrant workers.

This brings me to some issues that the current Immigration Reform and Control Act has not addressed and which people have forgotten. The act was touted as a remedy for the perceived immigration ills of the United States, that is most represented by the phrase "We have lost control of our borders." This act really did not change the fundamental immigration laws of the United States. It merely added a couple of twists.

The two major twists are those that you have been discussing, amnesty for immigrants who have been here since before 1982 and employer sanctions, an attempt to control future employment of undocumented immigrants. The law, however, does not deal with the fact that these will continue to be issues in the future. We are going to continue to see undocumented immigration in the United States.

The act does not address the fundamental problems that have been the source of large scale undocumented immigration to the United States. As a result, the chance for and the possibilities in the future for increased and higher risk of abuse of undocumented status. For the native-born workers, it arises largely because of the misunderstanding, and at this point it is difficult to predict whether or not the act will

be followed to the letter of the law, meaning that every new job applicant, whether native-born or not, must present documentation that they are, in fact, eligible to work in the United States. I believe this is an intrusion into civil liberties that most Americans do not see in the act and is a future civil liberties issue that remains to be resolved.

The third and fourth major issues that the act raises for local communities is one about the provision of medical and social services to those individuals who did not receive amnesty, or in the future are not eligible for any kind of amnesty because the program will no longer exist. This is a problem not only for the immigrant, but also for the native born, particularly the first generation.

Since we are talking about a generational period of about 20 to 30 years, children of immigrants, whether they be eligible for amnesty or not, are certainly citizens. Yet there are major issues for the future about whether or not these individuals will be able to receive needed public services for a variety of reasons. It is unclear what kind of documentation will be needed or required and what kinds of changes local county governments will make as a result of the act.

The last major issue I raise involves the future, 10 to 15 years from now. The question is whether or not local communities will continue to provide educational services regardless of documentation or nationality. Education has now become one of the most costly public services. Most schools now receive the vast majority of their funds from State organizations and that is particularly true in California. The issue becomes one of local communities being able to control how much education go throughout the community to all kinds of citizens, regardless of their immigrant status whether they are native born, or what generation they are.

I raise these five issues as items that need to be kept in the forefront of the Commission's deliberations.

William J. Carroll, Assistant District Director of
Investigations, Immigration and
Naturalization Service

There are two parts to the act and each part is subdivided into various sections. The first major part is legalization. Within legalization, we have those who are eligible for legalization or amnesty, as they call it, who have been here prior to 1-1-82 in an illegal status. In the

second group are agricultural workers. Agricultural workers are divided into two groups, the first group working 90 days before May 1, 1986, and the second group are those who have worked 90 days within each year of a 3-year period. The difference is that those who have worked in the 90-day period for 3 years will be eligible to have their permanent residency expedited or a year earlier than those who have only worked 90 days before May 1st, 1986.

The second major part of the act is the employer sanctions portion, which now makes it illegal to knowingly hire unauthorized workers in the United States. There are civil penalties which are fines and criminal penalties for blatant violators.

That in a nutshell is the Immigration Reform and Control Act of 1986. Interpretation of the law is very strict. It is going to be uniform and there is going to be continuity in the administration of law.

In Los Angeles district, we have what we call a district mail system. The applications that go to the 15 offices here in the district will be fed into a major location and those applications go to the various legalization offices. The reason we have this in the L.A. District is to prevent lines

and long waiting periods for people outside of those offices. We have opened suboffices for legalization within the district.

In Los Angeles there are a number of private, nonprofit organizations that have been contracted by the INS which we call Qualified Designated Entities (QDEs), to assist with amnesty. We have from the onset stated that you do not have to go to the QDEs but can come directly to INS. We set up the QDEs so that the people wouldn't fear an agency that has been enforcing a law for their arrest and deportation.

Within 1 week of applying for legalization, the INS will send you a receipt in the mail with authorization for employment up to the date of your interview. The authorization can be used for an employer.

We are recommending that if someone has gone to a QDE, and they are having problems, to get their documents and come directly to INS. Within 5 to 7 working days they will receive employment authorization and be set up for an interview.

[Let me address] employment discrimination where people have been hired or have been fired because the employer fears that he might be found out by INS.

On our own initiative we have established what we call the fair employment officer within the western regional

office. This officer will answer or mediate problems between an employee and an employer with a belief they have been fired because of discrimination. We have had some cases where we have mediated and it has been just a misunderstanding.

We have a unit of 10 to 20 special agents going out to various employers, speaking to them, knocking on the doors, and asking if they know about IRCA and the western region.

Susan Drake, Attorney, National Center for Immigrant Rights

I am an attorney at the National Center for Immigrant Rights, a national support center for the legal problems faced by low-income immigrants around the country. We receive funding from the Legal Services Corporation and also some private money. We do a lot of work with church, nonprofit and legal services groups around the country who are getting low-income immigrants coming into their offices and seeking help.

IRCA purportedly extends a welcome to these people and says that if you have been here for more than 5 1/2 years we will allow you to legalize. However, once they have achieved legalization, the Congress is trying to not let them fully participate in U.S. society to the same extent as other people

who are legal, permanent residents, much less to the same extent as U.S. citizens.

As the Commission eloquently pointed out in its 1980 analysis of civil rights issues in immigration, The Tarnished Golden Door, America historically has had a perversely schizophrenic attitude toward immigrants. On the one hand, we have extolled our country's history as a nation of immigrants and glorified the Statue of Liberty as a national symbol. At the same time we have responded to economic downturns and social changes with nativist, anti-immigrant legislation at both the Federal and State levels, and the denial of government benefit programs to the newly legalized that is inherent to the IRCA statute, and which suffers from the same kind of negative dualism with which historically America has treated its immigrants.

We are barring these legalized aliens from participating in programs in which other legalized aliens participate. they are barred from participating in Federal financial assistance programs based on financial need for 5 years after they achieve their temporary residency. We believe that this discrimination raises serious problems of both due process and equal protection under the 5th and 14th amendments to the

Constitution and the problems come both in the statute itself and in the regulations that the government is issuing to implement the statute.

The second thing that the statute says is that the State and local governments can bar these people from participating in local programs of financial assistance or the State funded portion of Medicaid for 5 years. Now these provisions in the statute are clearly discriminatory. There is no question that they discriminate against this group of people.

Several years ago Congress tried to bar legal, permanent residents from Medicare, which is the Federal medical program for aged people, for 5 years after they become legal, permanent residents. In Mathews v. Diaz (426 U.S. 67 (1976)), the Supreme Court upheld Congress' power to do this. It said that you can discriminate against legal, permanent residents. Basically, what the Court said is we are going to give deference to Congress because their power to regulate immigration derives from the plenary power, foreign policy power, so the Court really is not going to look into it too closely.

An increasing number of constitutional law scholars are questioning the rationale of the Diaz case and are pointing

out that the foreign policy power obviously gives Congress authority to regulate immigration because it relates to our foreign policy. That doesn't necessarily mean that the broad-based power to regulate immigration should extend [to the period after] people have been allowed to immigrate legally.

After all, they are persons protected under the 14th amendment. They have been allowed to be here legally, and Congress should not be able to get from underneath the Constitution once these people have met the criteria for legal residency.

We are also concerned about the potentiality for State and local discrimination. I mentioned that the statute attempts to give the States permission to discriminate against aliens for public assistance programs. This is just as serious as the Federal restrictions and, in fact, is going to be even more difficult to monitor.

Los Angeles County people have said to the State task force, "Well, we think we are going to extend benefits to them but if we do not get enough Federal assistance money, we might rethink it and decide to limit benefits to them after all."

In other words, they are hooking it up to just a quid

pro quo about how much money are we going to get and if we get enough money, maybe we will extend the benefits to them.

Fortunately, the California attorney general has given an opinion to the State health and welfare agency that once they are legalized, these people are lawful residents of California. Therefore, like any other lawful resident, they are entitled to care under the indigent care statute. I anticipate a great deal of litigation on this issue, probably not just in California but in other States around the country.

Judith Keeler, District Director, Equal Employment Opportunity
Commission

Our agency has the primary enforcement responsibility of Title VII of the 1964 Civil Rights Act, 42 U.S.C.^{SS} 2000e17. The Immigration Reform and Control Act (IRCA) specifically provides that national origin discrimination complaints will continue to be handled by the EEOC, if the EEOC otherwise has jurisdiction over those complaints. Complaints of citizenship discrimination will be handled by the office of the Special Counsel through the Department of Justice.

One of the most important issues facing our agency at this time is the determination of which agency has

jurisdiction. That is critical to the people who may be affected by this law. The EEOC has jurisdiction over employers with 15 or more employees and we cover discrimination in employment on the basis of national origin. The Department of Justice under IRCA has jurisdiction over those employers with between 4 to 14 employees regarding claims of national origin discrimination, and has jurisdiction over complaints of citizenship discrimination.

Let me give you an example of how this jurisdictional issue may become very hairy. Our agency has issued a policy which says that if a citizenship preference has a disparate impact on the basis of national origin, there is a violation of Title VII. As you know, IRCA contains a provision that says you may give preference to citizens. Our agency has said, not if it violates Title VII.

If an individual comes into our agency and has been subjected to discrimination which looks like preference is being given to citizens, we have to determine whether there is a disparate impact under the law. In Espinoza v. Farah Manufacturing Company, 414 U.S. 46 (1973), the Supreme Court made very clear that alienage discrimination is not covered by Title VII. One of the analyses referred to by the Court in

that case was whether or not there was the purpose or effect of discriminating on the basis of national origin in some citizenship or documented status requirement. In that case the Court said that there was no such discrimination because the vast majority of the workers at that plant were of Mexican American ancestry. We would be faced with the same task at EEOC. If we receive that kind of claim, one of the first things we would look at is what is the composition of the employer's work force.

If we investigate a claim, because it appears to be national origin discrimination, and subsequently find that it is a citizenship claim, we will forward that claim on to headquarters and again it will be referred to the Department of Justice.

I must emphasize that at this time we have no work sharing agreement. One of the reasons it is necessary to deal with these charges so very early is because there are time limits on filing under IRCA, as well as under Title VII and we need to make sure those complaints get there within the time frame to file.

Peter Reich, Attorney

Mr. Reich is a practicing attorney in downtown Los Angeles with the firm of Parker, Milliken, Clark, O'Hara & Samuelian. He has clients in business and management who need legal advice in handling the implications of the new Act.

Our first concern is with the issue of the warrantless inspection of I-9 forms. The regulations that the INS has issued under IRCA allow some inspection of the I-9 without subpoena or warrant. But, what is interesting is that in the law itself, there is no provision that the I-9 must be retained and made "available for inspection." Drawing up this regulation clearly exceeds the scope of the statute's authority.

Secondly, I would like to talk about the effect of the labor shortage that is being exacerbated by IRCA and how that labor shortage is affecting productive employment relationships. There is a labor shortage in the United States, particularly in certain manufacturing and service sectors. There was an article in Business Week in August about the problems of getting workers in many areas of the country, particularly the Southwest. When this is combined

with the fact that undocumented workers have, in the past, been found to compose 70 to 75 percent of many industries in the Southwest, such as restaurant, garment, hotel industries, the impact of a law which further curtails this labor supply is going to be severe. Already we have heard reports from employers in electronics, hotel, and construction industries about the problems in finding qualified workers.

Thirdly, I would like to talk about an issue which has been very much in the news and that is a lack of derivative amnesty for family members. Legalization under the law applies to individuals, not to families. Many of our clients have lost valued workers because they were afraid to stay in the United States when they thought that a family member was going to be deported.

It is also true that the INS District Director has discretion to stay deportation or to extend deportation proceedings. We have not seen any evidence of this happening.

In conclusion, I would like to say that much of what will happen with IRCA is going to be a question of how it is enforced. As it is written, the law provides a potential for serious abuse with the warrantless inspection provisions, the effective labor shortages and the lack of derivative amnesty.

Ms. Josie Gonzalez, Attorney¹⁴

Since the bill passed, I have lectured to over 5,000 employers in various seminars throughout the State, for example, to the California Restaurant Association, the Merchants and Manufacturing Association, and various trade organizations. I have given employers educational information on how to comply with the bill's provisions and I have answered their questions and their concerns about their responsibilities.

I believe that the sentiment being expressed today by the employers in southern California is one of confusion and fear regarding this bill. They are confused because they do not understand the complexities of this immigration bill and they do not understand exactly what their responsibilities are. They are fearful because of this confusion. They are fearful that they are going to violate the law and incur the wrath of the Immigration Service and, consequently, have levied on them some pretty heavy civil penalties and maybe potential criminal imprisonment. What this fear and confusion

¹⁴Ms. Gonzalez is a practicing attorney in Los Angeles who works as a management consultant in assisting businesses that employ undocumented workers.

really amounts to is an overreaction on their part in attempting to comply, with the law and that overreaction really triggers discrimination.

There is a lot of confusion over which workers you have to screen for work authorization and which workers need an I-9. Many employers are under the impression that you need an I-9 for the entire work force, not just for individuals hired after November 6.

Another area is an insistence on the part of employers that job applicants give them certain preferred documents. The immigration regulations are quite clear that an employer should not insist on preferred documents.

I have seen employers who have discriminated against the Hispanic. Even though you have a Hispanic who claims he is a U.S. citizen and he has something from column B, a driver's license, and he has a social security card from column C, they say they want more.

Another area that is just ripe for abuse has to do with the specific immigration regulations whereby an employer cannot continue to employ someone once that individual no longer has work authorization. What happens is you interview someone and he presents you with a document that has a finite

period of work authorization, -- he has applied for amnesty and he has the first card that is issued where you get a 6-month period of work authorization. An employer is not sure whether that 6 months is going to expire and not be renewed, in which case he will have lost money and valuable time in training this worker.

