

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

**THE FEDERAL ROLE
IN THE ADMINISTRATION
OF JUSTICE**

**HEARING HELD IN
WASHINGTON,**

SEPTEMBER 16-17, 1980

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**U.S. Department of Justice
National Institute of Justice**

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U.S. COMMISSION ON CIVIL RIGHTS

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

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

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ACQUISITIONS

UNITED STATES COMMISSION ON CIVIL RIGHTS

Morning Session, September 16, 1980

PROCEEDINGS

CHAIRMAN FLEMMING. I will ask the hearing to come to order. During its 23 years of existence, the U.S. Commission on Civil Rights has consistently sought to focus the nation's attention upon instances of discrimination in the administration of justice at the community level and upon the destructive impact such discrimination often has upon community life and respect for the institutions of government.

During the last 2 years, we have held a national consultation in Washington, D.C., and public hearings in Philadelphia and Houston that focused on police practices and the preservation of civil rights. In July we submitted a statement to the President and to the Congress containing some of our findings and recommendations. A statutory report containing an indepth analysis of the evidence which we have considered and further findings and recommendations will be issued at a later date.

As a part of our ongoing consideration of the impact of discrimination on the administration of justice at the community level, we decided to hold this hearing to receive testimony from selected Federal officials on their agency's policies and practices for (1) helping to prevent discrimination in the administration of justice at the community level, (2) responding to allegations of discrimination in the administration of justice at the community level in violation of Federal laws, and (3) helping to resolve public crises that develop in communities as a direct result of discrimination in the administration of justice. We will also be asking these officials for their recommendations for a unified Federal strategy designed to improve coordination and communication among Federal agencies that have responsibilities in the administration of justice and between the Federal Government and local departments and agencies with similar responsibilities. This hearing will be followed by field investigations and public hearings at the local level, the first of which will be held in Miami, Florida, from December 9 through 12 of this year.

I will ask counsel to call the first witness.

MS. STEIN. Francis Mullen.

CHAIRMAN FLEMMING. If you would please stand.

[Francis Mullen was sworn.]

CHAIRMAN FLEMMING. We appreciate your being with us. Counsel, proceed.

TESTIMONY OF FRANCIS M. MULLEN, JR., EXECUTIVE ASSISTANT
DIRECTOR FOR INVESTIGATIONS, FEDERAL BUREAU OF INVESTIGATION,
U.S. DEPARTMENT OF JUSTICE

Ms. STEIN. Mr. Mullen, would you please state for the record your name and title?

MR. MULLEN. Francis M. Mullen, Jr., Executive Assistant Director, Investigations, Federal Bureau of Investigation.

Ms. STEIN. Thank you. Would you please describe briefly the nature of your duties in regard to the investigation of Federal criminal civil rights violations?

MR. MULLEN. In my capacity as an Executive Assistant Director in charge of investigations, I am the third ranking FBI official and I oversee all investigative activities of the FBI, including intelligence and criminal type investigations.

The criminal investigative division is broken down into five sections; one of these sections is the Civil Rights and Applicant Section and comes directly under my command. In that connection, under the Civil Rights Section, we have a civil rights unit and present with me here is David Cole, who is the supervisor of the civil rights unit.

Ms. STEIN. Now, am I correct that you furnished us with a statement that the Director of the FBI, Judge [William H.] Webster, wished to present before this hearing?

MR. MULLEN. That's correct. We have a prepared statement. Director Webster personally reviewed the statement. He made many changes in the statement to ensure that it reflected his views. He would have been here today; however, he is out of the city.

Ms. STEIN. Thank you.

Mr. Chairman, at this time I would like to ask that the statement be received into the record of the hearing.

CHAIRMAN FLEMMING. Without objection, that will be done.

Ms. STEIN. Now, Mr. Mullen, we have also been provided with a copy of those portions of the FBI manual which contain guidelines for investigation of civil rights violations, and we would like to discuss with you some aspects of those guidelines.

MR. MULLEN. Fine.

Ms. STEIN. To begin with, is it correct, in general, that it is the policy of the FBI to conduct an immediate preliminary investigation of all complaints received alleging brutality inflicted under color of law?

MR. MULLEN. That's correct. All complaints are investigated no matter how received and no matter what the source of those complaints, whether it be referred by the U.S. attorney, a complaint by a victim, or even an article in the news media. We'll pick up on that and we will conduct an investigation.

Ms. STEIN. However, it is also our understanding that, if, during the course of the investigation, State charges should be filed against the subject of the investigation, it is your policy to suspend the investigation at that time; is that correct?

MR. MULLEN. That's correct. We would suspend our investigative activities but monitor the local investigation being conducted. This is true in all cases with the exception of Miami where the Attorney General has ordered that our investigations continue, even if there is a local investigation in progress. That is in view of the recent volatile situation in Miami.

Ms. STEIN. Can you tell us the policy of suspending your investigations? Generally, how long it has been in effect and what the purpose was for its adoption?

MR. MULLEN. Yes. I'm not certain as to the length of time it has been in effect, but the policy is there to encourage local authorities to pursue these investigations and eliminate the problem of brutality on a local basis. Often, also, the local charges that can be brought carry stricter penalties than we would have on a Federal level. We encourage the local authorities, in summary, to pursue the investigation. If there is a case where they are unwilling or unable to do so, then the Federal investigation will be pursued.

Ms. STEIN. Would you say that your statement pretty much sums up the reasons for this policy, or are there additional reasons why it is desirable to suspend?

MR. MULLEN. I think that pretty well sums it up.

David, do you have anything to add to that?

Ms. STEIN. From your point of view, are there any disadvantages involved in suspending your investigation when State charges are filed?

MR. MULLEN. None that I can see. We have a 21-day deadline on our investigation. Normally, when we do suspend an investigation, we are well along toward completing it anyway, and when we have achieved the interview of witnesses, interviews of victims, perhaps photographs of a victim or something of that nature, it will already be a matter of record.

If we later find out that the local investigation is inadequate, we can proceed at that time, because what we have there is in black and white and a matter of record and we can use it in court at a later date.

Ms. STEIN. Are you sometimes called upon to renew an investigation that you have suspended before it was completed to your satisfaction?

MR. MULLEN. Very often we are called upon to do so, yes, and we have not encountered difficulties in that regard. It's, of course, true that the best time to pursue an investigation is right at the outset, immediately, gather the evidence as soon as possible, and that's what our policy encourages, and I have not known of any difficulty of going back and picking up an investigation at a later date in connection with civil rights investigations.

Ms. STEIN. Is there any feeling on your part or on the part of Judge Webster that this policy of suspending the investigation ought to be reconsidered or changed in any way?

MR. MULLEN. No. I think the policy is sound and I am sure that Judge Webster feels the same way.

MS. STEIN. We know and we have seen that some incidents of alleged police misconduct can give rise to community unrest and civil disorders. Could you describe to us the process by which the FBI field offices and FBI headquarters can obtain information about the likelihood that any incident of police brutality under investigation might give rise to this type of disorder?

