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

The Decision to Prosecute Drug Offenses and Homicides in Marion County, Indiana

April 2001

A report of the Indiana Advisory Committee to the U.S. Commission on Civil Rights prepared for the information and consideration of the Commission. Statements and recommendations in this report should not be attributed to the Commission, but only to participants at the fact-finding meeting or the Advisory Committee.

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**The Decision to Prosecute Drug Offenses
and Homicides in Marion County, Indiana**

Letter of Transmittal

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

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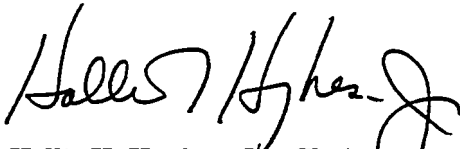
Les Jin, *Staff Director*

The Indiana Advisory Committee submits this report, *The Decision to Prosecute Drug Offenses and Homicides in Marion County, Indiana*, as part of its responsibility to advise the Commission on civil rights issues within the state. The Advisory Committee adopted the report by a vote of 13 to 1.

This report contains information received by the Indiana Advisory Committee at a public fact-finding meeting held in Indianapolis, Indiana, on January 27, 1999. The Advisory Committee is indebted to individuals who testified at the public meeting for their time and expertise and to the staff of the Midwestern Regional Office, U.S. Commission on Civil Rights, for the data analysis and preparation of this report.

The Advisory Committee understands the Commission is charged to study and collect information relating to denials of equal protection of the law, and trusts the Commission and the public will find the material in this report informative.

Respectfully,



Hollis H. Hughes, Jr., *Chairperson*
Indiana Advisory Committee

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

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Introduction

The criminal justice system has three major components that qualitatively and quantitatively affect minority communities: (1) policing and the provision of police services, (2) prosecution decisions, and (3) the courts and sentencing decisions. Policing and the provision of police services involve such issues as deployment decisions, use of excessive force, police officer sensitivity, response time, and policing strategy. Courts and sentencing decisions include issues such as bail amounts, conviction rates, parole decisions, and sentence lengths.

The U.S. Commission on Civil Rights has studied aspects of policing and the provision of police services as well as issues regarding court and sentencing decisions. The issue of decisions to prosecute and whether such decisions adversely affect minority communities has not been studied by the Commission. It is a particularly pertinent issue for study because there appears to be a perception within minority communities that minorities are disproportionately prosecuted.

The Indiana Advisory Committee to the U.S. Commission on Civil Rights decided to examine the issue of prosecution discretion. The Committee decided to study prosecution decisions in Marion County for the years 1993 and 1997.

Marion County was selected not because of any particular allegation or conclusion that prosecution decisions are racially biased, but rather strictly due to (1) the county's size (it is the most populous county in the state); (2) its proximity to the state capital—the city of Indianapolis, also the county seat for Marion County; (3) available computerized data; (4) the diversity of population within the county; and (5) the fact that the two most recent prosecutors have been from both major political parties.

Two types of charging decisions are included in this report: the prosecution of drug offenses

and the prosecution of homicides. Homicides are the most serious prosecution cases, and drug offenses offer particular insight into whether minorities are targeted for prosecution, because such offenses are the most numerous violations for arrest, prosecution, and incarceration in Marion County.

In the two years studied, 1993 and 1997, 7,282 individuals were arrested for possession of narcotics or controlled substances, and another 1,892 were arrested for dealing narcotics or controlled substances. In 1993 and 1997, 279 individuals were arrested for attempted murder, involuntary manslaughter, or murder.

Although the original study design included homicides, because prosecution numbers and arrest numbers are highly coincident and some of the information pertinent to the prosecution decision process was unavailable for analysis, an analysis of homicide prosecution decisions would have rendered invalid and unreliable results. Therefore, the technical aspects of this study are limited to drug offenses. However, testimony concerning the decision to prosecute homicides is included in chapter 2, and homicide arrest and prosecution data are included in the data analysis in chapter 3.

DEMOGRAPHICS OF MARION COUNTY

Marion County is located in central Indiana. It is the most populous county in the state, with a population of 836,610,¹ and is home to the state's capital, Indianapolis. Whites and African Americans compose 98 percent of Marion County's population, though there are Asian and Latino residents in the county.

The Census Bureau estimates the Marion County population in 1997 to have increased by

¹ U.S. Department of Commerce, Bureau of the Census, 1997 population estimates.

5 percent since the 1990 census, and includes 641,680 whites (76.7 percent); 177,361 African Americans (21.2 percent); 9,148 Hispanics (1.4 percent); and 8,316 Asian Americans (0.7 percent).² The percentages of whites, African Americans, Latinos, and Asian Americans in Marion County are estimated to be the same in 1997 as in 1990.³

According to 1990 census data, African American and Latino households in Marion County earn significantly less income than white and Asian households. Sixty percent of African American households in Marion County have an income less than \$25,000, and 50 percent of Latino households have an income lower than \$25,000. Less than 40 percent of white and Asian households in Marion County have incomes below \$25,000. Moreover, almost one-fourth (23.8 percent) of white households in the county have an income exceeding \$50,000 (see table 1.1 and figure 1.1).

TABLE 1.1

Household Income by Race and Ethnicity in Marion County

Income	Whites	Blacks	Latinos	Asians
< \$9,999	11.0%	27.2%	15.7%	10.6%
\$10,000–\$24,999	27.3%	32.2%	35.4%	23.2%
\$25,000–\$49,999	37.9%	28.4%	37.4%	34.1%
\$50,000–\$99,999	20.1%	11.3%	9.2%	26.0%
> \$100,000	3.7%	0.9%	2.3%	6.1%

SOURCE: Midwestern Regional Office, U.S. Commission on Civil Rights, from 1990 U.S. census data.

Despite recent desegregation trends to the northern parts of the county, i.e., the townships of Pike, Washington, and Lawrence, most of the African American population remains concentrated in the central part of Marion County, particularly the north central portion of the original city of Indianapolis. This area is bounded by downtown Indianapolis on the south, 38th Street on the north, Sherman Street to the east, and

² Ibid.

³ 1997 census update. Marion County Prosecutor Scott C. Newman states in his response letter, included as an appendix, that “a recent influx of Hispanics to the (Marion County) community has caused that ethnic group’s population percentage to rise to approximately 8.3% of all residents in Marion County.”

High School Road to the west. Figure 1.2 shows the African American population of the county by census blocks.

DRUG ARRESTS, PROSECUTION, AND INCARCERATION

In the late 1960s Marion County adopted a “Unigov” form of government. Under the Unigov structure, formerly independent municipalities merged into one countywide operating government structure. As a result, there is a sole county prosecutor in the county elected by all county residents.⁴

ORGANIZATION OF REPORT

The study has two parts. The first part sets out public testimony in two sections of chapter 2. The first section of public comment is from the two most recent county prosecutors: Scott Newman (R), current Marion County prosecutor since 1995; and Jeffrey Modisett (D), Marion County prosecutor from 1991 to 1994 and who was attorney general for the state of Indiana at the time of the study. The second section of public comment is primarily commentary from members of the African American community regarding their perceptions on the fairness of the prosecution decisions with respect to minorities. Public comment is set out in chapter 2.

The second part of this study is data analysis, which is presented in chapter 3. The findings and recommendations of the Indiana Advisory Committee are found in chapter 4.

METHODOLOGY AND DATA LIMITATIONS

Statistical analyses were conducted to determine if race and/or ethnicity was a factor associated with the decision to prosecute in arrests for possession and/or distribution of controlled substances in 1993 and 1997. First, a chi-square test was conducted to test for independence between race and homicides and arrests. Second, regression analyses were conducted to test the rela-

⁴ Under the Unigov structure, the police force was separated into two groups. The Indianapolis Police Department patrols the area of Marion County containing the original boundaries of the city of Indianapolis, while the Marion County Sheriff’s Department polices the area of Marion County outside the original boundaries of Indianapolis. The Marion County prosecutor, however, is responsible for prosecuting charges made by both the Indianapolis Police Department and the Marion County Sheriff’s Department.

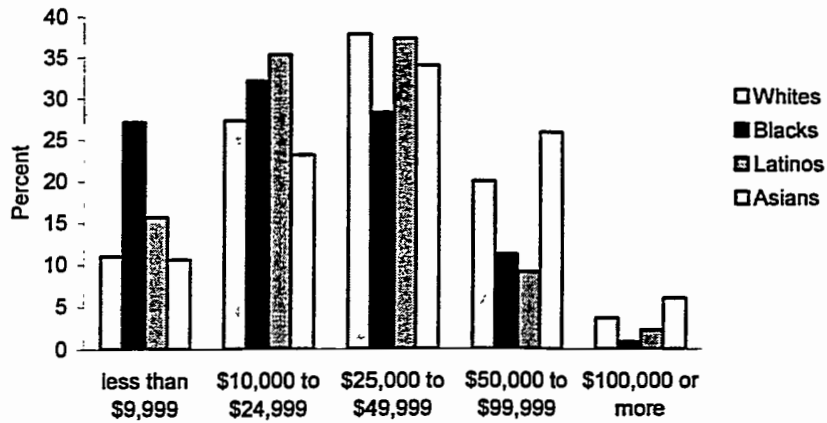
tionship between the decision to charge or not charge and individual and other variables, such as race. The results are shown in chapter 3.

Arrest data for drug offenses and homicides were obtained from the Marion County Criminal Justice Information Agency and law enforcement agencies in Marion County. Unfortunately, the

data did not allow for a complete analysis. For example, when matching arrest data with prosecution data, only 67 percent of the cases were able to be matched by case identification number. Similarly, data on education and income levels of arrestees had to be omitted from analyses because of missing data.

