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TRANSCRIPT OF PROCEEDINGS

UNITED STATES COMMISSION
ON CIVIL RIGHTS

In the Matter of:

COMMUNITY PERSPECTIVES ON)
THE APPLICATION AND EFFECTIVENESS)
OF THE MASSACHUSETTS CIVIL)
RIGHTS ACT)

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UNITED STATES COMMISSION ON CIVIL RIGHTS
Massachusetts Advisory Committee
Dorothy S. Jones, Vice Chairperson

April 5, 1990 Meeting
J.F.K. Federal Building
Conference Room 1900-A
Cambridge & New Subbdury Streets
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Community Perspectives on the
Application and Effectiveness of the
Massachusetts Civil Rights Act

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P R O C E E D I N G S

OPENING STATEMENT

BY VICE CHAIRPERSON JONES:

1 Good afternoon. My name is Dorothy Jones. I am
 2 the vice chairperson of the Massachusetts Advisory Committee
 3 to the U.S. Commission on Civil Rights. And with me today
 4 are: Philip Perlmutter, Andre Ryerson, Doris Arrington, and
 5 we expect other members of the Advisory Committee to join
 6 us.
 7
 8
 9

10 The 11-member Massachusetts Advisory Committee
 11 consists of residents of different parts of the State who
 12 serve here as 'the eyes and ears' of the eight commissioners
 13 in Washington, D.C.

14 The Commission and its 52 state advisory
 15 committees inquire into issues pertaining to discrimination
 16 or denials of equal protection based on race, color,
 17 religion, gender, age, handicap, national origin, or in the
 18 administration of justice.

19 Our panelists this afternoon have been invited to
 20 share their views on the applicability or effectiveness of
 21 the Massachusetts Civil Rights, known as CRA. As our
 22 panelists know, the Committee held a similar forum two years
 23 ago and later released a summary on Stemming Violence and
 24 Intimidation Through the Massachusetts Civil Rights Act.
 25 That forum and the subsequent report mainly aired the views

1 of state and local public enforcement officials on the
2 purposes and effectiveness of the CRA.

3 To revisit the subject and this time gain the
4 community's perspective, we invited:

5 The Alliance Against Racism and Prejudice
6 The American Jewish Congress
7 The Anti-Defamation League of B'Nai B'Rith
8 The Asian American Resource Workshop
9 El Centro Presente
10 The Dorchester Task Force
11 The Lawyers' Committee for Civil Rights Under Law
12 The Boston Branch of the NAACP
13 The Neighborhood Justice Network
14 and La Oficina Hispana.

15 Among the representatives of those organizations
16 are four attorneys, and so we have arbitrarily divided
17 today's panel into one composed of attorneys, and the other
18 of lay advocates. In this way, if any of the attorneys has
19 noticed a point of law she or he might differ with our
20 panelists of two years ago, we might hear about that
21 difference of opinion at the outset.

22 In any event, we expect that some of you may view
23 the application of the CRA Law or the types of bias-related
24 tensions confronting residents of Massachusetts today, to
25 have possibly changed over the last two years. For example,

1 two years ago, the name Willie Horton was not quite the
2 household word that it has become. And not many might have
3 predicted that the bizarre kind of incident which has come
4 to be known as the Stuart Case, would have grabbed the
5 nation's attention as it did this past year.

6 For such reasons, the Committee is gratified that
7 you have volunteered to offer your views today. Our parent
8 body in Washington has long been interested in legislative
9 approaches to combat bias-related incidents, and we intend
10 to share the results of today's forum in a new report to the
11 Commission.

12 I should add that the press was informed of the
13 forum, and is present, and any members of the audience will
14 have a reasonable opportunity to offer comments as well.

15 The proceedings are being transcribed, and the
16 transcript will be maintained in the offices of our
17 Washington staff in accordance with the privacy act. You,
18 our guest panelists, should know that for access to
19 information provided by you and stored in Washington, you
20 may contact the Commission's solicitor at the address shown
21 on the agenda that you have.

22 Federal Law also requires that all persons
23 refrain from degrading or defaming any individuals when
24 providing information. And if you start to do so, I will
25 just have to stop you. At the same time, all persons

1 presenting information have the right not to be reported or
2 photographed by the media. Should you wish to exercise this
3 right, please let us know so that your request can be
4 accommodated.

5 The State Advisory Committee anticipates issuing
6 a summary report of this forum, to be based on the
7 transcript, supplementary interviews, and any other relevant
8 information now in our staff's files or obtained in the
9 coming weeks.

10 Having stated these requirements, let me welcome
11 our guests and our audience. Would the guests on panel one
12 please take seats.

13 The first four are Sherry Leibowitz, Sally
14 Greenberg, Andrew Leong -- am I pronouncing it correctly?
15 And Christina DeConcini. Correct me if I'm wrong on the
16 pronunciations. I like to get people's names right. Well,
17 why don't you go over and join her here. She is here all by
18 herself. And the other two are not here yet, so what we
19 will do is start with you, and why don't you identify
20 yourselves, by not just title, but your representation, your
21 interest.

22 SALLY GREENBERG: I'm Sally Greenberg here.

23 DOROTHY JONES: Oh.

24 SALLY GREENBERG: So three of us are here.

25 DOROTHY JONES: Join them down there. It will

1 make it easier for him, I think.

2 SALLY GREENBERG: Alright, well -- Philip keeps
3 telling me to see --

4 DOROTHY JONES: I am going to start with Sherry
5 Leibowitz.

6 TESTIMONY

7 BY SHERRY LEIBOWITZ:

8 Thank you. My name is Sherry Leibowitz. I am
9 Director of the Project to Combat Racial Violence at the
10 Lawyers Committee for Civil Rights and Law of the Boston Bar
11 Association. And I would like to thank the Advisory
12 Committee for inviting me, and for including other
13 representative panelists from the community. I found your
14 presentation by law enforcement officials to be quite
15 helpful and informative, and the only comment I had at the
16 time was that some supplementation from the community would
17 be of assistance. And I am delighted to see that you have
18 chosen to do so, and I think your selection of
19 representatives is excellent, and I very much appreciate
20 being invited to attend.

21 I would like to say that as far as the statement
22 of law that was set forth by the law enforcement personnel,
23 the law has largely remained the same, since the
24 presentation of that panel. And I am not going to spend a
25 lot of time restating what was said by the law enforcement

1 people, who justifiably and correctly commended the
2 Massachusetts Civil Rights Act as a very important tool, in
3 the fight against racial violence.

4 I think the merits and benefits of the Civil
5 Rights Act are unquestioned. In the conversations I have
6 had with others locally as well as nationally, the Civil
7 Rights Act seems to be held up as a model of effective law
8 enforcement in the Civil Rights arena, and I would certainly
9 state that that remains the same today.

10 What I am going to address myself to are some of
11 the problems that have arisen in connection with the Act,
12 and I have to emphasize that these are minor problems
13 connected with implementation. The basic concept of the Act
14 is very sound. There have been great strides in the last
15 ten years, in implementing and enforcing the Act, and what I
16 am about to present is really in the nature of issues that
17 would help to increase the enforcement value. And it does
18 not in any way take away from the effectiveness of the Act,
19 or the many contributions the law enforcement personnel have
20 made in it.

21 My perspective partly arises because in my
22 capacity with the Lawyers Committee, I represent victims of
23 racial violence, and I see what may be described as some of
24 the hard cases. Some of the cases that have not been
25 perhaps successfully or easily prosecuted, will present

1 themselves in my office to try to determine if we can help
2 them.

3 I see cases where perhaps there is not just one
4 type of criminal involvement, where perhaps the victim of
5 racial violence is then subject to a cross-complaint, and
6 seeks our representation; where perhaps there are issues
7 involving the Civil Rights actions of the police officers.
8 So what I am describing are, in effect, the hard cases, the
9 complicated cases, the cases which really challenge the
10 effectiveness of the Act.

11 I would first like to indicate that the law
12 enforcement community has made great strides in the last ten
13 years, in implementing a new Act, an Act which, as your
14 previous panelists have pointed out, is on its face,
15 somewhat unclear. And there have been great strides in
16 making law enforcement personnel aware. Nevertheless, at
17 this point, the awareness on the part of police departments
18 is somewhat spotty. You have heard from Sergeant William
19 Johnston of the community, the sortus (ph) unit of the
20 Boston Police Department, who is seen as a national model,
21 and his unit is seen as a national model of effective crime
22 prevention. But around the State, not every department is
23 so lucky as to have a specialized unit, or even an
24 experienced officer, one Civil Rights experienced officer.

25 So we have great variances throughout the state,

1 in how well police officers understand, use, appreciate the
2 Act. We have found in our cases that the response of the
3 responding officer, the initial responding officer, is key
4 to the success of the Civil Rights prosecution.

5 So for an example, a responding officer reports
6 to the scene of a crime -- does not receive any more
7 specific information than that. It's that officer's
8 assessment that is going to largely determine whether
9 evidence will be promptly and effectively gathered and
10 preserved, or whether it will be forever lost. Whether
11 statements will be gathered, which would form the basis for
12 Civil Rights prosecution, and that they might show an intent
13 to violate Civil Rights. We have seen winnable, otherwise
14 winnable cases, lost, merely because the responding officers
15 were not aware of the Civil Rights Act. Did not ask the
16 right questions. Lost evidence. Even if that evidence was
17 subsequently gathered, the prosecution ended up looking like
18 it was a faked case, so to speak. If the initial statements
19 did not include evidence of racial motivation, and then
20 these statements were later discovered in the course of an
21 investigation, it looked like somebody decided to put the
22 victim up to bringing a Civil Rights case; perhaps getting
23 an organization, a public interest organization, advocates
24 like those you hear from today, to spur them on. And the
25 case, which should have been won, would be lost.

1 So it is very important to continue to improve
2 the awareness of police officers. I have noticed that
3 Sergeant Johnston mentions that in 1983, in Boston, even
4 with the awareness that we have in that city, that only 19
5 out of their 452 cases were initially identified as Civil
6 Rights cases. And I think this -- we don't have any
7 comparable figures for other communities, but it wouldn't be
8 too far off to estimate that these might be comparable to
9 other communities that do not have this much sophisticated
10 awareness of the Act.

11 We also need to improve the awareness of
12 prosecutors of the Civil Rights Act. Again, we have heard,
13 through the Advisory Committee's Report, from some of the
14 prosecutors who are, in effect, leading the way, either by
15 their approach, or by the numbers of cases in their office.
16 And throughout the state, again, there is great variability
17 on the awareness of prosecutors.

18 I spoke with a fairly high-ranking Assistant
19 District Attorney in a county which shall remain nameless,
20 and I asked what was happening in Civil Rights prosecution,
21 whether they worked a lot with the Civil Rights Act, and the
22 response, was no. We mainly handle street crime. That
23 response indicated such a profound lack of awareness of what
24 racial incidents were, what the Civil Rights Act was, and
25 what the mission of that office should accomplish, that I

1 was stunned, but I don't think that this is unusual, and
2 that it reflects the variability of priority among
3 prosecutors.

4 I have also heard a comment from another
5 prosecutor who publicly spoke and stated, We engage in
6 selective prosecution, referring to the Mass. Civil Rights
7 Act. I will get more to that in a few moments, but again,
8 the definitions, the concepts, the usage of the Act, vary
9 greatly.

10 I would also point out that there is an enormous
11 need to improve the performance in District Courts, as a
12 vehicle for bringing Civil Rights complaints. Originally,
13 the Lawyers Committee sought to study this matter. We were
14 able to obtain funding for a research at Northeastern
15 University, Professor Jack McDevitt, who did an excellent
16 study of the, basically, the community's minority's unit
17 cases, and the progress of those cases. Civil Rights cases.
18 You might want to speak with him and obtain his study, and
19 his information. But the study that he performed initially
20 began, or at least it was conceived of as a study of the
21 performance of the District Courts in handling Civil Rights
22 cases.

23 As it turned out, that information was not
24 available. The District Courts do not keep records,
25 according to the type of case, of the progress of each case

1 from the time a complaining witness comes into the court, to
2 the end of the case.

3 So, there was really no way of obtaining this
4 data, short of having massive amounts of resources, which we
5 did not have, to go in and do a study of every complaint
6 that was brought into every single court. So what I can
7 tell you is basically anecdotal information. We do not have
8 statistical profiles. But it is anecdotal information,
9 based on the Lawyers Committee's cases and the cases of
10 other advocates who I have talked with. And in a very
11 systematic way, numerous complainants are being discouraged
12 from filing complaints in the District Court under the Mass.
13 Civil Rights Act.

14 When they go in, perhaps they do not know the
15 Civil Rights Act exists. They go in and speak to a court
16 personnel, an assistant clerk. They are not informed of
17 their right to seek a Mass. Civil Rights Act complaint. If
18 they know of it, or they somehow discuss it, they are
19 discouraged, quite often, from seeking complaints under the
20 Civil Rights Act. There is a perception in several
21 communities -- more than several, I am afraid, that it
22 tarnishes the image of the community if there is said to be
23 racial violence. And if there are criminal prosecutions
24 brought under the Civil Rights Act. So, some clerks,
25 apparently, feel that it would be seen as a black mark, a

1 blot upon the community, if there were Civil Rights
2 prosecutions, and for this reason, there is often an attempt
3 to try to dissuade the complaining witness from going
4 forward. So people are discouraged. They are referred to
5 mediation, contrary to their wishes. They are, in effect,
6 made to feel like their cases are not serious, do not
7 deserve the protection of the court.

8 This is a great concern to us, because there are
9 people who do not go to the court system in any other way,
10 other than through the Clerk's Office, through the entry of
11 a criminal complaint, or an application for a criminal
12 complaint. And we have little data to study the extent of
13 the problem, but it is one we have word, state-wide, in a
14 systematic way. And we are very concerned about it.

15 I have actually heard an Assistant District
16 Attorney indicate that his office does outreach, to try to
17 prevent Civil Rights complaints from being issued by court
18 personnel. And I think that this is a serious problem,
19 while it's laudable to try to coordinate Civil Rights
20 prosecutions through the District Attorney's office, it
21 blocks an important access point for citizens to get Civil
22 Rights prosecutions.

23 This gives rise to the issue of selectivity in
24 Civil Rights prosecutions. You've heard much in your
25 previous panel, about the need to give content to what is,

1 on its face, a somewhat ambiguous act. And for those
2 reasons, prosecutors have sought to exercise some discretion
3 in bringing complaints, so that the Act does not lose
4 meaning, so that there aren't too many lost cases, which
5 send out a message that people will, so-called, get off on
6 these charges.

7 The problem with making prosecutions so
8 selective, is that it sends a message to victims that Civil
9 Rights cases are not going to be treated like other serious
10 crimes. Rape cases, for example. Some of them, we know,
11 that there will be an issue of consent defense arising. And
12 the prosecution won't be sure of winning the case, depending
13 on the jury's view of the consent defense. But, you do not
14 find, by and large, many rape cases not being brought in
15 this modern day and age, because there may be an issue of
16 consent. Because there may be a case that is lost. The
17 modern trend for prosecutors is if there is probable cause,
18 if there is legal reason to bring in a case, to bring a
19 charge, they will bring it, and for them to be more
20 selective, to screen out more Civil Rights cases, leads to a
21 perception in the community that prosecution can be
22 arbitrary and random. That it can be governed by political
23 concerns, more than any other concerns. So, this is, again,
24 a concern. Not the kind of message we want to send out.

25 I would like to raise the proposition, suggest

1 the proposition, that after ten years, we can close the so-
2 called experimental stage of the Civil Rights Act, and we
3 can begin to take more risks, and to begin to prosecute more
4 vigorously. I know time is short. I will close with just a
5 few brief remarks.

6 I would point to a need to educate judges. We
7 have seen inconsistent application of the Civil Rights Act.
8 A common misconception. Some judges have refused to issue
9 injunctions where there is a stay-away order in a related
10 criminal case, feeling that these are duplicative, and in
11 fact, they are not. They serve different functions.

12 Injunctions, I would point out, are key to the
13 effectiveness of the Act. There is a need to obtain them
14 promptly, and I would point out -- and here I am going to
15 get to the part that I was asked to discuss specifically.
16 Our work in the Daly case. The Attorney General's office
17 has, by and large, done most of the work on bringing
18 injunctions.

19 Last year, we brought, in the Daly case, an
20 injunction, sought by a private party in a racial violence
21 context. While there have been other uses of the Mass.
22 Civil Rights Act by private parties, to our knowledge, this
23 was the first under the Mass. Civil Rights Act, solely under
24 the Mass. Civil Rights Act, in a racial violence case. And
25 I won't go into the facts, although if the Commission is

1 interested, I would be happy to provide more details on the
2 case. But, we were able to obtain an injunction, by a
3 private party, without going through the Attorney-General's
4 office. I would hope that this procedure would never
5 replace the leadership of the Attorney-General's office in
6 bringing these injunctions. The fact is, they have
7 resources that most private parties and private attorneys do
8 not have. But there have been many cases where it would be
9 valuable to have an injunction brought by a private party.

10 Some victims may be reluctant to work with the
11 Attorney General or other law enforcement. By reasons of
12 geography, people in other parts of the State may not find
13 it as convenient to work with a Boston office. People who
14 have special concerns, for example, the un-documented, may
15 choose to work through a private attorney or a public
16 attorney, rather than to go to law enforcement. Some may
17 prefer their own lawyer.

18 There may be cases where we would want to impose
19 what is, in effect, an additional penalty, by having a
20 private attorney go forward and seek attorney's fees for
21 bringing an injunction.

22 In some cases, there is a need for great speed in
23 bringing an injunction. We may wish to have a case turned
24 around and brought into court in a matter of days. And
25 sometimes this is not always possible within a governmental

1 structure, where approvals must be sought.

2 I would also recommend that there be greater
3 coordination between the Attorney General's office, and the
4 local District Attorney's office. This is another reason
5 why sometimes people may want to have a private attorney,
6 who can in effect serve as a coordinating role, without
7 being a member of either staff.

8 We have seen cases where one or the other, the
9 injunctive or the criminal proceeding, has been
10 unnecessarily derailed, because of lack of coordination.
11 Where, for example, a criminal case is over before the
12 injunction was heard, and so the injunction is considered
13 moot, even though there was a valid reason for the
14 injunction. Or simultaneously, affidavits that were
15 gathered in an injunction case then derail the criminal
16 prosecution, by being used as prior inconsistent statements.
17 So there is a greater need for coordination.

18 My final recommendation is that the Civil Rights
19 Act has been little-used in cases involving suspected abuse
20 by police officers. And this is an untapped resource that
21 we have not seen very much action on the part of any law
22 enforcement or private organization.

23 Again, I would like to thank the Commission for
24 inviting me, and I would be happy to provide any additional
25 information you would request.

1 DOROTHY JONES: Thank you very much. We are
2 going to have some opportunity for discussion after all of
3 the panelists have spoken. Sally Greenberg.

4 TESTIMONY

5 BY SALLY GREENBERG:

6 Thank you. I, too, appreciate the opportunity to
7 be here, and to address some of the issues that we have seen
8 come up around the Mass. Civil Rights Act. I do want to say
9 that I hope that you will seek the views of the Attorney
10 General's office, since they are active, very active in
11 using the civil component, in any event, of the Mass. Civil
12 Rights Act. And I don't see any representatives from the
13 gay or lesbian community here, and they, too, need -- and
14 have used the protections of the Mass. Civil Rights Act, so
15 I think, to complete the picture, it will be important to
16 get the thoughts of both of those representatives.

17 I am an attorney and an advisor to the Eastern
18 States of the Anti-Defamation League, and as such, I have
19 had many opportunities to look at the Mass. Civil Rights
20 Act, and compare it to statutes that exist in other states.
21 Both civil and criminal.

22 I believe that the Mass. Civil Rights Act is
23 unique, from my experience, unique in its breadth and its
24 scope of coverage. Unlike many other statutes that have
25 been adopted in other states to combat hate crime and hate

1 activity, the MCRA doesn't require proof of motive, or proof
2 of intent to deprive anyone else, or anyone of their rights,
3 based on categories like race, religion, ethnic origin, or
4 sexual orientation.