The September 1 special rule is the most inhumane, nonsensical provision ever adopted by the Immigration Service. Everyone has until May 4, 1988, to file a legalization application but, in effect, you have a different rule for individuals who had the misfortune of seeking employment in the United States after November 6. Individuals have to expedite the processing of their application and they had to file by September 1. That rule never made any sense. I argued for the longest time that there ought to be a change or modification, and none was forthcoming. It did trigger a great many dismissals on the part of employers.

In some instances people were unsure whether they even qualified for amnesty because of the many provisions in the bill for which we still do not have answers, such as individuals who have left the country and reentered with tourist visas. At present the Immigration Service is saying

that these individuals are not qualified so people who found themselves in that predicament naturally did not want to file their application until there was something definitive from the Immigration Service. They found themselves without a job come September 1.

Jay Fong, Attorney, Asian Pacific Legal Center (APLC)¹⁵ in
Los Angeles

The passage of the Immigration Reform and Control Act of 1986 created an opportunity for a large number of undocumented aliens to legalize their status in the United States. To meet this need, the APLC combined its legal and linguistic resources with the outreach network of the trust placed in the First United Methodist Church of Los Angeles to form the Downtown Legalization Project. The project provides low-cost legalization counseling and application processing assistance to individuals and community organizations. It is prepared to

¹⁵The Asian Pacific Legal Center of Southern California is the only organization which provides legal education, individual case representation, and assistance to communities or groups with an emphasis on the rapidly growing Asian and Pacific Islander (AP) communities of southern California. The agency, a not-for-profit organization, is equipped to provide assistance in several AP languages.

assist clients in Cantonese, Mandarin, Japanese, Korean, Tagalog, Vietnamese, Thai, Spanish, Portugese, French, German, and, of course, English.

We have three points that we would like to raise. First, information about access to legalization. Although the Immigration Reform and Control Act, IRCA, requires the U.S. Immigration and Naturalization Service to do educational outreach regarding legalization, Congress omitted any requirement that outreach be done in languages other than English. Assuming that one is trying to reach an alien population for whom English is likely to be a foreign language, the use of English outreach efforts is of limited utility. Asian Pacific community leaders estimate that there are about 150,000 undocumented Asian Pacifics in the Greater Los Angeles Area. Of that number about 30,000 are believed to be legalization-eligible.

Now the effect of the lack of availability of information can be illustrated by the numbers of interviews conducted the INS western region. The western region, consisting of Arizona, California, Guam, Hawaii, and Nevada in INS' busiest legalization region, accounting for more than 50 percent of the Nation's legalization applications. Unlike the

Hispanic community, which can be reached through the use of one language, Spanish, the Asian Pacific community can only be reached through the use of no fewer than eight languages. As of July 31, 1987, the western region has 187,575 interviews conducted. Of those interviews, 60.8 percent were persons of Hispanic origin and only 3.5 percent were people from Asian Pacific origin.

There are two Spanish language daily newspapers serving the Greater Los Angeles area. In contrast, there are nine Chinese newspapers, two Japanese newspapers, two Filipino newspapers, and 11 Korean periodicals. At present, we are not aware of periodicals published in southern California in Cambodian, Tongan, or Samoan. Unless and until the Immigration and Naturalization Service expands its efforts to reach out to the Asian Pacific communities, many Asian Pacifics will remain ignorant of the immigration benefit that Congress has made available to them or they will stay fearful of the INS' bona fides and refuse to come forward to apply. Some people say that this is not a civil rights issue. However, in the same way that, "Where there is no remedy, there is no right," it is ludicrous to say a benefit is being offered if no one knows about it.

The second point that we would like to raise is that although Asian Pacific leaders have estimated that there may be as many as 150,000 undocumented Asian Pacifics in the Greater Los Angeles area, we believe that 120,000 do not qualify for legalization, for they were in legal status as of the benchmark date of January 1, 1982, or arrived thereafter.

Asian Pacific countries do not share a border with the United States. As a result, 90 percent of all Asian Pacifics arrive with some sort of legitimate visa, making their presence in the United States legal. For reasons that are not entirely clear, Asian Pacifics tend to extend and reextend their visas, thus maintaining legal status.

It is unknown how many Asian Pacifics had legal status on January 1, 1982, but the project encounters a large number of Asian Pacifics who do not qualify for legalization solely because these individuals attempted compliance with U.S. immigration laws. In effect, Congress is rewarding those who broke the law and overstayed their visas by giving these individuals legalization, an immigration benefit. Those who attempted to obey the law and keep their status current find that this benefit is unavailable to them.

This is arguable disparate treatment of similarly

situated persons. If the persons are not similarly situated, it is arguable that the equities for granting the legalization benefit should be with those who attempted to comply with our nation's laws.

The third point we would like to raise is that there is disparate treatment of post-January 1982 reentry. IRCA requires that a legalization applicant must be in illegal status since January 1, 1982. Theoretically, any break in illegal status renders the applicant statutorily ineligible for legalization. However, an alien who was illegal on January 1, 1982, left the country briefly, for example, to Mexico and who returned with a border crossing card is deemed by INS to still be eligible for legalization. The border crossing card permits the Mexican citizen-bearer to be in the United States legally for a number of days. This is regardless of whether they left, they came back and were illegal before. It does not matter. If they come in with that border crossing card for a number of days, they are legal.

Nonetheless, INS has held that those who depart and reenter the United States with border crossing cards, (and incidentally border crossing cards are only available to nationals of Canada and Mexico) are eligible for legalization,

despite the break in illegal status. This is not the case for Asian Pacifics. There is no border crossing card arrangement for countries which do not share a contiguous border with the United States, which happens to be the rest of the world, except for Mexico and Canada.

Asian Pacifics who leave the United States, briefly, and return with a B-2 visitor's visa, which is also called a tourist visa, are ineligible for legalization. We are not aware of any sensible, legal rationale for this distinction and preference for one set of nationals over others.

On its face, this appears to discriminate against all citizens of countries not sharing a border with the United States, in other words, a discrimination based on national origin. INS is aware of this inequity but they have not yet attempted to resolve it. We have asked on numerous occasions for them to clarify the matter. They have not yet done so. They should be encouraged to do so.

Finally, we have three recommendations. First, INS should be encouraged to intensify its efforts to reach out and educate the Asian Pacific community, in the native language of each community. I do want to make a note here that the INS has contacted the Asian Pacific Legal Center, and they have

made some attempts, asking our assistance to reach out to the Asian Pacific community.

INS has recognized that they do not have the resources to do this and are asking those of us in the community to help them. In our view, although it is admirable, it is too little, too late. The program is almost half over now. We recognize that the INS may not have the language capacity to do such outreach. They should seek assistance of community leaders like Asian Pacific Legal Center so that an educational and advertising plan can be drafted.

Further, because of the large number of Asian Pacific languages, INS should increase its advertising funding with respect to the Asian Pacific media.

Our second recommendation is that Congress must be encouraged to rectify the absurd way in which IRCA rewards those who broke the law by being illegally in this country and denies a valuable benefit to those who attempted to comply with our laws. One suggestion for this might be to make legalization-eligible any alien whose presence in the United States would be illegal but for the extensions of stay, of their visa. That is to say, if an alien had a legal visa that would have expired prior to January 1, 1982, but the alien

extended that visa, that alien should qualify for legalization. We do recognize that this would probably require a change in the law and obviously an act of Congress.

Third, and finally, INS should be directed to permit worldwide reentry, not simply reentry from contiguous territories. To do otherwise would discriminate against similarly situated persons on the basis of national origin.



UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425

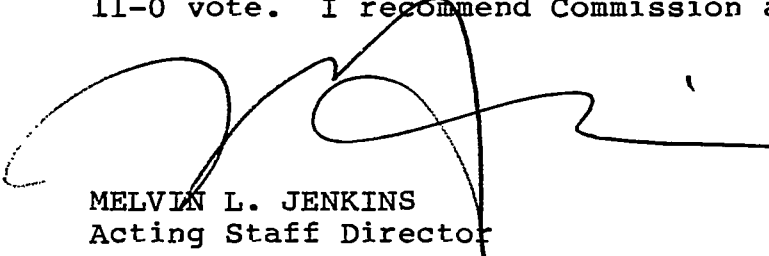
OFFICE OF STAFF DIRECTOR

September 1, 1989

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: Florida SAC Report

I am submitting for your review and action at the September Commission meeting the attached Florida SAC report on police/community relations. The SAC approved this report by a 11-0 vote. I recommend Commission approval of this report.



MELVIN L. JENKINS
Acting Staff Director

Attachment

Police-Community Relations
in Miami

September 1989

A Summary Report

Florida Advisory Committee
to the U.S. 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.

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.

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

Michael J. Moorhead, Chairperson
Gainesville

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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.

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

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B.	FINDINGS AND RECOMMENDATIONS OF THE ADMINISTRATION OF JUSTICE CHAPTER OF THE COMMISSION REPORT, <u>CONFRONTING RACIAL ISOLATION IN MIAMI, JUNE 1982</u>
C.	FORUM AGENDA
D.	BRIEFING MEETING AGENDA

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.

IX. FINDINGS AND RECOMMENDATIONS, MIAMI
POLICE DEPARTMENT

in

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 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 made to the Miami city commissioners and the Miami chief of police 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 Miami.

With regard to aliens lawfully admitted for permanent residence¹ (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.² The Florida Advisory Committee notes that the Supreme Court on two separate occasions has ruled both State³ and Federal⁴ civil service regulations barring resident aliens from government employment unconstitutional.

Further, with regard to Cuban resident aliens, the Florida Advisory Committee notes that the Congress⁵ 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 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.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 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).

i.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 in Cohen 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 EEOP 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.

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.

Communication

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 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 complaints: 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. Dougall*, 413 U.S. 634 (1973).
4. *Hampton v. Mow Sun Wong*, no. 73-1596 (U.S., issued June 1, 1976; Stevens, J.).
5. Public Law 89-732, 80 Stat. 1161 (8 U.S.C.A., §1255 nt.) 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. v. Miami, §2(b) (appendix D).
9. U.S. v. Miami, §3(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 residence¹ (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.² The Florida Advisory Committee notes that the Supreme Court on two separate occasions has ruled both State³ and Federal⁴ civil service regulations⁵ 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.⁵ 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 C.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 EEOP 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 EEOP 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

force of 1,570 persons, one black male and one Latin male hold the rank of lieutenant, the highest rank held by a minority member; sergeant is the highest rank held by a female.

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.

Finding 7

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 the county commissioners, as well as the public, to monitor the 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 public 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.

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.

Internal Review

Finding 1

In the department of public safety over 800 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 such complaints lodged against them.

CHAPTER VII

ADMINISTRATION OF JUSTICE: A CONTINUING SORE 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 Board, 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/

Other members of Miami-Dade's black community concurred. 2/

Mr. 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, Belafonte-Tacolcy 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. 157. This Commission is usually identified as the Kerner Commission, after its Chairman, former Illinois Governor Otto Kerner.

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

Steps to improve the caliber of policing in the black community and to control racism in the courthouse can reduce the likelihood that the criminal justice system will trigger a riot, but they cannot remove such risks entirely until underlying problems are resolved. Both before and since the 1980 riots, Dade County's two principal law enforcement agencies made administrative and policy changes designed to reduce tensions and improve relations between the police and the black community. Yet, as the chiefs of each department acknowledged, unless Miami addresses and resolves the root causes of the riots, the police and the black community will come again to confrontation. 5/

5/ Kenneth Harms, Chief, Miami Police Department and Bobby Jones, director, Dade County Public Safety Department, testimony, Hearing before the U.S. Commission on Civil Rights, Miami, Fla., Dec. 8-11, 1980, unpublished transcript, pp. 1326-32 (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 22, 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.

Attorney'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. 8/

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 Nathaniel LaFleur, a 48-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 disarray. 12/ Medical reports show that Mr. LaFleur received a scalp laceration, a contusion of the head above the

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

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

10/ Citizens' Committee Report, p. 29.

11/ 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).

12/ 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. 3B.

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

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

The second case involved an 11-year old black female who claimed that she had been sexually molested by a Florida highway patrolman. 18/ The initial investigation by the Florida 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 later reopened, Trooper Willie Jones was charged as the molester. 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/

The judge before whom the case was first brought, the Honorable John I. Gordon, said that if Jones would plead guilty, he would sentence him to the mentally disordered sex

18/ Ibid., pp. 37-42.

19/ Ibid., pp. 37-38.

20/ Ibid., p. 38.

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

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 response, 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 shooting death of a 21-year old black male, Randy Heath, by an off-duty Hialeah 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

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

29/ Report of the Acting State Attorney, Crim. Div. No. 79-2078 (11th Cir. Fla.) (May, 1980) (hereafter cited as Report of the Acting State Attorney) (maintained in Commission files).

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

31/ Citizens' Committee Report, p. 42; The Miami Herald, Feb. 19, 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 accepting 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 trial generated considerable public interest and, under the rules of the Florida Supreme Court, was televised. 39/

Compared to the handling of the other highly publicized and racially sensitive cases, the State's prosecution of Dr. Jones appeared to the black community to be particularly aggressive. 40/ The prosecution filed the second criminal charge on the eve of the first trial and excluded black

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

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

39/ Petition of the Post Newsweek Stations, Florida, Inc., 370 So. 2d 764 (Fla. 1979); 32 FLA. STAT. ANN., Code of Jud. Conduct Can. 3(A)(7)(West 1980).