MR. MULLEN. We do not have the ability to go out, in an intelligence mode that is, contact sources and so forth and say, "Is there likely to be violence?" but by past experience in certain areas of the country we can anticipate there will be some violent reaction in some cases.

Our policy, if we do learn of such information, is to advise the Department of Justice and to advise local authorities so that they will be aware of any such activity, and the FBI will have observers on the scene to ensure that adequate information is exchanged with authorities to handle any difficulty that may arise.

I think the best answer to this sort of a problem is a quick investigation, a quick appearance by Federal authorities, and we have had that. I cite the case of Vernon Jordan. I know it was a case that concerned all of us. We had a Federal investigation immediately of that case, a very high profile on the part of the Federal officials, and we saw no problem afterwards, no reaction on the part of the local community to what happened in Fort Wayne.

MS. STEIN. You do believe then that public awareness quickly that a Federal investigation has taken place can sometimes diffuse a potentially violent situation?

MR. MULLEN. I'm absolutely convinced of this, yes.

MS. STEIN. What is your policy generally about making announcements to the press about an ongoing Federal investigation?

MR. MULLEN. The FBI will confirm an ongoing investigation, in that the FBI has been instructed to conduct an investigation by the Department of Justice. They will confirm an ongoing investigation, will not identify and name the subjects of the investigation, which would be unfair on a pretrial basis.

MS. STEIN. When you say the FBI will confirm, does that mean if they are asked or will they sometimes volunteer this information to the press?

MR. MULLEN. Both. If asked and if we anticipate there may be a volatile situation, we will, on our own, go forward and make an announcement.

MS. STEIN. Now, to return to the situation where you learn that there is potential for civil disturbance growing out of an incident of police brutality, you would communicate this to the Justice Department. Would that be merely the Attorney General or would that include the Civil Rights Division, the Community Relations Service? What entities within Justice would you communicate that?

MR. MULLEN. Normally, we contact the Civil Rights Division, Drew Days in the Civil Rights Division, and then it would be up to the

Department to notify Community Relations. In a very serious matter, the Director would go directly to the Attorney General and the Attorney General can then take the appropriate action, such as he did in Miami, not only in ordering the FBI to conduct an investigation but ordering the U.S. Marshals to the scene to help maintain order.

MS. STEIN. If you have information indicating that an incident of police brutality on which you are conducting your preliminary investigations has potential to create racial disorder, would that information affect the decision to continue with that investigation or how that investigation should be conducted?

MR. MULLEN. No. We'd conduct the investigation just as we would have had there been no such information. That would not affect the investigation at all. We'd go forward.

MS. STEIN. And that fact alone would not, if I understand you correctly, result in your deviating from your policy of suspending the investigation at the time State charges are filed?

MR. MULLEN. I want to be sure I'm clear on your question. You are saying, if we have information there may be violence in connection with an act of police brutality that we would suspend our investigation on that basis?

MS. STEIN. I'm saying, would that override your normal policy of suspending the investigation when State charges are filed so that you would continue your investigation in a case like that?

MR. MULLEN. Yes. This is exactly what has happened in Miami. We are continuing Federal investigations, but it took an order of the Attorney General to override that policy, and it has been very effective.

MS. STEIN. I see. Can you explain why you feel that change in policy has been effective in Miami, although you don't advocate it as a general change in policy?

MR. MULLEN. It was perception on the part of some citizens that local action was inadequate, based on the outcome of the trial. Whether that was true or not it was perceived by many in the local community, and in this case the Attorney General was of the opinion that the change was called for.

In general, we would prefer—I would prefer, perhaps others would feel differently—to see quick, effective, efficient, local action in connection with these cases so that the citizens would have the perception that they have adequate protection on a local basis. They also have to be well aware, however, if that protection is inadequate that a Federal presence will be established.

MS. STEIN. As a result of the tragic events in Miami, do you see any reason for change in any of the policies or practices by which investigations are carried out? I am not talking now about change in Dade County, but change in the future in other incidents that may arise?

MR. MULLEN. I do not. A change in Federal policy as to our response to civil rights complaints?

MS. STEIN. Right.

MR. MULLEN. Yes. I could not suggest a change. We just have to ensure that there is an immediate response. I think that's vital.

Ms. STEIN. Is the FBI in a position to supply statistical information regarding patterns of complaints received about police brutality to the Civil Rights Division or the Community Relations Service?

Mr. MULLEN. Yes, we're in a position to provide statistics. The number of complaints we have—we keep very accurate records on the number and nature of complaints that we receive. We are not in a position to really analyze all of the information that we receive because there are so many other factors, other agencies who would be involved—the prison system, the Community Relations Service, and it is my opinion that the data supplied should be analyzed by the Civil Rights Division of the Department of Justice, not by the FBI.

We maintain the statistics to ensure we have proper, adequate resources in a given area to respond to civil rights complaints. For example, we would know that we have had a large number of allegations of brutality in a given area. We would ensure that that particular office had an adequate number of agents assigned to civil rights investigations to ensure the deadlines are met and investigations are complete.

Ms. STEIN. So that the information available to you in a statistical sense is the number of complaints you have from a given area?

Mr. MULLEN. That's correct.

Ms. STEIN. And based on that, you make allocations of—

Mr. MULLEN. Resources—

Ms. STEIN. —resources.

Mr. MULLEN. —to conduct the investigations. We really have not analyzed—of course, when you are conducting investigations, you have a sense of a given area, of a particular area, being a problem area, so to speak; so you do assign the resources. But as for addressing the problem and responding socially and in other ways to remedy the problem, probably would be something better handled by the Civil Rights Division.

Ms. STEIN. Have you, in the Bureau, compiled these complaints by police department or by race of the victim or the suspect?

Mr. MULLEN. I'm told we keep these statistics by complaint only and nature of complaint. We do not maintain them by race. We number them by field office. In other words, the Los Angeles division would cover many cities within the area, such as Long Beach, California, and we could go back and manually recapture this information, but we maintain the statistics by office.

Ms. STEIN. So it is this type of breakdown you're saying could better be done by the Civil Rights Division?

Mr. MULLEN. That's correct, by the police department, by race, etc.

Ms. STEIN. Can you tell us what the present staff resources are of the civil rights unit at headquarters?

Mr. MULLEN. At headquarters, I'll have to ask you, we do have 144 agent work years committed to civil rights investigations fieldwide.

David, how many men do you have in your unit? Five agents at headquarters to monitor and supervise the investigation?

Ms. STEIN. What is your view about whether or not additional staff would be necessary or desirable to monitor civil rights investigations or analyze statistical data?

Mr. MULLEN. We have recently recommended to Judge Webster, and he has approved an additional agent and an additional two analysts for the civil rights units to monitor these investigations. That would give us a total of six agents and two review analysts.

Ms. STEIN. Can you tell me what the current FBI/Department of Justice policy is regarding informing complainants or suspects of what action is taken following investigation of a complaint of police brutality?

Mr. MULLEN. This was a recently approved change where the suspect, the complainant, all parties involved in a civil rights complaint will be notified of the final action taken. This is a change in policy. Many police officers and many victims felt in the past they were left hanging, didn't know what happened. Time would pass and they were never aware of the outcome over a complaint.