FIGURE 1.1

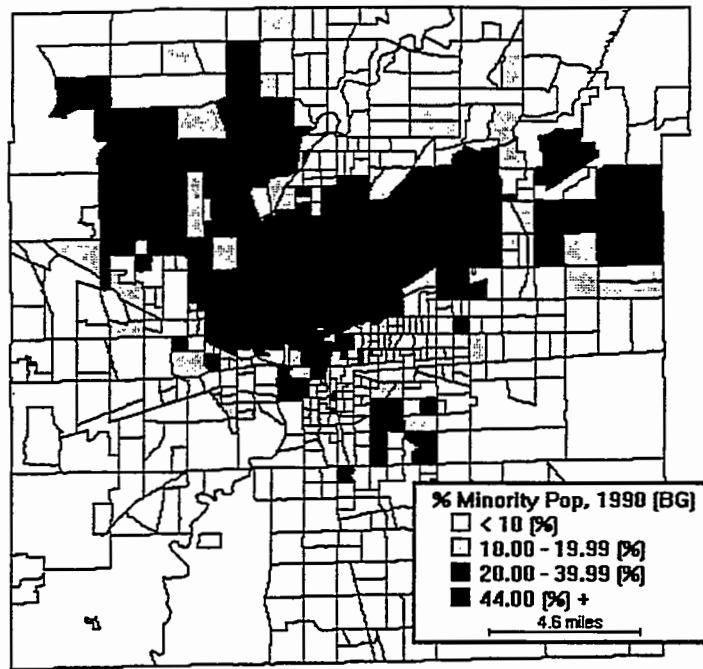
Household Income by Race and Ethnicity in Marion County



SOURCE: Midwestern Regional Office, U.S. Commission on Civil Rights, from U.S. census data.

FIGURE 1.2

Minority Population of Marion County by Census Block



SOURCE: Midwestern Regional Office, U.S. Commission on Civil Rights.

Public Commentary

STATEMENTS FROM MARION COUNTY PROSECUTORS

Two Marion County prosecutors testified before the Advisory Committee: Scott C. Newman (R), the current Marion County prosecutor; and Jeffrey Modisett (D), former Marion County prosecutor. Scott Newman has served as Marion County prosecutor since 1995, winning reelection in 1998. Jeffrey Modisett is currently the attorney general for the state of Indiana; he served as Marion County prosecutor from 1991 to 1994.

Scott C. Newman, Marion County Prosecutor

"I think after thorough study [this Committee] will find unequivocally that prosecution decisions are not tainted by issues of race. The focus of your study . . . includes decisions whether to charge or not to charge. You want to know whether any racial bias, explicit or implicit, direct or incidental, characterizes those decisions.

"Let me begin with the issue of violent crime, specifically, the unacceptable number of homicides in the last decade in Marion County. The first thing you should know is that the homicide problem itself has its own disproportionate impact upon the African American population of this community.

"In 1998, 73 percent of homicide victims in Marion County were African American. If you look just at the Indianapolis Police Department's jurisdiction and their roughly 130 homicides in 1998, some 81 percent of those victims were African Americans. These figures represent roughly triple the representation of African Americans in the general population. The disproportionate impact of violent crime on young African American males in Indianapolis has held true over time, as was noted in a study published by the National Institute of Justice in

Government of 1979.¹ Of the eight major U.S. cities studied there, Indianapolis showed the highest overall disproportionality of black male homicide victims age 18 to 24 during the years 1985 to 1994.

"Too many African Americans are being victimized by violent crime in our community, and they are being victimized far out of proportion to their numbers in the general population. They are dying young and the perpetrators of those violent deaths have also disproportionately and overwhelmingly been African American as well. These are facts which any right-thinking person in our city, black or white, bears with deep sadness and even shame.

"Probably no one in this city, other than those who have personally suffered the loss of a family member, experiences the devastating realities behind these homicide numbers more poignantly than the county prosecutors. In the living rooms, in the churches, in the funeral homes, at the crime scene, on the streets, and in the courtrooms and police stations of this community, I and my colleagues are the legal system, fellow sufferers with the angered, bewildered, and bereaved family members of those who have been cut down before their time . . .

"The stunning disproportionality of black victimization by violence I have described previously also means that as prosecutor in this community, I literally spend the majority of my time and energies in service to African American members of this community, and that is truly how I view my work in bringing justice to violent crime victims, most of whom are African American. I am in their service. And while the well-to-do on occasion fall victim to violent crime and

¹ See U.S. Department of Justice, National Institute of Justice, *The Study of Homicide in Eight U.S. Cities*, I.J. Interregional Research Project, CJ 167263 (1979).

more often to property crime, it is largely among the economically disadvantaged and the down-trodden that we spend our time and do our work. We cannot do our job well if we do not care deeply about the least of these.

"Despite all of the advances in the technologies of criminal investigation, such as the use of DNA analysis, the best way we have to solve crimes and bring justice continues to be simply this: People come forward and tell us what they saw and heard. People come together in their neighborhoods and decide they have something to defend. They decide to drive out drug dealers rather than tolerating or even glorifying local drug dealers. Getting needed cooperation from witnesses germinates best where there is a fertile soil of support and positive peer pressure in the affected community, and in many cases that has been increasingly hard to come by.

"The reluctance to come forward results from some combination of fear of retribution, lack of adequate resources for witness protection, and mistrust of the justice system. That is one reason why impartial studies and frank discussion of issues of race and justice is so important and why fear mongering and racially charged rhetoric is so destructive. If people are given the information that they need to be assured that the system is trying to help them, they will be encouraged to participate, to cooperate with the police to serve as witnesses and indeed as jurors. If they are told irresponsibly that the system itself is the problem rather than the criminal, they will find reason not to participate and criminals will go free.

"Let me turn now to the mechanics of the charging decision. [Regarding] narcotics cases, nearly all of the felony level drug charges in Marion County are screened by a deputy prosecutor with 20 years' [experience] . . . In meetings and discussing these cases with detectives, the areas of inquiry are simply: What drugs are involved in the case? What quantity by weight? Who can be proven to have possessed them and for what purpose? For delivery or dealing or for personal use? These are the points of discussion because these are the determinants as to what level of charges can be lodged under Indiana law. Considerations of race, creed, color, gender, sexual preference, and ethnicity play no part in those discussions.

"Dealing cocaine or possessing with intent to deliver cocaine over 3 grams translates to a class

A felony. Dealing under 3 grams means a class B felony. Possessing for personal use, depending on the quantity can result in a class C or D felony charge, and it should be noted that under Indiana law there is no distinction made between crack cocaine and cocaine in powder form. Possessing marijuana over 30 grams is a D felony, under 30 grams a class A misdemeanor, and so forth. The difficulties lie principally in determining who can be said to have possessed the drugs when the evidence is seized during the search of a house or car with multiple occupants. They are known as constructive possession cases.

"Another fertile area for discussions at charging time is whether any evidence exists to justify a charge of intent to deliver or intent to deal. Those discussions invariably revolve around the quantity of drugs seized, the method of packaging, and the presence or absence of other evidence tending to show the carrying on of a drug business as opposed to the satisfying of the personal craving of an individual drug addict. For the nonviolent addict, within the last few months my office has participated in the successful implementation of a federally funded drug treatment court allowing even indigent defendants the opportunity for long-term intensive outpatient drug treatment in partnership with Fairbanks Hospital. Initial eligibility determinations for this program are now also being made in my screening division.

"Rather, the most common concern voiced is that lower level crack cocaine dealers are disproportionately targeted for arrest by law enforcement, that those dealers are overwhelmingly African American, and that higher level suppliers (often presumed to be white or Hispanic) escape detection. These issues involve primarily the policies and police strategy and are beyond the scope of what I understand to be your inquiry.

"[Regarding homicides,] the charging decisions . . . are made in a section called the prosecutor's Screening Division. The lawyers in this division meet with detectives on a daily basis and are briefed on the results of police investigations. They ask questions about the evidence, make suggestions as to further evidence that might be gathered, and are then called upon to render a legal opinion as to the appropriate charge or charges, if any, to be filed. They then draft those charges for filing with the court . . .

"The charging discussion in the homicide revolves around the following issues: First, identity. Is there sufficient evidence to identify the killer? Is the evidence credible? Can it be corroborated by physical or other circumstantial evidence? Can other suspects be excluded?

"Second, intent. What is the evidence as to the state of mind of the killer? Was it a knowing or intentional act with some evidence of deliberation or motive which would justify a murder charge? Was it the act resulting from legal provocation indicating a voluntary manslaughter charge? Was it a reckless act, meaning that involuntary manslaughter or reckless homicide should be filed, or merely a negligence or accidental occurrence which would result in our declining to file any criminal charge?

"Lastly, any anticipated defenses. Can the defendant raise a credible defense on the evidence, such as self-defense or insanity? While the decisions growing out of the foregoing questions can be complex and involve many related discussions of investigative tactics, the framework of the analysis is simple and is exclusively what I've described above.

"Considerations of race, creed, color, gender, sexual preference, and ethnicity play no part in those discussions. On occasions, we have heard the allegation that there exists racial bias in our application of the death penalty. Without going into a detailed decision of the death penalty, the record stands with my having obtained death sentences on four individuals during my tenure. Three of them white, one of them black, all of them deserved.

"[The Committee] may hear from some vocal critics in the community about some difficult charging decisions in individual controversial cases. Such decisions are the stuff of everyday for major metropolitan prosecutors, and I do not shrink from those decisions. In one case, a black male who allegedly had stolen some tools was pursued by a neighborhood resident who was white. There was an exchange of gunfire, and tragically the alleged tool thief was killed. The police elected not to make an arrest on the scene, deciding instead to present the facts to my office for a charging decision in light of a claim of self-defense. On being presented with the case, my only decision and only participation in the case was to stand aside and ask for an appointment of a special prosecutor owing to my personal acquaintance and service on a nonprofit board with

the wife of the shooter. A well-respected prosecutor from another county presented this matter to a grand jury, entirely without my participation, and a racially mixed jury returned a no bill in that case.