5 Instead, the criminal sections of the MCRA simply
6 require proof that force, or threat of force has been used
7 willfully, to deprive another of his or her Constitutional
8 Rights. It does, this aspect of the law, removes the
9 problem for law enforcement officials, who charge and
10 prosecute under these cases. It removes their need to have
11 to prove the motive. And bias as a motive is very difficult
12 to prove. We have seen that as we have seen these laws
13 enforced, or attempted to be enforced, against perpetrators
14 of hate crimes.

15 Proving bias, for example, may be impossible, if
16 no words are spoken at the time of the incident. If rocks
17 are thrown at the window, for instance, of a Jewish family,
18 the Mass. Civil Rights Act avoids the problem of having to
19 prove that the reason that was done, is because of the
20 religion of that family. I want to talk specifically about
21 a case that I just got information about yesterday. To
22 prove further the whole issue of how one uses the laws we
23 have on the books in Massachusetts.

24 There was a case last summer that got a lot of
25 publicity. It was a case in Wellesley, in which a number of

1 graffiti, anti-semitic graffiti designs were painted both on
2 the Jewish Community Center -- I meant Marblehead.
3 Marblehead. There is also a case in Wellesley, but I am not
4 going to refer to that today.

5 In the Marblehead case, both the Jewish Community
6 Center and the synagogue in Marblehead were defaced with
7 anti-semitic graffiti, including the words, Die, Jew,
8 Mengola, swastikas, etc., on both buildings. I just had a
9 conversation with the prosecutor on that case. They were
10 not able to use the MCRA, because in that instance, there
11 was no force or threat of force they believed they could
12 show, as part of the evidence.

13 And that of course presents a problem. They were
14 able, because we in Massachusetts do have a panoply of laws
15 to cover these issues, they were able to use the statute
16 that is based -- I will say, probably on the ADL model, 265
17 39, which basically says, whoever commits an assault or
18 battery upon a person or damages the real or personal
19 property of another, for the purpose of intimidation. In
20 that instance, they were able to prove that the purpose was
21 intimidation of another, because of that person's religion.
22 So in this instance, we see that the Mass. Civil Rights Act
23 is not usable. And I think that that's an issue that we
24 might want to take up, or you might want to take up, as we
25 look further down the road, to see how we could improve the

1 protections that are out there, for people who are often
2 targeted by these incidents.

3 Whenever I get a call about an incident that
4 takes place, the first thing I do is look at the facts of
5 the incident. Apply them to the elements of one of the
6 three or four statutes that we have in Massachusetts,
7 including the MCRA, the Ethnic Intimidation Statute, or the
8 Institutional Vandalism Statute.

9 The next step I take is to call the Police
10 Department and the District Attorney's office, to indicate
11 the ADL's interest in seeing the crime charged as a Civil
12 Rights violation. As I said earlier, benefits to using the
13 MCRA include its breadth of coverage, and the absence of the
14 need to prove motive. However, in the case of the swastika
15 on a synagogue, as I said, we do find a weakness there.
16 Again, we have a law that specifically addresses the
17 defacement of religious property in this State, but in other
18 places, that may not be the case. I mean, we may want to
19 look to the MCRA to see if we can improve it or close up
20 what I see is a loop-hole and perhaps a weakness.

21 As Sherry Leibowitz just recounted, and Sherry
22 and I certainly agree on this point, many police departments
23 we find, are not familiar with the Mass. Civil Rights Act.
24 I strongly endorse the practice which was reiterated in the
25 report that was put out several years ago, the practice of

1 having an officer in every department who knows about the
2 Mass. Civil Rights Act, and who is assigned to deal with
3 such cases. When these cases arises in their departments.

4 When they are not, the District Attorney's office
5 is the place where I go, to make sure that these cases don't
6 fall through the cracks. And that of course doesn't always
7 work, as Sherry noted. Sometimes the District Attorney's
8 office is working against us. But, in general, I have found
9 that the D.A.'s office can be very useful. Let me read to
10 you something, a letter that was sent to a newspaper editor,
11 when the newspaper printed a story about how the police
12 chief had discovered the perpetrators of a number of hate,
13 actually hate, anti-semitic incidents in a town, a suburb
14 north of Boston. And unfortunately, the police chief told
15 the newspaper, that although they had committed Civil Rights
16 violations, he wasn't charging them with anything. And, he
17 was going to put them through a -- this is the police chief
18 who was quoted in the newspaper. And he was going to put
19 them through his own version of retraining, on Civil Rights
20 issues.

21 Here we have an instance in which we have the
22 law, which all of us worked very hard to get on the books
23 and to enforce, and to see it enforced, and a police chief,
24 literally telling us, and telling members of the public,
25 that he wasn't going to use it, and wasn't going to enforce

1 it for the very purpose in which it was enacted.

2 The letter I have in front of me, is a letter
3 that was sent to the newspaper, and it says, In the opinion
4 of the District Attorney's office, these acts constitute
5 more than simple vandalism, and this office will work with
6 the chief -- and I won't use his name -- to determine
7 appropriate penalties and counselling needs. It is our
8 intention to ensure that the offenders understand the
9 consequences and impact of their anti-semitic behavior.
10 Acts of anti-semitism, racism, and other Civil Rights
11 violations brought to our attention, have been, and will
12 continue to be, treated as priorities.

13 So we have a stop-gap measure there that
14 sometimes works, not always. But in this case, the District
15 Attorney's office said to the Chief of Police, you must send
16 us all of the evidence that you have, and we will make the
17 decision.

18 In conjunction with the criminal component of the
19 Mass. Civil Rights Act, its civil component is a valuable
20 yet under-utilized tool in my view. Once again, there is a
21 lack of familiarity with the civil portion of Mass. Civil
22 Rights among police officers. I have often sat on panels in
23 which police officers said, oh, we didn't know we had the
24 opportunity, or we could make use of the civil component of
25 the Mass. Civil Rights Act, or working through the Attorney

1 General's office, to place an injunction on perpetrators of
2 hate crimes.

3 The Attorney General of the Commonwealth, as well
4 as private parties, can bring an injunction, of course,
5 against alleged perpetrators, to keep them away from the
6 victims. And if the perpetrator violates the injunction, he
7 or she may be in contempt of court, and would go to jail,
8 then. These injunctive powers, as I said, are under-
9 utilized because of, in my view, one of three reasons. The
10 police officers often lack knowledge that they are
11 available, as I said. There is a lack of cooperation,
12 perhaps due to politics, between the District Attorney's
13 Office and the Attorney General's Office. And there is a
14 lack of communication between police departments and the
15 Attorney General's Office, in my view, once again.

16 Injunctions, of course, are often ideal.
17 Particularly in harassment situations, and I might add that
18 as we have this discussion here, the Attorney General's
19 Office is being challenged right now in one case, in which
20 it obtained a Civil Rights injunction. And the case I am
21 referring to is the Wellesley case -- I am going to mention
22 it, after all -- in which two young men committed 25
23 separate acts of anti-semitic and racist graffiti, in the
24 City of Wellesley and Andover, over the High Holidays last
25 year.

1 Included in their graffiti were the phrases, I
2 hate Greeks and Fuck Greeks, on the driveway of a man of
3 Greek ancestry. They painted a swastika and America Rules
4 on the garage door of a Jewish family, and wrote, SS, Adolf
5 Lives and No Niggers, in front of a shopping center.

6 The defendant in this case, challenging the
7 Attorney General's right to bring an injunction against him,
8 is arguing before the Appeals Court, that his actions did
9 not constitute threats, intimidation or coercion, as
10 required under the MCRA, in order to obtain a civil
11 injunction. The defendant is basing his arguments on the
12 affidavits of the victims, which, while indicating surprise,
13 shock and upset on the part of the victims, never mentions
14 the words in the Statute: threatens, intimidates or
15 coerced.

16 Further, the defendant is arguing that an
17 injunction requires proof of likelihood of irreparable harm,
18 and he says that after the Wellesley incidents, there was no
19 substantial risk that he or his co-defendants, might repeat
20 these acts.

21 Now, we expect to file an Amicus Brief, arguing
22 that this spree in Wellesley, had the effect of intimidating
23 the specific victims, as well as the larger Jewish
24 community, and the community as a whole.

25 Finally, let me close my remarks by suggesting

1 that, as a supplement to the Mass. Civil Rights Act, we need
2 a hate crimes reporting statute. The Greater Boston Civil
3 Rights Coalition's Subcommittee on Administration of
4 Justice, which Sherry Leibowitz chaired, has been very
5 active in promoting and trying to see that this statute is
6 passed. Not having broad-scale knowlege of the number of
7 incidents that are happening, where they are happening --
8 and I am talking about hate incidents -- puts us at a
9 distinct disadvantage.

10 There has also been an effort to distribute to
11 all police departments, hate crime reporting forms, by these
12 -- the crime reporting unit. And those forms are starting
13 to come into the crime reporting units, state-wide, and they
14 will provide us with an extra tool, in order to target our
15 efforts at hate crime.

16 Let me just summarize by saying that I strongly
17 believe that the MCRA gives us a unique formula for
18 providing civil and criminal remedies to hate crime victims.
19 It is a valuable statute which I believe should be adopted
20 in other states, to complement the statutes that we have
21 here in Massachusetts. The MCRA is under-utilized, both
22 because of the lack of familiarity with it, and because of
23 deficient communications between local and state law
24 enforcement officials.

25 And finally, the Mass. Civil Rights Act hasn't

1 been tested fully, as we know from the current challenge by
2 the defendant in Wellesley. Only after like suits like
3 this, will we further understand its value and efficacy.

4 Thank you once again for the opportunity to
5 testify before you today.

6 DOROTHY JONES: Mr. -- and you will have to tell
7 me if I am pronouncing it correctly. Leong?

8 ANDREW LEONG: Leong.

9 DOROTHY JONES: Thank you. Identify yourself,
10 please.

11 TESTIMONY

12 BY ANDREW LEONG:

13 My name is Andrew Leong, and I am an attorney
14 with the Greater Boston Legal Services. I am also a board
15 member of the Asian American Resource Workshop.

16 Since Sally and Sherry have done such a fantastic
17 job already, describing all the problems with the CRA, or
18 the things that need to be done with the MCRA, I am going to
19 try to provide a different perspective. And from my
20 perspective, the main scope is that of education. In that,
21 no matter how good a Civil Rights Statute we have, whether
22 it's a Federal one or it's a State one, no matter how good
23 it is, if we do not have effective education -- and when I
24 say education, I mean to all of the different groups that
25 have already been mentioned: to the judiciary, to the law

1 enforcement officials; whether we are talking about the
2 D.A., AG's Office, or police -- and most importantly, to the
3 victims. And also, to some extent, the potential
4 perpetrators. Okay.

5 I think education goes a tremendously long way to
6 effectuate the Civil Rights Act. No matter, you know, what
7 laws we may have on the books. It is only good to the
8 extent that people are aware of the law, and then make use
9 of the law.

10 This is especially true with the community that
11 we comprise, which is the linguistic minority, the first-
12 generation immigrant community. When you are talking about
13 an Asian community, you are usually talking about a
14 situation where we grew up with a confusing way of thinking,
15 that so long as you do good, you don't harm anybody, you are
16 going to get to where you are going. You are going to be
17 successful.

18 Unfortunately, when we come over to the United
19 States, we face racism. And we face it on a day-to-day
20 basis. Even though the statistics may not attest to such,
21 and all law enforcement officials that I've spoken to say
22 the same thing, that for every one case that is reported,
23 they could tell me that 5 to 10 go unreported. So even
24 though in Massachusetts we see just alone for the Boston
25 Police Department, the CDU, the Community Disorders Unit,

1 there is a statistic of Civil Rights violation -- and you
2 can see the direct correlation of increased violation of
3 Civil Rights, as far back as they have logged such
4 statistics, starting about 1982 -- it's been a straight line
5 upwards.

6 But at the same time, we are faced with increased
7 immigration on a day-to-day basis. Our population is ever-
8 increasing, and so I would stress tremendously that
9 education, education and education in the school system, in
10 the judiciary, in the law enforcement community in terms of
11 sensitivity training, that all of us, we need to be aware of
12 the Statute, and aware of the laws that can possibly
13 decrease -- if not decrease, at least enforce Civil Rights
14 violation.

15 I have much trouble getting across to victims of
16 Civil Rights violation, to say, come out. Come forward.
17 Testify. Go to court. File the complaint. Why? Because
18 we are stuck with this confusing theory that, you know, I am
19 not supposed to be pushing around. I am not supposed to be
20 picky.

21 We have to educate our community to the extent
22 that they do come forward to report these violations. And
23 then once they actually get to that standpoint, we have to
24 be able to provide assistance. And I know that the law
25 enforcement community, they are short of funding right now.

1 And that's why we need to really have strong coalition
2 amongst community groups. To provide the assistance that is
3 necessary. There is much assistance that can be provided
4 beyond the interpretation, the translators, that the
5 community agencies can provide to the law enforcement
6 community.

7 Much education can be done to victims, about the
8 judicial system in the United States. We come from a
9 society that does not have a system where it is an
10 adversarial system. Where you can -- on direct examination,
11 you are not supposed to lead the victim on the victim's
12 story. But, when it comes to a cross-examination, you can
13 call the victim a liar, everything that you want to.

14 My clients, you know, the victims, they are
15 afraid of this, obviously, and we need to educate them,
16 insofar as what is going to happen, once you get into that
17 courtroom. So that there will be no surprises. So, a lot
18 of assistance can come from the community.

19 This educational aspect, I would say, goes a long
20 way, also, in terms of a deterrence. And I don't see much
21 has been done in terms of educating the school system,
22 principals, about the Civil Rights Act. Yes, there are many
23 incidents that occur in the school system, in grade school
24 and high school, but a lot of it will -- the principals
25 don't want to highlight these incidents. They will say,

1 these are simply just kids that are fighting.

2 And regardless of what type of incident that
3 comes out, they will eventually be calling each other names,
4 because that's the way kids are. And that's the way adults
5 are, right? If you call me a Chink, I will call you Honkie.
6 I will call you a Nigger right back. That's the way of
7 human nature. And so, we have to be able to educate our
8 youths, to the extent that, hey, there are laws out there,
9 and if you are going to violate a crime, not just
10 participate in a crime, but participate in a crime in terms
11 of having a Civil Rights violation, there are going to be
12 serious ramifications for you.

13 And one last thing that I want to mention, in
14 terms of educating our community, is there are many
15 different concepts in the American Judiciary. This case
16 down in North Carolina I want to mention, even though it is
17 not a Massachusetts case. The North Carolina case of the
18 Ming Hi Lo case. The Jim Lu case. The defendant was just
19 convicted about a week or two ago, of second degree murder,
20 because this incident occurred where the victim was looked
21 upon as a Vietnamese-American. And the defendant said, my
22 brothers fought against Viet Nam, and they never came back
23 alive to the United States. And I don't want you Vietnamese
24 to be living in our Country, in our city.

25 So, Jim Lu died as a result of that. This case

1 was not tried as a Civil Rights violation, by the way. It
2 was tried only in the normal assault and battery with a
3 dangerous weapon type of a case. They are now going to seek
4 a Civil Rights violation on this. But what I am trying to
5 say is that, even though the man was convicted of a second-
6 degree murder, and is supposed to get a 37-year sentence,
7 all of a sudden, we hear in the community that, wait a
8 minute. If he serves his time, good behavior, he may be out
9 in four -- or five years. So, what the hell am I going to
10 say to my clients? To my victims. To my people that I am
11 trying to help out that, even though we are going to get a
12 full sentence, they may not serve this 37 years. If they
13 are lucky, if they are good, they will serve the two, three,
14 four, five years, and they'll be out to do the same thing
15 again.

16 So, in this regard, I don't know what to say,
17 okay? Whether you want to build more jails to house
18 criminals, or whether you want to really sensitize judges,
19 not just as to Civil Rights Statutes, but also the day-to-
20 day laws that we have on the books today. That, one, it is
21 very difficult enough to get victims out to testify.
22 Please, please, please, do whatever you can to provide
23 justice to the victims. To make sure that, you know, if
24 they don't understand plea bargaining, make sure they
25 understand at least half-way what this concept is, so that

1 they are not going to be going back to their own community
2 to say, look what happened to me. I came out to the system.
3 I did everything for the system. I participated in this
4 trial, and what's going to happen? He's not going to serve
5 his full sentence, while my son is dead.

6 So, I would say, education. I would have to
7 stress that. Thank you very much.

8 DOROTHY JONES: Thank you. Miss DeConcini.

9 TESTIMONY

10 BY CHRISTINA DECONCINI:

11 Yes. Hi. I also want to thank your for inviting
12 me here today. My name is Christina DeConcini, and I am an
13 attorney at Centro Presente, which is a non-profit, multi-
14 service organization that works with refugees from Central
15 America. And the population that I am here to represent is
16 very, very unique, in the fact that it is almost completely
17 an undocumented population. And so, the relation that this
18 population has to the Massachusetts Civil Rights Act is
19 virtually none. Because of their status -- and they have
20 good reason to fear for not coming forward with, and
21 describing acts of violence and racial discrimination that
22 happen to them on a daily basis, based on their status.

23 And Francisco Navarro, from La Oficina Hispana is
24 going to speak later, I think, more on the details of bias
25 and discrimination in housing, on the streets, etc., towards

1 this population. But I think that it's very important to
2 understand the context in which this population exists,
3 because it is a large population. There's at least 30,000
4 Central American refugees in the Greater Boston Area alone.

5 And when I mentioned that I want to put it in
6 context, I think it is important to understand the Federal
7 rights, and Federal Civil Rights violations that these
8 people are subjected to, on an ongoing basis, which is why
9 they are undocumented here.

10 I, as an attorney, represent these refugees who
11 are afraid to return to their home country because they are
12 afraid they are going to be persecuted in their home country on
13 account of race, religion, nationality, membership in social
14 groups, or political opinion. And the Federal law on that
15 is called the 1980 Refugee Act, and it is a humane and
16 ideologically neutral law on its face, providing safe haven
17 in the form of political asylum for a person who is fleeing
18 persecution. However, its applicability is what is truly a
19 Civil Rights violation on the Central American population,
20 as well as others.

21 The application of the law is completely
22 nationally-biased and discriminatorily (sic) across the
23 board, the way it's applied. A person fleeing persecution
24 in a country that the United States State Department has
25 deemed a friendly country, such as El Salvador, where the

1 U.S. Government funds them at one point, \$5 million a day.
2 A person from El Salvador has virtually a 3% chance of
3 getting asylum in the United States. While a person from an
4 enemy or communist, quote, unquote, country has a much
5 higher one.

6 So it is within that context -- and this has also
7 been statistically proven, again and again and again. The
8 G.A.O. has done a study that showed refugees who cited
9 torture as the cause for their requesting safety in the form
10 of political asylum here in the United States. Polish
11 people who cited torture as the reason why they wanted
12 political asylum, 80% of them got political asylum, and of
13 El Salvadorans who cited torture as the cause for their
14 request for political asylum, 4% got asylum.

15 So, it is within that background, and within that
16 context, that I think it is very important to understand why
17 it is that this population, who also suffers on a daily
18 basis, racial discrimination and violence is very afraid to
19 come forward. And in Massachusetts, which you are probably
20 aware of, there's a Governor's Executive Order 257, which
21 basically outlines the refugee policy for the State of
22 Massachusetts. This Executive Order recognizes the
23 contributions that refugees have made to the Commonwealth
24 throughout the years, and also, states its willingness to
25 provide a safe haven in the Commonwealth for refugees.