Now, when a final resolution is made—a decision to prosecute or not to prosecute—if the decision is to prosecute, everyone is going to be aware of it but if a decision not to prosecute is made, then all parties are advised.

Ms. STEIN. Thank you. Now, I would like to ask you, if I may, a couple of questions about FBI training. Could you tell us what training the FBI provides its agents regarding the investigation of allegations of police brutality which might be a Federal violation?

Mr. MULLEN. I don't know the specific number of hours but all FBI agents receive a block of instruction at the FBI academy as they go through their new agents training. In addition to that, for agents who are assigned to these investigations in the field, we do hold inservice classes on a regular basis at Quantico for retraining in the area of civil rights, any possible changes in the law, changes in policy, and so forth.

Any new instructions, such as the recent instructions to notify victims and complainants, all field offices are advised of any changes in policy, law, and so forth on a regular basis by the civil rights unit, but all FBI agents are trained to handle civil rights investigations.

Ms. STEIN. Does the FBI also provide any training to local police departments or State police departments?

Mr. MULLEN. Yes, we do. We conduct not only police schools on a local basis throughout the country—and I myself have lectured at these schools in New Orleans and while stationed at Tampa, Florida—but in connection with the National Academy, we bring in about 2,000 high ranking police officials each year. We conduct civil rights training, investigative training, and the problem awareness at these schools, and I know you have Drew Days speaking to you in the next hour, and he appears at each of these sessions, too, to address the classes regarding the problem and the Federal response.

Ms. STEIN. In addition to the civil rights training that you give to these police officers, do you give any type of training in how to handle racial disorders or civil disorders?

Mr. MULLEN. Not that I'm aware of. I might consult with Mr. Cole. Dave, do you know of any such training? Not that I'm aware of, not handling civil disorders. In the past, I refer back to the 1970s when there were many civil disorders, we did afford training at that time in

handling of civil disturbances and so forth, but I know of no recent training in that regard.

MS. STEIN. Okay. In your view, based on your experience with the training that you do provide for State and local police forces on Federal civil rights laws, what impact does that have on their understanding of the civil rights laws and their actions in that regard?

MR. MULLEN. I think it had a very significant impact, especially from the problem awareness that it is real, it does exist, there are cases of brutality occurring. Those who are unaware, lack the knowledge of the problem, might read an article now and then in the news media and think it is just a frivolous complaint, and I think in our schools where we cite specific examples—that is what has happened—it makes a police officer aware of the problem and conscious of it and I think would lead the individual officer to take precautions to make sure there's no brutality involving at least that particular individual. I think they are very, very effective.

MS. STEIN. Thank you. Now, Judge Webster did cover in his statement the role of FBI headquarters in monitoring and coordinating investigations of criminal civil rights violations, but I wonder if you could just briefly describe for us that role, what the civil rights unit does, what the inspections division does.

MR. MULLEN. Yes. We have certain investigative steps that must be taken. You have a copy of our manual, as you indicated at the outset, so I think as you reviewed it, if you have all had the opportunity to review it, you can see it is very thorough. If you have any suggestions of an investigative step that we could add, we will be happy to listen to it.

At headquarters, we do have the 21-day workday deadline. We ensure that deadline is met. We ensure that all investigative steps have been taken as required by the manual. We are a conduit between the field and the Department of Justice. Should the Civil Rights Division have additional investigations they wish to have conducted, we advise the field and tell them to go ahead and conduct that investigation.

The headquarters can normally monitor a field office operation to determine that the deadlines are being met, investigations are complete, but the inspection division, as it comes out every 12 to 18 months, also looks into the field office operation to ensure that all complaints are being investigated and that adequate personnel are assigned.

If we find a problem, an office isn't meeting the deadlines, then the inspection division or the civil rights unit will send a team out, investigators out, to see why the investigations are not being handled on a timely basis and in an adequate manner and corrective action be taken.

MS. STEIN. Thank you. Finally, Mr. Mullen, I would like to ask you if, as the head of the FBI's investigative efforts, you have any views or suggestions on modification of existing Federal laws or practices that could improve the ability of the FBI to respond to incidents of criminal civil rights violations committed by police officers?

MR. MULLEN. In Judge Webster's statement, you can see we do support changes in the law. Would you like me to repeat those here?

MS. STEIN. Very briefly.

MR. MULLEN. Yes. In sections 241 and 242 of Title 18, we believe that the elimination of the requirement of the word "citizen" wherein a victim is involved, eliminate that word. We do support that.

As you are aware, there was a recent change, or not a change but a clarification of departmental policy with regard to civil rights investigations regarding aliens, and now any individual, as a matter of policy, is covered. If that particular individual has stepped over the border two minutes before and alleges brutality, whether he be in the country illegally or legally, we will conduct a civil rights investigation, but I think eliminating the word "citizen" with regard to the victim would be helpful in that regard.

We also are, in connection with section 241, we would like to see the offenses classified as felonies rather than misdemeanors. We had last year, I believe, 57 convictions and in the majority about 80 percent were misdemeanor convictions. I think having the offenses classified as felony offenses would have a much more significant impact.

MS. STEIN. Thank you very much, Mr. Mullen. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Berry?

VICE CHAIRMAN BERRY. Yes, Mr. Mullen, I just wondered about your statement that the policy has been changed about suspending investigations in the case of Miami. The reason you gave, if I understood it correctly, was that there was a perception down there of some unfairness or allegations, at least, of unfairness on the part of locals because of the decision in the McDuffie case, the disturbances down there, that that was the reason for the change in policy.

Did I understand you correctly?

MR. MULLEN. That's correct. It was the Attorney General's decision. Attorney General Civiletti made that decision.

VICE CHAIRMAN BERRY. Isn't it the case in most complaints of police brutality that there is some local suspicion, at least in minority groups that are affected by it, that there may be some bias on the part of the locals? Isn't that usually a factor whenever you go out and do an investigation, when somebody has been shot by the police or beat up by the police, or whatever, that there is unfairness locally and people in the minority community want a Federal presence? Isn't that generally the case, wouldn't you say?

MR. MULLEN. I would say that would be the case.

VICE CHAIRMAN BERRY. Does that mean you have to have a civil disturbance like the one in Miami before you get a Federal policy change and more attention paid to the problem? Was the key ingredient there the riot or what?

MR. MULLEN. No question, Ms. Berry, that the riot did cause the Federal response that occurred, but I think, too, that if residents or citizens are assured that action is being taken, if the statement is made that there is a Federal presence, and when the FBI is monitoring a situation there is a Federal presence, but if local citizens are assured that the case is being pursued—we have several ongoing right now where a local district attorney is taking action. I think that reassures the community, also.

I just do not think that we can have the FBI jumping into every single situation. Where we are needed we are ready and we are going to be there, but I think this is a job for the whole country, not just the FBI or the Federal Government. We have a role and it is a very important role but we are not the only organization that should be involved.