"In another more recent case, a bail agent was searching the home of an individual who had jumped bail. When the bail agent discovered the fugitive in the opening of a basement crawl space, he was startled by the movement and discharged his weapon, killing the fugitive. Again, in light of the claim of self-defense, the police did not make an arrest on the spot, a decision which rankled some leaders of the African American community. The police presented the facts to our office. We determined that the fugitive was unarmed and that the use of deadly force was not justified under the circumstances. We charged the bail agent with reckless homicide. Under the law of Indiana, this was the only correct charging decision. I stand by it and hope to convict the shooter and send him to prison. The tough job of making that charging call reflected only the remorseless facts and the law, not any callousness on our part or any downgrading of the value of the human life that was tragically and unlawfully lost.

"Finally, much has been said about our restrictive plea bargaining policies in homicide cases, and I am proud of those policies, but relatively little has been noted as to the protection such policies actually afford the defendants. Our truth-in-plea-bargaining approach means an ethical, searching inquiry resulting in an appropriate level of charges at the outset, then requiring persistence on the part of our deputy prosecutors in obtaining a conviction of lead charges which we have determined to be the lead charge that most appropriately encompasses the defendant's actual culpability; this is what builds public confidence while at the same time being fairer to defendants . . ."²

Jeffrey Modisett, Former Marion County Prosecutor, and State Attorney General

"I am the attorney general [of the state of Indiana], but I am here to discuss my tenure as Marion County prosecutor. I think a forum like

² Scott C. Newman, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, fact-finding meeting, Indianapolis, IN, Jan. 29, 1999, transcript pp. 6-42 (hereafter cited as Transcript).

this provides a great opportunity for outside parties to come in to scrutinize the criminal justice system and how it performs here in Marion County and throughout the state. This type of oversight will, I hope, provide meaningful suggestions for improvement of the criminal justice [system] that criminal justice policy makers can follow. I think the topic [the Committee] is focusing on today is as relevant as 20 or 30 years ago. I will comment on both some of my personal observations as Marion County prosecutor and discuss some of the steps that I took to address some of the issues.

"Being very candid, in the wake of the Mike Tyson trial, I felt that there was a need in our community to address certain perceptions that developed with regard to whether or not the system as a whole was being fair to minorities. As a result, I put together a group called the Fairness in the Criminal Justice System Community. The prosecutor's office wanted to know whether this issue was reality or perception. So our office undertook to study each point in the system where a discretion was exercised to determine if looking at that point of discretion, a disparate impact existed based upon race or ethnicity or any other inappropriate reason.

"Unfortunately, my term came to an end before any report was published and I do not think that anything happened afterwards, but I can tell you what I recall from our findings, although there is nothing written about it. Early preliminary findings were that in Marion County—to the best that we were able to find—there was no finding of disparate treatment based on race throughout the criminal justice system except at the point of the intake. That is, once a defendant entered the system, we could not discern any statistically significant difference in treatment based on race. We could not find any overt discrimination in the system, and we could not find any statistical discrimination. But there were a disproportionate number of minorities who entered the system. Now, we didn't make any finding, not even preliminary, with regard to any potential causes for this phenomenon . . .

"So, I will also comment on . . . observations I made based on my experience. First, concerning the perception of racial bias in the prosecution of drug offenses, many of these perceptions existed when I was prosecutor and they continue to this day. I think it would be useful for policy makers

such as you to scrutinize and report on these perceptions.

"I think there is a perception of racial bias in the prosecution of drug offenses, especially because a large percentage of defendants are African American and few, if any, of the prosecutors involved in drug cases are African American. As many of you know, a screener in the prosecutor's office determines whether a drug case is filed at all, whether a possession case is filed as a possession case or whether it's filed as an intent to distribute with the higher penalties that would be attached, or whether a case is filed when the search that found the drugs might have violated the Fourth Amendment. All of these are discretionary judgment cases that are made by the screener.

"The Marion County Prosecutor's Office has few African Americans that screen major drug offenses. There are few African American deputy prosecutors assigned to the drug court. So, my first point is one of perception, and that is if you have a disproportionate number of minorities that seem to be going into the drug court, the perception would certainly be enhanced as far as the credibility of the system if you had better representation of minorities in the system.

"The next observation I would like to make involves drug kingpins. I think there is a perception the prosecution has focused on the dealer and not on drug kingpins. In the criminal justice system, assume that the dealers are predominantly African American when drug kingpins who finance and profit from the drug trade are predominantly white. Police are always more likely to arrest a street dealer than the drug kingpin. That's just, again, that has nothing to do with their intent. That has to do with the reality of the situation. It can be explained by saying that the dealer will sell drugs to strangers, including undercover officers and informants, while drug kingpins only sell quantities to people that they know. Some might suggest that the street drug dealer is to be investigated and prosecuted by state and local officials while the drug kingpins are to be arrested and prosecuted by federal authorities; perhaps that's true. A prosecutor could suggest more aggressive tactics to catch the drug kingpins like the use of electronic technique surveillance.

"My next observation deals with crack cocaine versus powder cocaine. I think there is a perception that the treatment of crack versus

powder cocaine by prosecutors could appear to be racially motivated. The conventional wisdom says that African Americans possess crack cocaine and whites more often possess powder cocaine. Federal sentencing law requires a disparity in the sentence of crack cocaine offenses as opposed to powder cocaine, and the sentencing for crack cocaine offenses is much higher than for powder. Indiana has the same sentence law for crack and powder cocaine and we don't provide for disparity in the sentence for crack and powder, but it would be interesting to evaluate whether or not a prosecutor's office nevertheless offers harsher sentences for crack cocaine than powder cocaine during plea negotiations.

"Next, drug roadblocks. I think there is a perception that drug roadblocks are focused on the inner-city neighborhood which, even though it is less true than it used to be, still they are predominantly in African American communities. The police are going to use drug roadblocks. Some of these roadblocks might want to focus equally on suburban areas and more predominantly white neighborhoods. They should be used, not used by city police, but also by the sheriffs and other counties as well.

"The fact is, however, that in the state of Indiana drug abuse is worse in the rural areas than it is in the urban areas. I know that is counterintuitive, so I should repeat it. In Indiana our drug problem is worse in rural counties than it is in metropolitan counties. The only drug that we found more prevalent in the cities was marijuana. Almost every other drug was more predominant in rural communities. So we need to deal with facts, and our criminal strategies and prosecution strategies must follow those facts.

"I would also speak about two efforts that I undertook during my time as Marion County prosecutor that I think have direct relevance to this Committee involving the study of the prosecution of drug offenses and homicide prosecution. The first is a report that we were able to complete, subsequently called the Tramberg Commission on Homicide in Marion County, 1991.

"Nineteen ninety-one was a record year for homicides in Marion County, which for various reasons has been surpassed a few times since then. Regardless, at that time just as now, homicides in Marion County was a real concern. As a result, I put together a blue ribbon panel headed by Judge John Tramberg. [The prosecutor's of-

fic] made observations with regard to the analysis of who were the people that were committing homicides in Marion County, who were the victims, and what those relationships were . . .

"The Commission found that model conflict resolution programs should be initiated in the community . . . My predecessor in the attorney general's office had started a program called Project Peace, a program where young people in the schools are taught to mediate conflicts. There are [student] mediators in the school [and] when there is a dispute in the school, students go to the mediators rather than to teachers or adults who might cause the other side to feel put upon . . .

"Second, there was a recommendation that environments that encourage violence should be eliminated from the community. This covers many things. If there are certain environmental factors that lead to aggravated assault, that's another point I should make. One of the first observations we made was that homicides were simply aggravated assaults gone bad. So we had to look not only at homicides, but also at aggravated assaults and how they were being committed because oftentimes the only difference is whether or not the person got to the ER in time to be revived as opposed to whether or not they died. So we wanted to make sure that the community looked at what was in its own environment that caused some of these problems and what could be dealt with.

"Three, structured activity for young people should be developed and implemented in the community. That is self-evident now, but again, this report was a number of years old now.

"Four, members of the community should be encouraged to participate in reclaiming their neighborhoods and keeping them safe, again making sure that the police and prosecutors work directly with the members of the community to try to solve their own problems.

"Five, young persons' access to guns should be reduced. Again, this is not in any way addressing the Second Amendment argument. Our issue was to try to make sure that we kept guns out of schools, kept guns out of the hands of children, and various programs can be implemented to do that.

"Finally, communication among law enforcement officers and between law enforcement agencies and the community should be employed. Those were the recommendations in

1991, and I think they ring as true today as they did then.”³

STATEMENTS FROM THE COMMUNITY

Ten individuals addressed the Advisory Committee on their perceptions of fairness along racial and ethnic lines regarding the decision to prosecute drug offenses and homicides. They included Rozelle Boyd, minority leader of the Marion County City-County Council; Monica Foster, an attorney with the law firm Hammerle, Foster, Allen & Long-Sharp; Lilberdia Batties, attorney-at-law; Lionel T. Rush, pastor with the True Victory Church of God; Mmbja Ajabu, member of the Nation of Islam; Roderick E. Bohannon, president, NAACP Indianapolis chapter; George H. Neal, Indianapolis Urban League; Toby Miller, Greater Indianapolis Progress Committee; Tyrone Chandler, Indianapolis Weed and Seed Program; and Larry Vaughn, who addressed the Committee during the public session.⁴

Rozelle Boyd, Councilman, Minority Leader, Marion County City-County Council

“I am Rozelle Boyd and I am the minority leader of the Indianapolis City and County Council. I am a lifelong resident of Indianapolis, Marion County, and have some familiarity with the community. I have not spent many hours going through the prosecutor reports and that kind of thing, but I have been in the community for a long, long time and have had an opportunity to make some observations and receive some observations and to develop some perceptions and perspectives about what some of the issues are and the perceptions [of the community].

“Let me say then, having said that, that there is a general perception in the [minority] community that perhaps persons working with the prosecutor’s office are not really in the corner, if you will, of the minority community. And I would underline perception, because in many instances you would not necessarily be able to follow that up with factual information. But, as has been suggested around the table, in the sense that perception is in a sense reality, then

³ Jeffery Modisett, Transcript, pp. 43–66.

⁴ Individuals are listed in the order they testified before the Advisory Committee.

it is something that very definitely has to be considered.