40/ Perry Testimony, Hearing Transcript, pp. 1176-1177; Dora Lee, "The Question Is Due Process...Not Guilt or Innocence," The 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 "Kel-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. 79-3424 (Dec. 22, 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

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

46/ (Con.t) with manslaughter. Offense Report. Two other officers, Charles R. Veverka 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, 1980, p. All. On January 4, 1980, Officer Hanlon 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. L. Saunders to Bobby L. Jones, Director (undated) S.I. #79-521, p. 19 (maintained in Commission files). On February 1, 1980, second degree murder charges were filed against Officer Marrero. Ibid., addendum of Feb. 5, 1980 (maintained in Commission files).

47/ 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 February 1, 1980, Officer Ubaldo Del Toro of the Dade County Public Safety Department was charged with being an accessory after the fact for his involvement in the coverup. Investigative Files, Dade County Department of Public Safety-Internal Review, Memorandum of Investigation from Sgt. L. Saunders to Bobby L. Jones, Director (addendum of Feb. 5, 1980) S.I. #79-521 (maintained in Commission files).

48/ 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 a tire 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. All. 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. All. 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 perceptions by ascribing them to ignorance, the committee said, will 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 against black citizens and unable to dispel the belief that the system is unfair and racist.

Finding 7.2: Independent official investigators who have reviewed 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, improprieties 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/

57/ Ibid., pp. 28-29.

58/ Ibid., p. 38.

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 in the Willie T. Jones case "so grossly inadequate for the offense involved and the evidence available that it actually bordered on criminal negligence." 62/

The committee described the Public Safety Department's investigation and handling of the Willie T. Jones case as "callous" 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 decisions 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 88 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. 42. 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.

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

[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 laws 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 Hialeah 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/

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.

and that the prosecution did not vigorously contest the change of venue from Miami to Tampa. 76/ The committee also criticized the prosecution's decision to ask no questions of the 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 patrolman, 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 question a child who alleged that she was sexually molested by another white male policeman. 78/ The report to the court demonstrated that there were other available options ignored by

76/ "[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.

77/ "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 jurors 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.

78/ 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).

The Acting State Attorney's report also disclosed that the prosecution had failed to update its investigation after criminal charges were filed and had permitted the victim to make statements without the assistance or presence of an Assistant 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. 80/

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

The State Attorney's Office and the Grand Jury

In Florida, the State Attorney is a constitutional officer who is elected for a 4-year term to prosecute all criminal trials. 81/ Felony charges, except in capital cases, may

80/ Id., p. 10.

81/ FLA. 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 suggest 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. R. 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 no written policy on the use of the grand jury but maintained that 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

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

84/ In re Rules 3.131(b), Florida Rules of Criminal Procedure, 289 So.2d 3 (1974) to which the State Attorney was presumably referring, Cf. Reno Testimony, Hearing Transcript, p. 1455, states: "Before filing information every state attorney should not only seek probable cause in his investigations but also determine 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 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/

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

By law the State Attorney has discretion in initiating criminal charges. The Governor's committee suggested that she make greater use of the grand jury, noting that charges in the McDuffie case were lodged by direct filing:

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 felt responsible for personally making the decision to file charges whenever possible. To leave it to the grand jury, she said, would be to "pass the buck":

86/ Reno Testimony, Hearing Transcript, pp. 1414-17. See also, 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.

also focus public discussion on legitimate issues raised by the overlapping roles of the State Attorney and the grand jury, dispelling 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 directly 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.

89/ (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.

Both Ms. Reno and Mr. Mays testified that it was common practice and procedure for the State Attorney's Office to act as legal 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. Until the public understands the respective roles of the State Attorney and the grand jury, review of cases by the grand jury will appear meaningless. 93/ Nevertheless, grand jury review of a determination not to charge, particularly in cases involving abrasive police behavior in the black community, provides oversight of otherwise unrestrained prosecutorial discretion by the State Attorney's Office.

To focus on the question of how to charge, however, is not to ignore the decision of whether to charge. A prosecutor has considerable discretion to decide not to prosecute. Such a decision is based on several reasons, which may be only tangentially 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 articulation of the separate roles of the State Attorney's Office and the grand jury in the criminal charging process. Citizens' Committee Report, pp. 27-28.

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 Heath 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. 102/ 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 it is appropriate were discussed at the Commission hearing:

101/ Ibid., p. 1421.

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

103/ 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 him 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).

abolishing plea negotiations. Although these experiments have been hailed as successful by some, other reviewers have noted that when plea bargaining is prohibited, negotiations do not cease, but surface at other discretionary stages in the criminal process. 106/

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

106/ Silberman, Criminal Violence, Criminal Justice (New York: Vintage Books, 1980), pp. 378-79.

107/ National Advisory Commission on Criminal Justice Standards and Goals, Courts (1973), pp. 46-49.

108/ 31 FLA. STAT. ANN. R. Crim. Pr. 3.171(a)(West 1980).

109/ Governor's Commission on Criminal Justice Standards and Goals, Standards and Goals for Florida's Criminal Justice System (1976), Std. CT. 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 1972, 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).

The President's Commission on Law Enforcement and Administration of Justice, in its report exploring the problems presented by plea bargaining, noted that the system operates informally and invisibly with often no formal recognition that the defendant has been offered an inducement to plead guilty. 113/

The commission added that "plea bargaining takes place at a stage when the parties' knowledge of their own and each other's cases is likely to be fragmentary." 114/

When the State Attorney offered "no objection" to a probationary sentence in the Willie Jones case, she was adopting a position specifically permitted by the Florida Rules of Criminal Procedure. 115/ What is unclear is how and why the State Attorney's Office changed its position on the sentence. According to the Acting State Attorney's report, the supervising Assistant State Attorney "would not entertain plea negotiations involving less than in-custody treatment," but the assistant who handled the case following its reassignment was

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

114/ Ibid., p. 11.

115/ FLA. STAT. ANN. R. Crim. Pr. 3.171(b)(1)(i)(B)(West 1980).

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 not only 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. Either party in a non-capital felony case in Florida generally has six peremptory challenges, which it can use to exclude any prospective jurors who have not been discharged for cause. 118/

Jury lists in Florida are culled from voter registration lists. 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/

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

119/ FLA. STA. ANN. §§40.01 (Supp. 1980).

120/ 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, Sec. IV, p. 2.

121/ 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 engaged 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

125/ Brummer Testimony, Hearing Transcript, p. 1437 .

126/ Ibid.

127/ 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 226-28. Courts have affixed themselves to the literal language of Swain to determine if there has been systematic exclusion. First, courts have required the defendants 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).

in individual cases and have prohibited such practices, 131/ but the Florida Supreme Court has not yet addressed the issue. 132/

Mr. Long told the Commission that defense counsels have begun to combat such practices in Dade County by making the courts aware of the problem and by establishing the record to prove systematic exclusion:

[O]ne 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

131/ People v. Wheeler, 148 Cal. Rptr. 890, 583 P.2d 748 (1978); Commonwealth v. Soares, 387 N.E.2d 499 (Mass. 1979) (premised upon due process protections arising from their respective state constitutions).

132/ Two lower Florida state appellate courts have relied upon the systematic exclusion equal protection standards of Swain. See, State v. Simpson, 326 So.2d 54 (Fla. 4th Dist. Ct. App. 1976); Lyons v. State, 388 So. 2d 1094 (Fla. 5th Dist. Ct. App. 1980). But see, Cornett v. City of Miami, Civ. No. 79-453 (Fla. 11th Cir. Dec. 17, 1980) (order on motion for new trial) (exclusion 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 dePozsgay, Chief of the Organized Crime/Public Corruption Unit of the State Attorney's Office, testified that he knew of no office 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 dePozsgay (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-Tacolcy Center testimony, Hearing Transcript, p. 1238; Capt. Douglas Hughes, Commander PSD 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, Islandia and Pennsuco, 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 persons 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/ Harms Testimony, Hearing Transcript, pp. 1327, 1345-46; Jones Testimony, Ibid., pp. 1337-38; Michael Cosgrove, 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 CRB's Role (February 1979); 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; Brummer Testimony, Ibid., p. 1461. Mays Testimony, Ibid., p. 1460; Michael Ray Greenwood, testimony, Ibid., pp. 1523-24.

142/ Perry Testimony, Hearing Transcript, pp. 1154, 1188; Pitts Testimony, Ibid., pp. 1240-41; Willard Testimony, Ibid., p. 75; Simms 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/ By 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 most PSD and MPD 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. 23-93.

144/ Many of the PSD 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. 1155-56.

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

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

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

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

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

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

151/ Who is Guarding the Guardians?, pp. 156-60.

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

153/ Robert Krause, Director, Human Resources, City of Miami, Hearing 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/ Cosgrove testimony, Ibid., p. 1251. MPD is presently augmenting its force and plans to have an additional 260 sworn 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).

sergeants (approximately 10 percent) and 64 of the 446 police officers (14.3 percent) in the Department were black. 158/ Black officers are also underrepresented in MPD's specialized units. For instance, in October 1980, 113 officers were assigned to the criminal investigations and special investigations 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 employees 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 \$16,000. 160/

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158/ Ibid. But 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 March of 1981, the Department has one black deputy chief, one black major, one black lieutenant, sixteen black sergeants and 110 black police officers. Kenneth I. Harms, Chief of Police, Comments on the Draft Miami Report Prepared by the Commission on Civil Rights, Apr. 26, 1982 (maintained in Commission files).

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

160/ Equal Employment Opportunity Commission, State and Local Government Information for the City of Miami, Police Protection, (EEO-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 PSD'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; PSD 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/ Petersen Testimony, Hearing Transcript, pp. 1398-1400.

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

In Dade County, an essentially white system administers justice to a defendant and victim population that is largely black. The lack of minorities throughout the criminal justice system maintains the perception of a dual system of justice.

Finding 7.6: The Dade County Public Safety Department recently modified its hiring process to include psychological screening of applicants. 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 its national study of police practices, this Commission recommended that law enforcement agencies include, as an integral part of the selection process, psychological screening of all applicants for employment. 167/

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

167/ Who is Guarding the Guardians? (1981), Recommendation 2.4, p. 155.

168/ Dade County, Fla., Ordinance Requiring Adoption of Program for Psychological Testing of Police Officers (Jan. 8, 1980).

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/

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

173/ 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 \$220,000 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 PSD'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/ Howard Rasmussen, 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.

few lay citizens understand. Consequently, such committees are usually no more expert or influential in shaping police policy than are any other group of concerned private citizens.

In July 1979, attempting to improve relations between the police and the community, the county manager established citizen advisory committees in each of the six Public Safety Department districts in Dade County. The county manager appoints the members of these committees, who meet regularly with PSD personnel from their districts to discuss community concerns. 177/

George Kilpatrick, chairman of the citizens advisory committee for the Department of Public Safety's Central District, which includes most of the unincorporated area of Model Cities, 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/

Not only do the advisory committees have no power, but they also must rely on the individual district commanders to volunteer information about police policy because the

177/ George W. Kilpatrick, President, Public Safety Department Central District Citizens Advisory Committee, testimony, Hearing Transcript, p. 1209.

178/ 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 Saltzman. 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 Saltzman. 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 then we would be empowered to give him--whoever is in charge--some direction. 181/

Finding 7.8: Training for officer candidates and officers is inadequate.

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

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

182/ 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 22, 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/ Howard 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.

hired a full-time college curriculum development specialist who shares the responsibility of preparing lesson plans and course designs. 187/

As with most police training programs, 188/ ICJ emphasizes training related to law enforcement, although police officers spend considerably more time on social service functions than they do pursuing and apprehending criminals. 189/ The ICJ curriculum consists of 840 hours of instruction over a 20-week period:

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

Howard Rasmussen, former director of ICJ, believes that the program's Human Skills component should be expanded. 191/

187/ Stinchcomb letter.

188/ Who is Guarding the Guardians? pp. 24-28.

189/ Herman Goldstein, Policing a Free Society (Cambridge, Mass.: Ballinger, 1977), pp. 24-25.

190/ Southeast Florida Institute of Criminal Justice, Basic Law Enforcement Curriculum (maintained in Commission files).

191/ Rasmussen 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/ BLE 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/

Finding 7.9: Although Dade County Independent Review Panel is authorized to investigate complaints of misconduct against officers of the Department of Public Safety, the panel lacks the needed investigative resources and subpoena power.

In its report on national police practices, the Commission summarized the history of independent external review of alleged officer misconduct, noting that many attempts to establish civilian review of police departments have failed. 194/ Citizen advisory bodies do not usually have the authority to decide cases or impose punishment, and they often have insufficient staff and inadequate 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 Dade County and to make recommendations. 196/

193/ Hughes Testimony, Hearing Transcript, p. 1220.

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

195/ Ibid.

196/ Dade County Board of Commissioners Ordinance No. 80-8, §3 (Feb. 5, 1980) (maintained in Commission files); Jeffrey L. Berkowitz, executive secretary, Dade County Independent Review Panel, testimony, 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, 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, 18% 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.

ability to develop the specific expertise for conducting independent reviews of alleged police misconduct. 198/

Since its inception, the panel members, particularly its executive secretary, have strived to be independent and to investigate citizen complaints objectively. 199/ The panel has issued a set of rules governing its proceedings, has attempted to publicize its existence, and has received and processed complaints expeditiously. 200/ Nevertheless, the absence of important 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

198/ But see Berkowitz letter, Appendix C, p. 2, noting that the present IRP 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 U.S. Attorney's Office.

199/ Berkowitz Testimony, Hearing Transcript, pp. 1349, 1351-52, 1357.

200/ Metropolitan Dade County Independent Review Panel, Rules of Procedure (June 10, 1980) (maintained in Commission files); Berkowitz Testimony, Hearing Transcript, pp. 1383-84; Independent Review Panel Complaint Summary (November 25, 1980) (maintained in Commission files).