VICE CHAIRMAN BERRY. In the parlance used by the Justice Department, in these kinds of cases where there is a compelling Federal interest, Federal Government gets involved, continues to be involved, how do you determine whether there is a compelling Federal interest? I mean, what does that mean?

MR. MULLEN. Well, if we were to determine that local authorities were unable to handle a particular situation, say their investigative response, prosecutor response was inadequate to address the problem, it would be a compelling Federal interest to move in to ensure not only that the rights of individual citizens involved were protected, but that there was generally calm and peace and that other lives were not endangered in the community. That would be a compelling Federal interest in my opinion.

It would not only be the opinion of the FBI, however. These decisions are not made just by the Federal Bureau of Investigation. We consult with the Civil Rights Division and normally such a decision would be made at the level of the Attorney General, the Deputy Attorney General. We would have input and would make recommendations.

VICE CHAIRMAN BERRY. In Miami, in the meeting in which Attorney General Civiletti and Assistant Attorney General Days met some community people down there—Civiletti's visit there right after the riot—one of the comments that was made by a community person to the notion that the FBI should not be too involved in local matters and local police are taking action. One of the responses from the community person was, "The problem is police, are taking action but the community is afraid of the police," and that was a reason for wanting a Federal presence there.

Do you think that's generally the case where there are allegations of police brutality, or police murder or somebody, that the community is really saying that it is afraid of the police, whatever the affected communities?

MR. MULLEN. I'm not sure I understand your question.

VICE CHAIRMAN BERRY. What I'm trying to get at, you seem to be saying that the FBI—and I understand that we don't have a national police force—

MR. MULLEN. Yes.

VICE CHAIRMAN BERRY. That the FBI only gets involved when it has to and when the locals are not moving to take care of whatever the situation is, if I understand you. But what I'm suggesting is that many of the people in the minority communities where those incidents have taken place say they are afraid of the local police and that is the reason they want the FBI to move in and to move in much more quickly. I'm saying, where is the balance in the interests that are concerned there?

MR. MULLEN. Mr. Cole was pointing out here that we are involved. As you recall, at the outset I said that we immediately start our investigation, so we are involved. Normally, when we discontinue our investigation, or hold it in abeyance, we are usually well along in the investigation. Victims have been interviewed, photographs have been taken, evidence has been gathered, and so forth. So we are involved in every single case to the degree that, even if we are not pursuing the case from a prosecutor's standpoint, we are always investigatively involved. We have a file open and we are monitoring the local process, the investigative process. We even obtain reports from local authorities on occasion to see that they are adequate and make them available to the Department of Justice for review, so there always is, really, an FBI presence and it may vary in degree from area to area, and the difference really is not in the investigation but in the prosecutive end of it—the decision is made where to prosecute. There is where the difference is. There normally is an investigation.

VICE CHAIRMAN BERRY. Had you completed your investigation in Miami at the time that the local court decision was announced? I don't think you had, is that correct? I'm talking about the McDuffie beating.

MR. MULLEN. I am advised we had not completed it; we had initiated it. When it was determined that local authorities were moving ahead, we did get an indictment locally. As far as the outcome, only the jury and the court system can answer for that, but there was what appeared to be effective local action being taken.

VICE CHAIRMAN BERRY. Don't you think that if you had completed your investigation, it would have facilitated moving forward with an indictment, which might have prevented some of the violence that took place subsequently down there?

MR. MULLEN. In connection with the current policy, we would not have moved forward with the indictment.

VICE CHAIRMAN BERRY. No, no, no. I understand that. I'm asking you whether you think that would be a good policy change to prevent occurrences in the future everywhere, not just in Miami, that when you have an investigation going on, instead of waiting for the locals to finish, conclude your investigation, keep the file in reserve, and if there is an acquittal, then you would be ready to have the information looked at by the Federal prosecutor, to make an early decision which might prevent some violence that might take place?

MR. MULLEN. It is difficult to prove a negative, but fortunately—and I just hope we don't see many more Miamis—we haven't had a lot of problems around the country of that serious nature.

In my opinion, Ms. Berry, the policy is sound and effective at present. Perhaps Mr. Days could address the issue also, but from my standpoint, the type of investigation we do conduct, the short deadlines on the investigations, that we are able to move in quickly, as we did. There have been indictments on the Federal level in Miami already.

Once the problem does arise, but I am again convinced that the policy we have at present is sound.

VICE CHAIRMAN BERRY. I only have one more question. In the consultation that the Commission held on "Police Practices and Preser-

vation of Civil Rights" in 1978, there was some discussion, or at least one person discussed some complaints that have been submitted to the Justice Department by MALDEF, Mexican American Legal Defense Education Fund, and my latest information is that MALDEF submitted 55 cases or complaints for investigation and that only 2 of the cases got any attention at all to date.

I was just wondering, are you familiar with these cases or with this issue?

MR. MULLEN. I am not familiar with these 55 cases. You say they were submitted to the Department of Justice?

VICE CHAIRMAN BERRY. The MALDEF alleges, I understand that Drew Days, what his responsibilities are—and I will ask him about that—MALDEF, as I understand it says only two of the cases have been investigated. I want to know, since you say you investigate complaints when they come in, whether, indeed, you received these?

MR. MULLEN. I'm not familiar with these 55 but if they were given to the Justice Department, that would have been to the Civil Rights Division, and they would then have been referred to the FBI. If referred to us, we certainly will investigate those cases and, if they have been referred to us, we have investigated them. Perhaps Mr. Days will be able to elaborate on this.

VICE CHAIRMAN BERRY. And under current policy, even if your investigation led you to believe that you reached a dead end and there was no necessity, really, for pursuing it, you would inform the complainant under your new policy?

MR. MULLEN. The Department of Justice, the Civil Rights Division, yes.

VICE CHAIRMAN BERRY. Okay, thank you very much.

CHAIRMAN FLEMMING. Commissioner Horn.

COMMISSIONER HORN. In Judge Webster's statement, it is noted that "no investigation is conducted by the FBI on its own initiative or upon the United States Attorney's request without prior clearance from the Department of Justice." How many of those cases have been denied?

MR. MULLEN. You are referring to the demonstrations—riot-type situations?

COMMISSIONER HORN. Yes, involving—I should have read the whole paragraph:

It should be noted that in matters involving mass demonstrations and major confrontations between local law enforcement officers and groups of persons, no investigation is conducted by the FBI on its own initiative or upon the United States Attorney's request without prior clearance from the Department of Justice.

I just wonder how many of those requests, if any, have been denied by the Department of Justice?

MR. MULLEN. I am aware of no cases having been denied in that regard.

COMMISSIONER HORN. On page 4 of Judge Webster's statement—and you referred to this in exchange with counsel—the judge states, "We seek to increase our expertise in this area by including civil rights

training in our new agents training." You mentioned that you weren't sure on the number of hours involved. Has the FBI furnished to the Commission the syllabus training manual, etc., that they use in Quantico for training acts in this area?

MR. MULLEN. I believe we have submitted an outline of the training, yes.