“I was very interested in listening to some of the comments made by the attorney general this morning, particularly when he indicated that there is some significant evidence of disparity at the intake level. But then when you carry the statistics and the studies beyond that point, the consistency does not necessary carry through. Well, whether the consistency in fact carries through or not, the fact is that the perception carries through.

“So if you are dealing with a population of people who at the intake level are aware that there is a disparity, they see that and it permeates the whole system.

“There is also a perception in the minority community that the homicide problem does not receive the attention it should.

“There is also the perception [in the minority community] that there is significantly more attention being given to incarcerating violators of [laws]. I am talking about building additional prisons, that there is more attention being given to this than to preventative measures or to treatment measures. And I think that for the most part the information generally will bear that observation out.

“Then, there is another perception . . . that law enforcement officers for the most part want to stay out of certain inner-city communities where there is a relatively high homicide rate, where there is high drug activity. I would suggest to you that as I have had an opportunity to talk with and to meet with many community and neighborhood organizations there is a very popular perception that there is an awareness of the activity of crack houses but no major effort put into putting them out of business but rather for the most part containing them to those areas.”⁵

Monica Foster, Attorney, Hammerle, Foster, Allen & Long-Sharp

“My practice focuses exclusively on representing persons charged with serious crimes or convicted of serious crimes on appeal. A large portion of my practice over the last 15 or 16 years has been devoted to representing persons charged with or sentenced to the death penalty. Those cases I accept on a public defender appointment basis because virtually none of the

⁵ Rozelle Boyd, Transcript, pp. 94–115.

pointment basis because virtually none of the individuals who are charged with the death penalty throughout the state of Indiana have the funds to hire private counsel.

"There is a perception in [the minority] community that race has played a role in the death penalty charging decision for quite some time. So one of the things that our firm did as part of its representation of [a particular person] was to look at the charging practices by this particular prosecutor to determine if, in fact, our perceptions were accurate.

"So we tracked cases [involving the death penalty] to see what the plea posture was. In other words, did the prosecutor at any point in time offer a plea bargain for something less than death? . . . There were six white defendants and eight African American defendants . . . Of the six white defendants charged with the death penalty, Prosecutor Newman offered a plea for life in five of those cases, . . . which computes out to 83.3 percent. Of the cases where an African American was the defendant, the statistics completely flip flop. There were eight African American defendants charged with the death penalty. Prosecutor Newman offered a plea for something less than death in only one of those cases. And in seven of the cases, the African American defendants have been required to go to trial with the death penalty hanging over their head. Only 12 percent of the African American defendants are offered life pleas."⁶

Lilberdia Batties, Attorney

"My name is Lilberdia Batties and I am an attorney practicing here in Marion County. Primarily I do criminal work as well as civil work. I have had occasion to represent pro bono and as private counsel in Marion County Superior Court. One of the things that strikes me as odd when I go down there is the fact that 95 percent of the defendants you see in drug court are black. In all of the time I have been there . . . I have only seen one white defendant, which seems odd that the only people in Marion County that are committing drug crimes are black people, because I know that drugs affect the entire community.

"Further, it seems to me that—and this is just what I get from clients and what they say—

that even if they do not have anything on them, police officers harass them."⁷

Lionel T. Rush, Pastor, True Victory Church of God

"This is a grave subject that we take up today, and I think it must be met with an equal portion of seriousness. I pastor the True Victory Church of God and Christ here in this city and I have been involved in human rights and civil rights as an activist and I have great concern about the issues that you raise.

"Notions of disparity and inequality as it were is ubiquitous and pervasive throughout all of the whole criminal justice complex from the standpoint of many in the African American community. That is outside of the police department and inside of the police department. Outside of the criminal court and inside the criminal court. It is very, very pervasive.

"This is a pervasive problem that all African Americans face. When whites [receive] preferential treatment it usually disintegrates into unequal treatment for blacks.

"I will share with you a portion of a press conference that [recently] took place, and it was directed in some ways at one of your previous guests this morning . . . It [will give you] the breadth and the depth of some of the things [other] speakers are saying in terms of the black community.

"We come to speak to an ethical or more so a deep-seated concern about how the office of Marion County prosecutor is run administratively. It must be said at this time that this is not brought on by any political motive. It was a fair notice in equality. The effectiveness of this obviously is questionable, especially the procedure and administration of this office, leaving many of the community with grave concerns. The following list raises some of the questions. This list is not exhaustive, but only indicative of one, the death penalty under Prosecutor Scott Newman's auspices. The death penalty has been filed for 13 individuals; five were white, eight were black. All of the five white persons were granted a plea bargain. A plea bargain was only offered to one black and that was as a result of a court ruling that made the death sentence invalid. The community must now question what

⁶ Monica Foster, Transcript, pp. 116–22.

⁷ Lilberdia Batties, Transcript, pp. 155–58.

seems like obvious disparate treatment in the administration of the death penalty cases where no whites die in this context.

"Number two, there's a great concern about the capricious and nebulous nature which the grand jury system is employed. Concerns focus on the lack of protocol surrounding when it is appropriate for grand juries to be called, which cases grand juries should hear, who determines who comprises the grand jury, and from what part of the community those selected live. This leads the community to think that there is foul play when the grand jury is convened."⁸

Mmbja Ajabu, Member, Nation of Islam

"I want to talk about a subject that is so serious that it is actually costing people their lives because they're black. If you want to know how something is going to act or perform in its existence, then what you need to do is to look at how it was created and the environment in which it thrives.

"When you're talking about the death penalty, here in America, I advance the argument and actually have that the death penalty comes out of trying to control a racist attitude . . . We in this city at this very time can have a prosecutor who has filed a death penalty 13 times, eight times against black people and five times against white people . . . I am saying that that situation that exists right now is part and parcel of the process to whereas that the death penalty initially started.

"If you look at the death penalty and its history here in America it actually started in 1636 with the Massachusetts Bay County; those were the first laws, written laws in America. Of those statutes, they had one statute that whereas that a person could be killed by the state for maybe stealing. If you understand that in 1636 this was post when the slave trade started, which was about 150 years before then, people were stealing slaves; white people were stealing slaves. Some collusion of black people, but those people who were taking part in the theft were not subject to the penalty to whereas here in America if a white person or any person stole a white person, a white man, for that act, you could be killed.

"So, in essence, what that says, if you steal a black person, work him to death. If you steal a

white person, then we'll kill you for that because you cannot be stealing white folks.

"This country is about being right . . . Men and women who are concerned about what is right, not necessarily what is legal, should stop this racist practice that has been racist from day one. It is racist now and will continue to be racist because when it started it was racist, and it is going to continue to be racist if it grows any more."⁹

Roderick E. Bohannon, President, NAACP Indianapolis Chapter

"African Americans do feel the system is unfair. But let's presume that every official speaking this day is an honorable person and the issue is not whether or not intentionally there is racism. Rather the question becomes whether the institution has put safeguards to do a check and balance so that it begins to look as though to make sure the question of fairness is across the board.

"What happens if the new prosecutor comes in and recognizes that there is, in fact, a problem at the front end. The question I have is, what have you done beginning to fix that? From the African American community, I would say nothing.

"Let me give you an example: the decisions to overcharge. The prosecutor . . . will tell you that the young African American males who are overcharged have some sort of record with judges and there may not be a conviction. But if there pops up in the investigation that they in fact have some relation to drugs, they get overcharged.

"Our community has a problem with that. If I have a new trial, I should be charged for the new crime and not punished for past crime.

"Something else not discussed by the prosecutors was the grand jury . . . What I have been told is that there has never been an African American as a prosecutor to the grand jury. I also have been told they only have one black police officer who have ever been assigned to the grand jury in 16 years.

"You have been told that the prosecutor's office has eight prosecutors involved in drug cases and two African Americans, but the two African Americans are in misdemeanor court not in felony court . . . There is an attitude [about] these

⁸ Lionel T. Rush, Transcript, pp. 159-68.

⁹ Mmbja Ajabu, Transcript, pp. 168-78.

prosecutors . . . and they say point blank—and it's just not black and white, Gestapo kind of mentality.

"If you want the community to feel the criminal justice system is fair, the prosecutors have to be perceived as fair-minded people.

"The cases sent to the federal court need to be examined because . . . you will find the majority of cases that are referred to the federal court are small weight in terms of what the drugs are."¹⁰

George H. Neal, Indianapolis Urban League

"The Urban League is as concerned with homicide and drugs in our community as anyone, particularly as impacted the African American community. But it is our opinion, while not scientifically measured by survey or whatever, that there is a great general perception in the African American community that African Americans are singled out and are targeted by prosecution at a higher rate than whites.

"Now, perhaps you can call this prosecutorial profile, and there are concerns in the African American community about selective prosecution. The question becomes, is this real or perceived? Hopefully this study will answer some of these important concerns. Is it justice or is it just us?

"In a recent article in the *Indianapolis Star* titled 'Prosecutors Linked to Unethical Tactics' and this is Associated Press coming out of Chicago article. I'll read you the first couple of paragraphs: 'Prosecutors throughout the country have key evidence leading to wrongful convictions, retrials, and appeals that cost taxpayers millions of dollars according to a *Chicago Tribune* analysis of thousands of court records in homicide cases.' It goes on to state: 'Winning has become more important than doing justice.'

"Let me close with this . . . prosecutors take over the cases after the arrest, deciding whether or not to press charges and what sentence to insist upon in the plea negotiations. Therefore, plea negotiations become a very important part that you need to take a good look at. More than 90 percent of criminal convictions are obtained as a result of guilty pleas. Here, too, the discretion of prosecutors again is greater for a less serious offense.

"We submit that within this context a system of overt discrimination and bias has been created

whereby similarly situated black and white people are treated differently, and a covert discrimination where policies have been implemented that if employed in a color blind fashion will apply principally to black Americans. This system lends itself to subtle subliminal racism where black defendants are stereotyped, disregarded, and dehumanized by judges and prosecutors where we see bias introduced in the system at least obvious levels where an individual's discretion determines who gets arrested, who gets prosecuted, how the guilty are sentenced, and who gets mandatory sentences."¹¹

Toby Miller, Greater Indianapolis Progress Committee

"I do not submit that I am the empirical giant, but I may be able to add some light to the perceptions that exist out in the community and why they are what they are. The status of this whole debate is that the perception in the community around law enforcement . . . this judicial system and the state of race relations in that regard are at a slow boiling point.