1 And the most important part of this Governor's
2 Executive Order is the non-discriminatory clause. And that
3 specifically states that no State agency can deny State
4 services to a person, based on their immigration status, or
5 lack thereof. And I think that the main thing that I want
6 to stress today is that when you institutionalize racial
7 violence, I think it is a far more dangerous thing than when
8 it is on a case-by-case basis, and this non-discrimination
9 section of the Governor's Executive Order is currently under
10 severe attack, right now, at the State House by several
11 Bills pending, that would basically overturn and undo it.
12 And by doing that, you virtually are not only legalizing
13 discrimination, but telling State agencies delivering State
14 services, that they cannot deliver these to people, unless
15 the person can show that they have documented status.

16 And in terms of Civil Rights, I think that is a
17 very dangerous thing, because this population that is afraid
18 to be deported to a country where they might be killed or
19 persecuted, is going to be ever so more afraid, if in order
20 to call the police, or in order to visit a District Attorney
21 in the office, the District Attorney is going to have the
22 law on his or her side to say, what's your immigration
23 status? And, possibly, turn them over to the I.N.S., as a
24 result of that.

25 So, I think that this community -- it has been

1 called before -- that this is a community, the Central
2 American community here, is one which lives in the shadows.
3 And I think that is very, very true, on a variety of levels,
4 and I am very frightened by the possibility of further
5 institutionalizing and systemizing Civil Rights violations
6 against this population, which basically has the end result
7 of further silencing an already extremely afraid population.

8 So, in conclusion, I would like to encourage the
9 Committee to look at the enormous contributions that the
10 refugees and immigrants have made to the Commonwealth of
11 Massachusetts, and to place as a priority, protecting this
12 very, very vulnerable population, who is -- their
13 vulnerability stems primarily and basically, because of
14 their undocumented status. And again, I would like to thank
15 you for having me here today.

16 DOROTHY JONES: Thank you. Before I open up for
17 questions from everyone, the members of the panel may want
18 to speak directly to each other. I give you that
19 opportunity first. Any of you want to say anything to any
20 of your colleagues there? You've talked too much already,
21 right? Alright, then. Are there questions and comments by
22 anyone else present, for the panel?

23 QUESTIONS AND CROSS-DISCUSSION

24 PHILIP PERLMUTTER: I want to ask a couple of
25 questions.

1 DOROTHY JONES: Phil Perlmutter, who is our
2 former chairperson.

3 PHILIP PERLMUTTER: One is really to all three of
4 you. How many cases of violations are not recorded? And
5 give me some flavor of what you mean by unreported cases.
6 The other question is one that has always bothered me. When
7 you're successful -- I am not talking about murder. Let's
8 talk about the Wellesley case. What punishment do I give an
9 8-year old kid? Do we go back, which personally I have
10 advocated, to the stocks of Colonial days? What do we do?
11 What do we do with a 14-year old? Do I put him in jail? Do
12 I -- for a week, a month -- or give him a human relations
13 course of some kind? In other words, what is the
14 punishment, for many of these cases of bad-mouthing?

15 And the only thing I say to make it even more
16 complex, what happens when it's one minority does it to
17 another? And I am talking the Vietnamese-Chinese versus the
18 Vietnamese? I am talking about blacks and Koreans. What is
19 the punishment -- I am not talking about murder, beating up
20 -- because I happen to be a hard-line. But what do we do
21 with kids?

22 The first one is, how it's -- you know, is there
23 a large number of cases that are not reported, and what are
24 they like.

25 SALLY GREENBERG: Well, let me speak to that,

1 please. As anybody knows, when we go out and speak to
2 various groups, minority groups in the community, there are
3 people who come forward, invariably, and say, you know, the
4 other day I was -- my son was in class, and another kid
5 called him a Kike or a Wop, or whatever. Typically, that
6 kind of case, doesn't get reported. I am positive --

7 PHILIP PERLMUTTER: Should it be reported?

8 SALLY GREENBERG: Definitely. I mean, I think --

9 PHILIP PERLMUTTER: Okay. That's what I want to
10 know.

11 SALLY GREENBERG: I think that's what we have
12 laws for. We have laws to deal with that. That's why we
13 have education programs. That's why the Boston Police
14 Department developed the film in conjunction with the ADL
15 and others, called Civil Rights and Civil Wrongs, to show --
16 and what Andrew said is absolutely correct. The education
17 around these hate crime laws is nil, as far as I can tell.
18 In terms of what is taught in the junior high school, where
19 a lot of these cases -- where a lot of these kids actually
20 pick up, or begin to reinforce their bigoted ideas. So I
21 say, without question, the number of incidents that are
22 actually reported to those of us who take these kind of
23 incidents in, are a very small percentage of what is
24 actually happening out there.

25 Let me just put in my two cents' worth on the

1 issue of, what do you do in this instance. In the
2 Marblehead case that I described in my more formal remarks,
3 the judge sentenced a -- I think it was a 14 or 15-year old
4 kid, to a combination of -- and this is where the judges can
5 get creative, with the right judicial attitude, and the
6 right judicial training -- restitution of something like
7 \$660 for the damage to the synagogue, which he had to split
8 with two other defendants, because the total amount was
9 \$2000. Probation. Again, these are juvenile cases. You
10 can't put these kids in jail. And so, therefore we have to
11 come up with creative remedies. And they're out there.

12 He also sentenced him to work in a battered -- I
13 believe a battered women's shelter, or a homeless shelter.
14 And also, to do some work for the Jewish Community Center
15 out there, in which he did the damage. And there were
16 several other components to the sentence. And if we really
17 want to treat the -- not just the end result, but also the
18 symptoms of these kinds of incidents, and the problems that
19 we see arising out of them, we really have to be creative
20 and I think we are lucky enough to have some judges who are
21 willing to go that extra distance, and to try to formulate a
22 remedy. But it takes some work, and I think we shouldn't
23 throw up our hands and say, well, what can you do with a
24 juvenile? You know, you can't put him in jail, therefore
25 you know, you slap him on the wrist and send along. There

1 are some very valuable re-education kinds of programs.

2 PHILIP PERLMUTTER: Have their punishments been
3 codified? That's what I am really getting to. And what are
4 your suggestions if --

5 SALLY GREENBERG: This sort of punishment?

6 PHILIP PERLMUTTER: The example you gave us
7 depends upon the creativity of the judge.

8 SALLY GREENBERG: That's right.

9 PHILIP PERLMUTTER: Another judge may do
10 something else. Are you recommending a series of clear
11 punishments, other than, we hope the judge is a creative
12 judge?

13 SALLY GREENBERG: I don't believe this can be
14 done through codification of laws. I do think that there
15 can be -- there are forums for discussing this sort of
16 thing. Judges have organizations and meetings, in which
17 they discuss this very sort of thing, and I think that's the
18 place where we would have to go. And I see nothing wrong
19 with the Commission making recommendations to that effect.

20 PHILIP PERLMUTTER: That's a good point.

21 SHERRY LEIBOWITZ: I think here we get into
22 general concerns about the limits of the criminal justice
23 system, and you get into theories of punishment, deterrents,
24 rehabilitation and so on. To address your questions one by
25 one, I don't know any way of giving you the numbers of

1 unreported cases. I think all of us who work in this area,
2 know that they are numerous. This is, by the way, also true
3 of other types of crimes. It is understood that only a
4 fraction are reported. But I think it is more true --

5 PHILIP PERLMUTTER: Except for murder and those
6 that go to outright attacks. I mean --

7 SHERRY LEIBOWITZ: Even some physical attacks are
8 considered to be unreported. But murder we usually pick up.
9 I think we would agree on that.

10 SALLY GREENBERG: Not because the people want
11 them; the victim has reported it to us, right?

12 SHERRY LEIBOWITZ: That's right. But, I think
13 there are other concerns with the Civil Rights Act that will
14 lead to under-reporting. The issue of the undocumented is a
15 very major problem -- that there really is no effective
16 means of redress for the undocumented, with the current
17 state of protections.

18 There are cultural issues involved. Some
19 communities have a cultural preference to try to work things
20 out, within the community, within person-to-person, rather
21 than resorting to the law enforcement system. There are
22 similar issues involving some immigrant and refugee groups,
23 where again, their culture dictates that the law enforcement
24 system is not to be used as a first resort.

25 So I think all of us feel that there are numerous

1 unreported cases. One of the issues in the Hate Crimes
2 Reporting Act, which Sally Greenberg mentioned -- and I
3 should mention, she has been one of the most active
4 proponents of that Act in her capacity through the ADL as
5 well as through the Civil Rights Coalition. But one of the
6 ideas behind the Civil Rights Coalition's Hate Crimes
7 Reporting Act -- which, by the way, is now pending before
8 the legislature -- is to try to get a sense of how many
9 cases might be unreported.

10 We will be able to determine that indirectly,
11 because the criminal justice system will be able to report
12 hate crimes, through a central State repository. And
13 community organizations, individuals and others, will be
14 able to report crimes or hate incidents, which don't rise to
15 the level of crimes.

16 We will be able to compare, if, for example, one
17 community has a plethora of incidents reported, and crimes
18 reported by non-law enforcement personnel, and no reporting
19 by the police. That will give us some indication that the
20 system is not responding to those incidents. So I am hoping
21 that the Act will pass, that we will have some information
22 for you in the future.

23 As far as what punishment to give the 14-year old
24 or the 8-year old. Again, you are dealing with the limits
25 of what the criminal justice system can impose. The legal

1 answer is, any sentence can be imposed, up to the statutory
2 maximum. For a juvenile case, that is usually a commitment
3 to the Department of Youth Services, until the person
4 achieves the age of majority. Beyond that you come up with
5 what Sally has referred to as the creative types of
6 sentences.

7 And again, we have seen these. Restitution is
8 common, certainly in cases our office works in. We do make
9 that a priority of demanding restitution for the victim.
10 Other kinds of community service are possible. It is very
11 ironic that several years ago, there was a movement in this
12 community to have some sort of alternative mechanism. Some
13 sort of a treatment program for racial violence offenders.
14 And my understanding is that this was knocked out. It never
15 came to fruition, because there was some concern in the law
16 enforcement community, that this would become, not only the
17 alternative, or the supplementary punishment, but the only
18 punishment. That racial violence cases would routinely be
19 referred to probation or treatment or counselling. Treated
20 as a mental health issue, exclusively, and not a criminal
21 justice issue.

22 I think many of those concerns are valid, but it
23 seems to me there is a role for both approaches. If
24 incarceration is in order, it should be meted out. But when
25 the person finishes incarceration, they might benefit from

1 some sort of a program in the community. For example -- and
2 again, this might be something that the Advisory Committee
3 could look into.

4 I have had judges ask, what can be done? What
5 other programs are available? And they are very few in
6 number. For young kids, there are, you know, community
7 programs. You know, inter-racial groups. But it's hard,
8 where you have a group of kids that are working together,
9 numerous races and backgrounds, to then put an offender in
10 and ask that the youngsters cure him, in effect. Or cure
11 her. So I think this is an important issue.

12 What happens when one minority attacks another?
13 My colleagues on Lawyers Committees in other communities
14 have mentioned this to me, particularly those in California.
15 I know it has happened. I will say, it does not happen
16 often, so far, in this community, and I think we are all
17 grateful for that. At least, those of us who want
18 communities of color, other minorities, to work together,
19 rather than work at odds.

20 There are a few cases where this has occurred.
21 The files of the Community Disorders Unit do disclose there
22 are a few cases. They are in the distinct minority, so far.

23 ANDREW LEONG: I just want to mention real quick,
24 in terms of the creative type of punishments, I think we
25 need much more to publicize those type of creative

1 punishments. Not enough judges understand or know about
2 such alternative means both for punishing or teaching these
3 young perpetrators of these really violent and racial types
4 of crimes.

5 And I am not advocating that for all those types
6 of instances, we have to put these 8-year old kids -- let
7 them stay behind school, you know, for an extra hour
8 detention, you know, that type of a thing. I think we have
9 to be flexible. To learn a little bit about why. You know,
10 do we know why this particular youth did the thing that he
11 or she did? And be flexible enough to come up with
12 alternative, creative methods of punishment, or whatever the
13 right word may be.

14 In terms of the issue of one minority group
15 versus another group. Again, education. This thing, you
16 know, is happening in Queens, in New York right now, between
17 Blacks and Koreans. The whole image that Spike Lee
18 portrayed in this movie. There is nothing that I can say
19 but education between the different cultures. Between the
20 different groups. To let both sides understand, you know,
21 that, yes, both of us, we're minorities. Both of us, we're
22 in the same game together.

23 It's not because, you know -- if I really had
24 money, do you think I would be in the black ghetto,
25 operating a fruit stand? No. It's because I am also an

1 immigrant, you know, we are in this same rotten boat
2 together, and we have to be able to work together instead of
3 fighting each other. And I'm not saying that this is only
4 because of black violence towards Korean. The Korean,
5 Asian-American groups, we also have to learn from black
6 Americans. We also have to coalesce together, in that one
7 fruit basket.

8 Insofar as under-reporting goes, you know, the
9 advocates at this particular table can tell you, on a day-
10 to-day basis, there are people that we see, that we talk to
11 on the telephone, that will call up and ask, I have this
12 particular incident that occurred to me. What can I do?

13 I have a lot of victims that will call up and
14 say, what should I do? Isn't there something that can be
15 done? If not victims, then relatives. Friends of victims,
16 that see such injustice going unreported. And I would say
17 that I have heck of a time, trying to persuade most of these
18 people to come forward, because of all the language
19 barriers. Because of these cultural barriers, that we deal
20 with on a day-to-day basis. And with that, unless we have
21 more resources I am not sure that we can adequately address
22 the under-reporting aspect of it.

23 CHRISTINA DECONCINI: I just want to emphasize
24 again, that the Act is very good to serve many populations,
25 but I really don't think I have met a Central American

1 refugee yet, who would ever consider coming forward under
2 this Act, because the majority that I know, won't report
3 violent crimes that happen to them, or call the police, when
4 people are breaking into their house, or other things like
5 that, for fear of being turned over by the D.A.'s office,
6 by the police or something like that. And I think that that
7 is, again, like I say, very systemized, institutionalized,
8 Civil Rights violations being perpetrated on this refugee
9 population.

10 DOROTHY JONES: And of course, it is not just
11 undocumented persons who are afraid of authority, but people
12 who have had negative experiences at home, with official
13 authority, who are reluctant to step forward and put
14 themselves at the mercy of them now.

15 ANDREW LEONG: Yes. And many of our communities,
16 the immigrant communities, we are dealing with situations
17 where police forces are on the other side. Where they're on
18 the payroll, right? So we don't, unless we do a little
19 under-the-table thing, we're not going to get our justice.

20 DOROTHY JONES: I want to watch the time. We
21 have 15 minutes for the rest of this discussion.

22 FAITH WALKER: I have two questions.

23 DOROTHY JONES: Would you identify yourself for
24 the record, please?

25 FAITH WALKER: Okay. My name is Faith Walker,

1 and I am with the Dorchester Task Force. On the issue of
2 creative sentencing for juveniles, isn't there also a
3 possibility in that situation, of bias coming into play in
4 terms of what type of sentence the judge --

5 PHILIP PERLMUTTER: What do you mean by that? I
6 think I know what you mean, but I want to hear it in plain
7 English.

8 FAITH WALKER: Okay, would not the bias of the
9 judge come across, when he is allowed the room to come up
10 with some form of creative sentencing?

11 ANDREW LEONG: Obviously, I mean, you know -- in
12 this particular type of scenario, you may get defendants
13 winding up doing community service, and the community
14 service be teaching tennis to underprivileged youths. I've
15 heard this time and time over again. But, again, I would
16 hate to see that we have any type of a rigid standard when
17 we are dealing with a particular group, and the group being
18 a youth group. That I hope to God that there would be some
19 changes, through education, that we can do to better
20 themselves.

21 FAITH WALKER: And one final question, how
22 worthwhile is it, actually, to report these incidents such
23 as name-calling? Would that be just basically for
24 statistical purposes -- and I tend to doubt it would go any
25 further than that.

1 SALLY GREENBERG: I can address that. It really
2 depends on the facts in the situation. And how frequently -
3 - I mean, if the name-calling is something that is an
4 ongoing problem. I mean, we've had situations where
5 somebody is constantly -- a student in school in constantly
6 harassed. So, I think we are in dangerous waters if we
7 decide that even a minor incident of name-calling may not be
8 reportable. I think it all should be reportable. Perhaps
9 one instance may not be actionable, but two and three and
10 four, I mean, that's where -- unless we snip the problem in
11 the bud -- we may not be able to track the problem, and
12 really deal with it.

13 So, I would say, our policy, or my policy, is
14 always to report any incident, no matter how minor, because
15 it may be representative of a bigger problem.

16 The other thing I want to say about responding to
17 your question about the flexibility. I think we all work
18 within a system in which judges are given a lot of
19 flexibility. And I think we have to live with that. And we
20 don't always get good results. We all know that. But I
21 think, to tie your hands, and just say that you must do
22 this, this or this, you know, in terms of codification of
23 what responses they have to make, I think that that would be
24 a mistake, and that we are going to have to work within the
25 flexibility that we've extended to judges. And hope they do

1 the right thing.

2 MORRIS JENKINS: Yes. My name is Morris Jenkins,
3 and I am Director of the Urban Mediation Project in
4 Dorchester. And I'm addressing the issue of unreported
5 cases and also the creativity of the judiciary that have our
6 sympathy. I think there is a major problem that the
7 judiciary -- in the fact that there are not enough people of
8 color as lawyers, as judges -- and I have lot of clients
9 that tell me that their perception of the courts, and the
10 judiciary and the legal system, and the criminal justice
11 system, that it is racist. So you will have a heck of a lot
12 of people not reporting. In my project itself, I see a ten-
13 fold -- that one person is reporting it to the judge, out of
14 ten other people who refuse to do it, just because of the
15 perception.

16 So I think that's the important factor that we
17 have to look at. We have to -- and let's start with the
18 education, like you stated. Not only education as far as
19 the Civil Rights laws are concerned, but educating people of
20 color to get into, get involved with the criminal justice
21 system. Get involved with the judiciary, so that that
22 discussion could be erased. Because there will be some sort
23 of bias, or perception of bias, with that creative
24 sentencing. Because they will perceive that this white
25 judge, possibly gave this black individual, a higher

1 sentence, just because he's black. That's the bias I think
2 she was talking about. There's a perception of bias.

3 And I think that's an issue you have got to
4 address through education. Not only education of Civil
5 Rights laws, but education in the middle schools, elementary
6 schools and high schools, about opportunities within the
7 system.

8 ANDREW LEONG: Yes, I just want to mention real
9 quick that I'm glad the man has said that, because this
10 morning, I just came out of a conference of the Supreme
11 Judicial Court of Massachusetts, where we were in a press
12 conference, where the Chief Justice Niachros just announced
13 that we will initiate a race-bias study in the court system.
14 And not just to examine what judges do, and lawyers do, but
15 how our clients, how our victims, how defendants are treated
16 in the court system.

17 So, I think, most of the people in the room, you
18 know, it was like, hey, everybody recognized that race,
19 bias, racism, all exists, but it is a matter of us actually
20 getting across the message to other folks that may not want
21 to understand, or hear that it exists. And then be able to
22 do something about it afterwards.

23 DORIS ARRINGTON: Doris Arrington, Commission. A
24 couple of comments and a question. One, to follow-up on the
25 gentleman right there -- and I come from the western part of

1 the State. And last Friday, we just had a program of black
2 judges, probation officers, and law enforcement officers,
3 through our church, to educate the larger community about
4 how to work their way through the system, the criminal
5 justice system, and what are your rights. And I would
6 encourage other similar groups to do programs like that.

7 My other comment had to do with talking about
8 creativity, in terms of judges' punishment, and one creative
9 role, I think, is to work with parents. Most young people -
10 - we are dealing with young people, many of the racial-
11 biased attitudes of young people are learned from family and
12 the closest members of their community. So it's just not a
13 case of educating that one young person, it's a case of
14 educating their family and their larger community, too. So
15 I would like to see some creativity there.