COMMISSIONER HORN. I would like it included in the record at this point, Mr. Chairman.

CHAIRMAN FLEMMING. Without objection, that will be done.

COMMISSIONER HORN. You also note and the testimony showed you require strict adherence to the 21-day work rule for reporting the results of the preliminary investigation. How many investigations have not met the 21-day work rule in this area that we're discussing?

MR. MULLEN. I do not have that figure available. I can make it available to you.

COMMISSIONER HORN. Please do, Mr. Chairman?

CHAIRMAN FLEMMING. Appreciate it.

COMMISSIONER HORN. May we have it inserted in the record at this point?

CHAIRMAN FLEMMING. That will be done.

COMMISSIONER HORN. There was a discussion in exchange with counsel on the training for civil disorders and it was noted that there really was no training at the present time for civil disorders. Was there such training in the 1960s?

MR. MULLEN. Yes, I can recall in some of the training schools of the sixties and early seventies riot control was the topic, how to contain a demonstration and so forth. Such things as not boxing in a group of demonstrators and giving them an outlet, don't trap them in an area and force them to fight, something like that, let them—if they want to disperse, give them a means of dispersing, and training such as that.

We are not conducting training in this regard at present.

COMMISSIONER HORN. Why is that?

MR. MULLEN. The reason for that is—and this is my opinion—that we have not had serious civil disorders in recent years.

COMMISSIONER HORN. That sort of reminds me of the army preparing for the last war and not the next war.

MR. MULLEN. If I may go further: it is a matter of priorities, also, that for many years the FBI did conduct this kind of training; however, local agencies, as they had become more professional—and this is true in many parts of the country—are able to handle this training on their own.

CHAIRMAN FLEMMING. Just to clarify that, as I understand it, you are now talking about training that the FBI gives police officers from the—

MR. MULLEN. Yes, that's what I'm referring to.

COMMISSIONER HORN. I'm moving to two areas. That's one.

MR. MULLEN. Training given police officers—

COMMISSIONER HORN. At Quantico and the courses they come to.

MR. MULLEN. For example, as your investigative priorities have changed, they have changed, and we are getting out of the many

criminal investigations such as bank robberies and car thefts and getting into the white collar crime and organized crime—other agencies are, perhaps, as capable or are as able to handle this type of training as the FBI. We just do not have the resources at this time to conduct the riot control training.

COMMISSIONER HORN. Now, speaking only of local police officer training, does the FBI in its various bulletins have guidelines or developments and a sharing an exchange of information that would give advice to local law enforcement officers in this regard of how one handles civil disorders?

MR. MULLEN. We have in the area of civil rights but I know of no specific information furnished regarding riot or mob control.

COMMISSIONER HORN. Are you aware, or Mr. Cole, or any of the experts in this area aware of any directives from the FBI in the past or in the present that related to containment of the minority community when civil disturbances broke out?

MR. MULLEN. Absolutely not. Our response when a civil disturbance occurs, Federal response I'm talking about, is to ensure we have adequate investigative resources on the scene.

COMMISSIONER HORN. Now, in your own training of FBI agents, to what extent is civil disorder training involved as to coordination, working with local police, giving advice, etc.?

MR. MULLEN. I'm sorry, could I—

COMMISSIONER HORN. Well, in your own training of your own FBI agents, as opposed to what Quantico offers or field courses offer, for local law enforcement, to what extent is the topic of civil disorder training involved with your own agents?

MR. MULLEN. We do not afford the training in civil disorder, to my knowledge. David, you're not aware of any? It is not an FBI responsibility to go in and control a civil disorder. In fact, we prefer that it be just the opposite, and in this connection I'm sure all of us are aware of what occurred on the Indian reservations in the Dakotas in the past. What we would prefer in the FBI is that we would come in as the independent investigators, neutrals, so to speak, rather than as the law enforcement to control the situation, and in that way gain the trust and confidence of all parties in an investigation, both law enforcement and any victims in a civil rights type investigation.

COMMISSIONER HORN. Okay. Basic policy is you prefer to be seen and perceived as neutrals and investigators after the fact, not involved in handling the disturbance and then being caught in the going in and investigating way?

MR. MULLEN. That is right. It is like a dual role. While I personally feel we probably could do it, I'm sure there are many who would have a different perception.

COMMISSIONER HORN. To what extent has the lack of an Assistant Attorney General for Internal Security crippled the FBI in relation to information dealing with, say, Ku Klux Klan caused and other extreme groups caused civil disorders? Has that changed your base of information, of the effectiveness with which you function in this area?

MR. MULLEN. No. As you know, we have very definitive guidelines now with regard to domestic security investigations. At one point the FBI had over 26,000 such investigations. We are now in the neighborhood of 100, and we have to have a very definite probable cause to get involved in such investigations. It is my personal opinion that the guidelines are effective.

We recently had a very successful investigation in the Detroit area. We have to have a criminal premise, a possible violation of the law, before we get into an investigation. In this particular case, it is an ongoing case and I can't discuss it in detail, but we did have a source that did come forward and advise us of the activity ahead of time. Unfortunately, there has to be a balance. We are not always going to know ahead of time, because we can't have an informant in every organization and we just can't be aware of all planned activity.

In some cases, if it is a small tightly knit group or one individual, there is no way we can be aware, but to answer your question, it has not had an adverse impact.

COMMISSIONER HORN. We mentioned the type of information that comes to the central headquarters from your field offices in some of these areas. Obviously, we're concerned with the number of different causes of civil disturbance in an area and the ones we read about in our clipping service, such as the recent one in Muncie, Indiana, where a black couple's home is firebombed and various extreme groups either take or don't take credit in any of these situations. Are local field offices gathering data in that regard just to keep the national headquarters informed, or do you get it out of the papers like we do?

MR. MULLEN. We get that information from our local field offices and, if I could just expand a bit, Mr. Horn, we have had several shootings around the country, not only the case of Vernon Jordan, but where we had a Caucasian and black couple involved, joggers in Utah, a shooting in Oklahoma. We do follow this very closely and we have investigations going on in every case, and we are comparing the cases to see if there are similarities in weapons, modus operandi, so, no, we do not get that from the newspapers, we get it from our investigators.

COMMISSIONER HORN. Is your impression that we have had an increase or decrease of these types of incidents, or have they stayed the same over the last 10 years?

MR. MULLEN. Overall, civil rights investigations for the past couple of years have remained constant, around 9,000 complaints that we have investigated each year. I have detected in my position an increase in the shootings as they have occurred around the country and this is a matter of concern.

COMMISSIONER HORN. Now, when we say shootings, we mean police/citizen shootings, or do we mean citizen/citizen shootings, or both?

MR. MULLEN. Unknown subjects, citizen/citizen shootings. The police shootings—I cannot make a definitive statement as to whether there has been any increase. Our complaints in this area, again, have remained very consistent.

COMMISSIONER HORN. There was a discussion between you and counsel as to the monitoring system of complaints from the field offices. As I recall, you said they do not come into central headquarters based on identification by race of the individuals involved.

MR. MULLEN. That's correct.