"I think perceptions are as powerful as facts, and sometimes the truth is that racism is at the decision-making level and influences how people and certain organizations that make the decisions respond in the ways that they do. I also submit that racism is not always there. I think it is unfortunate that it is all too easy playing to race. So, sometimes it is not fair.

"I do not know if Prosecutor Newman or any prosecutor is going to be the ring master at a dance between law enforcement and the community, and so his challenge is to try to convince folks that he and his office are above board, honest, straight forward, ethical, and on balance not necessarily recognizing race as a variable in how they make decisions. I submit that is rather naïve, but I think many, including the prosecutor, try.

"I think that one of the major failures in this community is that there is a lack of engaged and effective leadership at the point of top decision makers—the prosecutor, the mayor, the judges, and also the various police chiefs and sheriff—in terms of how decisions are made.

"Additionally I think there is a case of situational ethics. The squeaky wheel gets the grease, but unfortunately I think in balance the African

¹⁰ Roderick E. Bohannon, Transcript, pp. 184–89.

¹¹ George H. Neal, Transcript, pp. 193–204.

American community and the minority community find them getting greased up too much.

"I think there is also a lack of engaged, effective leadership within the African American community. I think it's done a disservice within our entire community in the sense that some folks make its industry on the suffering of African American folks and would make it their business to continue to exploit that misery that is existing in the community without necessarily providing adequate working service to remedy that situation. I think that's been a miserable condition in our community, both African American and otherwise.

"Ultimately what we need to do is recognize the law needs to be applied fairly and equitably all the way across the board."¹²

Tyrone Chandler, Indianapolis Weed and Seed Program

"Most of what has been said, I agree with, but I look at it with a different situation because of the initiative that we have going on the near west side and other sites called Weed and Seed in which we have active participation with law enforcement agencies. But just looking at stereotypes and perceptions, particularly ones used by the media, makes me believe . . . that the media plays a big role in some of this stuff because of the perceptions that they put out there about different groups of people.

"What we are trying to do is to look at intervention and prevention programs with the young men growing up . . . In talking to youth we found out that there is a big dislike for police officers and law enforcement . . . Those kids early on can see officers and others in other situations outside of making the arrests.

"What we try to do is to get younger people involved in leadership positions in their community. So, it's a natural occurrence as they get older they assume more responsibility. They start to find out how the system works and then also to, like was mentioned earlier, try to put the right people into place so that as things occur we have some people or we have people there that understand and can help us get through these difficult things."¹³

¹² Toby Miller, Transcript, pp. 209–18.

¹³ Tyrone Chandler, Transcript, pp. 219–29.

Larry Vaughn

"My name is Larry Vaughn, a concerned citizen. The reason that I am here is to contradict Mr. Newman's testimony this morning, which I feel was nothing but no more than a testimony of lies and deceit. He has commonly used the citizens of Indianapolis to scapegoat things and cover his racist policies, which just pervades his office where blacks are concerned.

"We touched on a lot of different items here today, but not a syllable about the real underlying racism in the policies of his office. Mr. Scott Newman has a policy in his office that he uses in our community in which the community in which I live which is primarily black and underprivileged, illiterate people who are out in the cuff just trying to scrape to make it.

"What Mr. Newman does is he will let these drug dealers . . . sell dope as long as they can . . . [The prosecutor] is allowing the most highest drug dealers, the ones that have turned over the most dope, to come in and out of jail like a revolving door.

"Eighty-five percent of the cases [in drug court] are cases in which a sting was the way that people got there. Sting cases happen where [the prosecutor] has a good case on a drug dealer that is known in the community, and [the prosecutor] tells him to go and get me two or three other people and in the process you sell this kilo of dope for me. So now there are four or five dope dealing cases and [the prosecutor] has his cases, and these drug dealers are just in and out of jail like a revolving door. And you know that their supplier is not going to give them dope if they're just in jail because they're going to figure that they got a tail on them.

"So what I'm telling you about is [the prosecutor] should not be able to be in that office down there, letting his racism and hatred color that office and ruin lives and they are going to be the ones that pay the price because of who Scott Newman is. Because when the drug dealers get through with the blacks and poor and underprivileged, they're not going to stop there."¹⁴

¹⁴ Larry Vaughn, Transcript, pp. 230–39. Marion County Prosecutor Scott C. Newman stated in his letter to the Indiana Advisory Committee that Mr. Vaughn has been prosecuted by his office twice during his tenure, and that the Marion County Prosecutor's Office had obtained convictions of Mr. Vaughn on at least four separate occasions in the 18 years prior to the Newman administration. (See letter of Scott C. Newman, May 12, 2000, in the appendix.)

Data Analysis

Under Indiana Code felony charges can be brought against an individual for numerous violations, including murder, robbery, attack, vehicle manslaughter, distribution of a controlled substance, burglary, carjacking, battery, reckless homicide, involuntary manslaughter, theft, possession of a controlled substance, firearm violation, criminal recklessness, vehicle theft, resisting arrest, fleeing a police officer, and child molestation. Depending on severity, the charge is classified A, B, C, or D.¹

Although the original study design of this report included homicides, because prosecution numbers and arrest numbers are highly coincident and some of the information pertinent to the prosecution decision process was unavailable, an analysis of homicide prosecution decisions would have rendered invalid and unreliable results. However, arrest and prosecution data on homicides are included in this chapter.

An analysis was conducted on the decision to prosecute in Marion County for individuals arrested in 1993 and 1997 for two types of charges: possession of narcotics or a controlled substance and dealing narcotics or a controlled substance. Drug offenses are the most numerous violations for arrest, prosecution, and incarceration in Marion County. For both types of charges, analyses were conducted to compare arrest rates with population rates by race, differences in arrests for different violations by race, and evaluation of race as a factor in the decision to prosecute.

In the criminal justice system, the prosecutor has broad discretion as to whom to prosecute. This decision can be influenced by factors such as "the strength of the case, the prosecution's general deterrence value, the Government's en-

forcement priorities, and the case's relationship to the Government's overall enforcement plan."² A prosecutor's decision to prosecute a specific defendant cannot be based upon arbitrary classifications, such as race or religion. The equal protection clause only prohibits disparate treatment, not disparate impact.³ Direct or circumstantial evidence can constitute proof of intent of disparate treatment.⁴

The courts should consider seven factors as circumstantial evidence of intentional discrimination.⁵ The first factor involves disparities in the administration of the law. Evidence alone will not satisfy the equal protection claim's discriminatory intent, if the pattern of discriminatory administration is not severe.⁶ Other evidence could consist of (1) objectionable purposes underlying the official action; (2) sequence of events leading up to the decision; (3) deviations from ordinary procedures; (4) substantive departure from normal considerations in the decision making; (5) legislative or administrative history; and, (6) direct testimony by the decision maker.⁷

In *Wayte v. United States*⁸ the Supreme Court articulated the test for the selective prosecution defense. In order to prove a selective prosecution claim, the defendant must show that the government's enforcement of a facially neutral law had a discriminatory effect, and the enforcement was motivated by a discriminatory purpose.⁹ To

¹ IND. CODE ANNO. §§ 35-50-2-4, 35-50-2-5 to 35-50-2-7 (MB, LEXIS 1999).

² *Wayte v. United States*, 470 U.S. 598, 607 (1985).

³ *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977).

⁴ *Id.* at 266.

⁵ *Id.* at 266-68.

⁶ *Id.* at 266.

⁷ *Id.* at 268.

⁸ *Wayte*, 470 U.S. at 598.

⁹ *Id.* at 268.

prove the first prong, the defendant must prove that others similarly situated have not been prosecuted.¹⁰ To establish the second part of the test, the defendant must prove selection based on an impermissible reason, such as race, or other impermissible classification.¹¹

In *United States v. Armstrong*,¹² the Supreme Court held that the defendant's study was insufficient to meet the threshold standard entitling the defendants to discovery on a claim of discriminatory prosecution.¹³ The study showed that all crack cocaine cases brought by the federal prosecutor in the Central District of California during a specific time period were against African American defendants. The Court held that the defendants failed to demonstrate that similarly situated individuals of a different race were not prosecuted.¹⁴ The defendant's study did not show the existence of the essential elements of a selective prosecution claim, because it failed to identify individuals who were not African American, and could have been prosecuted for the offenses for which the respondents' were charged, but were not so prosecuted.¹⁵ *Armstrong* sets a standard that applies to state and local prosecutors, as well as federal prosecutors.¹⁶

Analysis of incarceration records for drug offenses shows that African Americans are prosecuted and incarcerated at a rate significantly higher than their percentage of the population. African Americans are 21 percent of the Marion County population, yet they are the majority of those incarcerated for drug offenses. Of those incarcerated for drug possession, 32.7 percent are white, while 62.6 percent are African American.¹⁷ Similarly, 57 percent of inmates convicted of dealing drugs are African American, while 37 percent are white.¹⁸

¹⁰ *Id.* at 269.

¹¹ *Id.* at 609-10.

¹² 517 U.S. 456 (1996).

¹³ *Id.* at 470.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See also *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999); *Wade v. United States*, 504 U.S. 181 (1992); *Hunter v. Underwood*, U.S. 222 (1985).

¹⁷ 1995 statistics from Indiana Department of Corrections.

¹⁸ *Ibid.*

DEMOGRAPHIC DATA

Demographic information was obtained from the 1990 census. The racial and ethnic characteristics of Marion County are set out in table 3.1. The county is essentially divided between two racial groups, whites and African Americans.¹⁹

Population

Whites are 76.7 percent of the total population; African Americans are 21.2 percent. Latinos and Asian Americans are the other 3.1 percent of the county's population. Because the populations of Latinos and Asian Americans are so small relative to whites and African Americans, they were excluded as separate racial/ethnic groups in this study.