16 My other question was for Sherry, who mentioned
17 that law enforcement officers often discourage people from
18 proceeding with cases. And one of the things that you said
19 was that one of the reasons was because of the reputation or
20 the stigma of the community. And that's one thing. But
21 there have to be more reasons than that. And also, what can
22 we do to law enforcement officers, too? Aren't they then
23 violating people's rights, then, if they are discouraging
24 victims?

25 SHERRY LEIBOWITZ: That's actually the point that

1 I was trying to make before. The impact of law enforcement
2 discouragement. What I was mentioning before about
3 discouraging them from proceeding, was actually not so much
4 law enforcement personnel, as court personnel. From my
5 understanding of why they discourage, it's only partly that
6 they want to avoid stigma. Some of them just simply feel
7 that these kinds of cases are inappropriate. Court
8 personnel are supposed to use their jurisdiction to weed out
9 cases that don't belong in court. And make sure they don't
10 reach court.

11 So, in other words, two neighbors come and
12 they're fighting about a barking dog. Some people bring
13 these matters to court, and it is the court personnel's job
14 to try to resolve it in another form.

15 If the personal bias of the court personnel says
16 that racial violence cases are not serious matters -- should
17 not be in court -- they will then treat them, in effect, as
18 the barking dog. And will try to keep them out by saying,
19 why don't you work it out? You've got to live together.
20 Why don't you come back in six months and then we'll handle
21 it.

22 So, these are the kinds of reasons that we get.
23 I wanted to echo your point, which I think was Madam
24 Chairman's point as well, about the impact of the Stuart
25 Case and some actions of police personnel. I think this is

1 the other major issue we haven't talked about. Why cases
2 are unreported. Why people are reluctant to seek help under
3 the Civil Rights Act. There is a perception of widespread
4 violation of rights, civil rights, of people of color, on
5 the part of police officers. Some of it relates to the
6 aftermath of the Stuart case, but these incidents have
7 happened for years before we ever heard of the Stuarts. And
8 it's had a very pernicious influence in many communities of
9 color, who are reluctant to report to the police, when they
10 feel that the police will abuse them -- have abused others
11 in the community. And it has caused an extreme breakdown in
12 the relations between police and community, to the
13 deterrence of real effective crime control. And I think
14 that this is something, if the Commission can lend its
15 wisdom and expertise, we badly need some solutions to.

16 ANDRE RYERSON: Andre Ryerson. I've got some
17 questions and comments. First of all, about educating
18 police officers, is it known whether this law is part of the
19 education of policemen at police academies?

20 SHERRY LEIBOWITZ: It's supposed to be, but
21 there's no longer a criminal justice training council which
22 used to take on the responsibility of training police
23 officers, because of funding problems. Because of the lack
24 of funding.

25 ANDRE RYERSON: And nobody is monitoring it.

1 SALLY GREENBERG: Because of a lack of funding.
2 So they are not being trained in it anymore. The training
3 was inadequate, at best. It's one of the things that we --
4 Sherry and I and others have pointed out to State officials
5 -- an inadequate two hours on civil rights violations, and
6 then two hours on how to avoid being sued for a civil rights
7 violation. Or some other such formula, which was, in terms
8 of a police officer's career, totally inadequate.

9 But the Mass. Civil Rights Act was certainly a
10 part of the teaching, and we have taken it upon ourselves,
11 some of us in organizations, to do police trainings, all
12 across the state. And the District Attorney's Office, and
13 the Mass. Commission Against Discrimination, has organized a
14 training session for police officers. And that is how we
15 know that they are sometimes surprised to learn that there
16 is a Mass. Civil Rights Act, and that there are civil
17 components to it, because --

18 ANDRE RYERSON: That's logical to have them learn
19 about it. The other thing is -- in the age of computers,
20 this question of knowing how many cases there are, or how
21 many cases there might be -- in an age of computers, it
22 seems to me it would not be difficult to have a little
23 symbol of a couple of letters that would indicate that a
24 case is explicitly, or potentially, a civil rights or
25 relating to a civil rights matter. That then once the State

1 is properly computerized, which it isn't now, anybody could
2 plug in and get a piece of public information that, you
3 know, this would not be a problem. It requires --

4 DOROTHY JONES: You said the key word.

5 ANDRE RYERSON: -- structural reform.

6 DOROTHY JONES: That the system is not now
7 computerized.

8 ANDRE RYERSON: Right.

9 DOROTHY JONES: Think of all those nice public
10 servants, scribbling away, for hours on end, shuffling
11 papers. There's part of your answer right there.

12 ANDRE RYERSON: It is said that the Governor does
13 not know how many people the State employs. At any rate --
14 I mean, precisely. Then in the order of people speaking,
15 Sally Greenberg talked about this loophole, and that maybe
16 we could seek to shut the loophole, and then you explained
17 how another law worked adequately, to define the defacing of
18 the synagogue with epithets, as being intimidation. Well,
19 if it works, where is the loophole?

20 SALLY GREENBERG: Well, it depends on the factual
21 situation. In the case of the -- I believe I was talking
22 about the Marblehead case. In that case where the swastikas
23 on the synagogue. That case -- you know, they've gotten one
24 conviction. That case may not work for another of the
25 defendants. And the reason is, is because it's very hard to

1 prove that the motive of that person was religious
2 intimidation.

3 One defendant was convicted under that Statute,
4 and they are not sure that the next defendant -- and I hope
5 I am not giving anything away to the defense. I hope the
6 defense attorney is not sitting in this room, but in any
7 event, it is not altogether clear that they are going to be
8 able to prove -- and this has come up time and time again
9 with the Statute, Section 39 -- that it will be provable
10 that the motive of the perpetrator was religious bias. And
11 in that situation, force or threat of force does not --
12 prevents -- the lack of evidence that there is force or
13 threat of force, under the Mass. Civil Rights Act, prevents
14 them from using the Mass. Civil Rights Act. So we have a
15 situation in which we are not sure we are going to be able
16 to go under one of the Acts. And the Mass. Civil Rights
17 Act, clearly will not be appropriate. So, this is where
18 these cases sort of fall apart.

19 ANDRE RYERSON: Well, it seems clear to me that
20 when an epithet is used, or graffiti is scrawled on a
21 building or a garage, there is intimidation. Whether there
22 is the threat of violence, it's true, that's open to
23 question. It may simply be -- but I think people who are
24 subjected to this sort of thing, do feel that they've got to
25 sort of hunker down, lower their heads. You know, not speak

1 out in public situations. They are diminished as citizens.
2 So, there is a factor of intimidation that I think is
3 definable by law. The violence factor left --

4 SALLY GREENBERG: I'm glad you think so, and I
5 hope the judge thinks so, but that's --

6 ANDRE RYERSON: The thing relating to intent to
7 do an act motivated by religious bias or racial bias. I was
8 thinking about that driving over here, with relation to the
9 Stuart Case and the other case that I think ought to be
10 mentioned simultaneously with it, because it's so similar,
11 the Rowley Case, is that it should be possible to define in
12 the law, the following: not whether these people wanted to
13 provoke racial enmity, but whether they understood that one
14 of the effects of their acts, would be to produce racial
15 enmity. Because they may simply have been, in each case,
16 trying to cover their tracks for whatever reasons.

17 But if they were aware that doing this, has the
18 effect -- if somebody knows what a swastika means -- the
19 kid does not know what a swastika means, okay, then he's
20 just an ignorant vandal. But if he knows what it means, and
21 if somebody knows what the effect of their act will be, then
22 it seems to me, they can be -- a law can be articulated
23 whereby they can prosecuted, for doing something that they
24 know will have destructive effects.

25 So, going down to Andrew Leong, the expression of

1 -- and also another comment that the police chief said oh,
2 you know, we deal primarily with street crime. I think our
3 whole status and, you know, what we want to accomplish,
4 floats on a surface of the problems of society as a whole.
5 And people are going to perceive murder as being more
6 important than the racial epithets. The point simply being
7 that I think it's appropriate for the kinds of people that
8 we deal with, who may often say, let's not spend money on
9 cops. Let's not spend money on prisons. Let's not spend
10 money on having an expeditious court system. What they are
11 doing, is forcing at least some policemen, and some police
12 chiefs, to set up priorities that unfortunately deal with
13 what they consider to be first things first. So I think
14 ultimately, we ought to think about the fact that, you know,
15 crime must not be permitted to pay, at the level of street
16 crime, so that what may be perceived as a more refined
17 problem, can be dealt with forcefully by the judicial
18 system. Where it is appropriate.

19 I'm not always sure whether in the school
20 setting, it would be appropriate to have police officers
21 walk in and arrest a kid. That might, I think, backfire.

22 Finally, Christina DeConcini talked about
23 institutionalized racism, of which this State is in danger
24 of being, or is already, guilty of. I'm afraid I really
25 have to differ on this. Immigration has got to be,

1 according to any reading of the American Constitution, a
2 Federal matter. If there is a problem at the Federal level,
3 it has got to be solved at the Federal level. If there is
4 misinterpretation of the law by the Executive, that is where
5 the focus of indignation should be.

6 It is inappropriate for states to set up their
7 own status for immigrants, and to start having -- you know,
8 we cannot have 51 departments of immigration, deciding who
9 will be certified as a resident, and who will remain an
10 undocumented alien, and what the basis of it all should be.
11 I am afraid that's -- you know, I think the problem has got
12 to be solved where the problem is, rather than going down
13 the ladder and then blaming the states for questioning
14 whether the Governor can act in place of the I.N.S., with
15 authority that, Constitutionally, I really don't think is
16 his.

17 Finally, relative to Mr. Perlmutter's comment
18 about, it's too bad we can't go back to the stocks of
19 Colonial days. I've often thought exactly the same. I
20 mean, look how cheap this was. It didn't cost any money.
21 You didn't have to have prisons. People just publicly saw
22 who was the person who did the bad deed, and it was done.
23 Well, we lived in a time where people couldn't afford
24 prisons. We couldn't afford these fancy solutions.

25 One solution I think that might be comparable to

1 the stocks would be, removing the law whereby minors --
2 because often these things are done by minors, 16-year olds,
3 who are at the edge of adulthood. And it is impermissible,
4 I believe, to mention their names in the newspapers. Remove
5 that law, have their names in the newspapers. These people
6 will be embarrassed out of their minds, and I think you
7 might see a change in behavior.

8 FRANCISCO NAVARRO: I don't think that's going to
9 change it either. I don't think -- that's just a different
10 way of repression, and we're not going to solve the crime
11 just by repressing --

12 ANDRE RYERSON: Well, we're not going to solve
13 the crime. I'm saying, this is a way, this is another means
14 --

15 FRANCISCO NAVARRO: Okay, but we should prove --
16 we should be able to work for our solution, not just
17 poisoning people who did something wrong.

18 DOROTHY JONES: As soon as you finish you this
19 cross, I am going to have to stop the discussion, because we
20 are five minutes late going into the next panel. And there
21 will be time for some further discussion.

22 (DISCUSSION RE: MOVING PANELS)

23 DOROTHY JONES: And thank you very much. We need
24 your input continued. And the new panel, Mr. Elisa of the
25 NAACP. Is he here? No. Sheila is here and Mr. Sobol is

1 with her. Francisco Navarro. Marisa Jones. And Faith
2 Walker is here. Are Melissa Jones? William Lee. Okay,
3 fine. Now, let's let our recorder get the names of people
4 in order. It will make life easier for him. So why don't
5 we start here, and each of you give him your name, so that
6 he can code the report adequately.

7 FAITH WALKER: My name is Faith Walker, and I am
8 the Coordinator for the Dorchester --

9 DOROTHY JONES: Just a name at this moment. Just
10 go around. Just so he can attribute everybody's remarks
11 properly.

12 FRANCISCO NAVARRO: I am Francisco Navarro, and I
13 come from La Oficina Hispana.

14 DOROTHY JONES: He's on your list.

15 SHEILA DECTER: I am Sheila Decter from American
16 Jewish Congress.

17 DOROTHY JONES: And with her is Thomas Sobol. Is
18 it Sobel or Sobol?

19 THOMAS SOBOL: Sobol.

20 DOROTHY JONES: Sobol. Sorry about that.
21 Attorney to the AJC. And then we have William Lee. And
22 Marisa Jones. Got it? Ready? This panel are lay
23 advocates, with the exception of one attorney who is along,
24 escorting a layperson. Their organization is interested in
25 the same issue and we would like -- and I think we will

1 start with -- I will start with Sheila. I'm sorry. Miss
2 Decter. Director of the A.J.S. How's that?

3 TESTIMONY

4 BY SHEILA DECTER:

5 I am delighted to be here on behalf of the
6 American Jewish Congress, and I wanted to introduce an
7 attorney that I have asked to come with me, Mr. Thomas
8 Sobol, of Brown Rudnick Freed and Gesmer. I particularly
9 asked him to come with me today, because he has been a
10 collaborating attorney with us on several Amicae Briefs,
11 which American Jewish Congress has submitted in cases under
12 the Massachusetts Civil Rights Act. Most specifically, in
13 the Vanessa Redgrave of the B.S.O., and also, more recently,
14 in the injunction dealing with Operation Rescue and the
15 injunction which Planned Parenthood sought against Operation
16 Rescue.

17 Both of those are cases in which we filed briefs,
18 and we are now also considering dealing with a brief in the
19 Wellesley case, which has been discussed earlier today.

20 The Congress has a long history with the
21 Massachusetts Civil Rights Act. We have been involved,
22 historically, in Massachusetts, with the drafting of the
23 early anti-discrimination statutes in Massachusetts. And
24 the ones dealing with education, public accommodation, and
25 fair employment. And in more recent years, as part of large

1 coalitions dealing with the drafting and advocacy around the
2 passage of these Acts.

3 And we were, in fact, involved in the drafting of
4 this Statute, and involved in securing its passage. And so
5 I feel in my testimony, some sense of responding to some of
6 the issues that have come up before it.

7 We were involved in the drafting, mainly because
8 the Attorney General of the Commonwealth had indicated a
9 particular need. He said that he needed legislation, to
10 give his office the authority to enter cases where a variety
11 of crimes, for example, assault, trespassing, violence
12 against property or persons, were in fact part of an effort
13 to forcibly prevent persons from enjoying their civil
14 rights. And he wanted to be able to go into those cases.

15 He also indicated a need for additional authority
16 to ask for injunctions against individuals, whose behavior
17 showed a pattern of intimidation or coercion, against
18 individuals or groups in their exercise of civil rights.
19 Injunctive relief, which might allow control of potentially
20 dangerous situations, before persons were physically harmed.

21 Of particular concern at that time, when the Act
22 was written, were youths who were intimidating racial
23 minorities from moving into areas, which had previously been
24 occupied solely or predominantly by white persons.

25 The civil remedies part of the part of the Bill,

1 was specifically in our interest, because we wanted a right
2 for the aggrieved party to sue for damages, and we included
3 this in the drafting, because it reflected our interest in
4 allowing minorities, who were deprived of their rights at a
5 particular point in time, such as not being able to move
6 into a house. Not being able to get a given job or what-
7 have-you. The right to have some monetary relief, by the
8 time the case came before the court. And it was too late to
9 go back and say that was now available, two or three years
10 later.

11 Attorney's fees were also included, because of
12 our recognition that such persons often would not have the
13 material resources to hire appropriate counsel. Now, the
14 rights that we were thinking about at the point at which
15 this were drafted. The rights to be protected, were
16 described in very broad terms. Because our experiences with
17 racial intimidation at that point, showed that the
18 deprivation could take place in a broad number of ways. And
19 through many different kinds of intimidation or coercion.

20 In many circumstances, the coercing parties were
21 in fact breaking laws that already existed. But the
22 penalties for breaking those laws, were often too slight,
23 such as trespass, disorderly conduct, defamation of private
24 property. The penalties were not sufficient to prevent the
25 individuals from simply repeating the crimes over and over

1 again.

2 In examining the drafts of the proposed Bill,
3 some concern was raised around our table and among our
4 attorneys, as to the possible breadth of the Bill. And
5 there were those who were concerned whether or not it was
6 being drafted in an overly-broad way. And our initial
7 concern centered over the omission from the Statute, of any
8 requirement to show motivation to deprive someone of his or
9 her civil rights.

10 Nevertheless, that was left in the Bill. It was
11 not -- in other words, it was omitted from the Bill. We did
12 not feel that it you needed to show -- a person had to show
13 proof of intent to take away someone civil rights. And the
14 reason we felt that the Bill was not overly broad, because
15 we thought there were two protections, in a sense, written
16 into the Bill.

17 One is, we felt that the nature of the protected
18 right was always there before the Court. And secondly, that
19 the existence of threats, intimidation and coercion, was the
20 other part of it. If somebody was using violence, or
21 threatening, we felt that in a sense was the balancing part
22 of the Bill. To prevent an overly-broad use of this Bill.

23 Thus, the different sections of the Bill, which
24 have been discussed today. The fact that in one part of the
25 Bill, you deal with the question of threats, intimidations,

1 and coercion. And then in another part of the Bill, you
2 deal with the issue of, specifically, of force and violence,
3 was not incidental. It was specifically, and a part of the
4 discussions that went into the drafting of the Bill, and the
5 different sections.

6 Now, in fact, at this point in time, we believe
7 that the Statute has proved to be a very effective tool, for
8 police enforcement and governmental protection of civil
9 rights. Since the Attorney General and the District
10 Attorney said discretion is when to bring actions under the
11 Massachusetts Civil Rights Act, they have an opportunity to
12 examine the coercing parties. To look for patterns of
13 behavior. Evidence regarding motivation. Levels of
14 intimidation, coercion, etc. And we believe that such
15 governmental officials use the Statute appropriately.

16 There is no evidence that we see, that public
17 officials have used this Statute, where individuals have
18 inadvertently denied someone else rights, or where the right
19 itself is not clearly understood. If anything, we believe
20 that there is sometimes a time-lag in this area of public
21 enforcement, when there is an increase in intimidation or
22 coercive behavior, against particular groups, against other
23 groups. A pattern of attacks, for example, against new
24 refugees in a given cities. A pattern of ethnic
25 intimidation. Or, the violence against homosexuals, such as

1 now often called Gay Bashing. We think sometimes there is a
2 time-lag, before public officials recognize the necessity to
3 use this Act, and deal with this new pattern of behavior in
4 a given area.

5 The American Jewish Congress would urge public
6 officials to examine incidents of violence more closely,
7 looking for such patterns, and to consider more quickly the
8 use of the Statute, to protect the rights of such
9 individuals.

10 Now, there is a part of the Bill where we think
11 some problems -- or part of the Statute where some problems
12 have arisen. And we think that that deals with the question
13 of private parties being able to get injunctive, or
14 equitable relief from other private parties. And that is
15 the area in which I have asked Thomas Sobol to join me
16 today, because of this greater familiarity with the whole
17 range of cases that have appeared over the last ten years.
18 Because we are concerned that that area and its possible
19 backlash, even on the way in which public officials are able
20 to use this Act.

21 TESTIMONY

22 BY THOMAS SOBOL:

23 Thank you, Ms. Decker. My name is Thomas Sobol.
24 I work with the law firm of Brown, Rudnick, Freed and
25 Gesmer, and I want to make sure at the outset of my brief

1 remarks, that I focus exactly what it is that I plan on
2 talking about. So far, I think, at least while I have been
3 sitting here in this room, most of the type of enforcement
4 that has been discussed, has been the use of public
5 officials. Public money, to enforce the Massachusetts Civil
6 Rights Act. And the comments that have thus far been
7 addressed to this Committee, have involved the education of
8 public officials, whether they are judges or they are police
9 officers, or they are Court employees, or they are the whole
10 range of public employees.

11 And I want to address my remarks specifically to
12 the area of private enforcement because, as you know, the
13 frustrations we deal with in public enforcement, are the
14 lack of funds, the lack of resources, the difficulty of
15 education. That kind of thing. To the extent that you can
16 take hold of the use of private resources. For instance, I
17 note, that I am probably one of very few white, male lawyers
18 from a private law firm here today. To talk about this
19 Civil Rights Bill, shows you that there are significant
20 untapped resources out there, in this community, that can be
21 used under the Civil Rights Bill, and we think at this time,
22 aren't being used enough. That's not to disparage the Bill,
23 but rather to point in progressive directions.