COMMISSIONER HORN. How often are these reports made, every month?

MR. MULLEN. We get the initial report within 21 days and the investigation is normally completed at that time. Is that what you're referring to?

COMMISSIONER HORN. Well, Judge Webster says on page 6 of his statement, "Further in this regard, the FBI currently monitors the number of complaints received by each field office."

MR. MULLEN. I understand that. Monthly.

COMMISSIONER HORN. I don't know that those would always be investigated, so what I'm trying to get is sort of an incident—

MR. MULLEN. On a monthly basis.

COMMISSIONER HORN. That's a monthly report.

MR. MULLEN. That's correct.

COMMISSIONER HORN. Now, is that published ever in your Uniform Crime Reports or anything, or is that just strictly an internal monitoring mechanism?

MR. MULLEN. An internal monitoring mechanism.

COMMISSIONER HORN. Could you furnish the Commission—and counsel and you could work it out with the types—but we would just like to see what kind of volume or trend or area with these data from around the country for a given period that you two can work out, maybe over the last couple of years, since you already have the data, so we could get a feel for the volume of complaints, the type of complaints. Whether the chairman or counsel wish to ask for a racial identification, since those data are apparent down at the grassroots, not in Washington headquarters, I'll leave it up to my colleagues but I'm interested in the volume.

MR. MULLEN. Yes, we could furnish that to you and you may also raise the issue with Mr. Days. I think the Department may have accurate figures also but, yes, we'll get with counsel and make this information available.

COMMISSIONER HORN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Mullen, has your department made any evaluation about the significance in the breadth of the problem of police brutality?

MR. MULLEN. We have not. No, we have, as I have indicated earlier, addressed it from the standpoint of investigative resources and, as I have also indicated earlier, it would be more in the realm of the Civil Rights Division of the Department of Justice to make such an assessment. We would aid them in any study, though, with any information that we had available.

COMMISSIONER SALTZMAN. There is no assessment then of the supposed linkage between the occurrence of police brutality and recent incidents of civil unrest, such as in Miami and other places?

MR. MULLEN. That's correct, no assessment on the part of the FBI. I really feel, Mr. Saltzman, we're the investigators and it would be up to the social scientists and others to make this type of assessment, based in part on the information we make available, which we'll be happy to do.

COMMISSIONER SALTZMAN. As I recall your statement, you say you have in your department 144 agents and 5 supervisory agents.

MR. MULLEN. That's correct. These would be—to clarify it, I don't want to complicate the issue here—agent work years, and this would be a total work year. It would probably be more than the 144 agents. An agent work year takes into consideration vacation and everything, so 144 dedicated work years to civil rights investigations.

COMMISSIONER SALTZMAN. Do you have any idea, off the top of your head, what the race and sex of those agents represent?

MR. MULLEN. What race?

COMMISSIONER SALTZMAN. And sex, yes.

MR. MULLEN. We just don't keep that sort of record as to what the race of an agent is. We do have approximately 240 black agents and—

COMMISSIONER SALTZMAN. The FBI doesn't have an affirmative action program?

MR. MULLEN. Yes, but we don't know the race of an agent assigned to a case.

COMMISSIONER SALTZMAN. I just mean, do you know—

MR. MULLEN. Exactly.

CHAIRMAN FLEMMING. Just to clarify it, as far as the agents assigned to the civil rights units are concerned, you could provide us with a breakdown by race of those particular agents assigned to the civil rights unit?

COMMISSIONER SALTZMAN. Precisely.

MR. MULLEN. I know we have assigned to headquarters now one black agent to our civil rights unit, one female, and—

COMMISSIONER SALTZMAN. Could you provide us with a list so we could enter it into the record?

MR. MULLEN. I want to be sure I understand. We do have an affirmative action program and a very good one, and I may have misunderstood your question.

COMMISSIONER SALTZMAN. Race and sex of the agents assigned to the civil rights effort of the FBI.

CHAIRMAN FLEMMING. Just statistical. You don't want list of names.

COMMISSIONER SALTZMAN. No, not names.

MR. MULLEN. Sure.

COMMISSIONER SALTZMAN. In Judge Webster's paper he writes about investigations initiated in conformity with the current Department of Justice policies and gives an example. "For example, a civil rights violation where police brutality is involved would be investigated under our civil rights jurisdiction, and the results of such an investigation then would expeditiously be furnished to the Civil Rights Division for prosecutorial consideration."

Are there examples of this actually taking place, this kind of process?
 MR. MULLEN. Certainly. You mean you would like to see some specific cases?

COMMISSIONER SALTZMAN. Yes.

MR. MULLEN. Surely.

COMMISSIONER SALTZMAN. Could you submit those for the record?

MR. MULLEN. Of where a case has been investigated and then made available to the Department of Justice for a prosecutor's determination?

COMMISSIONER SALTZMAN. Yes, to give us a feel for that kind of a situation.

MR. MULLEN. Sure. It would have to be a case that has been completed and adjudicated.

COMMISSIONER SALTZMAN. Yes.

CHAIRMAN FLEMMING. This would be something you would work out with Mr. Days.

MR. MULLEN. I see Mr. Days is here.

CHAIRMAN FLEMMING. That's where the case gets referred and handled?

MR. COLE. Every single case is handled in that manner and every single complaint from the field office comes through our headquarters, but it is up to the Department to make release of this information. The FBI does not. Just one clarification on your agents, was your question pertaining to the breakdown of agents throughout the FBI or just at headquarters?

CHAIRMAN FLEMMING. No. Wait a minute. The 140-odd assigned to civil rights activities by the FBI, that would be your headquarters and your field officers?

COMMISSIONER HORN. I think you have a problem here because you're talking about an agent giving 5 percent of his time.

MR. MULLEN. We can't do that. An agent may work part of his time on a civil rights case but we do have agents of all races assigned to these investigations, that I can assure you, but of the 144, no, we couldn't say this one is Caucasian, this one is black. We don't do that.

CHAIRMAN FLEMMING. Commissioner Saltzman, I would suggest that we have inserted in the record at this particular point the overall picture as far as FBI agents are concerned, the number of minorities, the number of women, and the total number. We insert that in the record and that will give us the overall picture.

COMMISSIONER SALTZMAN. There's no way of our getting at the race and sex of those working in this particular area?

MR. MULLEN. Not without going to each field office and go through the file and say who worked this case and who worked this case and going back and ascertaining identities. In our opinion, an agent, whether he be male or female, black or Caucasian or Oriental, they are assigned to all of the investigations.

CHAIRMAN FLEMMING. Commissioner Horn has put his finger on it. They do not assign agents 100 percent of their time normally, I gather, to civil rights matters.

MR. MULLEN. We do in some areas, but in general we have a smaller office out in Butte where we don't have the problem we have in

Philadelphia or Houston, so an agent may work part time on civil rights matters.

COMMISSIONER HORN. I think the question to ask at this point, Mr. Saltzman, given the affirmative action plan of the FBI, given the jurisdiction of this hearing, in your professional judgment, Mr. Mullen, has the FBI's ability to investigate some of these cases involving people of a different race been at all crippled by a lack of agents of the particular group, race, etc., in terms of their ability to go follow up on leads, feel sympatico, or have the people they talk to feel sympatico with what they are about?