201/ 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.

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

Jeffrey Berkowitz, IRP 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

206/ Id., §10(2).

207/ 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 IRP 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 IRP 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 IRP.

We 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 has 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 J. Block, chairman of the Governor's Dade County Citizens' Committee that investigated the underlying causes of the May 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

209/ Ibid., pp. 1358-59. But see Berkowitz letter, Appendix C, p. 4, stating that "the legal and political implications inherent in the efforts to obtain subpoena power would be counter-productive to the police department's efforts to improve its own image and might serve to diminish the respect of the community which the department has been striving hard to regain."

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 policy 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.



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

VIII. SAC Reports and Recharters

Bigotry and Violence in Georgia

(Report submitted at June meeting)



UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425


OFFICE OF STAFF DIRECTOR

September 1, 1989

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: Draft Report, Bigotry and Violence in Georgia

As directed by the Commissioners at the July 1989 meeting, staff in the Eastern Regional Division contacted the Georgia SAC members to arrange a meeting to discuss the draft report noted above. All 11 members were telephoned. Two members could not be reached; one was out of the country on vacation and the other did not return repeated staff calls. The 9 members who were contacted indicated their approval of the draft and felt it was unnecessary to meet to discuss it further. Therefore, I recommend that the draft report be approved by the Commissioners.



MELVIN L. JENKINS
Acting Staff Director



UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425

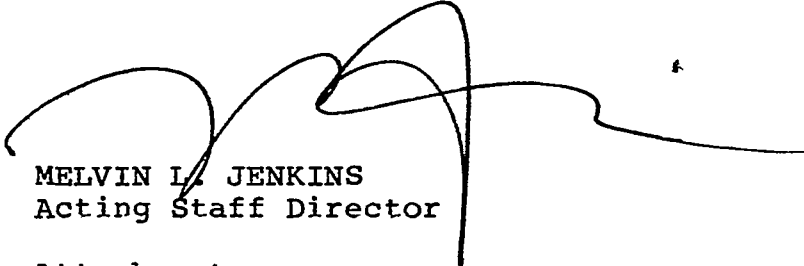
OFFICE OF STAFF DIRECTOR

September 6, 1989

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: Minnesota SAC Report

I am submitting for your review and action at the September meeting the attached Minnesota SAC report on bigotry and violence. The SAC approved this report by a 10-0 vote. I recommend Commission approval of this report.



MELVIN L. JENKINS
Acting Staff Director

Attachment

BIGOTRY AND VIOLENCE IN MINNESOTA

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

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

LETTER OF TRANSMITTAL

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

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 report on a community forum held by the Minnesota Advisory Committee in St. Paul on August 12, 1988, to obtain various perspectives on bigotry and violence in Minnesota. The Advisory Committee voted 10 to 0 to approve and submit this report to the Commissioners. The Committee heard from five local government officials, four State agency officials and eight community representatives. The Committee was provided with information on the extent and nature of bias-related violence. Although the report does not reflect an exhaustive analysis on the subject, the Committee hopes the Commission will find it of value in its monitoring of bigotry and violence nationwide.

Respectfully,

/s/

Talmadge L. Bartelle, Chairperson
Minnesota Advisory Committee

MINNESOTA ADVISORY COMMITTEE

Talmadge L. Bartelle, Chairperson
Minneapolis

Mary Ryland
Duluth

Larry P. Aitken
Duluth

Alan W. Weinblatt
St. Paul

Gloria Ann Gallegos
Maple Grove

Thaddeus W. Wilderson
St. Paul

Lupe Lopez
White Bear Lake

Stephen B. Young
St. Paul

Earl W. Miller
Minneapolis

Cathrine Zuckert*
Northfield

Karon Jenese Rogers
Minneapolis

*No longer a member of the Advisory Committee.

ACKNOWLEDGMENTS: This report was the chief assignment of Lorenzo Cervantes and Ascension Hernandez. Support services were provided by Jo Ann Daniels, Central Regional Division staff.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957 and reestablished by the Civil Rights Commission Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the laws; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and 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 Civil Rights Commission 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.

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APPENDIX A: CHAPTER NO. 643, BIAS CRIME REPORTING ACT,
CODIFIED AT MINNESOTA STATUTE SECTIONS
626.5531, .8451 (1988)

APPENDIX B: CHAPTER NO. 261, AN ACT PROVIDING INCREASED PENALTIES
FOR HATE CRIMES

INTRODUCTION

At a community forum on the status of civil rights in the State, conducted by the Minnesota Advisory Committee on May 27, 1987, participants raised concerns about incidents of bigotry and violence against persons because of their race, national origin, or religion. Emma Hixson, executive director, Minneapolis Department of Civil Rights reported to the Advisory Committee that her agency had received a number of calls concerning bias-motivated incidents. A subsequent report provided to the Central Regional Division documented 17 incidents of harassment from May 30, 1987, to March 1988. Morton Ryweck, executive director, Jewish Community Relations Council, Anti-Defamation League of Minnesota and the Dakotas, stated that his organization received 20 reports of bias-motivated incidents in 1986 and 29 in 1987.

In 1987, the student body president at Macalester College in St. Paul, a Native American, received hate mail that contained ethnic slurs and threatened physical harm. Macalester College had been the site of previous incidents. One involved five Japanese students who had the letters "KKK" painted on their dormitory door and a picture of a Japanese flag with an "X" through it.

On August 12, 1988, the Advisory Committee held a community forum on "Bigotry and Violence in Minnesota" to obtain various perspectives on the subject.

COMMUNITY PERSPECTIVE

A community perspective on bigotry and violence was provided at the forum by a governor's task force member, a spokesperson representing a student victimized by hate mail, an Indian Education Association official, a college president, two NAACP officers, a Minnesota Migrant Council staff member, and a lawyer with the Anti-Defamation League.

Elaine Valadez, Chair, Governor's Task Force on Prejudice and Violence

Ms. Valadez told the Committee that concerns about bias crime in Minnesota go back at least 10 years. As early as 1980, legislation was introduced in the State legislature to increase penalties for bias crime. Bias crime legislation was introduced twice and withdrawn by its sponsors because of attempts by opponents to destroy the bill's impact.

A legislator and several concerned citizens approached the Governor's office to appoint a task force on bias crimes. The Governor's Task Force on Prejudice and Violence was appointed by Governor Rudy Perpich in October 1987. It held 13 public hearings throughout the State to document the extent of bias-related incidents in Minnesota. A summary of the hearings reported a total of 827 incidents in the State. The incidents were classified as: sexual orientation, 205; race, 250; gender, 315; disability, 15; national origin, 8; religion, 30 and age, 4. Of the 827 incidents reported, 129 did not fall into the hate crime category. During the 1988 legislative session, the Joint Religious Legislative Coalition, together with the Governor's task force, supported two hate crimes bills, one on data collection and training for law enforcement agencies and the second, to increase penalties for violators.

According to Ms. Valadez, bias crimes are the most underreported crimes in Minnesota and possibly nationwide. She also stated that law enforcement officers, especially in rural Minnesota, have not been trained to recognize bias crimes. Ms. Valadez stated that law officers give low priority to bias crimes because they are misdemeanors with minimal penalties. Conversely, she believed stiffer penalties would make bias crime a higher priority.

Several reasons given by the task force for the causes of bias-related crimes and incidents were the perceived backtracking by Federal Government

agencies on discrimination issues, the country's economic situation, and the increase of immigrants from other nations. Also, the AIDS epidemic has provided an impetus for hate crimes against the gay and lesbian communities.

Flo Wiger, Chairperson, Minnesota Indian Education Association

Flo Wiger, chairperson of the Minnesota Indian Education Association, stated that the issues of violence and bigotry are frequently acted out in terms of the manifestation of power and control. She explained that people of power with a "who's in charge" mentality practice racism and violence. On college campuses, incidents of racism are not reported because a minority group student will leave himself or herself open to retaliation and harassment by the majority group students. Thus, incidents of discrimination do not get reported as violations of the student conduct code.

Ms. Wiger further stated that most hate mail in Minnesota is sent to racially mixed couples or families. In describing her experience as a victim, Ms. Wiger called hate mail an intrusion into her personal life that left her feeling angry and violated. She said that bigotry and violence stem from fear and ignorance of different minority groups by the dominant society. Ms. Wiger noted that teaching cultural pluralism is one approach for improving intercultural relations. She stated that the token minority role model in the various educational and governmental institutions authorizes everyone else to ignore the problem, thus abdicating personal responsibility with discriminatory behavior being the result.

Erin Ronayne, Macalester College Student

Ms. Ronayne, a student at Macalester, spoke on behalf of a female student who was the victim of hate mail, harassment, and a violent assault.

The victim, a Native American, wrote an article on racism in her college newspaper. She subsequently received a racist and sexist letter through the campus mail system. In the most recent incident a man broke into her apartment and physically assaulted her. The assault was interrupted, but it was frightening enough that the victim left Minnesota to be closer to her family in Florida. Ms. Ronayne stated that the level of violence and racism in Minnesota against women and people of color did not permit the victim to make her presentation to the Committee.

When the victim talked with the president of Macalester College about going public with the hate mail incident, he told her that she would be subjected to new pressures about the incident. She made the hate mail incident public knowledge with the support of the college administration. The college provided counseling services and incidental expenses to the victim. The faculty held meetings to discuss their responsibilities with reference to bigotry and violence on the campus. Macalester College began to work on policies that would enhance race relations on campus. Still a second hate letter was sent to the victim. The letter writer has not been identified despite good investigative efforts by the college. The man who assaulted the victim of hate mail has not been caught. The hate mail episodes and the assault were serious incidents at Macalester, but they were not considered to constitute a pattern or trend on the campus.

Robert Gavin, President, Macalester College

Dr. Robert Gavin told the Committee that over the past year there have been a rash of incidents involving racial tensions on campuses throughout the United States. Macalester College has always been proud of its diverse student population and educational atmosphere. The hate letters, which the president described as vicious, racist, and sexist, were sent through the

campus mail system and shattered the smugness and overconfidence of Macalester.

Dr. Gavin, the college president, provided support for the student victim. The president, the dean of students, and the director of minority programs provided direct access and personal time for the student. A volunteer counselor provided assistance. The college afforded the student the opportunity to be with her family.

In a racial incident of this type, Dr. Gavin felt that the rights and privileges of the individual should take precedence over those of the institution. If the individual does not want to make the incident a public matter, the institution should handle it in a confidential fashion. According to Dr. Gavin the incident allowed Macalester College to discuss racism openly, and a number of significant changes occurred in college policies and personal attitudes.

National Association for the Advancement of Colored People (NAACP)

Matthew Little, president of the NAACP of Minneapolis, gave a profile of his organization's service and structure. His presentation included a housing discrimination complaint which implicated the Ku Klux Klan. The incident is under investigation by the police.

Dr. James T. Shelton, president of the NAACP of St. Paul mentioned that he had also received hate mail from the person who has mailed many similar letters to targeted persons in the Twin Cities area. His mail included information about the National Association for White People. A picture of Dr. Shelton, clipped from the local newspaper, was stamped with the letters KKK and mailed to him. In addition, Dr. Shelton proposed to the Committee that the local police department establish a joint civilian-police review board. He pointed out the need for factual

information involving racially motivated complaints generated by community organizations. Dr. Shelton said the review board would improve police-community relations in the Twin Cities.

Beth Pokela, Program Coordinator, Minnesota Migrant Council

Ms. Pokela has worked in the Hispanic community for 11 years. Her agency, the Minnesota Migrant Council, provided a collection of 16 newsclips of bias-motivated incidents that occurred primarily in rural Minnesota and a video of the same that originated on the MacNeil/Lehrer newscast. Ms. Pokela described several incidents in which migrants were discriminated against because of ethnic origin or poverty status by the townsfolk in rural Minnesota. Instances of domestic violence were described, but no incidents of physical violence related to ethnic slurs or hate crimes were reported.

Mark Weitz, Legal Advisor, Anti-Defamation League of B'nai B'rith

Mr. Weitz said that the Anti-Defamation League (ADL) keeps track of anti-Semitic incidents throughout the United States. It divides anti-Semitic incidents into two categories: one is vandalism; the second tracks harassment, threats, assaults, and personal violence. In 1987 there were 14 vandalism incidents reported in Minnesota and 15 incidents in the second category. The ADL's response to hate crimes is to develop and support appropriate legislation and to educate the citizenry. ADL provided support in the 1988 Minnesota legislature for three bills: 1) bias crime reporting bill, 2) ethnic intimidation statute, and 3) antiparamilitary training bill.

According to Mr. Weitz, the increase of anti-Semitic incidents in the U.S. can be attributed to conditions in the Middle East. Anti-Semitism is directed at individuals as a result of their religious beliefs or ethnic

identity. Mr. Weitz received hate mail from an individual in the Twin Cities area after testifying at a hearing sponsored by the Governor's Task Force on Violence and Prejudice.

STATE OFFICIALS' PERSPECTIVE

Karen Clark, Representative, Minnesota Legislature

Ms. Clark told the Committee that there is leadership in the State of Minnesota on the issue of hate crimes, as demonstrated by the Governor's task force investigation into the extent of bigotry and violence in the State. As a member of the task force, she saw a great deal of pain suffered by the victims of incidents in telling of their experiences as a result of being of a particular race, religion, ethnic background, or sexual orientation.

Ms. Clark is the author of the Bias Crime Reporting Act, codified in Chapter 626 of Minnesota statutes which was enacted during the 1988 legislative session. (See Appendix A.) Two important components of the legislation included the adoption and use of a bias crime reporting form and required training on use of the reporting form, in order to be certified as a peace officer after August 1990.