24 We think -- at least I think -- that the
25 Massachusetts Civil Rights Bill, in the area of private

1 enforcement, needs some work. And it needs some work in
2 several areas. But to understand why it needs some work, a
3 very brief history is necessary as to why.

4 In bringing a private action, under the
5 Massachusetts Civil Rights Act, historically, the
6 Massachusetts Supreme Judicial Court has held, in 1985, in a
7 case called Bell versus Mazza, that the rights that this
8 Bill takes hold of, are very, very broad. They include not
9 only Constitutional rights have existed before enactment of
10 this statute, but even rights that sort of look like they
11 are a Constitutional right, but aren't actually made
12 unlawful.

13 So in Bell versus Mazza, a plaintiff stated a
14 case, under the Civil Rights Act, that their Constitutional
15 right to build a tennis court, had been infringed by their
16 neighbors, when their neighbors had engaged in threats,
17 intimidation, and coercion, in an effort to prevent their
18 neighbor from building a tennis court.

19 As a result of that decision, a period of time
20 went by, several years, during which the Massachusetts
21 Supreme Judicial Court, repeatedly broadly construed the
22 unlawful conduct that seemed to have been made unlawful by
23 this Act. And it is no surprise, then, that very recently,
24 during the past couple of years, the Supreme Judicial Court
25 has been faced with approximately four cases, in which it

1 has, in an effort to make sure this Statute is not too broad
2 to look absurd, interpreted the phrase, threats,
3 intimidation and coercion to mean, physical force, or
4 potential physical threat of force. Not -- and I'm sorry
5 that I forgot your name before, what we colloquially would
6 consider to be threats or intimidation or coercion.
7 Something that might -- I think the framers of this Statute
8 might have intended to be a fairly broad phrase,
9 encompassing conduct that was coercive, if nevertheless not
10 physically threatening.

11 But the Supreme Judicial Court at least arguably
12 has interpreted that phrase narrowly. Now, the jury is
13 still out, as Ms. Decker always reminds me, and the jury is
14 still out, particularly on the Wellesley, in interpreting
15 that phrase.

16 I give that history of this Act, and the likely
17 backlash from the Bell versus Mazza case, that the Supreme
18 Judicial Court had, as a background to describe why it is
19 that this Statute can be improved, for private enforcement.
20 It can e improved for private in three ways.

21 First, we must figure out a way, either by
22 legislation or by winning the Wellesley case, or otherwise,
23 whereby this Act is not interpreted solely to prohibit
24 violent conduct. Or conduct that appears to be a potential
25 of violence. Why? Because, that is already made unlawful

1 in Massachusetts, and if private litigants want to go and
2 get a private attorney, before otherwise threatening or
3 coercive conduct, their lawyer is going to send them right
4 back out the door. Because no lawyer is going to want to
5 take on a case where they're going to have to show actual
6 violence, or potential violence, if that is not there. If
7 the conduct has merely been threatening or intimidating.
8 That kind of thing. That is the first thing that has to be
9 done. So we either have to win the White Case, or win that
10 battle by legislation.

11 Second, the Massachusetts Civil Rights Act, while
12 it provides attorney's fees, does not make clear that people
13 can get injunctive relief, in a private context, as easily
14 as an Attorney General can get injunctive relief. By that,
15 I mean, this. When the Attorney General goes into Court,
16 the Attorney General only has to show a violation of the
17 Statute, and that it would be in the public interest to
18 issue the injunction. That is all.

19 A private party, when they go to Court, has to
20 show not only a violation of the Statute, and that it would
21 be in the public interest, but also, irreparable harm. In
22 other words, Your Honor, I think that they are going to
23 continue it, and I can prove to you that they are going to
24 continue this harm. Or, that even if they are going to
25 continue this harm, they are running out of money. So that

1 when I win my lawsuit three years from now, they won't have
2 any money to pay me the damages. You have to prove
3 irreparable harm, in the private context, normally.

4 There is a very serious question under this Act,
5 whether or not private litigants have to show irreparable
6 harm, in order to get an injunction to prevent a
7 demonstrated violation of a secured right. Again, if you
8 want the private bar to get involved, and if you're
9 representing somebody, you have got to take away procedural
10 barriers, by which they might be able to prevail. And
11 since, at least the theory behind this Act, is that private
12 litigants act as a private Attorney General. Then the Act
13 should be clear that those private Attorney Generals only
14 have to show that which the Attorney General has to show. A
15 violation of the Act and it being in the public interest.
16 Not also this irreparable harm.

17 Third, we think that there is a Court-imposed
18 limitation to this Act that needs to be addressed.
19 Obviously, there are many other procedural statutes to
20 vindicate civil rights. The Massachusetts Commission
21 Against Discrimination is the obvious first example that
22 everyone has.

23 There is a Supreme Judicial Court decision in
24 this Commonwealth that says, that if you try to bring an
25 action, Mr. or Mrs. Private Litigant, under this Civil

1 Rights Act, and you could have brought in the MCAD, or you
2 could have brought it through some other procedural
3 mechanism, you are foreclosed from bringing it here. In
4 other words, says, the Supreme Judicial Court, you cannot
5 use this Civil Rights Act as a double bit at the apple, if
6 you have something that which exists before. Some other
7 procedural mechanism.

8 Now, that is problematic, because before
9 enactment of this Statute, the most heinous violations of
10 civil rights have been made unlawful. And procedural
11 mechanisms have been created to deal with them. So, it
12 turns the whole issue right on its head, for the ruling to
13 be that those rights that had already been made unlawful,
14 and had been given procedural mechanisms to deal with, will
15 not be vindicated, under the Massachusetts Civil Rights Act.
16 That is difficult, and what I would suggest, as an
17 individual, and not speaking as a counsel for the American
18 Jewish Congress, is that, at least in the area of injunctive
19 relief, preventing things from happening, rather than long-
20 term redress for damages, that kind of thing, that the Civil
21 Rights Act ought to act as a duplicative remedy. That you
22 ought to be able to go into Court very quickly and get an
23 injunction, very quickly, on the same standard as the
24 Attorney General. Just as a private litigant. And if you
25 win that injunction, your attorney is entitled to their

1 attorney's fees, then and there. Not waiting three years
2 down the road, for a final, ultimate resolution.

3 And I think that if the Act were changed or
4 interpreted in these ways, where it was made a very
5 effective, equitable mechanism whereby private attorneys
6 could represent somebody, go into Court, get an injunction
7 on the same terms as the Attorney General, and get their
8 award of attorney's fees then and there, I think that you
9 would be able to find, looking at it benignly, you know,
10 many private -- the private bar coming to the aid of Civil
11 Rights.

12 Looking at it in many less terms, lawyers going
13 to where they might find money. But nevertheless, it is a
14 way of changing a Statute, and possibly dealing and amassing
15 additional resources that are out there.

16 My final comment is a caution. When you have
17 private parties suing private parties, you undoubtedly are
18 going to have a clash of rights. When the Bells sued the
19 Mazzas, the Bells had a right to build their tennis court.
20 The Mazzas also had a right to complain about it. When
21 Vanessa Redgrave sued the Boston Symphony Orchestra, Vanessa
22 Redgrave surely has the right to speak her mind. And surely
23 the B.S.O. has its right to put on artistic presentations as
24 it wishes. When private litigants are suing one another, we
25 have continually maintained that this Act must repeatedly be

1 interpreted, to make sure that it fundamentally understands
2 that there is a clash of rights, and that there is a need to
3 balance those rights, and that it should not be a race to
4 the courthouse, in terms of what private litigants sues
5 which private litigant first, before they can say that their
6 rights have been violated before the other's.

7 DOROTHY JONES: Thank you, very much. Mr.
8 Navarro?

9 TESTIMONY

10 BY FRANCISCO NAVARRO:

11 Well, first of all, thank you for having me here
12 and representing La Oficina Hispana. You know, sometimes I
13 ask myself the question, I mean, Civil Rights is just for
14 everybody, or just for a few privileged persons who live in
15 this Country or in this State. And sometimes I come to the
16 conclusion that Civil Rights is just not for minorities. I
17 mean, minorities are very, very discouraged to protect
18 themselves. Especially when it comes to undocumented
19 immigrants.

20 It is clear that discrimination is all over the
21 places, and we face discrimination on a daily basis. In
22 school. Because I didn't work in -- I am also an attorney,
23 so I have been working for Massachusetts Advocacy Center,
24 and I do the work for La Oficina Hispana and some other
25 places. And it's really, really sad, how some principals in

1 schools are in neighboring Boston, ask questions they
2 shouldn't be asking, the students, or parents that are
3 bringing kids to school.

4 Just to mention one case, I won't mention names
5 or even the town. The person brought his child from school,
6 and the principal, as soon as this person opened his mouth
7 and he realized that it was a foreign accent, the principal
8 demanded to see the green card. I don't know if the
9 principal was ignorant of the law, or he just wants to
10 harass these people and move him out of town, because that's
11 a mainly white neighborhood.

12 When it comes to housing, racial discrimination,
13 every single day, and hundreds of times everyday. Which is
14 discrimination when it comes to applying for a house. I
15 mean discrimination -- they are not stupid as to say, well,
16 we are not renting the apartment to you right because,
17 you're Hispanic, or because you are Jews, or because you are
18 black or white or whatever. No. They do it in a very
19 subtle manner, and they just say, well, you know, the rent
20 is that high, and probably you will not afford it, or -- and
21 it is even harder for illegal immigrants.

22 The first thing they have to show up, you know,
23 is a credit record. And for that you must have a social
24 security number. Most of the immigrant community here, they
25 don't have social security numbers. And they do as much

1 good for the economy of Massachusetts as everybody else. I
2 mean, sometimes, they pay even more taxes, and let me say
3 why. Because of them, they work, and they never claim tax
4 refunds. And we all do. So they contribute to the Mass.
5 economy even more than, you know, most people do.

6 The problem is as Andrew Leong says, is
7 education. Sometimes we discriminate against each other,
8 because we don't know each other. I mean, when I moved to
9 the town where I live now, one of my neighbors came in, and
10 he welcomed me with a bowl of muffins. That was nice. But
11 the neighbors asked me to move out, along with my dogs.

12 After a brief argument, I called the police. The
13 police came. And I explained what happened. The police
14 went and knocked at this door. I don't know what he told
15 them. He didn't bother anymore. I didn't report that case,
16 because I am not that kind of person that -- I tend to
17 disagree in reporting every single case. Every time I get
18 called Spic, when I am working around. I just don't pay
19 attention that. I think, really, racism is an illness. And
20 I am not sick. They are sick. They have to look for a
21 cure, not me.

22 DOROTHY JONES: But if you don't tell us they're
23 sick, how do we know that they are --

24 FRANCISCO NAVARRO: No, they are sick, because,
25 you know, we are not taking garbage from anybody. I mean,

1 when I called the police, I was stating very clear to my
2 neighbor, that I was not going to take that kind of abuse.
3 That I was not going to go, unless, you know, he come later
4 in with a bat and want to beat me up. And that we have to
5 be sensitive to the other communities. Sometimes, it is not
6 that they are not mistreating us, or anything like that.
7 Sometimes it is just, you know, we have to realize there are
8 cultural differences. Cultural barriers. Language barrier.
9 And no community is more -- more at risk, than the community
10 that has no documents to live or work in this country.
11 Whether we like it or not. And that is a fact we have to
12 deal with.

13 I mean, these people are going to live in this
14 Country, whether we like it or not. If they send back to El
15 Salvador, you know -- I don't know how many people they send
16 back to El Salvador everyday, or on a monthly basis, but if
17 they didn't send back those people to El Salvador, or
18 Guatemala or any other country, unless they get arrested, or
19 killed in their own countries. They are going to be back
20 here two months later, whether we like it or not.

21 And if they have no incentive to pursue their
22 rights, that is going to create a very explosive situation
23 in this Country. Because this Country may be well-prepared
24 to fight against Panama or even Russia, I don't know. But
25 definitely, is not prepared to fight an internal war. And

1 this is where we live, with this kind of -- you know, if we
2 promote racism, if this is a clear -- as I'm trying to be --
3 this is a clear case of legal racism. Trying to
4 discriminate against the undocumented community. As we have
5 said, they have contributed to the Mass. economy even more
6 than we do. Repression, as I said before, repression is not
7 going to solve the problem -- I mean, if we go to the
8 neighbors in Roxbury, Dorchester, Mattapan or, you know,
9 those very -- my own neighbors -- neighborhoods. I'm sorry.
10 We are going to see mainly violence comes from the denial of
11 economic opportunity.

12 If you have a choice where to live; in a black
13 ghetto; in an Hispanic ghetto; or in a nice neighborhood, I
14 think the answer is pretty obvious, where you want to live.
15 So we -- at Oficina Hispana -- we are facing a major problem
16 by now. Because we provide training for the Hispanic
17 community, and not only for the Hispanic community, we have
18 some Chinese people working with us. We have people from
19 Poland. We have people from -- well, different countries.
20 But mainly, most of the people are Hispanics, from different
21 countries in Latin America or the Caribbean. But we are
22 facing a major problem right now. Some of the money we get
23 comes from State agencies, or Federal agencies. And you
24 know what they tell us? You only have to give training to
25 people who are legal in this country.

1 What do we tell to the people who can't flash a
2 green card? We are telling them, okay, you have no
3 opportunity in this Country. So, go sell drugs. That's the
4 ultimate violation of Civil Rights that I see, because it's
5 a legal form of discrimination. Telling the people, because
6 you don't have a work permit, you can't work. Yes, we can
7 tell them that they have no right to work. But we cannot
8 tell them that they have no right to eat. And they're going
9 to get the food anyway. They are going to get a living
10 anyhow.

11 So I think that's a major point where things
12 should change. Increase the economic opportunity to the
13 impoverished people in the State. And then we are going to
14 see a reduction in violence. We are not going to see a
15 reduction in violence by arresting more and more people.
16 Jails are crowded. But I really believe, I firmly believe,
17 that there is discrimination all over the place, because of
18 lack of education. The lack of education is the milestone
19 to any understanding, future understanding. If we want to
20 solve the problems for the future, you have to start working
21 right now.

22 We have to educate the people. We have to
23 educate ourselves, too. I mean, if there are some cases in
24 which there is a Civil Rights problem within the same ethnic
25 group, that really is telling us that there is some major

1 lack of understanding, because not even Hispanic people
2 understand each other sometimes. They speak different, you
3 know, the idioms, or whatever. I mean, what can we expect
4 if we talk with different cultures?

5 I think the community should be working, in order
6 to organize worships. Inviting people from different ethnic
7 groups. Telling how to identify cases of Civil Rights
8 violations. Housing discrimination. Discrimination in the
9 schools. Discriminations in the workplace. And then we can
10 go forward.

11 Thank you for having me here.

12 DOROTHY JONES: I have been asked just to deviate
13 from the Agenda for a very brief comment from Chris
14 DeConcini.

15 CHRISTINE DECONCINI: Right. I am sorry. I have
16 to leave now, and I just wanted to address in one sentence
17 the comment made by a Committee member. It may not have
18 been clear. The Governor's Executive Order, which I was
19 talking about, does not confer any legal status on a person.
20 And you are correct that the State cannot confer legal
21 status, nor take away legal status, from anyone. And I
22 wasn't suggesting that that was the answer. The Governor's
23 Executive Order only ensures that all people are entitled to
24 State services, regardless of their legal status.

25 And so I just wanted to clarify that point that

1 may have been misunderstood. And thank you, and I am sorry
2 to interrupt. I have to go someplace.

3 DOROTHY JONES: Thank you for the clarification.
4 Let's hear now from Marisa Jones.

5 TESTIMONY

6 BY MARISA JONES:

7 For the record, my name is Marisa Jones. I am
8 Executive Director of the Neighborhood Justice Network.
9 Very quickly, what we are is a non-profit organization that
10 is involved in crime prevention efforts, and court
11 interaction issues within the City of Boston.

12 We cover primarily four areas. Roxbury,
13 Dorchester, Mattapan and Jamaica Plain, possibly reaching
14 out to over 2000 households. I am very excited to be here,
15 and I would like to thank the Advisory Committee for
16 inviting me here, and also to commend them for looking for
17 the community perspective, because that is what I tend to
18 represent, so to speak. We work with over 300 Crime Watch
19 groups, and we tend to get a lot of stories. They get a lot
20 of input from the community.

21 One story, unfortunate, that I would like to
22 share with you, is a particular incident of a woman of
23 color, with her three small children, living in an apartment
24 complex. Every time that she would go out of her complex,
25 it seemed that there would be six white males that were

1 congregating, either on the steps, or by the corner.

2 At first, she didn't notice it, and it wasn't any
3 particular problem. But perhaps they noticed that she was
4 living alone with her three children. And the harassment
5 started. What happened is that there were racial slurs that
6 were made. Statements that were made to her, where this
7 woman felt that she was consistently being harassed.

8 What had happened is that she did use 911. She
9 called the Police Department, and that is one of the major
10 keys that we give to all Crime Watch group members, is to
11 report this information to the police. When the police did
12 come to the scene, what they did is they did sweep the young
13 men away from the particular corner.

14 This young woman expressed to the police
15 officers, that this was a chronic problem for her. And that
16 she felt, at some point, that she would be in jeopardy,
17 eventually, because it seemed like they were targeting her
18 out. For what reason, she did not know at the time.

19 Law enforcement proceeded to tell her that this
20 was only harassment. That she should call 911, but she
21 couldn't make a report with the Police Department. That
22 they felt that there was nothing else that they could do,
23 except to sweep the young men away from the corner.

24 This proceeded for a period of months. Actually
25 what happened is she used a strategy that we try to promote

1 to the community, called the Window Watch. When these young
2 men were not sitting in front of her apartment building,
3 that's when she decided to go out. When these young men
4 were sitting in front of her apartment building, she would
5 call the police to have them sweep, so that she could go
6 back into her building, in the evening.

7 It was a situation that she was practically under
8 siege. What happened is that they eventually started
9 throwing rocks through her window. Now, this is an issue of
10 some form of assault. The police then were able to take
11 this case a step further, and make some arrests, since
12 someone did see this incident happening.

13 When it went to court, because our program is a
14 Court Interaction Program -- went to court with this woman
15 in support of what she was going through, we had the
16 opportunity to speak to the Assistant District Attorney that
17 was involved in the case. We had told him about the
18 harassment, over three or four months of harassment that was
19 going on, and we felt that this was a violation of her Civil
20 Rights. And the Assistant District Attorney at that point
21 said, well, no, let's not go with that. Let's go with the
22 incident of the rocks being thrown through the window.

23 That was very, very upsetting to us, on
24 particular points. And that gets back to the issue of
25 education, that I believe we have heard so much of today.

1 It's Number One, to educate law enforcement. Because what
2 community resident doesn't see law enforcement as part of
3 the process, and as part of the informational process to
4 offer to the community, and to offer to the residents?

5 Again, it is an issue of educating the judiciary
6 system, as far as the Massachusetts Civil Rights Act, and
7 how it can be enforced, and how it can be used in particular
8 cases, such as this.

9 The second point that happened is -- and it was
10 mentioned briefly before the first Forum. Was again the
11 issue of law enforcement within the community. There was a
12 particular incident that we heard of, of a young boy who was
13 not aware of the Civil Rights. It was in the issue of the
14 Stop and Frisk Policy.

15 What seemed to have happened is that this young
16 boy was merely standing in a hallway, waiting for his friend
17 to meet him so that they were going to the basketball court.
18 Officers proceeded to see him, standing in the hallway.
19 Went into the hallway. Asked him what he was doing there.
20 And asked him if he was holding any drugs, or anything of
21 that nature.

22 The young boy felt that due to the intimidation
23 that the officers were presenting, and the coercion, he felt
24 very nervous. He was not carrying any drugs. He was not
25 carrying any weapons. And what happened is the young boy

1 proceeded to pull down his pants, so that the officers could
2 frisk them, and they could be aware that there were no drugs
3 that he was carrying, and there was no gun.