TABLE 3.1

Population of Whites and Blacks in Marion County

	Population
Whites	76.7%
Blacks	21.2%
Other	3.1%

SOURCE: 1990 U.S. census data.

Income

Differences between African American households and white households are particularly notable in the lowest income categories. Nearly 60 percent of all African American households in Marion County have an income lower than \$25,000 (in 1990 dollars), while 38 percent of white households in the county have an income level below \$25,000.

TABLE 3.2

Household Income of Whites and Blacks in Marion County

	Income below \$25,000	Income below \$10,000
Whites	38.3%	11.0%
Blacks	59.6%	27.2%

SOURCE: 1990 U.S. census data (adjusted for inflation).

¹⁹ See footnote 3, chapter 1.

**DATA ANALYSIS OF ARRESTS AND PROSECUTION:
DRUG OFFENSES**

Data on Drug Offenses

Data on arrests for dealing and for possession of narcotics and controlled substances were obtained from the Marion County Criminal Justice Information Agency for the years 1993 and 1997. The agency also provided prosecution decision data on all individuals prosecuted for drug offenses.

Arrest records were obtained for all drug-related offenses in 1993 and 1997 recorded by the Indianapolis Police Department and the Marion County Criminal Justice Information Agency. These data included such information as the name and address of the arrestee; location of the arrest; arrest charge; case identification number; and the race, age, gender, and education level of the arrestee.

TABLE 3.3

Arrests for Possession of Narcotics by Race, 1993 and 1997, Marion County

	Number	Percent
Whites	2,388	32.8%
Blacks	4,849	66.6%
Other	45	0.6%

SOURCE: Marion County Criminal Justice Information Agency.

Arrests for Possession of Narcotics

Arrest records for possession of narcotics by race and year are shown in table 3.3. In 1993 and 1997, 7,282 people were arrested in Marion County for narcotics possession. Of those, 4,849, or 66.6 percent, were African American. There were 2,388 whites arrested for possession of narcotics, 32.8 percent of such arrests.

The analysis divided possession of narcotics into three categories: (1) possession of cocaine, (2) possession of a controlled substance, and (3) possession of marijuana. The arrest numbers and percentages by race for the categories are shown in tables 3.4, 3.5, and 3.6, respectively.

Arrests for Possession of Cocaine

In 1993 and 1997, 2,617 people were arrested in Marion County for cocaine possession. Of those, 2,287, or 87.4 percent, were African American. There were 330 whites arrested for

possession of cocaine, 12.6 percent of such arrests.

TABLE 3.4

Arrests for Possession of Cocaine by Race, 1993 and 1997, Marion County

	Number	Percent
Whites	330	12.6%
Blacks	2,287	87.4%
Other	0	0%

SOURCE: Marion County Criminal Justice Information Agency.

Arrests for Possession of a Controlled Substance

In 1993 and 1997, 368 people were arrested in Marion County for possession of a controlled substance. Of those, 132, or 35.8 percent, were African American. There were 236 whites arrested for possession of a controlled substance, 63.2 percent of such arrests.

TABLE 3.5

Arrests for Possession of a Controlled Substance, by Race, 1993 and 1997, Marion County

	Number	Percent
Whites	236	63.2%
Blacks	132	35.8%
Other	0	0%

SOURCE: Marion County Criminal Justice Information Agency.

Arrests for Possession of Marijuana

In 1993 and 1997, 4,297 people were arrested in Marion County for possession of marijuana. Of those, 2,430, or 56.6 percent, were African American. There were 1,822 whites arrested for possession of marijuana, 42.4 percent of such arrests.

TABLE 3.6

Arrests for Possession of Marijuana by Race, 1993 and 1997, Marion County

	Number	Percent
Whites	2,430	56.6%
Blacks	1,822	42.4%
Other	45	1.0%

SOURCE: Marion County Criminal Justice Information Agency.

Arrests for Dealing Narcotics

In 1993 and 1997, 1,892 people were arrested in Marion County for dealing narcotics. Of those, 1,384, or 73.2 percent, were African American. There were 508 whites arrested for dealing narcotics, 26.8 percent of such arrests.

TABLE 3.7

Arrests for Dealing Narcotics, Whites and Blacks, 1993 and 1997, Marion County

	Number	Percent
Whites	508	26.8%
Blacks	1,384	73.2%

SOURCE: Marion County Criminal Justice Information Agency.

Analysis

The first set of analyses are straightforward tests for independence among arrest rates, types of arrest rates, decision to prosecute rates, and population designed to show disparate impact assuming binomial distributions.

The second set of analyses is a binary logit regression, with the decision to charge an individual with a crime as the dependent variable and race specifically modeled as an independent variable.

Tests for Independence

Tests for independence are structured to determine relationships between sets of characteristics, for example racial groups and geographical region or religion, or as in this study, arrest rates. Observed frequencies are compared with expected frequencies, which are based on the assumption there are no between-group differences.²⁰

African Americans are 66.6 percent of all arrests for drug possession and 21.2 percent of the county population. Employing the above, the expected range for the number of African Americans to be arrested for drug possession is between 1,381 and 1,645.²¹ The observed (actual) arrest rate of African Americans for drug possession

in the years 1993 and 1997 is 4,849. This disparity is depicted in figure 3.1.

African Americans are 73.2 percent of all arrests for drug dealing, though they compose just 21.2 percent of the county population. Employing the above test, the expected range for the number of African Americans arrested for drug dealing is between 242 and 344.²² The actual arrest rate of African Americans for drug dealing in the years 1993 and 1997 is 1,384. This disparity is depicted in figure 3.2.

FIGURE 3.1

Expected Arrest Range for African Americans and Observed Arrests, Drug Possession

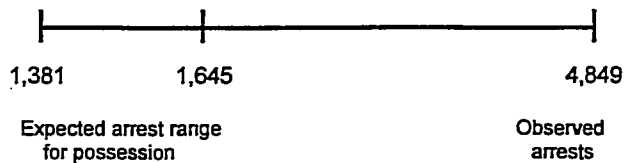
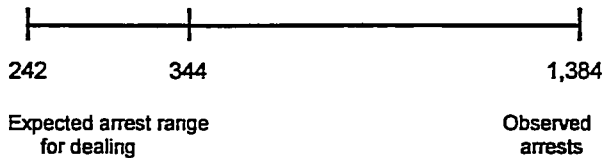


FIGURE 3.2

Expected Arrest Range for African Americans and Observed Arrests, Drug Dealing



Differences in Arrest Rates for Different Crimes

The chi-square test is employed to test the hypothesis of independence between race, i.e., African American and white, and the type of drug possession arrest, i.e., possession of cocaine, possession of a controlled substance, and possession of marijuana. Following standard statistical procedures, table 3.8 displays a contingency table with the actual and expected (in parentheses) frequencies for the three types of drug arrests by race.

²⁰ Probabilities associated with binomial experiments are readily obtainable from the formula $b(x; n, p)$ where the mean $(\mu) = n \cdot p$, n being the population and p the population proportion, and the standard deviation $(\sigma) = (n \cdot p \cdot q)^{1/2}$

²¹ This assumes a tolerance range based on 3 standard deviations.

²² Ibid.

TABLE 3.8**Contingency Table of Race and Type of Drug Possession Arrest**

	Cocaine possession	Controlled substance possession	Marijuana possession
Blacks	2,287 (1,753)	132 (247)	2,430 (2,849)
Whites	330 (864)	236 (121)	1,822 (1,403)
Total	2,617	368	4,252

SOURCE: Marion County Criminal Justice Information Agency.

Calculating the chi-square at 926, a significant dependence is found between race and the type of drug possession offense for which an individual is arrested. Specifically, from table 3.8 it is observed that African Americans are significantly more likely to be arrested for drug possession and possession of cocaine (chi-square; at $0.05=5.99$), whereas whites are significantly more likely to be arrested for possession of marijuana and controlled substances.

Logit Regression of the Decision to Charge

A logit regression was employed to test whether race was a contributing variable in a prosecutor's decision to charge an individual. The decision to charge/not charge was set as the dichotomous dependent variable. The independent variables in the model are age, race, previous offenses (yes/no), public defender (yes/no), and year (1993/1997).

The case identification number from the arrest data was matched with case identification numbers from prosecution decision data. However, the data match rate between the listed arrest case identification number and the listed prosecution case identification number was only 67 percent. The analysis proceeded assuming unmatched cases were distributed between groups at expected rates.

Individual cases with multiple arrests were condensed to one entry, and an additional independent variable—multiple charges—was computed. In addition, an interaction variable was created using race and age.

Education was dropped as a considered independent variable because of the high number of cases for which the data was missing. Similarly, the income of the arrestee was omitted from the analysis because the data analysis indicated

problems with the reliability and validity of the data.

The inclusion of the variable year (1993 or 1997) was to isolate differences in the prosecution decision between the Newman (1997) and Modisett (1993) administrations. Because of theorized differences in the charges, two separate regressions were computed: analysis of the decision to prosecute dealing narcotics and the decision to prosecute possession of narcotics.

Results: Decision to Charge in Narcotics Dealing

The race of the person arrested was not found to be a significant contributing factor in the decision to prosecute narcotics dealing arrests, holding other variables constant.²³ Although there was a positive relation between race, i.e., African American, and the decision to prosecute, the relationship was too small to confidently conclude that race was a contributing factor in the decision to prosecute. The only variable found to have a significant contribution was previous arrests. None of the other variables (age, gender, public defender, year, or race) was found to significantly contribute to the decision to prosecute. Of particular interest is the finding that year (1993 or 1997) is not a contributing factor, which implies that the two prosecutors have both followed similar policies in the decision to prosecute.

HOMICIDES

Data on arrests for homicides were obtained from the Marion County Criminal Justice Information Agency for the years 1993 and 1997. The agency also provided prosecution decision data on all individuals prosecuted for homicides.