Ms. Clark praised the work of the Governor's task force. Testimony from local citizens provided documentation and evidence on the nature and extent of bias incidents.

Passage of the Bias Crime Reporting Act will require the reporting of bias crimes beginning August 1988 and the compiling of data. The Joint Religious Legislative Coalition and others will have another resource to support future bias crime legislation. The entities involved in the successful legislative enactment of this law included the Governor's task force, the ADL, human rights organizations, State and local law enforcement

agencies, and interested citizens. In the process of hearing testimony as a Governor's task force member, Ms. Clark concluded that gay and lesbian people have been victims of hate crimes and should come under the list of protected classes in the State of Minnesota.

Asian Americans and Southeast Asian refugees in Minnesota have also been victims of discrimination and bias crimes, due to language and cultural differences. Legislation on bias crimes that dealt with increasing the penalties was submitted in 1983 but did not pass. The bill included language with reference to sexual orientation. Organizations throughout the State successfully lobbied against the bill because the wording "sexual orientation," was construed to be giving gay and lesbian people special rights. According to Ms. Clark, this political experience demonstrated that legislators have to be educated about the extent of prejudice and violence against the gay/lesbian community that represent 10 percent of the population; taxpayers that are not protected as gay/lesbian under the laws.

In April 1989 the Minnesota legislature overwhelmingly passed Chapter No. 261, a hate crime bill that increases penalties for crimes committed because of the victim's sexual preference as well as race, religion, sex, age, and other factors. (See Appendix B.)

Mark Shields, Superintendent, Minnesota Bureau of Criminal Apprehension

The Bureau of Criminal Apprehension is a statewide law enforcement agency. It serves as a law enforcement assistance agency to the law enforcement community in the State, and provides investigative services, crime lab services, and criminal justice records information. Mark Shields worked with legislators on development of the bias crime reporting form and provided the training development expertise and resources necessary to implement the specifics of the legislation. The bureau provided technical

assistance in drafting the bill and also absorbed the expenses needed for implementation of the legislation, thus assuring its passage.

Bill Carter, Executive Director, Minnesota Peace Officer Standards and Training Board

According to Bill Carter, executive director of the Peace Officer Standards and Training Board (POST), the primary responsibilities of his agency involve certification of preservice law enforcement educational training programs, hiring standards for State law officers, and standards of conduct of peace officers, among other things. With reference to the bias crime reporting act, POST has made a commitment to research thoroughly and develop the educational aspects of the legislation. After the law enforcement officers discuss the philosophical issues of the reporting form and the course content, POST will put the theory into practice. POST will develop a curriculum for preservice and continuing education on bias crime data collection. The objective will be to collect data on the frequency and nature of racially motivated incidents in a systematic way.

Gary Wilson, Minnesota Police Chief Association

Mr. Wilson stated that the police chiefs supported the objectives of the Bias Crime Reporting Act but had some reservation about achieving them because of the great disparities in police resources and capabilities throughout Minnesota. He mentioned the many sticky areas to be considered with reference to the report form and the preparation of a criminal case, the availability of training time for limited staff, and the consistency in reporting.

CITY OFFICIALS' PERSPECTIVE

Sergeant Roger Willow, Minneapolis Police Department

Sergeant Willow explained that, at the suggestion of Emma Hixson of the Minneapolis Civil Rights Department and Morton Ryweck of the

Anti-Defamation League, the police department formed a committee to discuss bias crimes. In June 1987 the Minneapolis Police Department developed a policy for reporting bias crimes in order to collect statistics and to investigate incidents to the fullest. Ten guidelines for use by police officers investigating the crimes were developed.

Sergeant Willow emphasized the need for training in the area of bias crime reporting. Inservice training was used to help the officers implement the new policy. According to Sergeant Willow, the police department needs to designate a coordinator to make the bias crime reporting system operational. The Minneapolis Police Department recorded nine cases of bias crimes in a 6-month period in 1987 and none for a 7-month period in 1988. The implementation of the bias crime law report system will be evaluated by the Minneapolis Police Department.

Robert Alfton, City Attorney, Minneapolis

Mr. Alfton reviewed the 9 bias crimes reported by the Minneapolis police and compared that to the 18,000 offenses handled by the city attorney's office in 1 year. The number was considered insignificant. Mr. Alfton noted that it appears that the police department's reporting method is missing a lot of bias crime activities.

Captain Bill Steenberg, St. Paul Police Department

Captain Steenberg stated that the St. Paul Police Department is already complying with the intent of the bias crime reporting statute. The police chief has provided the St. Paul officers guidance through a video presentation and has also asked the Minnesota Department of Human Rights for technical assistance. Congress passed hate crime legislation on June 14, 1988. The city of St. Paul contacted the U.S. attorney's office for assistance; however, they had not received copies of the Federal

legislation or implementation procedures from Washington as of August 11, 1988. Chapter 292 of the St. Paul legislative code is similar to the Federal legislation and deals with offenses directed to religious beliefs and racial origins. In the past St. Paul has referred bias-motivated crimes to the city human rights department, which has enforcement authority.

Although the Minnesota statute has been on the books only a couple of weeks, Captain Steenberg said the report process is working in St. Paul. One incident of a swastika painted on a garage door has been reported but all the specific details cannot be revealed. A second incident involved aggravated assault by a black suspect against a Southeast Asian victim.

Emma Hixson, Director, Minneapolis Department of Civil Rights

Ms. Hixson described three recent incidents of prejudice in the Twin Cities area to point out that prejudice and hate take different forms and exist at all levels in our society. She stated that it should not be surprising that name-calling, vandalism, and harassment are an everyday reality for people of color, women, gay and lesbian people in Minneapolis and elsewhere.

Ms. Hixson stated that hate crime incidents, by and large, are not reported to the Minneapolis Department of Civil Rights. Victims tend to go to their own group, agency, or organization. Asian Americans report incidents to the Center for Asian and Pacific Islanders and American Indians to the Minneapolis American Indian Center; other minority groups act similarly. Her agency has received only three bias-motivated crime reports this year. One incident involved anti-Semitic graffiti on several buildings on the University of Minnesota campus. The Center for Asian and Pacific Islanders has reported approximately 100 bias-motivated incidents for 1988.

The Minneapolis Office of the Gay/Lesbian Community Action Council has recorded 15 incidents for the 1988 calendar year. The Urban League reported 567 incidents for 1988; of the 567 incidents, 175 were in the bias-motivated incident category. Because community agencies that work with the protected classes are not keeping formal records of hate crimes (a conclusion also reached by the Governor's task force), many of the agencies will receive from the task force a tracking form for reporting hate crime incidents.

Marilyn Johnson, Executive Director, St. Paul Human Rights Commission

According to Ms. Johnson, the city of St. Paul has sent city personnel to training conferences in New York on the subject of hate and violence. There have not been many incidents of hate crime reported to the commission in 1988. Most other complaints have been based on racial discrimination. One incident reported to the human rights commission involved a racially motivated note placed on the car of a black fire fighter during a training session. An investigation by the commission revealed that there had been other racial incidents. One involved a black fire fighter on his first day of work. A fellow fire fighter with a Ku Klux Klan-type hood over his head chased him around the fire station. When the commission shared the findings with the administration, Ms. Johnson said changes were made in the fire department. The human rights commission expects to receive better statistics with the recent enactment of the Minnesota hate crime statute.

SUMMARY

This report summarizes the proceedings of a community forum on bigotry and violence in Minnesota. The Governor's task force of concerned citizens gathered documentation and community support to enact legislation in Minnesota that requires the reporting of hate crimes by law enforcement

agencies. The forum heard of a college student whose reporting of an incident brought widespread change in the college community by confronting society with the realities of racism and hate mail.

State legislators and agency personnel shared information, resources, and ideas. They worked with human rights organizations in developing and passing hate crime legislation that will help the protected classes as well as all citizens of Minnesota. The city government perspective demonstrated a cautious yet willing group of peace officers who are ready to implement local hate crime ordinances. The Advisory Committee will continue to monitor bigotry and violence in Minnesota.

APPENDIX A

AN ACT

H.F. No. 2340

CHAPTER No

643

1
2 relating to crime; law enforcement; requiring the
3 reporting of crimes motivated by bias; requiring the
4 peace officer standards and training board to mandate
5 pre-service training for peace officers in
6 recognizing, responding to, and reporting crimes of
7 bias; requiring the board to make similar
8 instructional materials available to peace officers
9 for continuing education credit; proposing coding for
10 new law in Minnesota Statutes, chapter 626.

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

13 Section 626.5531 (526.5531) (REPORTING OF CRIMES MOTIVATED BY
14 BIAS.)

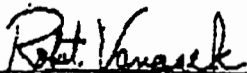
15 Subdivision 1. [REPORTS REQUIRED.] A peace officer must
16 report to the head of the officer's department every violation
17 of chapter 609 or a local criminal ordinance if the officer has
18 reason to believe that the offender was motivated to commit the
19 act by the victim's race, religion, national origin, sex, age,
20 disability, or characteristics identified as sexual
21 orientation. The superintendent of the bureau of criminal
22 apprehension shall adopt a reporting form to be used by law
23 enforcement agencies in making the reports required under this
24 section. The reports must include for each incident all of the
25 following:

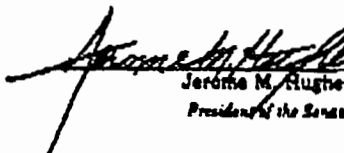
26 (1) the date of the offense;
27 (2) the location of the offense;
28 (3) whether the target of the incident is a person, private

1 board requirements for continuing education credit and be
2 updated periodically as the board considers appropriate. The
3 board must also seek funding for an educational conference to
4 inform and sensitize chief law enforcement officers and other
5 interested persons to the law enforcement issues associated with
6 bias crimes. If funding is obtained, the board may sponsor the
7 educational conference on its own or with other public or
8 private entities.


9 Subd. 4. (IN-SERVICE TRAINING; CHIEF LAW ENFORCEMENT
10 OFFICER REQUIREMENTS.) A chief law enforcement officer must
11 inform all peace officers within the officer's agency of (1) the
12 requirements of section 1, (2) the availability of the
13 instructional materials provided by the board under subdivision
14 3, and (3) the availability of continuing education credit for
15 the completion of these materials. The chief law enforcement
16 officer must also encourage these peace officers to review or
17 complete the materials.

H. F. No. 2340


Robert Vansack
Speaker of the House of Representatives


Jerome M. Hughes
President of the Senate

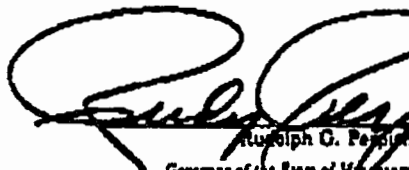
Passed the House of Representatives this 5th day of April in the year of Our Lord one thousand nine hundred and eighty-eight.


Edward A. Burdick
Chief Clerk, House of Representatives


Passed the Senate this 29th day of March in the year of Our Lord one thousand nine hundred and eighty-eight.


Patrick E. Flahaver
Secretary of the Senate

Approved April 26, 1988


Joseph G. Peppin
Governor of the State of Montana

Filed April 26, 1988


Joan Anderson Crown
Secretary of State

AN ACT

Distributed By
Secretary of the SENATE
Room 231, State Capitol
St. Paul, 296-2343

1
2 relating to crimes; increasing penalties for certain
3 crimes when committed because of the victim's or
4 another's actual or perceived race, color, religion,
5 sex, sexual orientation, disability, age, or national
6 origin; increasing penalties for using the mail or
7 making telephone calls and falsely impersonating
8 another for the purpose of harassing, abusing, or
9 threatening another person; authorizing the
10 commissioner of public safety to report on additional
11 bias-motivated criminal activity not covered by the
12 bias crime reporting law; amending Minnesota Statutes
13 1988, sections 609.2231, by adding a subdivision;
14 609.595, subdivisions 2, 3, and by adding a
15 subdivision; 609.605, by adding a subdivision;
16 609.746, by adding a subdivision; 609.79, by adding a
17 subdivision; 609.795; and 626.5531, subdivision 2.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
19 Section 1. Minnesota Statutes 1988, section 609.2231, is
20 amended by adding a subdivision to read:
21 Subd. 4. [ASSAULTS MOTIVATED BY BIAS.] (a) Whoever
22 assaults another because of the victim's or another's actual or
23 perceived race, color, religion, sex, sexual orientation,
24 disability as defined in section 363.01, age, or national origin
25 may be sentenced to imprisonment for not more than one year or
26 to payment of a fine of not more than \$3,000, or both.
27 (b) Whoever violates the provisions of paragraph (a) within
28 five years of a previous conviction under paragraph (a) is
29 guilty of a felony and may be sentenced to imprisonment for not
30 more than one year and a day or to payment of a fine of not more
31 than \$3,000, or both.

1 Sec. 2. Minnesota Statutes 1988, section 609.595, is
2 amended by adding a subdivision to read:

3 Subd. 1a. [CRIMINAL DAMAGE TO PROPERTY IN THE SECOND
4 DEGREE.] (a) Whoever intentionally causes damage described in
5 subdivision 2, paragraph (a), because of the property owner's or
6 another's actual or perceived race, color, religion, sex, sexual
7 orientation, disability as defined in section 363.01, age, or
8 national origin is guilty of a felony and may be sentenced to
9 imprisonment for not more than one year and a day or to payment
10 of a fine of not more than \$3,000, or both.