4 Again, it is an issue of educating our youth,
5 around the Civil Rights Act. Educating our youth, what
6 their particular rights are. And again, I can't stress
7 strongly enough, the issue of education. That needs to be
8 presented within our community. And again, the issue of law
9 enforcement, being educated towards working with the
10 community.

11 Our Agency is currently trying to address that,
12 as far as to develop some sort of a sensitivity training,
13 for law enforcement that does work within communities of
14 color.

15 Thank you very much for your time.

16 DOROTHY JONES: William Lee.

17 TESTIMONY

18 BY WILLIAM LEE:

19 Thank you. I am very honored to be here today.
20 And I am very delighted that the Advisory Committee wants
21 the viewpoint of the youth. My name is William Lee. I am a
22 member of the Student Alliance Against Racism. And I would
23 like to address some of things that have been said during
24 this meeting.

25 First of all, as to why the youths do not report

1 Civil Rights cases. I agree with Mr. Leong that the
2 immigrant families are very wary of authority. For example,
3 in my personal experience, when I first moved to Quincy,
4 there were several incidents where rocks were thrown into my
5 windows, breaking them. And when I asked my parents what
6 they would do about, they said there was nothing we could
7 do. This was something that we just had to endure, if we
8 wanted to live in a suburban neighborhood.

9 And secondly, I am sure you all know that youths
10 are very wary of adults. You have to understand that youths
11 live in their own world, and they have their own type of
12 justice. If a boy beats me up because I am Chinese, then I
13 don't go to an authority. I might return the favor, by
14 getting a friend, and we'd beat him up.

15 For example, there was an incident at Quincy High
16 School, where a group of white youths beat on a group of
17 Chinese youths. And what happened was, the Chinese youths
18 called up their friends. Their gangs from Chinatown, and
19 they were going to elevate the violence, by bringing
20 weapons, etc., and just continuing the fighting. Luckily,
21 the D.A.'s office got hold of the news, and they stopped it
22 beforehand. But that's an issue.

23 Thirdly, youths aren't sure that the punishment
24 is always guaranteed. They might report it, but what's
25 going to happen? Do they get the vengeance that they seek?

1 For example, I know the person -- he's a black. He goes to
2 our school. And he is probably, like, one of three blacks
3 in our school of 1000 kids. And he was on the subway
4 station, and three kids, three white youths, ran after him.
5 And one had a golf club. And the black youth tried to run
6 down the tracks to escape, but the white boy hit him, and
7 shattered his elbow. And he reported that to the police,
8 but it's been a year now, and still they haven't had any
9 punishment that the white youths have received, so -- so as
10 far as that goes.

11 And another point I want to make is that many of
12 the youths are unaware of the CRA. For example, I had
13 another friend whose jaw was broken by an altercation. And
14 he didn't do anything about it, because he wasn't aware that
15 he was protected under the CRA. He knew it was wrong, but
16 he didn't know what to do.

17 So, I hate to be redundant, but I think the
18 solution is education. My organization has just been
19 started by the Norfolk County District Attorney, just in the
20 last year. And our main goal is to educate the youths, to
21 enlighten them. And we plan on doing peer counselling in
22 the middle schools. And one of the main innovative ideas
23 that we had is starting a forum of youths, whereby youths
24 can come to us, and report their Civil Rights cases instead
25 of going to an adult. And let us decide whether we should

1 report them to the authorities, or whether we can just
2 mediate the problem amongst ourselves.

3 I have spoken of all these bad Civil Rights cases
4 that have occurred in Quincy, but I would like to end my
5 testimony with a little gleam of hope. Just a couple of
6 months ago, there was a house right next to our school. And
7 the man in the house -- I don't know what happened, he was
8 either mentally out of it, or -- but he painted a swastika
9 on his garage door. A huge swastika. Outside his window,
10 he hung a flag. A huge flag of a skull and crossbones. In
11 one of his windows, he had a swastika cut out of a piece of
12 paper, and he had it lighted up with Christmas lights. In
13 one of his windows, he had a piece of paper with a prayer on
14 it, except that some of the words of the prayer had been
15 replaced by profanity.

16 So, what happened was, almost all of the kids in
17 my school were outraged by this person, and we spoke to an
18 officer from the Civil Rights Unit. And what the Civil
19 Rights Unit told us was that we couldn't do anything about
20 it, because he was doing this on his own property, and not
21 injuring other people's property. And unless a real
22 neighbor made a complaint, there was nothing we could do
23 except talk to the person.

24 And many of the youths in my school organized and
25 we thought we could hold a candlelight vigil or whatever, to

1 protest this person's act. But before we could do that, he
2 was placed in a mental institution. So, what I am trying to
3 say is that there is hope for our youths, and -- but if we
4 just get a little more education, I am sure that we can
5 handle the problems that we are facing today. And thank you
6 very much for having me.

7 DOROTHY JONES: Thank you. Faith Walker.

8 TESTIMONY

9 BY FAITH WALKER:

10 On behalf of the Dorchester Task Force, I would
11 like to thank the Committee for inviting me to be a part of
12 these discussions. And my name is Faith Walker, and I am
13 the Coordinator for the Dorchester Task Force. And I would
14 like to begin by saying I am sure most of us in this room
15 would agree that the Mass. Civil Rights Act has its merits,
16 in that it covers a broader spectrum of criminal behavior
17 that would not otherwise be able to be penalized under some
18 of the previously existing laws. There have been laws in
19 other states that have been made more specific to acts such
20 as cross-burnings and so on. But the Civil Rights Act
21 actually covers a wider realm of possibilities, and also
22 leaves room for the protection of other groups that may be
23 targeted for Civil Rights crimes.

24 There are some difficulties with it, however, and
25 some of these difficulties lie in the bias of the police

1 officer who was investigating and reporting these crimes.
2 In some situations -- and some of my comments are based both
3 on personal knowledge and on the report that Sherry, I
4 believe, referred to, done by Jack McDevitt at Northeastern.

5 One of the problems would be with the police
6 officer who is not sensitive to Civil Rights crimes.
7 Probably more likely, someone who is not a member of the
8 Community Disorders Unit. Who is not necessarily as well-
9 trained as a CBU officer, to conduct an investigation in
10 such a way that a Civil Rights violation would be brought
11 out. In a case of apparent vandalism, or assault and
12 battery, there may be underlying reasons for this act, that
13 may not be brought out in the investigation, simply because
14 the police officer is not attuned to that, and is not
15 directing his line of questioning in that way.

16 Secondly, there may be instances in which the
17 police officer is unwilling to acknowledge or report the
18 crime as such. And that may just be based on his own -- or
19 her own personal bias. And there may also be instances
20 which we need to consider, where a reporting officer may be
21 covering for another officer, who has acted inappropriately
22 in the line of duty. Those are some of the things that need
23 to be considered, on the part of the officers.

24 On the part of the victims, there are situations
25 in which the victim is unusually unwilling to report, and

1 one of the instances that has been brought forth by a couple
2 of people is the cultural difference. The cultural
3 stereotypes that the victim may have towards the police,
4 based on their own experience in their homeland. It may
5 also be an intimidation factor, based on past experiences in
6 the police, from certain ethnic groups. And, in addition to
7 that, if a person, for instance, has a record, or is known
8 by the police, there is also an intimidation factor that,
9 you know, the victim may not feel that they are going to be
10 fairly treated, simply because they have had a record, a
11 criminal record with the police.

12 In addition to that, there are sometimes found to
13 be difficulties in identifying the perpetrator of the crime.
14 Being that in Civil Rights violations, for the most part,
15 the -- I think more commonly, the perpetrator is usually a
16 stranger to the victim. Unless it is in a situation where
17 there is a group of kids, or a person who is constantly in
18 the neighborhood, and harassing people in that same manner.
19 The perpetrator is normally a stranger, and it is much more
20 difficult to come up with an identification.

21 Just on some more general observations about some
22 of these difficulties is just general difficulty for both
23 the victim and the police, in identifying what is actually a
24 Civil Rights Act. There are times when the victims
25 themselves may not realize what is happening. And if the

1 police officer is not keen enough to pick up on that, or
2 does not ask the appropriate questions, that type of thing
3 would go unreported.

4 And I think my main point here -- or one of my
5 main points is that I think things lie a little too heavily,
6 sometimes, on the judgment of the police officer, in terms
7 of -- and that brings into play his bias as well, in terms
8 of reporting these, or deciding what is actually a
9 violation. And according to Jack McDevitt's study, he has
10 stated that both police and court officials also are unsure
11 in some instances, what to do in a Civil Rights violation,
12 and how they can enforce the law.

13 I am going to be quoting some statistics from
14 Jack McDevitt's study, which would include a random sampling
15 of reports from the Community Disorders Unit. From 1983 to
16 1986, they used 100 random samples for each of those years
17 of reports from the CDU, as well as from January through May
18 of 1987, whatever reports that had come in through the CDU,
19 that the investigation was completed.

20 The total number of cases they researched was
21 452. Of those 452 cases, 40 of them came through the Boston
22 court system. Of those, only 6 were actually given Civil
23 Rights charges. Three of those were also accompanied by
24 assault, or assault and battery charges.

25 19 cases were assault and battery charges. And

1 11 were assault and battery with a dangerous weapon. In
2 terms of convictions, there were nine probations, five
3 restraining orders. five continued with no findings. four
4 finds. And three suspended sentences. And in terms of
5 those that actually had a jail sentence, there were only
6 five, out of the total of 452 cases that were included in
7 that study.

8 And I think that is a strong commentary on how
9 effectively this is working. I think a lot of cases are
10 falling in between the cracks. And I think, particularly
11 cases against police officers are falling in between the
12 cracks, partly because of the intimidation factor. Not only
13 on the part of the officer, who's perpetrating this, but
14 also just on the part of the police force and the judiciary
15 system, you know, as people begin to work their way through
16 that system, the type of response that they are met with
17 when they are filing a complaint a police officer. I think
18 that is something that needs to be taken into consideration.

19 I believe that education certainly is a
20 deterrent, and I don't think there is enough of that. And
21 as the Coordinator of the Task Force, we normally receive
22 monthly reports from the CDU, as to the incidents that take
23 place in Dorchester. And I think there is one particular
24 trouble spot, that we were hearing from time and again, and
25 that was in the Savin Hill area of Dorchester. And I think

1 once -- you know, there was a young person who was actually
2 put away, because of a Civil Rights violation that was
3 committed, I think it would turn a lot of other people --
4 you know, probably, potential defendants, you know, who
5 might have ended up in the situation. I feel it really
6 deterred them from getting into those same types of
7 situations, because they actually see that there is a law,
8 and it is working. And there is going to be a consequence
9 for the violation.

10 And I guess I would just like to reiterate the
11 issue about the perception of people of color when they are
12 going through the criminal justice system. It's a primarily
13 white system, and I think when people are going through
14 this, and they along the way are meeting with the biases of
15 other facets of that system. And just from their
16 perception, this is not something that is going to work for
17 them, and I think that deters a lot of people from going
18 through with that, and I think I will end my comments with
19 that.

20 DOROTHY JONES: Thank you very much. Now, Mr.
21 Elisa.

22 TESTIMONY:

23 BY LOUIS ELISA: Thank you, Ms. Jones. The first
24 thing I would like to say, good afternoon. And I would like
25 thank you for the opportunity to address this panel here, on

1 the issue of Civil Rights.

2 My name is Louis Elisa. I am the President of
3 the Boston Branch of the NAACP, located at 451 Massachusetts
4 Avenue, Boston, Massachusetts 02118. I came today to talk
5 about the Mass. General Laws Chapter 12, which is the basis
6 of the Civil Rights Act. And its affect on the communities
7 of color in the City of Boston. I came to address the issue
8 of Civil Rights, from a perspective that is not often raised
9 in talking of the issues of Civil Rights, only because in
10 the past we have been so caught up with the issue of Civil
11 Rights as being about just gender, color, race-based, that
12 we miss the fact that Civil Rights extended to all the areas
13 of the Constitution which are guaranteed, and to which the
14 decision in 1964 has affected the quality -- or should have
15 affected the quality of life of all people in this society.

16 To a large extent, my concern about the Civil
17 Rights Act is that of the Civil Rights that have been
18 guaranteed under the Constitution. Those laws that are
19 guaranteed by the rights, the decisions of the Supreme Court
20 and the Acts of Congress, in a sense are being violated on a
21 constant basis, and the Mass. General Laws, do not, have not
22 effectively covered or addressed them as they affect people
23 of the City of Boston, on a day-to-day basis. And
24 particularly, people of color. That we tend to constantly
25 view the Civil Rights Act from a race-based perspective, and

1 we miss that people who are victimized in other ways on
2 issues other than color, but because of their color, are
3 very much affected, in terms of their Civil Rights.

4 This issue is that people who live in a community
5 where they feel under siege. People who live in an area
6 where they cannot leave their homes. They do not feel that
7 they are safe to worship, as they choose. They cannot
8 attend their synagogue or church or parish. They cannot
9 shop, like normal people do, for groceries to feed their
10 families. They cannot utilize the resources of the City,
11 the public transportation. They cannot earn a living that -
12 - whether or not they are receiving problems or are having
13 problems at their work place, they basically can't have a
14 job, because they don't feel comfortable to go there. In a
15 sense, their Civil Rights are being denied them.

16 I am not sure how this was allowed to happen, but
17 it is clear that it does happen. It is clear that, within
18 the communities of color in the City of Boston, a certain
19 atmosphere has been allowed to arise, and has been
20 maintained in that community, to the detriment of the
21 residents that live there. And I strongly believe that that
22 is a clear violation of their Civil Rights. The right for
23 peaceful enjoyment. The right for peaceful and safe
24 transport and movement in public. The right to be free in
25 their persons. The right to feel that they have the ability

1 to earn a living. To get an education. And to worship as
2 they feel.

3 That violation of their rights has not been
4 addressed by the Commonwealth of Massachusetts in its
5 General Laws, and it is not being maintained. More
6 particularly, the right for people of color, and
7 particularly African Americans, to feel safe in their
8 persons, to move about freely in the public ways.

9 Over the past year, there has been a deliberate
10 policy, which has been condoned by the police department, at
11 least from below the level of Commissioner, and sanctioned
12 by area commanders, that puts all young black males and
13 females at risk. The policy, as they have defined it, that
14 they will stop and search any person that they believe to be
15 a member of a gang, in violation of their Constitutional
16 Rights to be free from search and seizure. In violation of
17 the Supreme Court decision of Terry v Ohio, which declares
18 that an officer must have at least reasonable grounds for
19 suspicion. They have decided they will stop and frisk, stop
20 and search, anyone they feel, for whatever reason, they want
21 to.

22 That has caused a great amount of harm, emotional
23 damage. It has caused many problems within the community.
24 But most of all, it has been abridgement of their Civil
25 Rights. To a large extent, there is something we have to

1 say about this process that tells -- sends a message to the
2 Attorney General for the Commonwealth of Massachusetts, that
3 under the laws of the Commonwealth, Mass. General Law
4 Chapter 12, Section 11, that he has a responsibility -- and
5 I submit to this panel, that Section 11 H says that
6 violation of Constitutional Rights, Civil Action by
7 Attorneys General, his venue is that, whenever any person or
8 persons, whether or not acting under the code of law,
9 interferes by threat, intimidation or coercion, or tends to
10 interfere by threat, intimidation or coercion, the exercise
11 and enjoyment by any person or persons, of rights secured by
12 the Constitutional Law, laws of the United States. Or
13 rights secured by the Constitutional Law of the
14 Commonwealth. The Attorney General may bring a Civil Action
15 for injunction or other appropriate equitable relief, in
16 order to protect the peaceable exercise or enjoyment of the
17 right or rights secured.

18 That has not happened in this case. That there
19 are cases that have been brought to the attention of the
20 U.S. Attorney, as well as to the attention of the Attorney
21 General of the Commonwealth, and there has been no action
22 taken to enjoin the police or to prevent the continuous
23 behavior, which threatens the peaceful enjoyment of people
24 of color in the City of Boston, of their Constitutional
25 rights. There are cases that have been documented. I will

1 submit an article by the Boston Globe from Peter Continello
2 who wrote of 15 cases, in which he did interviews, and they
3 were young people between the ages of 15 and 25, who felt
4 that their rights were violated, and had documented the fact
5 that they had been stopped for something other than
6 reasonable grounds of suspicion. Who were not arrested.
7 And in which no further charges were brought. They were
8 just victimized, in a sense, emotionally vandalized. And
9 had been left to be, what I would call, emotional baggage,
10 on our society, because they now feel the loss of some
11 precious right, which is guaranteed by our Constitution.

12 I would also submit that the conduct of the
13 Police Department leaves the community and the people who
14 live in that community in a position of bewilderment and
15 amazement, because it is the responsibility of the police
16 and has been the responsibility of the police, to uphold the
17 law. And that to a large extent, the rights, the Civil
18 Rights laws and violations that have to be investigated, are
19 left in the hands of the people who are now violating those
20 rights. And unless there is a change, unless something is
21 done about it, you then have a community that feels
22 threatened, not only from the amount of crime and violence
23 which has been allowed to perpetuate, but threatened by the
24 people, the very people, who are supposed to protect them.
25 And supposed to secure their rights, not just be free from

1 harm and danger. And secure their safe passage, and state
2 of mind.

3 I quote from a case by Judge Mathers,
4 Commonwealth versus Lamar Phillips and Melvin Woody. Within
5 the case he states that, as early as March of 1989, and not
6 later than May of that year, the Boston Police Department, a
7 level below that of the Commissioner -- the Commissioner's
8 Office -- began the systematic application of a policy, in
9 the general area of Roxbury, that has not previously been
10 formalized, although it may well have been in intermittent
11 use for a much longer time..

12 The policy was developed in conjunction with the
13 formulation of a secret list of known gang members, which
14 was initially 150 in number, but now has grown to 750. The
15 Deputy Superintendent, William Celeste, commanded some 230
16 officers in the Roxbury District, announced that,
17 henceforth, all known gang members and their associates,
18 whether known to be gang members or not, would be searched
19 on sight.

20 Celeste's announcement was, in effect, a
21 proclamation of Martial Law in Roxbury, for a narrow class
22 of people. Young blacks, suspected members or a gang, or
23 perceived by police to be in the company thought to be a
24 member. Mr. Celeste's Machiavellian approach to the problem
25 in Roxbury, has continued to be implemented.

1 The court finds a tacit understanding exists in
2 the Boston Police Department, that Constitutionally and
3 permissible search will not only be countenanced, but
4 applauded in the Roxbury area. This is a problem which
5 cannot be dealt with on a case-by-case basis. A fact
6 addressed by the Supreme Court of the United States.

7 The court ordered that the incident be dismissed
8 against the two men, because of this policy. And a
9 memorandum be furnished to the Attorney General, James M.
10 Shannon, for such action to be deemed necessary to restrain
11 further unreasonable search and seizure, by the Boston
12 Police Department. In a sense, he had remanded the issue to
13 the Attorney General's Office, which to date, has not taken
14 it upon themselves to avail, or utilize the powers that are
15 vested in him, under the Mass. General Law Chapter 12,
16 Section 11 H, which clearly states that he has the right to
17 find injunctive relief from this type of behavior. And so
18 the process goes unabated.

19 African American people within the Roxbury-
20 Dorchester-Mattapan community, are having their Civil Rights
21 violated on a daily basis. This cannot continue. But I
22 daresay that this policy goes beyond the narrow borders of
23 Boston, Massachusetts, and exists throughout the Country.
24 That in city after city that I have travelled throughout the
25 East Coast and part of the West Coast of this Country, I see

1 there is a continuous process, which has allowed the police
2 departments to exist and create the most egregious impact on
3 our Constitutional Laws, the Civil Rights. They go
4 unchallenged.