Arrests

Arrest and prosecution records on all homicides in 1993 and 1997 were obtained from the Indianapolis Police Department and the Marion County Sheriff as recorded by the Marion County Criminal Justice Information Agency. The data included such information as the name and address of the arrestee; location of the arrest; arrest charge; case identification number; the race, age, gender, and education level of the

²³ The coefficient of the race variable was 0.39, but it was not significant ($p=0.087$). The chi-square value was 8.12 with 5 degrees of freedom.

arrestee; and type of charge by the prosecutor's office, i.e., aggravated assault, involuntary manslaughter, and murder.

Though African Americans were disproportionately arrested and prosecuted relative to their population in Marion County (see table 3.9), the arrest and prosecution rates of African Americans were coincident with the African American victimization homicide rates in the county.

Further analysis showed a high coincidence between rates of arrest and rates of prosecution, more than 90 percent. This produced a multicollinearity in the data and precluded further analysis with logit regression to test whether race was a contributing variable in a prosecutor's decision to charge an individual.

TABLE 3.9

Prosecution for Homicides, 1993 and 1997, Marion County

	Number	Percent
Whites	133	24.6%
Blacks	405	75.0%
Other	2	0.4%

SOURCE: Marion County Criminal Justice Information Agency.

Death Penalty Prosecution

There is a perception in the minority community that race plays a role in the death penalty charging decision. For the death penalty to be sought, the defendant must be charged with murder and there must be one of a list of statutory aggravating circumstances present in connection with that murder. Those aggravators may include intentional killing during the course of a felony, the murder of a person under the age of 12 or over the age of 65, or other factors making the murder a more heinous and aggravated act.

If such a factor is present, the decision whether to charge the death penalty is completely discretionary with the prosecutor. During the course of the prosecution, however, the prosecutor still has the prerogative to offer a plea bargain to the defendant for a penalty less than death, which is generally a plea to life without parole.

Monica Foster of Hammerle, Foster, Allen & Long-Sharp testified that in the past six years, death penalty charges have been filed by the prosecutor in 15 cases. One of those cases was dismissed, leaving 14 individuals facing death penalty charges. Of the remaining 14 defendants, six defendants were white and eight were African American. Of the six white defendants charged with the death penalty, the prosecutor offered a plea bargain for life in five cases; in only one case where the defendant was white was no plea for life offered. Of the eight cases with African American defendants, seven defendants were charged with the death penalty, and only one was offered a plea for a penalty less than death.²⁴

Scott C. Newman, Marion County prosecutor, said Monica Foster's assertions are false. Newman reported to the Advisory Committee that 22 death penalty cases have been handled by the Newman administration in the Marion County Prosecutor's Office during the years 1995–2000.

During that period, 11 capital defendants were African American, and 11 capital defendants were white. Among capital cases in which the defendant was African American, he said, eight cases have been disposed of as follows:

- Five defendants were either offered plea agreements or death penalty request/case was dismissed.
- Three defendants received no plea offer.
- Three cases are still pending.

Among capital cases in which the defendant was white, he said, the cases have been disposed of as follows:

- Five defendants were either offered plea agreements or death penalty request/case was dismissed.
- Five defendants received no plea offer.
- One case is still pending.²⁵

²⁴ Monica Foster, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, fact-finding meeting, Indianapolis, IN, Jan. 29, 1999, transcript, pp. 116–22.

²⁵ Letter of Scott C. Newman to Constance M. Davis, regional director, Midwestern Regional Office, U.S. Commission on Civil Rights, May 12, 2000.

LIMITATIONS OF THE STUDY

Data Limitations

Valid and reliable research can be hampered by data quality and completeness. As discussed earlier, the case identification number from the arrest data matched the case identification numbers from prosecution decision data at a rate of only 67 percent.

There are also issues regarding the quality of the data with respect to race. There are issues about who is African American and Latino, and this variable in this study comes from the arresting officer's opinion of the race/ethnicity of the person arrested. Finally, there may be variables or information pertinent to the explanation of the data but not included in the model because of unavailability.

Similarly, other factors may come into play that are difficult to model explicitly. For example, education may be a significant factor affecting criminal justice equity in that it may play a role in how well a person can articulate the facts surrounding the case and thereby assist his or her lawyer in presenting a case. Another factor may be prior records. For example, the number of

prior criminal events may influence the criminal justice system, e.g., whether a person receives bail, which in turn can affect whether or not a person has access to a better defense, which in turn may affect the case in court.

Limitations in Analysis of Differences between Groups

The differences between groups in arrest data in this section are highly significant, but there are issues about race being highly related to other factors, which might in part explain why a particular racial group is treated the way that it is. Some of these explanations may be legally legitimate in the sense of we accept that explanation and live with it. Some of it may be illegitimate socially and legally in the sense that we need to do something about that explanation. Regardless, race is often a variable related to resources that may have an impact on equality in the criminal justice system, e.g., resources determine what kind of lawyer a person has, how well the lawyer argues, and how long the lawyer can afford to keep that case in court.

Findings and Recommendations

Finding 1. There is a perception within the minority community, and nothing in the Committee's study allows us to rebut it, that minorities are singled out for drug arrests and prosecution. Minority communities perceive their experiences with the criminal justice system in an entirely different way than the white community, believing an inescapable subjectivity along racial lines permeates the criminal justice system.

However, the Committee is unable to draw a statistically valid conclusion that race has played a role in the decision to prosecute drug offenses and homicides in Marion County in 1993 under the administration of Jeffrey Modisett and in 1997 under the administration of Scott C. Newman.

Finding 2. In Marion County, Indiana, with respect to arrest and prosecution of drug offenses, African Americans are disproportionately represented in the criminal justice system. The Committee finds this particularly disturbing in light of the testimony from Attorney General Jeffrey Modisett that:

in Indiana the drug problem is worse in rural counties [where the population is predominately white] than it is in metropolitan counties. The only drug . . . more prevalent in the cities is marijuana. The use of . . . every other drug [is] more predominant in rural communities. So, we need to deal with facts and our criminal strategies and prosecution strategies must follow those facts.

In Marion County, whites are 76.7 percent of the population, while African Americans are 21.2 percent. Yet African Americans are 66.6 percent of the total arrested for narcotics possession, while whites are only 32.8 percent of those arrested for possession of narcotics.

To the Committee there clearly is a problem with policing strategy and deployment.

Recommendation 2. City and county officials, police agencies, and representatives of all communities in Marion County should convene a task force to examine publicly policing strategy and deployment to ensure that laws are being equally enforced along racial and ethnic lines.

This Committee understands this recommendation not to be without precedent. Similar task forces have been convened in other cities in the state, including South Bend and Fort Wayne, so that the community as a whole becomes knowledgeable and involved in police strategy and deployment decisions.

Finding 3. Data limitations exist with respect to the Committee's study, which preclude, among other things, definitive conclusions with respect to:

- plea bargaining decisions
- the impact of the number of charges brought against a defendant in the decision to prosecute
- the severity of charges chosen to prosecute

Recommendation 3.1. The appropriate government agency of Marion County should make all information accessible so independent researchers and organizations can access the data and examine these issues in order to ameliorate the perception in the minority community of racial bias in the criminal justice system, including decisions to prosecute and plea bargains in Marion County.

Recommendation 3.2. Attorney General Jeffrey Modisett testified that while he served as Marion County prosecutor:

a group called the Fairness in the Criminal Justice System Community [was convened] . . . to study each point in the [criminal justice] system where a discre-

tion was exercised to determine if looking at that point of discretion a disparate impact existed based upon race or ethnicity or any other inappropriate reason. Unfortunately, my term came to an end before any report was published.

The prosecutor and county administration should complete, update, and release the report of the Fairness in the Criminal Justice System Community with explanations of the data set and methodology.

Recommendation 3.3. The State Legislature should require *all* appropriate governing authorities in the state involved in criminal justice to put systems in place that would allow independent researchers and organizations to access data and examine issues with respect to the criminal justice system, including the decisions

to prosecute and plea bargains along racial and ethnic lines.

Additionally, the State Legislature should provide funding to local communities to implement these systems.

General Recommendation. The Committee recommends to itself to revisit these issues within the next six years and determine:

- if the recommendations in this study have been implemented and to what extent
- if the perception within the minority community that minorities are singled out for arrests and prosecution persists
- whether race plays a role in the decision to prosecute

Appendix



May 12, 2000

Constance M. Davis, Regional Director
Midwestern Regional Office
U.S. Commission on Civil Rights
55 W. Monroe St., Ste. 410
Chicago, IL 60603

RE: A Study of Decisions to Prosecute Homicides and Drug Offenses in Marion County,
Indiana

Dear Ms. Davis:

Thank you once again for allowing me the opportunity to participate in the fact-finding meeting regarding the above study on January 29, 1999. As I stated in my testimony at that time, while any prosecutor approaches the prospect of being "studied" with some trepidation, I welcomed your inquiry because the issues of race and justice are important ones worthy of study and searching public discussion.

I also appreciate the opportunity to respond to the Indiana Advisory Committee's proposed report as well as the Committee's findings and recommendations regarding the above study. Having now had the opportunity to review both of those documents, I feel it's important to make the following comments.

Regarding part one of your report, and specifically the section dealing with methodology, please be advised that I have served as the Marion County Prosecutor since 1995 and not 1994. I also won re-election in 1998 and not in 1997. My predecessor, Jeff Modisett, served as the Marion County Prosecutor from 1991 to 1994 and not 1989 to 1993 as your report indicates. These dates attributed to Mr. Modisett's term as the Marion County Prosecutor are also incorrectly stated in section 2 of your report.

With regard to section 2 of your report, Public Commentary, I have also found some inaccuracies with regard to my testimony at the January 29, 1999 public hearing. Specifically, on page 9, beginning at the third full paragraph, there are some mistakes in the transcript. The second sentence of that paragraph should read as follows:

Those discussions invariably *revolve* around the quantity of drugs seized, the method of packaging, and the presence or absence of other evidence tending to show the carrying on of a drug *business* as opposed to the *satisfying* of the personal craving of an individual drug addict.

The fourth paragraph of page 9 likewise contains some mistakes. The first sentence in that paragraph should read as follows:

Rather, the most common concern voiced is that lower level crack cocaine dealers are disproportionately targeted for arrest by law enforcement, that those dealers are overwhelmingly African-American, and that higher level *suppliers* (often *presumed* to be white or Hispanic) escape detection.