MR. MULLEN. No, we have not. For your information, we do have 229 black agents, 238 Hispanics, 22 American Indians, 50 of Asian extraction, and 300 female agents, so, if we have a situation where an agent in charge is of the opinion that a Hispanic agent may be more effective or a female agent, we do have the resources available.

VICE CHAIRMAN BERRY. I think Commissioner Saltzman asked a very significant question. You may not have the data to give the answer, but if we can complain that an all-white jury that acquits police officers X of the alleged beating of Y that there is a perception in the minority community that there may have been bias, one could argue if the FBI team that went out to investigate a certain complaint was all-white and came up with no facts to support an investigation, there might be a perception there was some bias there, so you might not have the data to answer the question, but I think, in terms of who works on cases, it is a very important question.

MR. MULLEN. I think it is very important, Ms. Berry. I have been special agent in charge of two field offices. When there is an arrest to be made or a sensitive investigation to be conducted, I always ensure—and I'm sure all of our agents in charge do ensure that if we're going into a predominantly black area, I would always ensure we have black agents present. If the fugitive was a female, without fail I would have some females on the team. Really, that's commonsense, but we do in our annual SAC conferences bring all the agents in charge into Washington once a year in February and these matters are discussed. I think that answers your question. We just do not keep written records that we sent a black agent on this one, a female on this one.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No further questions.

CHAIRMAN FLEMMING. Commissioner Ruckelshaus?

COMMISSIONER RUCKELSHAUS. Mr. Mullen, I wonder if you could tell me, on the first page of Judge Webster's statement you received something close to 8,000 civil rights complaints last year as noted on the first page of the statement.

Could you give me some idea of how many of those that have been initiated in field offices might have come from a monitoring by the agents in cities as opposed to coming through the U.S. attorneys or specific complaints from individuals?

MR. MULLEN. Mrs. Ruckelshaus, I do not have that breakdown. We accept them for any source. Let me check and see if I can get that for you.

COMMISSIONER RUCKELSHAUS. If you don't have that, maybe it would be possible to find that somewhere.

MR. MULLEN. If I can. I won't be able to promise it to you, but if I can get it done, I will do it, and if not, we'll let your counsel know.

CHAIRMAN FLEMMING. Counsel will keep in touch with you on that and, if the information is available, then it will be entered in the record at this point.

COMMISSIONER RUCKELSHAUS. Thank you. As I understand you, after 21 days your report is submitted and a determination is made at the FBI level, or is the determination made in the Civil Rights Division whether or not to keep that file alive to proceed some further way?

MR. MULLEN. Civil Rights Division of the Department of Justice.

COMMISSIONER RUCKELSHAUS. Based on a recommendation?

MR. MULLEN. No. They review. Of course, we could make a recommendation, as can the United States attorney and the local prosecutor, but the final decision is up to the Civil Rights Division.

COMMISSIONER RUCKELSHAUS. So in every case, at the end of the 21 days you have a feeling about whether you're going to go forward with something or not?

MR. MULLEN. Not really. We just submit the results to the Department and there the decision is made.

COMMISSIONER RUCKELSHAUS. But they will have enough information to make that decision?

MR. MULLEN. They will have adequate information. If they do not, they will ask and often have asked that we go back and conduct additional investigation and answer some more questions and so forth.

COMMISSIONER RUCKELSHAUS. Are those investigations terminated sometimes before the 21 days because of some local action?

MR. MULLEN. Yes, that could be. If the local authorities move ahead quickly and are conducting—many police departments have their internal affairs divisions. If they are conducting a thorough investigation and the local district attorney indicates he's going to take prosecutive action, then we would hold in abeyance our investigation.

COMMISSIONER RUCKELSHAUS. And you don't close it?

MR. MULLEN. Don't close it, no. We monitor.

COMMISSIONER RUCKELSHAUS. Just put a hold on it?

MR. MULLEN. That's correct. We monitor the local action and if it should be determined at a later date that the local action was inadequate, then, again, based on a decision from the Civil Rights Division, we could move forward with Federal investigative and prosecutive activity.

COMMISSIONER RUCKELSHAUS. What was the sequence of events in Miami? Did the local prosecution move forward before you had completed your investigation?

MR. MULLEN. That's correct. We had initiated our investigation, had not completed it. There were local indictments and all the appearances of adequate activity taking place on the local level, but none of us can, of course, predict what action a jury or a court will take.

COMMISSIONER RUCKELSHAUS. I think you're absolutely right that it is important that the public you are dealing with perceive there's a

swift response by the government in cases like this, by the Federal Government, but I wonder if anybody, if it was clearly in the minds of the people who cared about this case that the FBI was still involved, in the sense they hadn't closed the book during the local action, and that the FBI was retaining the option to become involved again pending the disposition of that case?

MR. MULLEN. You mean, if all citizens were aware of this, Mrs. Ruckelshaus?

COMMISSIONER RUCKELSHAUS. Yes, those who might have been specifically concerned in that, if they knew there was, in a sense, kind of a safety net on whatever happened?

MR. MULLEN. No. I would have to say, perhaps all were not aware of it, but as soon as the activity—we know we're going to have problems of this nature around the country. There are areas that are volatile and you hope that there is a public awareness and we give—all of our agents in charge give frequent speeches to minority groups and other groups to let them know of our jurisdiction with regard to civil rights, but apparently there were those who were not aware.

COMMISSIONER RUCKELSHAUS. That's not something the media asked. They focused on the local investigation, once it had begun.

MR. MULLEN. Once it had started, yes, that is right, but then when the difficulties arose, there was an immediate Federal response. On this one, a very strong response to the point the Attorney General personally went to Miami.

COMMISSIONER RUCKELSHAUS. Yes, I'm aware of that. Of the 8,000 civil rights matters that are complained about, does that mean there are 8,000 separate investigations?

MR. MULLEN. 8,000 separate investigations, that's correct.

COMMISSIONER RUCKELSHAUS. What percentage—

MR. MULLEN. Perhaps, if I could, Mrs. Ruckelshaus, elaborate more, because those we call "office of origin," those are singular cases. Maybe it involves more than one person, but then other offices would be conducting what we call supplemental investigation to aid the main investigation; so actually more cases are open. You could have a case on one civil rights or brutality complaint, cases being worked in four, five different offices, if you understand what I'm saying, so there's activity on the part of several offices in many of these cases.

COMMISSIONER RUCKELSHAUS. What percentage of those would have resulted in some kind of Federal action?

MR. MULLEN. We can give you a breakdown on that. We do have a fact sheet here. I indicated 57 convictions in fiscal year 1979, but there may have been indictments that were later dismissed, so I can give you a breakdown of the statistics with regard to those that finally resulted in Federal action— 57 convictions total, and I believe we're in the area of about 43 so far in fiscal year 1980.

CHAIRMAN FLEMMING. Without objection, those statistics will be entered into the record at this point.