5 I think it now becomes the duty and
6 responsibility of the Federal Government, and the panel on
7 Civil Rights, to look very closely at this process, to see
8 whether or not what is being claimed here has any weight,
9 any value, and therefore any standing, whereby action can be
10 taken to, in a sense, mitigate this procedure and turn it
11 around if necessary. To tell people of color in this
12 Country, that they do have a right to be protected in their
13 person. And that they can be treated as citizens, not only
14 of the state in which they live in, but of the Country to
15 which they belong.

16 That, unless Dredd Scott is still in effect, we
17 do have an obligation to affirm the rights of people of
18 color, that they should be safe in their persons from
19 search, unreasonable search and seizure. That we do have an
20 obligation to make the Constitution work for all citizens of
21 this country, equitably. And the failure to do so, deems us
22 to a nation to be separate, and unequal. And deems us to a
23 society where people do not feel that they have the support
24 of law, nor is there a process of justice.

25 I, as the President of the Boston Branch of

1 NAACP, brought the issue to the U.S. Attorney. I have
2 raised the issue with the Attorney General of the
3 Commonwealth of Massachusetts. I thought it unnecessary to
4 raise it with the District Attorney of the Second Suffolk
5 District under which jurisdiction the process has been
6 implemented, and allowed to continue, only because he, early
7 on, sanctioned the process, and in a sense, created the
8 atmosphere which allowed the process to move forward.

9 But I do say that for us to look into the future,
10 as to where law is to go, and to where we, as a nation, will
11 be. Unless we strictly enforce the law. Unless we quickly
12 move to affirm for all citizens of this Country,
13 particularly those of the Commonwealth, that their rights
14 are protected and secured under the Constitution of the
15 United States, and the General Laws of Massachusetts, we are
16 deemed to move further and further apart as a nation.
17 People of color feeling that they have no rights by which
18 anyone is obligated to respect, and therefore, relegated to
19 second class and no citizenship. Moving us to a society
20 that will be below the contempt of the rest of the world and
21 humanity.

22 Thank you for your time.

23 QUESTIONS AND CROSS-DISCUSSION

24 DOROTHY JONES: Thank you. Before I open for
25 general discussion, I will ask if members of the Advisory

1 Committee have questions or comments to make to the members
2 of the panel.

3 PHILIP PERLMUTTER: Well, I have a comment and a
4 question. I think it's very important testimony that has
5 been given. I feel that on this -- a few of you have
6 suggested education. That took me back 30 years. I'm
7 sorry, I believe in education, but I believe more in
8 enforcement of laws. Because by the time you educate a
9 bigot, you're not going to get anywhere, unless you throw
10 him in a nuthouse like, you know, the example you gave. So
11 it's a cop-out. But Mr. Elisa, I am intrigued by what you
12 say, and I have to -- I need your reaction. I am not an
13 expert of the black community. But I grew up in a tough
14 area of Brooklyn. Maybe even tougher than Roxbury. And I
15 think the people in that area -- and I did -- liked it when
16 the cops came around, and picked up, or beat up, hoodlums.

17 Now, since the Stuart case, more than 30 blacks
18 have been killed. Not by policemen, but by other blacks. I
19 know black leaders in this community, and you know them
20 better than I do. And I really, I am not presenting this as
21 an argument, but I need it from you, but I have to put it
22 clearly -- who applauded that effort. Who said, look, when
23 there are known hoodlums in these gangs, let's get them off
24 the streets. Now, I know that from some black leaders. I
25 know the Bay State Banner called for bringing in a National

1 Guard, in order to get these hoods off the street. And I
2 know a number of say, average, black people who are old, who
3 are scared out of their wits to go out at night, not from
4 attacks by the police, but by tough kids.

5 Now, the way you sounded, it sounded to me that
6 you were more concerned, in a way -- which I know isn't so --
7 -- but that's the way it sounded to me. That you are more
8 concerned with protecting the rights of some hoodlums, than
9 of most of the rights of innocent blacks who are being
10 victimized, and are scared to enjoy all of the things that
11 you want and that I want. So, tell me. What is going on in
12 the black community in a mind that's informed?

13 LOUIS ELISA: Mr. Perlmutter, the first thing I
14 should inform you that I grew up in a tough area of
15 Brooklyn, too.

16 PHILIP PERLMUTTER: Okay. Which one?

17 LOUIS ELISA: I'm from Bed Stuy.

18 PHILIP PERLMUTTER: Alright. I'm next door to
19 you. Williamsbury.

20 LOUIS ELISA: And I used to travel through
21 Williamsbury.

22 PHILIP PERLMUTTER: Okay.

23 LOUIS ELISA: I lived in Brownsville.

24 PHILIP PERLMUTTER: Okay, good.

25 LOUIS ELISA: I lived in a town with -- I came

1 from Mobilization from Youth on the Lower East Side. I
2 worked in --

3 PHILIP PERLMUTTER: Alright. We're on the same
4 background.

5 LOUIS ELISA: I've known cops from both sides.
6 I've been a police officer myself. I've seen crime, and
7 I've seen punishment. And I am here to tell you what is
8 going on in the African American community of this Country.
9 It has nothing to do with protecting hoodlums. The bottom
10 line is a gross violation of Constitutional, human, Civil
11 Rights of people of color throughout this nation.

12 PHILIP PERLMUTTER: That I am not denying. I am
13 saying, the protection --

14 LOUIS ELISA: But the process -- the process by
15 which they have allowed drugs, guns, violence, corruption to
16 exist in the African American community, is the first
17 violation of our Civil and Constitutional Rights. To then
18 come back, and to treat the neighborhoods of those impacted
19 in victimized areas, the neighborhoods, and all the people
20 in there, as the problem is the gross and the grossest
21 miscarriage of justice. And denial of their Civil Rights.

22 PHILIP PERLMUTTER: You're not responsive -- I
23 say this respectfully. You are not responsive to my point.
24 I don't disagree with that.

25 LOUIS ELISA: Let me be very clearly,

1 DORIS ARRINGTON: Let me speak for my colleague,
2 as to what to --

3 DOROTHY JONES: And I think I will have to answer
4 you.

5 LOUIS ELISA: May I finish?

6 DOROTHY JONES: Yes.

7 LOUIS ELISA: The point, that we all appreciated
8 a policeman with a firm hand, who understood our community,
9 who walked the beat, is not lost on me. I lived in the 79th
10 Precinct. I know what it is like to have a police officer
11 who knows your community, and knows the people in that
12 community. He knows your parents. And is concerned about
13 his reputation, or her reputation. And the impact of their
14 job on your life. I know what that means. We have all
15 asked for that.

16 We, the residents of the Roxbury-Dorchester-
17 Mattapan community, were in support with the neighborhood
18 justice system. Five years ago. Eight years ago. Called
19 for the police to come in. To stop proliferation of drugs.
20 To stop the proliferation of houses of prostitution. To
21 stop the proliferation of number joints. We identified
22 them. We had the best network. The best neighborhood-based
23 network of information resources. They did nothing about
24 it.

25 I am saying the response that we have today, is

1 not to go after the known gang members. Is not to go after
2 the known drug dealers. Is not to after the known gun
3 runners. It's to throw a blanket over a community, and stop
4 at random. The Superintendent of that area said he will
5 stop every gang member, anyone they associate with. The
6 Superintendent of that area said he will stop anyone he
7 feels like. The judge has declared a State of Martial Law.
8 Based on the comments and behavior of the police department.
9 The neighborhood didn't declare that.

10 I am saying it is a gross miscarriage of justice,
11 and a horrendous violation of Civil Rights, when the people,
12 normal people, good people, working people, mothers, fathers
13 and children, cannot feel confidence in the police, who they
14 pay. Who they support. Who they ask to come in and protect
15 them. I am saying the problems that exist in the City of
16 Boston, exists throughout the nation for people of color.
17 The violation of their Civil Rights, is a standard operating
18 procedure throughout this country. That people who ask for
19 the police to come in and support them, now come in and
20 violate their rights to safe passage, to be free from search
21 and seizure. I am saying we all have asked that we get the
22 crime problem off the street. But I am not the problem.

23 A 32-year old man going to his house who is shot
24 by a cop saying he looked like a gang member, isn't the
25 problem. A 15-year old girl going down the street carrying

1 bags, being searched, is not the problem. Until they are
2 victimized. And then they become a problem. Because they
3 lose faith and confidence, in a system that basically is
4 sworn to protect them.

5 I am saying, no. We are not saying cover up the
6 criminal. We are saying, do the job. But if doing the job
7 means depriving me of my Civil Rights, that job will not be
8 allowed to be done. At least not on my behalf, because I
9 file a suit. I will ask that we bring the weight of the
10 Constitution and all the civil procedures allowable, to
11 change that. Have people called for the support of police?
12 We have been doing it for ten years. Some of us in Bed Stuy
13 have been doing it for 30 years. Some of us have been doing
14 it longer. We have asked the police to come in. We didn't
15 ask them to come in and break all arms. We didn't ask them
16 to come in and disrespect us. We didn't ask them to come in
17 and violate our civil and Constitutional Rights. But we
18 have said, please come in and do your job, and they have not
19 done that.

20 But at some point, they have decided that we are
21 now the problem, when actually we're the victims. We cannot
22 be victimized twice. And we clearly can't be victimized by
23 the laws that have been set up by the Constitution of the
24 United States, to protect us. If we are now going to use
25 the same people who are there to investigate Civil Rights

1 Laws, to violate the laws, then where do we go from here?

2 The bottom line is a person under siege will ask
3 for any help they can get. And someone will abhor the
4 remedy, even though it may cost them their lives. But a
5 person under siege, does not think clearly. A woman or a
6 man in pain, will take an amputation, the same amputation
7 they wouldn't consider if somebody would have arrested the
8 pain. So we can't say because people call and report the
9 acts of the police, because they're under siege, that that's
10 a rational decision that would be made under normal
11 circumstances.

12 I dare say, a person who wears a button, as some
13 people in the white community does, that says Frisk Me, if
14 they were ever frisked, would use every penny they had, to
15 put that cop somewhere other than in their community. I'm
16 saying it's easy to sit on the outside and talk about the
17 misery on the inside. I often feel empathy for people in
18 pain, but I am not in pain. Right now, my neighborhood is
19 really in pain. We're under siege. And we feel as much
20 fear now, from those who are sworn to uphold our Civil
21 Rights, as we do from those who constantly violate our civil
22 and human rights. I am saying that we have a problem that
23 is not just local but national, and somehow, we have to
24 address that, because it's the law in the courts, and their
25 agents in the police department, do not uphold the

1 Constitution and our Civil Rights. And where do we go? We
2 then become adrift.

3 And losing confidence in those who are there to
4 protect us, we have two nations. We can't afford that in a
5 society that in the world community, is slipping further and
6 further behind.

7 DOROTHY JONES: And before I let anybody else
8 speak, I have got to say it first. Phil, one of the parts
9 of your question was about black leadership that was
10 applauding the stop and frisk, search on sight, and so
11 forth. You know, fear does strange things to people, but I
12 remember my mother telling me a long time ago, that if you
13 do wrong from right motives, it's still wrong. And this is
14 what is happening now. People are forgetting that these are
15 the same police, that they blamed. Who didn't come when
16 they called. You know, call today and say somebody is
17 prowling around the outside, and four hours later, somebody
18 might show up.

19 And see I grew up in Roxbury. I lived in
20 Brooklyn later. I lived in Brooklyn in the sixties. But
21 I'm a kid of Roxbury, too. My nephew, who is a METCO
22 student. He is on the honor roll all the time. He plays
23 basketball. He was an MVP in, would you believe, Bedford,
24 Massachusetts. He has been stopped three times in his own
25 home neighborhood. He doesn't associate with gang members.

1 He doesn't do anything. He spends his time -- as much of
2 his time in Bedford as he can, in order to avoid the
3 situation. But he gets stopped. And he gets harassed,
4 because, unfortunately, I think the cop that stopped him the
5 first time didn't believe him when he said who he was, and
6 so now he's a kid who has been involved with the cop. So he
7 gets stopped again and again.

8 Now, I don't know what this is going to do to
9 him. I know what it has done to some other kids. It has
10 turned them against the whole idea of law enforcement. You
11 know, this is one of the problems. You get the situation
12 like you were talking about, where you don't look to any of
13 the adults. You take matters in your hands. And this is
14 what we have got to avoid. Okay. End of my statement. I
15 promised you before next. And then you, and then you. And
16 then you. Okay?

17 DORIS ARRINGTON: Now, I don't know if there is
18 any more to say, because I think it was probably already
19 said quite awhile. Except for to say that I don't think
20 it's an either/or choice. I think it's a balance. We
21 expect the police both to protect us, as well as to protect
22 our Civil Rights. And to bring it home, my skin cringes
23 when I hear that the police will just stop anyone.
24 Particularly, since I live in almost a predominantly white
25 community, and my husband has been escorted home by the

1 police. I mean, they have stopped him and asked him
2 something, and he says, well, I live right up the street.
3 They have driven right behind him.

4 Now, that probably won't happen anymore, because
5 everybody on the whole police force knows that the
6 Arringtons are one of the five black families who live in
7 South Hadley. But, you know, that was the type of thing
8 that we had to put up with. So, it really bothers me to
9 hear that the police will be stopping people. My husband,
10 himself, who happens to be part of the criminal justice is
11 stopped by the police and escorted home. And that is I
12 think what happened to all, particularly black males.

13 PHILIP PERLMUTTER: Look, I think, in fairness to
14 what you said, you did pick up something. I am in no way
15 defending police brutality or arrogance. Not at least as
16 you knew your area and I did. I didn't love the police.
17 And I still don't, though I do give a course at the Academy.
18 I am saying, however, that within any community, whether it
19 is black or whether it was the Irish community, and they're
20 here 50 or 60 years ago. There is such a thing as lawless
21 kids. And there are such things as assemblies which are
22 dangerous. And there's such a thing as being afraid to walk
23 out. And I am saying, how do we address this, without
24 sounding like -- and that's what I was hearing, although I
25 knew you don't mean it. What do we do with them?

1 Beat up on a police, alright, I'll join you in
2 beating up on the police. But that isn't going to solve the
3 problem. And I am saying, there is such a thing that is
4 going on there, which is not unique to the black community.
5 Anyone who knows Boston's history, Boston had probably more
6 deaths and robberies when the Irish came in here and took
7 over, 1880, for the next 50 years. There is nothing unique
8 about that. Jews, also, in Williamsbury or in Brooklyn,
9 were deep into crime.

10 I am saying, how do we deal with lawless
11 elements, and we shouldn't be, as far as I'm concerned,
12 protecting them. Any cop who violates a kid's Civil Rights,
13 fine and dandy. And that does go on. You know. It goes on
14 more with blacks than it does with whites. But there has to
15 be a way of dealing with crime.

16 DORIS ARRINGTON: Well, I think all of us aware
17 of it, but this is not the focus of this Commission.

18 PHILIP PERLMUTTER: Well, in a way, we want to
19 hear if we are going to be dealing with violent actions.

20 DOROTHY JONES: Let's see, I promised the floor
21 to you, you, then you, Sheila. And I'm going to keep my
22 mouth shut from now on.

23 MARISA JONES: I would just like to make a point
24 that, at first, our agencies and with all respect to Louis,
25 we were in support of the stop and frisk and the stop and

1 search. And I have to put that on the record. And the
2 reason being is because we work with a lot of residents who
3 are under siege. Who don't see any way out. That are
4 dealing -- are so apathetic with the percentage of crime
5 that is coming into their particular neighborhood, that they
6 don't see any way out of it. And I want to make that for
7 the record. The reason why, now, we are not in support of
8 the stop and frisk policy, is because we educate and
9 encourage our residents, to work very closely with law
10 enforcement. To work very closely with the police
11 department. And pass over information concerning negative
12 activity, that is going on within your neighborhood.

13 And now I have to question the motives of the
14 police department, of law enforcement, when we have Crime
15 Watch groups that are aware of the activity within your
16 neighborhood, that can actually point out the drug house,
17 the crack house. And law enforcement is not addressing that
18 issue. So that is way, again, that we are now in opposition
19 of the stop and frisk policy. But I have to make it very
20 clear, that -- and again, in all due respect, Mr.
21 Perlmutter, the question -- the key is education. As far as
22 community residents are concerned. That community residents
23 are not aware of their Civil Rights. They are not aware of
24 how the Massachusetts Civil Rights Act operates. And it's
25 our part, and it is our agency, to de-mystify the criminal

1 justice system, and to try to de-mystify the Massachusetts
2 Civil Rights Act. So youth, as well as residents, are aware
3 of how that operates, and aware of how that is supposed to
4 protect them.

5 MORRIS JENKINS: I would like to say, ditto, to
6 Louis Elisa's comments. I've only been in Boston a short
7 period of time. I'm originally from Detroit. And I spoke
8 to Mr. Elisa on this issue, prior to it hitting the press.
9 So that I am aware of illegal conduct of police prior to the
10 media sensation.

11 One thing I would like to point out to you is
12 that, beware. A lot of times a knee-jerk reaction to
13 certain issues, revolving around communities of color -- a
14 lot of times, that reaction takes on the color of something
15 being good, when in actuality, it is something that is bad.

16 I think one of the solutions is to get more
17 community involvement from community organizations, such as
18 the ones we have got around the table. Get them involved in
19 the process of reporting Civil Rights violations.
20 Presently, it looks like most of the violations are reported
21 to the police, who's perpetuating the Civil Rights
22 violations on the community.

23 I don't think that's right. I don't think that's
24 right. I think we've got to get community involvement, and
25 -- for example, the legal community.

1 PHILIP PERLMUTTER: I'm with you. I'm saying
2 that's a dilemma. They're not going to do it by themselves.
3 And that is what happened in your case. See, what I was
4 saying is once you report them and educate them, what if the
5 police don't follow up? See, then you have frustration.
6 This is where I agree. But I come back to your base of
7 argument, that's got to --

8 MARISA JONES: But I think it's up to, it's --
9 ditto, to me, Morris, what you stated. It's agencies, such
10 as the Dorchester Task Force, the Indian Asian Project. The
11 NAACP, in our agency, to play a role as to follow up with
12 law enforcement, concerning these particular cases.

13 SHIRLEY DECTER: Dorothy, I would like to tie the
14 two pieces together, if I could, by coming back to the Mass.
15 Civil Rights Statute. But to address in some of the areas,
16 Mr. Elisa just dealt with. I have been at meetings where I
17 have heard discussion of the use of the Mass. Civil Rights
18 Act, in terms of the stop and frisk policy. I am not clear
19 in my mind whether or not litigation has actually been
20 started. I have sat at meetings of both the Civil Liberties
21 Union, and the Lawyers Committee, and have heard discussions
22 about a possible action under the Mass. Civil Rights Act, in
23 terms of the police.

24 And given I just would indicate for the record,
25 American Jewish Congress participated in a major press

1 Conference just a few weeks back with the NAACP. Our
2 president, Representative David Cohn, spoke about our strong
3 feeling that the stop and frisk policy had to stop, and it
4 clearly was a violation of Civil Rights of individuals.

5 The way in which it is being -- aside from --
6 whatever the intentions were when it was started. And there
7 is no question in the implementation of it, that is,
8 depriving individuals of their Civil Rights. If in fact no
9 one has yet started a complaint action and a case here, that
10 perhaps this is something we ought take a look at together,
11 and file. And we would be happy to do that with you.

12 Now, I say that at the same time, calling
13 attention to what Tom was suggesting. He was warning that
14 certain kinds of cases aren't going well. And that they
15 tend to be the cases where there are private parties against
16 other parties. That those have been harder to deal with
17 than cases where the Attorney General brings action. But
18 nevertheless, sometimes just bringing a case is useful, even
19 if it is going to take awhile, and even if it is not
20 necessarily going to win. I think that the kind of public
21 attention on the intimidation, on the coercion that is
22 involved in the stop and frisk policy, would be useful.