11 (b) In any prosecution under paragraph (a), the value of
12 property damaged by the defendant in violation of that paragraph
13 within any six-month period may be aggregated and the defendant
14 charged accordingly in applying this section. When two or more
15 offenses are committed by the same person in two or more
16 counties, the accused may be prosecuted in any county in which
17 one of the offenses was committed for all of the offenses
18 aggregated under this paragraph.

19 Sec. 3. Minnesota Statutes 1988, section 609.595,
20 subdivision 2, is amended to read:

21 Subd. 2. [CRIMINAL DAMAGE TO PROPERTY IN THE SECOND THIRD
22 DEGREE.] (a) Except as otherwise provided in section 2, whoever
23 intentionally causes damage to another person's physical
24 property without the other person's consent may be sentenced to
25 imprisonment for not more than one year or to payment of a fine
26 of not more than \$3,000, or both, if the damage reduces the
27 value of the property by more than \$250 but not more than \$500
28 as measured by the cost of repair and replacement.

29 (b) Whoever intentionally causes damage to another person's
30 physical property without the other person's consent because of
31 the property owner's or another's actual or perceived race,
32 color, religion, sex, sexual orientation, disability as defined
33 in section 363.01, age, or national origin may be sentenced to
34 imprisonment for not more than one year or to payment of a fine
35 of not more than \$3,000, or both, if the damage reduces the
36 value of the property by not more than \$250.

1 (c) In any prosecution under paragraph (a), the value of
2 property damaged by the defendant in violation of that clause
3 paragraph within any six-month period may be aggregated and the
4 defendant charged accordingly in applying this section. When
5 two or more offenses are committed by the same person in two or
6 more counties, the accused may be prosecuted in any county in
7 which one of the offenses was committed for all of the offenses
8 aggregated under this paragraph.

9 Sec. 4. Minnesota Statutes 1988, section 609.595,
10 subdivision 3, is amended to read:

11 Subd. 3. [CRIMINAL DAMAGE TO PROPERTY IN THE THIRD FOURTH
12 DEGREE.] Whoever intentionally causes damage described in
13 subdivision 2 under any other circumstances is guilty of a
14 misdemeanor.

15 Sec. 5. Minnesota Statutes 1988, section 609.605, is
16 amended by adding a subdivision to read:

17 Subd. 3. [TRESPASSES MOTIVATED BY BIAS.] Whoever commits
18 an act described in subdivision 1, clause (13), because of the
19 property owner's or another's actual or perceived race, color,
20 religion, sex, sexual orientation, disability as defined in
21 section 363.01, age, or national origin may be sentenced to
22 imprisonment for not more than one year or to payment of a fine
23 of not more than \$3,000, or both.

24 Sec. 6. Minnesota Statutes 1988, section 609.746, is
25 amended by adding a subdivision to read:

26 Subd. 3. [INTRUSION ON PRIVACY; AGGRAVATED
27 VIOLATION.] Whoever commits an act described in subdivision 2
28 because of the victim's or another's actual or perceived race,
29 color, religion, sex, sexual orientation, disability as defined
30 in section 363.01, age, or national origin, may be sentenced to
31 imprisonment for not more than one year or to payment of a fine
32 of not more than \$3,000, or both.

33 Sec. 7. Minnesota Statutes 1988, section 609.79, is
34 amended by adding a subdivision to read:

35 Subd. 1a. [OBSCENE OR HARASSING TELEPHONE CALLS;
36 AGGRAVATED VIOLATIONS.] (a) Whoever commits an act described in

1 subdivision 1 because of the victim's or another's actual or
2 perceived race, color, religion, sex, sexual orientation,
3 disability as defined in section 363.01, age, or national origin
4 may be sentenced to imprisonment for not more than one year or
5 to payment of a fine of not more than \$3,000, or both.

6 (b) Whoever commits an act described in subdivision 1 by
7 falsely impersonating another with intent to harass, abuse, or
8 threaten that person or another, may be sentenced to
9 imprisonment for not more than one year or to payment of a fine
10 of not more than \$3,000, or both.

11 Sec. 8. Minnesota Statutes 1988, section 609.795, is
12 amended to read:

13 609.795 [LETTER, TELEGRAM, OR PACKAGE; OPENING;
14 HARASSMENT.]

15 Subdivision 1. [MISDEMEANORS.] Whoever does any of the
16 following is guilty of a misdemeanor:

17 (1) knowing that the actor does not have the consent of
18 either the sender or the addressee, intentionally opens any
19 sealed letter, telegram, or package addressed to another; or

20 (2) knowing that a sealed letter, telegram, or package has
21 been opened without the consent of either the sender or
22 addressee, intentionally publishes any of the contents thereof;
23 or

24 (3) with the intent to harass, abuse, or threaten,
25 repeatedly uses the mails or delivers letters, telegrams, or
26 packages.

27 Subd. 2. [GROSS MISDEMEANORS.] (a) Whoever commits an act
28 described in subdivision 1, clause (3), because of the victim's
29 or another's actual or perceived race, color, religion, sex,
30 sexual orientation, disability as defined in section 363.01,
31 age, or national origin may be sentenced to imprisonment for not
32 more than one year or to payment of a fine of not more than
33 \$3,000, or both.

34 (b) Whoever commits an act described in subdivision 1,
35 clause (3), by falsely impersonating another with intent to
36 harass, abuse, or threaten that person or another, may be

1 sentenced to imprisonment for not more than one year or to
2 payment of a fine of not more than \$3,000, or both.

3 Sec. 9. Minnesota Statutes 1988, section 626.5531,
4 subdivision 2, is amended to read:

5 Subd. 2. [USE OF INFORMATION COLLECTED.] The head of a
6 local law enforcement agency or state law enforcement department
7 that employs peace officers licensed under section 626.843 must
8 file a monthly report describing crimes reported under this
9 section with the department of public safety, bureau of criminal
10 apprehension. The commissioner of public safety must summarize
11 and analyze the information received and file an annual report
12 with the department of human rights and the legislature. The
13 commissioner may include information in the annual report
14 concerning any additional criminal activity motivated by bias
15 that is not covered by this section.

16 Sec. 10. [EFFECTIVE DATE.]

17 Sections 1 to 8 are effective August 1, 1989, and apply to
18 crimes committed on or after that date.

This enactment of the House of Representatives and Senate is properly enrolled.

Robert Vandeen
Robert Vandeen
Speaker of the House of Representatives

Jerome M. Hughes
Jerome M. Hughes
President of the Senate

Passed the House of Representatives on May 19, 1989.

Edward A. Burdick
Edward A. Burdick
Chief Clerk House of Representatives

Passed the Senate on May 19, 1989.

Patrick E. Flanagan
Patrick E. Flanagan
Secretary of the Senate

Presented to the Governor on May 23, 1989.

Steven C. Cross
Steven C. Cross
Recorder of Statutes

Approved on 25 May 1989, at 18:34 p.m.

Rudolph G. Perpich
Rudolph G. Perpich
Governor of the State of Minnesota

Filed on May 26, 1989.

Joan Anderson Grove
Joan Anderson Grove
Secretary of State

IX. Commission Subcommittee Reports.

(No written material)



UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

September 8, 1989

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: Staff Director's Report

Attached is the Staff Director's report for the months of July and August.

A handwritten signature in black ink, appearing to read "M. L. Jenkins". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

MELVIN L. JENKINS
Acting Staff Director

Attachment

PERSONNEL REPORT
July 1 through July 31, 1989

PERMANENT APPOINTMENTS	64
TEMPORARY APPOINTMENTS	04
INTERMITTENT APPOINTMENTS	20

ACCESSIONS - PERMANENT APPOINTMENTS

PROGRAM STAFF

Bobby Doctor, Civil Rights Analyst, Office of the Staff Director,
Regional Programs Coordination Unit, GS-160-13, \$53,460.

SUPPORT STAFF

Dorothy Benjamin, Clerk-Typist, Office of the Deputy Staff
Director for Management, GS-0322-03, \$15,039.

ACCESSIONS - NONPERMANENT APPOINTMENTS

PROGRAM STAFF

None

SUPPORT STAFF

Stephanie A. Dorn, Mail Clerk, Office of the Deputy Staff
Director for Management, SYEP.

SEPARATIONS FROM PERMANENT POSITIONS

PROGRAM STAFF

William Gillers, Solicitor, Office of the Solicitor, ES-0905-04, \$76,400.

SUPPORT STAFF

None

SEPARATIONS FROM NONPERMANENT POSITIONS

PROGRAM STAFF

Bobby Doctor, Civil Rights Analyst, Office of the Staff Director, Regional Programs Coordination Unit, GS-160-13, \$53,460.

Lloyd Parker, Writer Editor, Office of Programs, Policy and Research, GS-1082-09, \$23,846.

SUPPORT STAFF

Stella Duran, Secretary (Typing), Commissioners and Staff, GS-318-7, \$20,143.

Dorothy Benjamin, Clerk-Typist, Office of the Deputy Staff Director for Management, GS-0322-03, \$15,039.

PERSONNEL REPORT
August 1 through August 31, 1989

PERMANENT APPOINTMENTS	62
TEMPORARY APPOINTMENTS	04
INTERMITTENT APPOINTMENTS	19

ACCESSIONS - PERMANENT APPOINTMENTS

PROGRAM STAFF

None

SUPPORT STAFF

None

ACCESSIONS - NONPERMANENT APPOINTMENTS

PROGRAM STAFF

None

SUPPORT STAFF

Stacey O'Connell, Student Volunteer, Congressional and Public
Affairs Unit, WOC - Receiving college credits

SEPARATIONS FROM PERMANENT POSITIONS

PROGRAM STAFF

Robert Jeffrey, Special Assistant to the Staff Director, Office of the Staff Director, GS-0301-13, \$41,121.

Joseph J. Piccione, Attorney-Advisor, Office of General Counsel, GS-0905-11, \$34,624.

SUPPORT STAFF

None

SEPARATIONS FROM NONPERMANENT POSITIONS

PROGRAM STAFF

None

SUPPORT STAFF

Stacey O'Connell, Student Volunteer, Congressional and Public Affairs Unit, WOC - Receiving college credits.

Stephanie A. Dorn, Mail Clerk, Office of the Deputy Staff Director for Management, SYEP.

Joseph K. Woodard, Commissioners and Assistants, GS-0301-11, \$28,852.

U.S. COMMISSION ON CIVIL RIGHTS
 REPORT OF RACE/NATIONAL ORIGIN BY GRADE
 THIRD QUARTER - FY 1989

<u>PAY PLAN</u>	<u>GRADE</u>	<u>ASIAN</u>	<u>BLACK</u>	<u>HISPANIC</u>	<u>WHITE</u>	<u>OTHER</u>	<u>TOTAL</u>	<u>FEMALE</u>
ES	00	0	1	0	3	0	4	1
GM	13	0	1	0	1	0	2	1
GM	14	1	0	0	5	0	6	4
GM	15	0	0	1	5	0	6	0
GS	02	0	0	0	0	0	0	0
GS	03	0	2	0	0	0	2	2
GS	04	0	3	0	0	0	3	1
GS	05	0	2	0	0	0	2	2
GS	06	0	4	0	1	1	6	6
GS	07	0	3	1	0	0	4	4
GS	08	0	0	0	0	0	0	0
GS	09	0	5	0	2	0	7	5
GS	10	0	0	0	0	0	0	0
GS	11	2	1	2	2	0	7	3
GS	12	1	3	1	4	0	9	6
GS	13	1	4	1	7	0	13	4
WG	04	0	1	0	0	0	1	0
GW	01	0	1	0	0	0	1	1

PRESS AND CONGRESSIONAL RELATIONS

Copies of the Ohio and Pennsylvania SAC rosters were sent to the White House on request.

Congressional requests included one from Congressman Molinari to view Operation Rescue tapes, from Senator Helm's office on the North Carolina SAC, and from Congressman Gray's office on bills introduced to overturn Supreme Court decisions.

A news release on the report, The Immigration Reform and Control Act: Assessing the Evaluation Process, was sent to over 500 media representatives. A news advisory, along with embargoed copies of the report, was distributed to selected reporters. Approximately six television crews, three radio news representatives, and ten print media representatives attended the news conference in San Francisco. News stories were aired on California radio and television stations and on the national NBC Nightly News. Staff responded to 35 media inquiries about the report.

A news advisory was sent out about the Asian Roundtable conference, and staff also made more than 60 followup telephone calls to selected Asian media representatives. Staff responded to eight media inquiries on the conference.

A Sunshine Notice was sent to the media for the July 28 Commission meeting and press conference, and the July 29 Asian Roundtable conference. Staff handled inquiries.

There were 110 other media and public inquiries during this reporting period: 51 about Operation Rescue; 15, the Commission's history, activities, and projects; 8, Chairman Allen; 7, the killing of an Asian American in Raleigh, NC; 6, Commissioners' biographical data; 3, civil rights cases; 3, the Allen-Untermeyer meeting; 2 each concerned the Commission's reauthorization; campus bigotry and violence; Perspectives magazine; and women rights; and one each concerned the Los Angeles County voting rights case; the California SAC meeting; Arthur Fletcher; the Eastman-Atwater news article; the Asian report; blacks in government; school desegregation, housing segregation; and the Ku Klux Klan.

CIVIL RIGHTS EVALUATION UNIT

Staff continued to work on a draft report on civil rights enforcement activities at the major Federal civil rights enforcement agencies. Staff also helped on the immigration

report and on testimony on congressional exemption from civil rights laws and worked with OPR on the Window Dressing update project.

Complaints relative to police treatment of Operation Rescue demonstrators increased; those about the case of Dr. Elizabeth Morgan continued.