Continuing on to page 10 and the fourth full paragraph, the second sentence should read as follows:

“While the decisions growing out of *the foregoing questions* can be complex and involve *many* related discussions of investigative tactics,...”

On page 11, the first full paragraph and the last sentence of that paragraph, should read as follows:

“The tough job of making that charging call reflected only the remorseless facts *and* the law,...”

The final paragraph on page 11 reads as follows:

“Finally much has been said about our restrictive plea bargaining policies in federal homicide cases...” The word *federal* should be deleted.

The above includes all of the corrections that I could find with regard to the excerpted transcript of my testimony.

I take serious issue with the testimony of Monica Foster of Hammerle, Foster, Allen & Long-Sharp. The “statistics” cited by defense attorney Foster regarding the death penalty are simply incorrect. As the enclosed table (see Appendix A) discloses in detail,

- 22 death penalty cases have been handled by the Newman administration in the Marion County Prosecutor’s Office during the years 1995-2000.
- During that period, 11 capital defendants were African-American, and 11 capital defendants were white.
- Among capital cases in which the defendant was African-American,
 - 8 cases have been disposed of, as follows:

- 5 defendants were either offered plea agreements (Highbaugh, Mosley, Powell) or death penalty request/case was dismissed (Miller, by the Court; Webber, by the State; Powell, by the State);
- 3 defendants received no plea offer (Dye, Moore, Price), all of which were murders of multiple victims.
- 3 cases are still pending (Adams, Jones, Veal).
- Among capital cases in which the defendant was White,
 - 10 cases have been disposed of, as follows:
 - 5 defendants were offered plea agreements (Boyd, Games, Lowrimore, R. Mathisen, T. Mathisen);
 - 5 defendants received no plea offer (Barker, Gross, Thompson, Timberlake, Underwood), two of which were murders of multiple victims.
 - 1 case is still pending (Martin).

Having indicated that I strongly disagree with Ms. Foster's statistics, I would welcome any actual empirical study that this Committee would care to undertake with regard to whether or not the Marion County Prosecutor's Office unfairly charges or offers plea agreements to African-Americans regarding the death penalty. I am convinced that if this Committee would choose to undertake such a study it would find that race does not play a role in either the Marion County Prosecutor's Office charging decisions with regard to the death penalty, nor does race play a role in the decision as to whether or not to offer a plea to Life Without Parole to a defendant charged with the death penalty.

With regard to the testimony of Roderick E. Bohannon, he indicates that there has never been an African-American as a prosecutor in the Grand Jury. He also indicates that there has only been one African-American officer who has been assigned to the Grand Jury in 16 years. Mr. Bohannon is wrong. Ralph Staples, an African-American prosecutor, was my first Grand Jury Supervisor. In addition, I currently have, and have had in the past, more than one African-American officer assigned to the Grand Jury.

In addition to those incorrect statements, Mr. Bohannon speaks of a "gestapo kind of mentality." Such language is offensive, and unsupported name calling of this kind has no place in this Committee's report.

The final individual who spoke at the hearing on January 29, 1999 was Larry Vaughn, who is referred to in this report as a *concerned citizen*. At the time of his testimony, Mr. Vaughn had been prosecuted by my office on two separate occasions for harassing an elderly gentleman and former United States Attorney. Moreover, the Marion County Prosecutor's Office convicted Mr. Vaughn at least four separate times in the 18 years prior to my taking office, on charges ranging from theft to patronizing a prostitute. I would characterize Mr. Vaughn's entire testimony as mere hate speech by a prior defendant which has no place in this Committee's study. I would request that his testimony be stricken from this report.

There are several areas that I would like to address with regard to your third section of this report, entitled "Data Analysis". Directing your attention to page 26, in the fourth and final paragraph of that page, the Report compares *arrest* demographics with those of the population at large, and concludes that African-Americans are disproportionately subject to arrest. But your Study is intended, as its title suggests, to focus on *prosecutive* decision-making. For this purpose, the appropriate comparison would then be between *arrest* statistics and *charging* statistics — *e.g.*, if formal charges showed a disproportion of African-American defendants compared to those *arrested* by police, a bias might be demonstrated in the charging decision. The prosecutor has no authority to control the strategic decisions of police departments that result in the arrest statistics being compared with the general population. The end result of including such comparisons in a report on "Decisions to Prosecute" (your title), is to mislead the public into believing that such arrest/population comparisons connote prosecutorial bias.

With regard to the demographic data on page 27, a recent influx of Hispanics to our community has caused that ethnic group's population percentage to rise to approximately 8.3% of all residents in Marion County. Thus, your statement that the county is essentially divided between two racial groups, whites and African-Americans, would be incorrect.

On pages 28, 29, and 30 you have included three tables, 3.3, 3.4, and 3.5. I would again note that these tables do not bear upon the decision to prosecute narcotics cases in Marion County. That is, these statistics deal with *arrests* made by the various police agencies. Since the purpose of your study was to examine charging decisions in drug cases in Marion County, the citation of such arrest statistics is misplaced.

On page 30, your table 3.6 indicates that it includes statistics for arrests for Possession of a "Controlled Substance". I believe this is a typographical error, and is in fact a table showing the arrest for Possession of "Marijuana," as indicated by the heading of the paragraph that contains this table.

The analysis of the data that you collected begins on page 31. In the final paragraph on page 31, you once again compare the percentage of all *arrests* for drug possession with population. I believe that this comparison has nothing to do with the Marion County

Prosecutor's Office's charging decisions in drug cases. Likewise, on page 32, the first full paragraph once again repeats this same misplaced analysis.

On page 34, the Committee indicates its results with regard to the decision to charge in narcotic dealing cases. I note the Committee's finding that the results of its studies clearly show that **"the race of the person arrested was not found to be a significant contributing factor in the decision to prosecute narcotics dealing arrests holding other variables constant."** The Committee goes on to state that **the only variable found to have a significant contribution was a defendant's previous arrest record.** Finally, the Committee states that **"[o]f particular interest is the finding that year (1993 or 1997) is not a contributing factor, which implies that the two prosecutors have both followed racially neutral policies in the decision to prosecute."**

While I am gratified that these were the results and that these findings were included in the body of your report, I am extremely puzzled with the Committee's proposed findings with regard to those conclusions. Based on your own conclusions contained on page 34 of the report, I take great issue with Finding 1. The last full sentence of the first paragraph in Finding 1 states that **"minority communities experience the criminal justice system in an entirely different way than the white community, and inescapable subjectivity along racial lines permeates the criminal justice system."** (emphasis added) The italicized portion of this statement is simply not supported by the study. That is, race was not found to have been taken into account in decisions to charge individuals regarding drug offenses. Thus, this phrasing of your finding is simply contrary to the results of your own empirical analysis.

Further in the next full paragraph under Finding 1, you indicate that the Committee is **"unable to draw a statistically valid conclusion"** that race has played a role in the decision to prosecute drug offenses and homicides in Marion County in 1993 under the administration of Jeff Modisett and 1997 under the administration of Scott C. Newman. In fact, *you have been able* to draw a statistically valid conclusion, and you so state on page 34 of your report. As stated above, **"race of the person arrested was not found to be a significant contributing factor in the decision to prosecute and of particular interest is the finding that year (1993 or 1997) is not a contributing factor, which implies that the two prosecutors have both followed racially neutral policies in the decision to prosecute."**

Finally, with regard to recommendation 4.2, Mr. Modisett indicated that during his tenure as the Marion County Prosecutor he put together a group called the "Fairness in the Criminal Justice System Community." The Committee's recommendation is that the Marion County Prosecutor's Office should "complete and update the report" generated by this Committee. The Committee should be aware that the Marion County City-County Council refused to appropriate the funds to collect this data. To our knowledge, no data was ever collected or transmitted to the Marion County Prosecutor's Office, so there is no report or data to "update or complete."

Constance M. Davis, Regional Director
Page Six

I appreciate the opportunity to respond to the Committee's report as well as the proposed findings and recommendations. In keeping with the Committee's mission to accurately collect pertinent data, and to responsibly inform the public as to what the data reveals, I trust that the Committee will incorporate our observations and corrections before its Report is issued in final form.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Scott C. Newman". The signature is fluid and cursive, with a large initial "S" and "N".

SCOTT C. NEWMAN
Marion County Prosecutor

cc: Peter Minarik

APPENDIX "A"

**DEATH PENALTY CASES
HANDLED BY NEWMAN ADMINISTRATION
1995 - 2000**

DEFENDANT	RACE	AGGRAVATORS	PLEA OFFER
99172192	b/m	multiple victims age of victims	*
93095544	w/m	multiple murders	NO
95054257	w/m	murder during burglary	YES
96112831	b/m	multiple murders victims (3) less than twelve years	NO
83004134	w/m	murder during robbery	YES
98141115	w/m	murder during robbery	NO
97183229	b/m	murder during robbery	YES
98032696	b/m	murder during robbery	*

95132515	w/m	murder during robbery murder while on probation	YES - (refused)
96014305	w/m	murder during robbery murder by hire	*
94061385	w/m	murder during kidnapping	YES
94061384	w/m	murder during kidnapping	YES
95110486	b/m	murder during CDC	DP dismissed by Court
29D02-8001-CF-005	b/m	multiple murders murder of police officer during the course of duty	NO
96014300	b/m	murder during robbery murder for hire	YES
97183028	b/m	murder during robbery	YES - (refused) DP dismissed by State
97028645	b/m	multiple murders murder while on probation	NO
92060651	w/m	multiple murders murder w/ prior conviction murder during robbery	NO

93014191	w/m	murder of police officer acting during the course of duty	NO
84004844	w/m	murder during robbery	NO
98078282	b/m	murder during rape	*
95077681	b/m	murder during robbery	DP dismissed by State

* Indiana Supreme Court Rules prohibit disclosure of any plea discussions in a pending criminal case.

U.S. COMMISSION ON CIVIL RIGHTS
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