23 Then I would like to raise a different question.
24 When you first started talking, I thought you were going to
25 go a different direction. I have to tell you that as I

1 first listened to you, I thought you were going to say
2 something else. I thought you were going in the direction
3 of, the extent to which the powers that be -- the city,
4 government officials, have allowed an atmosphere of violence
5 to take place, to grow, without sufficient police
6 protection. Without caring. A kind of knee-jerk, if you
7 will, response, saying, well, it's only in the black
8 community. It is only there, and we don't have to care
9 about it. It is only their problem. It isn't crime on
10 white people. So we don't need to have the level of police
11 protection.

12 I thought you were going to go into the case of,
13 that there has been a huge Civil Rights violation, to the
14 whole population of areas of the city, where they are not
15 free to walk and go to the store, and use the transit system
16 and the others. And it seems to me that we ought to take a
17 good look at that, and see whether there isn't a more basic
18 case. That there is a coercion, and it is a coercion which
19 is taking place, and the government is under an obligation --
20 -- one of the most basic protection of lives who live in an
21 area. Where people who are not engaged in drug traffic, and
22 not engaged in illegal acts, are not free to move on the
23 streets. And maybe we have all been ignoring the
24 possibility of a major action under the Massachusetts Civil
25 Rights Act, which may or may not win, but may in fact get a

1 better response than we have seen so far.

2 ANDRE RYERSON: Well, I have got a little comment
3 to make. I live in a very protected part of western
4 Massachusetts, so, you know, consider me a visitor from the
5 moon to some of these problems, although I grew up in the
6 city.

7 I read a book a long time ago, 20, 30 years ago,
8 that argued against the invention of the police cruiser.
9 And they said that this completely depersonalizes the
10 relationship between the police, and the people who live in
11 a community. And he said, if only we would bring back the
12 cop on the beat, who knows the people on the street, who
13 knows the families. You know, it becomes, in a sense, his
14 territory. And he cares about that people trust him. They
15 know they can tell him something. You know, I just throw
16 that out as a thought. But if the policeman had a proper
17 beat, and knew the people in the community, and they
18 developed that relationship, it seems to me he would
19 automatically know, well, you know, I am not going to raise
20 so much of my eyebrow to this kid. He is not a trouble-
21 maker. And that's simply a thought that somebody offered a
22 long time ago.

23 FAITH WALKER: I think the comment about possibly
24 using the Civil Rights Act against acts of violence that are
25 perpetrated by the gang members and so forth, is very

1 interesting. But I would also like to comment on the
2 broadness of this act, in that it is supposed to encompass
3 so much, yet it was not able to be applied in a situation
4 where a swastika was drawn on a synagogue. While on the
5 other hand, a white person who wanted to have a tennis court
6 built was able to use it. And I think -- while I think it
7 is an interesting suggestion, and is something that has
8 passed through my mind as well, I think the Civil Rights Act
9 can encompass quite a wide number of situations, including
10 gang violence.

11 But I still think we need to beware of how that
12 all is going to play out, especially when you look at the
13 statistics of cases being reported against police officers,
14 that somehow never seem to follow through. I can just see
15 masses of people of color being hit with the Civil Rights
16 Act, while other perpetrators are going on --

17 SHEILA DECTER: Can I just -- if I didn't make
18 myself clear, let me try. It wasn't the gangs that I saw as
19 the defendant in the case. I saw the city. What I thought
20 Louis was doing when he started, was suggesting that there
21 was a condition and an atmosphere that had been allowed to
22 develop. And as I read through Section 111, any person
23 whose exercise or enjoyment of rights secured by the
24 Constitutional Laws of the United States, or rights secured
25 by the Constitution, have been interfered, or attempted to

1 be interfered, may institute or prosecute in his own name.

2 It seemed to me that one could suggest that there
3 is a coercion here from the city, by failure to deal with
4 these issues appropriately. I don't know, I mean, you know,
5 it may be far-fetched, but it may be worth a look, in an
6 attempt to see if it could be useful. It certainly can be
7 used against coercion by police. If you feel that the --
8 and there is clear evidence that the police have been taking
9 away Civil Rights, it seems to me that the Act could be used
10 there. But I thought, when you started, that you were even
11 suggesting it in a broader way.

12 DOROTHY JONES: You were going to ask a question,
13 and then we'll come to you.

14 SHERRY LEIBOWITZ: I was just going to indicate --
15 -- I don't know if you want to take the time, but there is
16 information about the suit that has been filed regarding
17 stop and frisk, as well as other organizations that have
18 been --

19 DOROTHY JONES: Oh, good.

20 SHERRY LEIBOWITZ: -- that have taken complaints.
21 And if you want me to explain that, I will be glad to. If
22 not, I will discuss it with anyone privately. I don't know
23 if you feel it's --

24 SHEILA DECTER: Get this the other way.

25 SHERRY LEIBOWITZ: Yes, there is a suit that has

1 been filed by the Civil Liberties Union in Massachusetts,
2 with the law firm of Brennan, Hynes and Bilbey. It's a
3 class action suit that does allege numerous causes of
4 action, including violations of the Mass. Civil Rights Act.
5 It is scheduled for trial in May, in the Federal Court,
6 before Judge Zobel. And it will address whether there is a
7 policy or practice of the Boston Police Department to
8 perform unlawful stops and searches or stops and frisks.

9 In addition to that, there are other
10 organizations that are taking complaints, both law
11 enforcement and private organizations. The U.S. Attorney's
12 Office and the Attorney General's Office have both announced
13 their availability to take complaints. It is our
14 understanding that numerous complaints are under the process
15 of investigation. To date, there has been no formal action
16 by any of those agencies, but matters are under
17 investigation.

18 There are other private organizations that are
19 taking complaints and advising people on both their rights
20 to lawsuits, and to bring complaints of law enforcement
21 personnel. The Mass. Black Lawyers Association. It was
22 assisted by the Lawyers Committee for Civil Rights in a
23 complaint taking session. The Lawyers Committee is also
24 doing an ongoing complaint process. And so there are other
25 organizations that are involved. I mean, the Hennessey

1 Commission is -- I won't go into that. But if the Committee
2 would like to take this up, there is activity.

3 The other thing that it is important to realize
4 is the distinction between the stop and frisk and stop and
5 search. And search on sight. Stop and frisk is a lawful
6 activity of police officers to conduct a limited pat-down
7 under the circumstances Mr. Elisa described. What is the
8 allegation is that the stops are exceeding both the scope of
9 the frisk. That it is not just a frisk, it is an intrusive
10 search including a strip search. And that the stops are
11 being done improperly, not based on reasonable suspicion,
12 but just on sight. Hence the term, search on sight. So I
13 think -- I have heard those three terms discussed
14 interchangeably, and I just wanted to clarify.

15 PHILIP PERLMUTTER: Good thing we've got a
16 lawyer.

17 DOROTHY JONES: Now it's your turn.

18 REGINALD JOHNSON: After hearing that, too, one
19 thing that -- more in terms of where we are in the state of
20 affairs. We got a piece of legislation passed through. We
21 had the Constitution amended, to the 14th Amendment, the
22 Bill on Disability. And also had some other legislation put
23 through. But one of the one areas that we found out, was
24 that a lot of people never utilize -- this still has very
25 rarely been utilized. So we've got it on to uphold Civil

1 Rights of folks disabled.

2 The point I am trying to bring up is that we
3 found out that you almost have to kind of go out, show a
4 person exactly how to do it. Because a lot of folks just
5 don't want to file. Don't want to take their chance.
6 Number one, they feel that it is not going anywhere. And
7 the second thing is the threat of reprisal if you do file
8 it, if you lose. People down there will say, well, you're
9 the one who caused all these problems. And most people are
10 just terrified. They're frightened to go into a court of
11 law, for a thing like this. And that has -- in a lot of
12 different cities and towns we don't see that.

13 You brought up the point about education. That
14 would be one of the things you are almost going to have to
15 do within the community organization. Bring your people in.
16 Try to educate people. And if you have enough
17 organizations, maybe to have issues that would be class
18 action suits and things like that, that we file on behalf of
19 the individuals. Because if it's just an individual, very
20 few will do it. And I keep looking back to all the stuff
21 that we had to do to get the Constitution amended here. And
22 since we've gotten disability rights, very few people have
23 taken advantage of it. And that's just a point I brought
24 up.

25 The other thing you had just mentioned about if

1 the patrol person that was on the beat versus in the car.
2 Well, I'm also from Detroit. And --

3 PHILIP PERLMUTTER: Where you also have tough
4 neighborhoods, too.

5 REGINALD JOHNSON: But, you know, for a long
6 time, they put a lot of -- one of the areas that they
7 brought up was the mini-station concept. In which you
8 basically took three or four officers stationed in an area.
9 And you might have five or six or seven throughout that are
10 posted at the mini-city hall, things like this, to try to
11 get people more educated, and try to get some police
12 protection in the area. And as you said, they would have
13 the neighborhood -- you know, people who lived in that
14 neighborhood, or people who are seen all the time. Try to
15 do that. And I don't know -- I don't think it has ever been
16 tried up here. I don't know. But that's an area that I
17 just wanted to bring out.

18 MARISA JONES: Just an addition to that, what
19 currently the Boston Police Department is trying to
20 implement, and I believe that they have implemented in two
21 particular areas on a pilot basis, is the sector integrity
22 concept. And what the sector integrity is, is that the same
23 officer will be in the same part of a particular
24 neighborhood, on a day-to-day basis, on their shift.

25 ^ So what happens is almost the same concept with

1 sector integrity, is that the officer gets to know the
2 logistics of the neighborhood. Also gets an opportunity to
3 build some form of relationship between the residents that
4 live in that particular neighborhood. I think the problem
5 currently for the Boston Police and the sector integrity
6 concept, is with the deployment issue. Is that it's a
7 problem for Boston Police to keep the same officers within
8 the same neighborhood on a consistent basis.

9 LOUIS ELISA: I don't know what the problem is,
10 other than the fact that they won't do it. Before I
11 addressed the whole issue of integrity in the police
12 department, I didn't even say that -- I now apologize if I
13 somehow befogged the issue by going too quickly, but I did
14 bring up exactly both those issues. That there is an issue
15 of Constitutional Civil Rights for a city to fail to provide
16 access or the right to access, in my report, the public
17 enjoyment for citizens. And the other is the failure for
18 the police department to uphold the Constitution and protect
19 the lives of the citizens of the City of Boston.

20 I also wanted to make a point with that -- it was
21 the obligation of the Attorney General of the Commonwealth
22 under Mass. General Laws 12 Section 11 H to bring forward a
23 suit to make sure those rights were being protected. And
24 that is basically what that section addresses itself to in
25 the record. That Judge Matthews remanded a case of the two

1 gentlemen, who basically remanded to their Attorney General
2 to take action on it. I mean, it is very succinct. He says
3 in his order -- his order that these indictments be
4 dismissed. A copy of this memorandum furnished to the
5 Attorney General, James M. Shannon, for such acts -- and
6 restrained further, a reasonable search and seizure, by the
7 Boston Police Department.

8 Now, this decision was made in September of 1989,
9 and to date, there has been no action on the basis of the
10 Mass. Civil Rights Law to -- in a sense to abate this
11 situation that still goes unabated. So, I mean, we have
12 worked this case, and the issues of race, and the issues of
13 gender, the issues of sexual preference and things, and the
14 concept of Civil Rights Law are very important. But the
15 basic issues of people being -- having the right of safe
16 passage, feeling safe and secure in their own environment.
17 Being able to enjoy the benefits of their taxes, or being
18 protected. Those basic rights are being denied. I mean,
19 somehow, someone has to say from some level of government,
20 that the State has an obligation to do their job. And I
21 guess that's the point that I really want to make.

22 As far as the remedies, as relates to police
23 doing their jobs, sector integrity or whatever it is,
24 whether they're walking or riding, if they don't respect the
25 basic rights of the people they are there to protect; if

1 they don't understand that to stop a person without
2 reasonable grounds for suspicion; to body search somebody;
3 to detain them; to arrest someone on something less than
4 probable cause, and destroy the quality of life that they
5 live now, and will live forever, because of that stop and
6 unlawful arrest. You know, unless they respect and somehow
7 we make them understand that, we are doomed to create a
8 whole sector of our society, that has no respect for the
9 right or the process of law.

10 The most egregious loss in our society is that of
11 our young people black and white, who don't feel protected
12 by police. I have a 23-year old daughter, a 17-year old
13 daughter, and a 6-year old daughter. And the two older
14 children do not feel that if their life was in jeopardy,
15 that they can turn to the police for protection. I don't
16 want the 6-year old to grow up to feel that way. That is
17 the greatest loss of any person. If you grew up in Brooklyn
18 -- you know what I'm saying. That no matter how bad things
19 were, how bad the gangs were in the fifties and sixties, any
20 time you were in jeopardy, you would look for that green and
21 white. You would look for that cop, because you knew that
22 she or he would be there, and that you could get protection
23 with safe haven.

24 Today, if I asked the kid, where would you run
25 for protection, they would not run to a police station, they

1 would run past it. And that is a major loss in our society,
2 that our young people do not feel they have any place to
3 turn for protection.

4 DOROTHY JONES: I would like to just add a --
5 going back a minute to the educational possibilities. I
6 agree with you when you say that there is no point in trying
7 to educate a bigot. But there are other areas of education
8 that can help. And I will give you just a very brief
9 example. When we desegregated the schools in Cambridge,
10 there were some people on the street who would have liked to
11 act out and create problems.

12 We had first of all kind of short-circuited the
13 possibility of their success by having some work and some
14 staff people out on the street, having identified them. But
15 there were a couple of young men who were out of school
16 themselves and out of work, and just plain mad at the world.
17 You know how it gets. And they were harassing some of the
18 students, on a regular basis. And one of the things that we
19 had done with this staff sent out on the streets, was to
20 educate them about the State Civil Rights Law, among other
21 things -- on the possibilities.

22 They talked to these young men, one of whom
23 decided well, maybe he'd better cool it a bit, but his
24 friend, he didn't care what anybody did to him. So one of
25 workers who knew him, knew his family, went by the house.

1 Talked to his dad. Explained to his dad that, if this young
2 man didn't straighten up, he was going to find himself in
3 court on a Civil Rights charge. And poppa wasn't having
4 any, thank you. He straightened it out for us.

5 Education works in a lot of ways. And I think
6 it's one of the -- it's certainly not the answer. None of
7 these is the answer. It's one of the approaches we have to
8 use. And part of it is letting people know that there are
9 these sanctions out there, that we can use them. And that
10 people have been found guilty. As well as educating the
11 potential victims to the fact that there are rights for
12 them. Now, who was it that I've cut off from getting the
13 floor when I started.

14 DORIS ARRINGTON: I don't know, but just for the
15 record, Dorothy, I think everybody agrees with the education
16 point. And you might have contributed that comment to the
17 wrong persons. It wasn't Louis who said that education did
18 -- you know, doesn't work.

19 DOROTHY JONES: I'm sorry, I thought -- it
20 sounded like that.

21 LOUIS ELISA: -- Cambridge School system, I would
22 never think of saying education doesn't work.

23 DORIS ARRINGTON: I just wanted to clarify that
24 for the record.

25 PHILIP PERLMUTTER: I think what Mr. Elisa said

1 before rings very true, and it's sad. If people don't have
2 confidence in the police, we can't educate people to have
3 confidence in police. It's the responsibility of the police
4 to prove their credibility and reliability. That's what I -
5 - and that point is -- it's there with any bureaucracy,
6 whether it's the police or hospital or what. If you don't
7 have trust in it, that's tragic. And you can't build that
8 by saying, hey, these are the complexities of the police
9 department or the hospital. Yes, pressure has to be put on
10 them and look, it isn't for me to throw roses at the NAACP.
11 It's record has been in that area. That's what I would want
12 to put my energy into, in pressuring the institutions. As
13 to our differences on tactics, that's a complex subject that
14 I do not argue against what he overall said. I just don't
15 want the -- what I know to be so. People who are afraid to
16 walk out.

17 And this I will give you a personal anecdote.
18 I'm a generation before you, at least in Brooklyn, which was
19 once all Jewish. By the I left it, or right after, my
20 mother was the last Jewish woman in this tenement house. It
21 was the most -- at that time. These old Jewish women and
22 old Puerto Rican women, scared out of their wits to go out
23 at night, because of the crimes. They would say, I don't
24 want to -- you know, I don't know the answer for it, but I
25 have no sympathy for tough, lawless kids. I say, you know,

1 round them up and ship them out.

2 What I want to know is --

3 LOUIS ELISA: On the other hand, I hope we will
4 not tolerate tough and lawless cops.

5 PHILIP PERLMUTTER: Absolutely. Absolutely.

6 LOUIS ELISA: -- because when we get to the
7 bottom line, we are going to find a lot of our friends, our
8 peers. People who sit in this room. Our peers. Who are
9 going to be a part of the due cause of the lawlessness that
10 exists in the communities throughout this country. We are
11 going to find that some of our friends in banking. And I
12 daresay in the religious, and in the industrial community,
13 are very much a part of the problem, and not near the
14 solution.

15 And so if we do not and cannot, which I am sure
16 no one does, tolerate and support any of the violence and
17 lawlessness that takes place in the major urban areas
18 throughout this Country, I hope we take a strong -- as
19 strong an advocacy view to set up a Rico Statute in this
20 State. To train and educate the police about what their
21 responsibility is to uphold the Constitution and Civil
22 Rights of all citizens.

23 To advocate, with the mayors and governors and
24 attorney generals, about their responsibility to make sure
25 that all citizens are treated with the same respect in terms

1 of the Constitution and Civil Rights. And to create an
2 environment where we go after the real lawbreakers. The
3 people's who gain and benefit from the murder, drugs and
4 poison that is within our urban communities. I hope you all
5 back me up.

6 PHILIP PERLMUTTER: Amen.

7 SHEILA DECTER: Well, the only scary thing about
8 that is the Rico Statute was originally meant for organized
9 crime, what --

10 LOUIS ELISA: This is all --

11 SHEILA DECTER: -- right. No, no. If we now are
12 going to see it being used --

13 LOUIS ELISA: Misused.

14 SHEILA DECTER: Misused by businesses for
15 everything. That has been one of our concerns about the
16 Mass. Civil Rights Statute. One of the real problems to
17 make sure the Statutes stays on course are used for what
18 they intended to be, otherwise, you lose their ability. And
19 the same thing is true with Rico. Is what -- my concern is
20 to have a State Rico Law would be you would end up seeing it
21 used abusively against the people of color. And so you've
22 got to be really careful to make sure that the Statutes,
23 which are like elephant guns in their -- you know, in their
24 content, are really only used against organized crime.
25 That's my only concern about a Statute as potentially

1 difficult as that.

2 DOROTHY JONES: Alright. Normally, I try to sum
3 up at this point, and I think Mr. Elisa, you just did that
4 for me. I am not going to try and top that. We have one
5 more point on our Agenda, the members of the Advisory
6 Committee have to plan a Campus Violence Project. And we
7 invite all of you who are sitting right there to help us do
8 it in the next 15 minutes.

9 LOUIS ELISA: I have to leave, I have to
10 apologize. But I would like to recommend that if there is a
11 panel, that you talk with Professor Charles Walker at New
12 England School of Law. They had a panel yesterday on campus
13 violence that I understand was very intensive and extensive
14 in the scope of dealing with the issues.

15 DOROTHY JONES: Where was he?

16 LOUIS ELISA: At the New England School of Law.
17 Professor Charles Walker. His number is 451-0010. Right?

18 DOROTHY JONES: 0010?

19 LOUIS ELISA: Former Assistant State Attorney.

20 OUTLINING CAMPUS VIOLENCE PROJECT

21 (SPEAKERS WERE SPEAKING OVER ONE ANOTHER --)

22 (Whereupon, at the session was concluded.)

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REPORTER'S CERTIFICATE

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I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the U. S. Securities and Exchange Commission and that this is a true and correct transcript of the same.

Date:

2/25/93

Richard M. Tarkenton

Official Reporter

Notary Public in and for the Commonwealth of Massachusetts

My Commission Expires. 2/25/93

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