OFFICE OF THE DEPUTY STAFF DIRECTOR FOR MANAGEMENT

New requests for publications totaled 353; about 12,000 items were sent out. The publication requested most often in July was The Economic Status of Americans of Asian Descent: An Exploratory Investigation (112 mailed). Other frequently requested publications included Bias Related Incidents in Pennsylvania and Education Vouchers in Louisiana. In August 45 requests were received for the winter 1988 issue of New Perspectives.

The library made about 450 loans to the public during July and 185 loans to Commission staff. Telephone calls from the public and library visitors increased, as a result of the recent Supreme Court decisions related to affirmative action.

Materials were gathered for a September 6 meeting with staff from the House Committee on Appropriations, who are looking into the Commission's compliance with the reprogramming and relocation notification requirements, as required by the annual appropriations act.

Administrative Instruction I-13, Evaluation of Internal Control Systems, was revised in accordance with current OMB requirements.

Administrative items accomplished during July included the week-long mail sampling (for computation of postage bills), issuance of new ID cards in Washington and Kansas City, and various budgetary reports. Informational memoranda on various topics such as health programs and flexitime were distributed to staff.

A meeting was held with officials from the Office of Personnel Management to provide an update on Commission actions in response to the 1988 OPM audit as well as to convey information on the needs of small agencies.

Monitoring

The following is a breakdown of monitoring and regional activities in the Office of General Counsel. Time spent by OSD staff and Commissioners and their special assistants is noted also.

ENFORCEMENT OF THE INDIAN CIVIL RIGHTS ACT OF 1986: 72 SES-4 hours, 293.5 GM 15-1 hours, 168 GS 12-2 hours, 355 GS 11-1 hours, 276 GS 12-1 hours, 6 GM-14 hours, 312 GS 11-7 hours, 44 GS 7-7 hours, and 4 GS 9-9 hours. Commissioners and assistants: 109 hours. OSD staff: 4 hours.

FEDERAL PROTECTIONS FOR HANDICAPPED INFANTS: 13 GS 6-1 hours, 64 GS 12-2 hours, 1.5 GS 9-9 hours, 41 GM-14 hours, and 6 GS 7-7 hours. Commissioner and assistants: 59.3 hours. OSD staff: 15 hours.

CIVIL RIGHTS IMPLICATIONS OF AIDS: 10 GS 6-1 hours, 7 GM-14 hours, and 40 GS 7-7 hours.

COMPLAINTS PROCESSING: 17 GS 9-9 hours, 136 GS 6-1 hours, 95 GS 7-7 hours, and 77 GM-14 hours. OSD staff: 372 hours.

REGIONAL MATTERS: 177 GM 14-1 hours, 1 GS 9-9 hour, 2.5 SES-4 hours, 16 GS 12-2 hours, and 5.5 GS 11-1 hours. Commissioners and assistants: 166.5 hours. OSD staff: 1,160 hours.

IMMIGRATION REFORM AND CONTROL ACT: 131 GS 6-1 hours, 112 GM-14 hours, 3 GS 9-9 hours, 102.5 SES-4 hours, 16 GS 11-1 hours, and 32.5 GS 12-1 hours. Commissioners and assistants: 47.2 hours. OSD staff: 16 hours.

CIVIL RIGHTS ENFORCEMENT AT FEDERAL AGENCIES: 3 GS 6-1 hours. Commissioner's assistant: 20 hours. OSD staff: 256.

CIVIL RIGHTS COURT CASES: 14 GS 6-1, 70 GM 14, 1 GM 15, and 10 GS 7-7. Commissioner's assistant: 13 hours.

CONGRESSIONAL MONITORING: 59 GM 14 and 49.5 SES-4. OSD staff: 1 hour.

HATE GROUP ACTIVITY: Commissioner's assistant: 104 hours. OSD staff: 44 hours.

CONSTITUENT RIGHTS ISSUES--BLACKS: OSD staff: 10 hours.

CONSTITUENT RIGHTS ISSUES--WOMEN: OSD staff: 26 hours.

SOLICITOR'S UNIT

Freedom of Information Act requests in July concerned U.S. human experimentation, individuals paid from other than agency unclaimed money funds, and all reports and responses of States that participated in the prison project in 1971-1980 and material related to the Colorado Department of Corrections from 1970-1989.

OFFICE OF THE GENERAL COUNSEL

Staff prepared a memorandum analyzing recent U.S. Supreme Court cases affecting civil rights.

A briefing on administration of justice issues was organized and a background memorandum started.

Medical Discrimination Against Children with Disabilities

The report is scheduled for release at a press conference on September 13, 1989.

Enforcement of the Indian Civil Rights Act of 1968

Part I was revised in light of editorial board comments. Work continued on Parts III and IV of the second draft.

Civil Rights Implications of AIDS

Work on this project is temporarily halted because of staff assignment to other projects. A new timetable for the report targets review by the Commissioners in mid-1990.

OGC and OPPRImmigration Control and Reform Act

The report was approved and released at the end of July. Revisions to include material on GAO's hiring audit were made during August.

OFFICE OF PROGRAMS, POLICY AND RESEARCHThe Economic Status of Hispanic Groups: An Exploratory Investigation

Some progress has been made in terms of getting necessary data in shape.

The Economic Status of Black Women: An Exploratory Investigation

The report was revised based on comments from the editorial review board and from outside experts. Legal sufficiency review was completed.

Validity of Testing in Education and Employment

Preparation of several components of a report on test construction began. Staff summarized the transcript from the consultation, drafted an analysis of legal issues, and outlined an analysis of scientific issues. Plans were developed for a

consultation on the appropriate uses of tests in education. Contacts were made with the EEOC and the Departments of Justice, State, and Education concerning various testing issues.

Changing Perspectives on Civil Rights: Los Angeles Summary Report

The draft summary was approved by the Commissioners in July subject to editorial revision.

Changing Perspectives on Civil Rights: Nashville Summary Report

The draft summary is being reviewed by office staff.

Asian Civil Rights Issues in the 1990s

Extensive efforts resulted in the San Francisco Roundtable's having the most ethnically balanced group of participants. Staff are correcting transcripts of the Roundtables.

REGIONAL PROGRAMS COORDINATION UNIT

REGION I - EASTERN REGIONAL DIVISION

PROJECTS

Access to Health Services for Southeast Asian Refugees and Immigrants in Connecticut

A summary report on the March community forum in Hartford is being prepared.

Bigotry and Violence in Georgia

Commission action on the summary report of the community forum was deferred.

Bigotry and Violence in Rhode Island

A community forum was held on May 8, 1989, in Providence. A summary report of the forum is underway.

Followup Forum on 1990 Census Issues - New York

A community forum was held in New York City on April 27, 1989. A summary report is in OSD for editorial review.

Impact of Ability Grouping on Educational Opportunity of Minority Students in North Carolina

The community forum was held on May 24, 1989, in Raleigh. A summary report of the forum is underway.

Implementing the 1988 Fair Housing Act Amendments in Pennsylvania

A summary report of the forum in Philadelphia is undergoing agency review.

In-School Segregation in Morris County, New Jersey

A community forum was held in Morristown on June 27. A summary report is being prepared.

Minorities and Women in Higher Education in West Virginia

The summary report was approved by the Commissioners and submitted for final processing.

Nutrition Services and the Minority Elderly in Delaware

The summary report is at the printer.

Police-Community Relations in Miami and Dade County

A summary report of the 1988 forum and the 1989 briefing was readied for submission to the Commissioners.

Reporting Bias-Related Incidents: A Followup - Pennsylvania

Agency review comments are being incorporated in the summary report.

Review of Civil Rights Legislation - West Virginia

A summary report of the forum held last March was returned to ERD for legal sufficiency corrections.

Treatment of Language-Minority Students in Manchester, New Hampshire

The revised briefing memorandum was sent to the Commissioners.

Voting Rights in South Carolina

The community forum was held in Columbia on May 22, 1989. A summary report of the forum is underway.

MONITORING HIGHLIGHTS

NEW YORK

New York SAC Chairman Walter Y. Oi was one of the seven speakers at a hearing held by the House census oversight

subcommittee in New York City on July 24. Dr. Oi reported upon the two forums which the Advisory Committee held in November 1987 and April 1989 on the 1990 census and undercount adjustment.

REGION II - CENTRAL REGIONAL DIVISION

PROJECTS

Bigotry and Violence in Minnesota

A draft report on the community forum held in St. Paul last August was readied for submission to the Commissioners.

Bigotry and Violence on Missouri College Campuses

A summary report is being drafted for a community forum held on March 22, 1989, in Columbia.

Chippewa Indian Treaty Rights - Wisconsin

A community forum was conducted by the Advisory Committee on April 27, 1989. A summary report is undergoing legal sufficiency review.

Civil Rights Implications of Student Dropouts - Michigan

The community forum was held on May 5, 1989. A summary report of the forum is being drafted.

The Employment of Minorities and Women in Kentucky State Government

A summary report of a community forum held by the Advisory Committee on March 14, 1989, was returned CRD for legal sufficiency corrections.

Civil Rights Problems of Older Americans - Arkansas

The report was approved by the Commissioners and submitted for final processing.

Desegregation of Public Higher Education in Tennessee

The report is being prepared for publication.

Equal Opportunity in Alabama State Employment

The report was returned to CRD for legal sufficiency corrections.

Homosexuals and the Administration of Justice in New Orleans

The report is being prepared for printing.

Kansas Human Rights Agencies

The report is undergoing editing in OSD.

Race Relations in Toledo

The report was approved by the Commissioners and released in a press conference on August 21, 1989.

Selected Civil Rights Issues in Iowa Public Education

A summary report is being drafted for a community forum held on January 25, 1989, in Des Moines.

Voter Registration in Louisiana Parishes

A community forum was conducted on this topic on May 12, 1989, and a draft summary report was circulated to the SAC for approval.

Bigotry and Violence on Nebraska's College Campuses

A summary report of a community forum conducted by the Advisory Committee on May 24, 1989, is being drafted.

MONITORING HIGHLIGHTSARKANSAS

A U.S. District Court judge ruled that the State hospital had systematically discriminated against black employees in hirings, firings, and promotions and other conditions of employment. Between 200 and 300 employees could be due millions of dollars in back pay. Attorneys for both sides of the case were instructed to meet to work out a settlement. It was the second time since 1986 that the hospital has been found to discriminate against blacks in employment.

Nearly identical lawsuits were filed in the U.S. District Court seeking to force three local school districts (Pine Bluff, Dollar Way, and Watson Chapel) to switch to single-member district board elections to increase black representation. The suits allege that each of the districts' at-large election system prevents black voters from selecting board representatives of their choice in numbers reasonably proportioned to their population ratio. According to school officials, about 67 percent of the students in one of the districts are black, whereas 2 of the 7 board members are black.

An attorney in Pine Bluff contends that the system of electing State judges in Arkansas is maintained to keep blacks off the bench. In a suit filed in U.S. District Court he asks to represent all black voters in the State and contends that if judicial districts are redrawn fairly, black people could form majorities in districts in 19 counties. No blacks have ever been elected to the challenged positions.

ILLINOIS

On June 20, 1989, the U.S. Justice Department filed a lawsuit against the city of Chicago Heights for refusing to issue a permit for a group home for the mentally retarded in violation of the Fair Housing Amendments of 1988. The lawsuit, the first of its kind in the country, alleges that the city denied the request of Galesburg-based Residential Facilities Management Specialist, Inc. to build a 15-bed home based upon the fears and prejudices of neighbors who spoke out against the home during public hearings on the project. The city contends that the decision was based upon deficiencies in the developer's application for a permit to build. The Justice Department seeks up to \$50,000 in fines against the city.

INDIANA

The Lily Endowment Inc. of Indianapolis, Indiana, recently announced it will give \$1.26 million in grants to 12 black colleges and universities. The vice president for education said that a significant proportion of minority students prefers attending institutions that are historically black. He believes that these schools have proven successful in graduating large proportions of minority students. Schools receiving the grants are: Bethune-Cookman College, Dillard University, Houston-Tillotson, Jackson State University, LeMoyne Owen College, Lincoln University, Morris Brown College, Paine College, Shaw University, Talladega College, Tougaloo College, and Voorhees College.

A prominent black businessman has been rejected for membership by Lake County Country Club, and the Indiana Civil Rights Commission is investigating whether the businessman's civil rights may have been violated. To date, no complaint has been filed, however, the commission has the legal authority to conduct an investigation without a complaint. A State representative said he will introduce legislation next year to deny the liquor licenses of private clubs shown to discriminate on the basis of race or sex. This legislation was introduced last year and passed the State House of Representatives but died in the Senate.

KANSAS

The civil rights office of the U.S. Department of Education is conducting an official inquiry into the ways black athletes are treated at Kansas City, Kansas Community College. In addition to the alleged use of racial slurs by the basketball coach, the coach is also charged with providing separate housing for the black and white basketball players who lived in different apartment complexes.

KENTUCKY

A report released by the Kentucky Human Rights Commission showed that the salary gap between male and female State employees is narrowing. The gap between the average salary of men and women working for State agencies fell from \$3,796 to \$3,685 between November 1986 and November 1988. During that period the gap lessened in six cabinets while disparities worsened in 10 others.

MISSOURI

A Missouri group affiliated with the Ku Klux Klan apparently mailed a letter threatening Hispanics who were scheduled to attend a convention in Kansas City, July 15-19, 1989. The letter, delivered to the Guadalupe Center, Inc., stated that members of the Missouri Knights would detain any "obvious aliens" attending the convention. The letter also stated that some people detained would be televised on "Kansas City Cable," a reference to the KKK's First Amendment victory to gain public access to cable television.

OHIO

A Federal jury determined that Stark County court administrators discriminated on the basis of race against a black woman who worked for nine years as a deputy clerk of courts. The complaint alleged that the county administration hired white males and paid them the same salary or more for jobs with less responsibility than her own. She also alleged that five white women were hired and promoted ahead of her, despite her repeated requests for promotion and a record of showing no disciplinary write-ups. The jury ordered the county to pay the complainant damages totaling \$104,237.

A coalition of civil rights groups, community organizations and religious leaders renewed their push to oust Toledo Fire Chief William Winkle and to get city officials to solve racial problems. Members of the Toledo Chapter of the NAACP and various religious, women, and community groups held a rally before attending a city council meeting. Chief Winkle was suspended earlier this year for making alleged sexist remarks

about a female employee, and a report by the city's law department alleges that Winkle praised Adolf Hitler and supported lynching blacks. The Interracial Religious Coalition gave the city council petitions signed by more than 400 people asking that the city investigate Winkle's character, and asked that Toledo officials exercise leadership in eliminating racism in city government and the community.

The Federal Bureau of Investigation will begin a civil rights investigation into the drowning of a black 16-year-old boy suspected of being involved in the theft of soft drinks from a convenience store in Toledo. The FBI is initiating the investigation based on recent articles in the Blade about the drowning of the youth. The investigation will try to determine whether any facts exist that the youth's civil rights were violated.

TENNESSEE

Local NAACP officials have filed a complaint with the regional and national Office for Civil Rights of the U.S. Department of Education charging the Knox County school system with discriminatory practices and policies. The charges concern the school system's hiring practices. Blacks make up 16 percent of the student population but only 7 percent of the professional staff are black. School officials acknowledged that the school system does not have enough minority teachers and that a stronger recruitment effort could be made, but pointed out that school systems across the nation are having problems attracting minorities into the education profession.

WISCONSIN

A lawyer for the Lac du Flambeau Chippewa tribe says tribal members may not be willing to approve the lease of hunting and fishing rights because of hard feelings over violent and anti-treaty rights protests during this spring's spearfishing season. News media reports indicated that the State had offered an estimated \$42 million, 10-year package to the Lac du Flambeau tribe.

REGION III - WESTERN REGIONAL DIVISION

PROJECTS

Casino Employment in Nevada

The draft report is being prepared for publication.

Early Childhood Intervention Programs in Texas

Staff has begun drafting a report of the community forum held in Dallas on May 20, 1989.

English-only Ballot Measure in Colorado

The report was approved by the Commissioners and submitted for final processing.

Hawaiian Homelands: Update

The SAC continues its planning for the second forum on this issue.

Immigration Reform in Arizona: A Preliminary Review

Staff drafting of a summary report continues.

Immigration Reform in California: A Preliminary Review

The report was readied for submission to the Commissioners.

Immigration Reform in Texas: A Preliminary Review

The report was approved by the Commissioners and submitted for final processing.

Immigration Reform and Control Act of 1986: Implementation in Utah

The SAC reviewed the transcript of a community forum held in Salt Lake City on May 18, 1989.

Indian Civil Rights in Oklahoma

The report is being prepared for publication.

Native American Issues in North Dakota

Staff reviewed the transcript of the community forum held this spring.

MONITORING HIGHLIGHTSCALIFORNIA

Although the city of Fremont is recruiting and interviewing minority and female candidates in numbers close to affirmative action goals set by the city council in 1987, they are not being hired. The allegation was made in a report to city officials by affirmative action specialists. Fremont's city employee workforce is: 53.3 percent white male; 22.7 percent white female; 9.42 percent Hispanic male; 4.40 percent Asian male; 3.14 percent Hispanic female; 2.26 percent Asian female; 2.14 percent black male; 1.38 percent black female; 0.63

percent American Indian male; and 0.25 percent American Indian female. A training officer hired in 1988 will begin a program of cultural diversity awareness and an expansion of an internship program initiated in the public works department as a way to recruit minorities.

The California State Attorney General's Commission on Racial, Ethnic, Religious and Minority Violence conducted a hearing in late June to determine if hate violence is increasing and to identify gaps in addressing this problem. According to a February 1989 report from the Los Angeles Human Relations Commission, hate incidents have increased by 20 percent over 1987. The Commission's recommendations will address the effectiveness of laws relating to violence and bigotry.

Since 1986, four lawsuits have been filed against the Alameda Police Department alleging racism. Members of the United Methodist Church have urged the city council to conduct a forum and to set up a citizens police review board to combat alleged racial harassment by police officers. The city councilpersons have agreed that a review of the police department should be undertaken. City officials have determined that a public forum was premature and that the allegations of racism are unfounded. The city council has designated a minority member of the Alameda Police Department to act as an official contact for minority resident allegations of police harassment. It is anticipated that the ombudsman position will help alleviate the community's sense of apprehension and mistrust of the police department.

A steady influx of Southeast Asian refugees into the Lodi Unified School District in California has put the district at a loss for teachers who speak Vietnamese, Cambodian, Laotian and Hmong. The State Department of Education and the Office for Civil Rights, U.S. Department of Education, found the district out of compliance in 7 areas of its limited English classes, including a lack of adequate training programs for bilingual staff, incomplete annual language census reports, and insufficient allocation of resources to provide each non-English speaking student with bilingual learning opportunities. The district is developing a plan to remedy the shortage of bilingual staff.

The San Diego Charter Review Commission has proposed increasing city council seats from eight to ten and creating an independent commission to redraw districts. The Chicano Federation, an umbrella organization for various Hispanic community groups which seek the establishment of 12 council districts, may file a preliminary injunction to halt the September 19 primary election where the public was to vote on the ten district proposal.

OREGON

A Eugene man was convicted of racial intimidation in Lane County for a June 7 incident where a black was verbally and physically assaulted. Under Oregon law, a person is guilty of second-degree intimidation if he or she intentionally subjects another to offensive physical contact because of the other's race, color, religion or national origin. The conviction is the first racial intimidation case to be won at trial in recent history.

TEXAS

A city charter amendment to restructure the Dallas City Council passed on August 12 by a nearly 2-1 margin (41,452 to 20,600). Proponents have alleged that the measure's passage will increase the chances for minorities to win council seats. At present, two blacks serve on the council, which is without a Hispanic member. Three of eleven seats are elected at large. The new plan will have 10 districts plus four overlapping "super districts" elected at large.

U. S. COMMISSION ON CIVIL RIGHTS
COMPLAINT REPORT

CCR Form 120
OFCRE (Dec 81)

REPORTING MONTH: JULY 1989

Total Backlog: (cumulative)* 27

Total new complaints received in month: 117*

Total complaints processed in month: 96

BREAKDOWN OF COMPLAINTS RECEIVED: *

By Subject

Employment	<u>12</u>
Housing	<u>4</u>
Education	<u>3</u>
Federal Programs	<u>0</u>
Administration of Justice	<u>31</u>
Voting	<u>0</u>
Public Accommodaitons	<u>0</u>
Human Rights	<u>1</u>
Other **	<u>49</u>
No Jurisdiction	<u>17</u>

By Basis for Complaint

Race or Ethnic Origin	<u>12</u>
Religion	<u>0</u>
Sex	<u>1</u>
Handicap	<u>4</u>
Age	<u>0</u>
Combined	<u>3</u>
** Other (no Jurisdiction) Incl. inmates & information	<u>91</u>
Unknown	<u>6</u>

*The total number of complaints received in July includes 28 authentic telephone complaints.

**During the month of July, the Commission received six petitions concerning Dr. Elizabeth Morgan, bringing the total to 159. A total of 159 inquiries have been answered.

**U. S. COMMISSION ON CIVIL RIGHTS
COMPLAINT REPORT**

CCR Form 120
OFCRE (Dec 81)

REPORTING MONTH: AUGUST 1989

Total Backlog: (cumulative) 24
 Total new complaints received in month: 142*
 Total complaints processed in month: 114

BREAKDOWN OF COMPLAINTS RECEIVED: *

<u>By Subject</u>	
Employment	<u>21</u>
Housing	<u>6</u>
Education	<u>4</u>
Federal Programs	<u>1</u>
Administration of Justice	<u>49</u>
Voting	<u>0</u>
Public Accomodations	<u>0</u>
Human Rights	<u>0</u>
Other	<u>40</u>
No Jurisdiction	<u>21</u>

<u>By Basis for Complaint</u>	
Race or Ethnic Origin	<u>24</u>
Religion	<u>0</u>
Sex	<u>6</u>
Handicap	<u>8</u>
Age	<u>3</u>
Combined	<u>1</u>
Other (no Jurisdiction)	<u>90</u>
Incl. inmates/Information Unknown	<u>10</u>

*The total number of complaints received in August includes 44 authentic telephone complaints.

**During the month of August, the Commission received two petitions concerning Dr. Elizabeth Morgan, bringing the total to 161. A total of 159 inquiries have been answered.

Operation Rescue - To date, CRE has referred 12 authentic complaints. All have been referred to the Department of Justice. All other correspondence have been forwarded to the CPA unit.

X. Staff Director's Report

A. FOIA Regulations

B. 504 Regulations

(Copy of Regs. sent in earlier mailing)



UNITED STATES
COMMISSION ON
CIVIL RIGHTS


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

September 6, 1989

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: Request of the California Advisory Committee for a
U.S. Department of Justice Review

Attached for your review and action is a request from the California Advisory Committee for the U.S. Department of Justice to investigate allegations of police abuse at the University of California at Berkeley. If the request is approved, a draft letter for the Chairman's signature is attached for your consideration.



MELVIN L. JENKINS
Acting Staff Director

Attachment



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

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

September 1, 1989

MEMORANDUM FOR MELVIN L. JENKINS
Acting Staff Director

SUBJECT: Allegations of Police Abuse at the University

The California Advisory Committee to the United States Commission on Civil Rights convened a public forum in Berkeley on July 18, 1989 to obtain information on issues relating to bigotry and violence based on race, sex, and religion on college campuses. The inquiry was designed not only to elicit information about the causes and extent of prejudice and violence, but also the manner in which higher education systems have addressed such problems. Among those addressing the forum were officials of the University of California, students, civil rights leaders, and other knowledgeable persons.

During the course of the forum, the Advisory Committee received disturbing information concerning an incident which occurred on the University of California at Berkeley campus on July 15-16, 1989. Representatives of the African Students Association alleged police brutality and racism in a disturbance that erupted after a dance on the University of California at Berkeley campus. The dance was sponsored by Alpha Phi Alpha, a black fraternity. According to information reported to the Committee at the forum and subsequent allegations reported to the NAACP, Berkeley city police charged and indiscriminately clubbed fleeing students after University of California at Berkeley campus police had called other law enforcement agencies for assistance in quieting the disturbance which started on campus and later moved into city streets. The students allege that police formed a riot line and charged into the crowd, with batons swinging. They contend that the police ordered students to run and then began chasing and beating them, inflicting serious physical injury to several students. The African Students Association alleges that the excessive force demonstrated by the Berkeley police department exhibited racism in that almost all the students were black. The

organization told the Advisory Committee and Commission staff that they do not believe this reaction by law enforcement authorities would have occurred had the incident involved predominantly non-minority students.

The California Advisory Committee voted on July 18, 1989 to request an investigation by the United States Department of Justice, Civil Rights Division, into the police brutality allegations reported by the African Students Association based on the July 15-16 incident. The Advisory Committee asks that you communicate this request to the United States Commission on Civil Rights.

Staff of the Western Regional Division in Los Angeles met with Ronald Nelson, Chief of Police, City of Berkeley, and Derry Bowles, Chief of Police, University of California at Berkeley, on July 20, 1989. These officials were notified of the Advisory Committee's interest in the allegations of police misconduct and its request for an investigation.

/s/

DEBORAH HESSE, Chairperson
California Advisory Committee



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

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

Honorable Richard Thornburgh
Attorney General
U.S. Department of Justice
10th Street & Constitution Avenue, NW
Washington, D.C. 20530

Dear Attorney General Thornburgh:

The California Advisory Committee to the United States Commission on Civil Rights convened a public forum in Berkeley on July 18, 1989 to obtain information on issues relating to bigotry and violence based on race, sex, and religion on college campuses. The inquiry was designed not only to elicit information about the causes and extent of prejudice and violence, but also the manner in which higher education systems have addressed such problems. Among those addressing the forum were officials of the University of California, students, civil rights leaders, and other knowledgeable persons.

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organization told the Advisory Committee and Commission staff that they do not believe this reaction by law enforcement authorities would have occurred had the incident involved predominantly non-minority students.

The California Advisory Committee voted on July 18, 1989 to request an investigation by the United States Department of Justice, Civil Rights Division, into the police brutality allegations reported by the African Students Association based on the July 15-16 incident. The Advisory Committee communicated this request to the United States Commission on Civil Rights which in turn is hereby requesting that such an investigation be initiated promptly by your department. We would appreciate a full review into the matter with a followup report of the results to the Commission.

Staff of our Western Regional Division in Los Angeles met with Ronald Nelson, Chief of Police, City of Berkeley, and Derry Bowles, Chief of Police, University of California at Berkeley, on July 20, 1989. These officials were notified of the Advisory Committee's interest in the allegations of police misconduct and its request for an investigation.

You are aware that our agency, an independent, bipartisan, factfinding agency established by Congress in 1957 and reestablished in 1983, has no enforcement authority. Furthermore, we have not investigated the specific allegations detailed herein. However, we agree with our California Advisory Committee that they are indeed serious and warrant a full investigation by the United States Department of Justice, and appropriate action if necessary.

We would appreciate your acknowledgement and a timely response.

Sincerely,

For the Commissioners:

WILLIAM B. ALLEN
Chairman

XI. Future Agenda Items

(No writtern material)