COMMISSIONER RUCKELSHAUS. Also I noticed in the statement that Judge Webster made before this Commission on May 14, 1979, he used the statistics— and I don't know whether he just rounded it off or

whether this was accurate enough to be making a point—there were 9,000 civil rights cases in the preceding year, 3,100 of which involved police brutality.

On the first page of his statement this year we learn that there has been 8,000 and 5,000 of those related to police brutality, which is a significant percentage jump up from one year to another if those are, in fact, accurate statistics. Do you know if they are?

MR. MULLEN. Ms. Ruckelshaus, what year did those figures relate to?

COMMISSIONER RUCKELSHAUS. Well, the 9 and the 3,100—

MR. MULLEN. What year was that?

COMMISSIONER RUCKELSHAUS. That was a statement made before this Commission on May 14, 1979.

MR. MULLEN. They would have pertained to 1978, I would assume. What Judge Webster gave you was the total number of cases. When I gave you the figure of 8,000, I did not include the 1,000 cases that would have been opened in other offices in support of the 8,000. We would have the same number this year, so Judge Webster gave you the figure of 9,406, but 8,000 of those were actual cases. The other 1,483 were the auxiliary offices supporting those investigations.

COMMISSIONER RUCKELSHAUS. His basic 8,000 would correspond to the 8,000 figure you gave this year?

MR. MULLEN. Absolutely, exactly, yes.

COMMISSIONER RUCKELSHAUS. Then the figure he uses of 3,100 allegations of police brutality versus yours of 5,000 would be a significant difference?

MR. MULLEN. He uses the figure there of 3,901 for 1978 and the next year, '79, 4,418, so we see an increase of about 500. That's a significant increase, yes.

COMMISSIONER RUCKELSHAUS. Thank you.

MR. MULLEN. Does that answer your question?

COMMISSIONER RUCKELSHAUS. Actually, the statistics in the statement are not quite the same as yours.

MR. MULLEN. His were rounded off. We have them very specific here if you would like those.

COMMISSIONER RUCKELSHAUS. Yes, that would be of interest.

COMMISSIONER HORN. Let's get that in the record.

CHAIRMAN FLEMMING. If the table that you have just read from, if that could be provided for the record, so it could be inserted in the record at this point—

MR. MULLEN. What I would make available are the figures for '78, '79, and so far in 1980.

CHAIRMAN FLEMMING. That would be fine. We'd appreciate that very much.

COMMISSIONER RUCKELSHAUS. And to the agents communicating with the local law enforcement officials that they are investigating civil rights complaints and police brutality complaints—

MR. MULLEN. We do. We notify the head of the agency that we will be conducting an investigation. We do not, however, identify the complainant to them.

COMMISSIONER RUCKELSHAUS. Thank you very much.

CHAIRMAN FLEMMING. Commissioner-Designate Ramirez?

COMMISSIONER-DESIGNATE RAMIREZ. Yes. I am still having a little bit of a problem understanding in what way the action of the Attorney General in Miami was extraordinary. As I understand it, you started an investigation at the time of the death of Mr. McDuffie. You suspended that investigation at the time that indictments were entered. You then resumed that investigation. Was it at the point at which the verdicts came in unsatisfactorily or was it after the riots?

MR. MULLEN. I would say simultaneously. I don't have a minute-by-minute assessment, but almost immediately our agent in charge in Miami suspected this was going to be a problem and they immediately—coming through headquarters and the Civil Rights Division—determined to go ahead with the investigation.

Now, to clarify, where the action is extraordinary is that the Attorney General has ordered in all cases now coming to our attention that there will be a simultaneous investigation no matter what action is taken by local authorities, not joint investigation but a separate investigation by the Federal Government of every complaint in the Miami area.

COMMISSIONER-DESIGNATE RAMIREZ. So we have had a major change in policy?

MR. MULLEN. In Miami.

COMMISSIONER-DESIGNATE RAMIREZ. In Miami but not in other areas?

MR. MULLEN. That's correct, yes. Dade County.

COMMISSIONER-DESIGNATE RAMIREZ. But in another city, if you had had the same situation occurring in that specific case of police brutality, if a verdict had come in that was unsatisfactory?

MR. MULLEN. Yes.

COMMISSIONER-DESIGNATE RAMIREZ. And whether there were local citizenry or not, you would resume that investigation?

MR. MULLEN. I wouldn't say we would but we may in some cases, depending on all the factors. Each situation would be different. If we saw that it was inadequately pursued, we would consult with the Civil Rights Division and there would be a good likelihood we would go ahead with it. I see what you're driving at: did we go ahead with this case just because there were riots?

COMMISSIONER-DESIGNATE RAMIREZ. That's not what I'm saying.

MR. MULLEN. That is not the case, no. We would go ahead whether there are—

COMMISSIONER-DESIGNATE RAMIREZ. I'm trying to determine, Mr. Mullen, if after an unsatisfactory verdict, whether you would resume the investigation on your own, or whether you would wait, or whether you would resume it if a citizen came to you and said, "We believe this to be inadequate," regardless of whether there were riots or not?

MR. MULLEN. When a citizen came forward, that would be a basis, whether in the opinion of the local agents, the local U.S. attorney wasn't an adequate prosecution, that would be adequate to consult with the Civil Rights Division and authority to proceed.

COMMISSIONER-DESIGNATE RAMIREZ. But you would not resume the investigation until you consulted with the Civil Rights Division?

MR. MULLEN. That is correct. We would consult with the Civil Rights Division or our prosecution division. Civil Rights Division, as Mr. Days will point out, I'm sure he will point out in his testimony, is the final authority.

COMMISSIONER-DESIGNATE RAMIREZ. That's whether you go ahead with prosecution but not whether you resume the investigation?

MR. MULLEN. Well, we wouldn't resume the investigation, Ms. Ramirez, if the Justice Department wasn't going to prosecute.

COMMISSIONER-DESIGNATE RAMIREZ. I have a little bit of difficulty. Even assuming that you did not have enough information at that point?

MR. MULLEN. We would have to get the information. That would be the purpose of the investigation. We would consult with them and say, "This is what's happening. These are the facts." Now, should we conduct an investigation to see if thus and so has occurred and, if so, will you prosecute? Yes, we will. We would go ahead with the investigation, and we like to consult with the prosecutors at the outset to make sure that we are obtaining adequate information so they can move forward with prosecutive action later on.

COMMISSIONER-DESIGNATE RAMIREZ. Assuming that the MALDEF request of investigation of the 51 cases—

MR. MULLEN. 55 cases.

VICE CHAIRMAN BERRY. 55.

COMMISSIONER-DESIGNATE RAMIREZ. —was actually made and went to the Civil Rights Division, and assuming that in a good number of those cases you would already have begun investigations, what would you do with those 55 cases at the point at which MALDEF submitted them to you? Would you consult with the Civil Rights Division before going forward with any investigation or would you—

MR. MULLEN. In this case, they were made available to the Civil Rights Division and there would be no need for consultation. They would have referred them to us, which means—that's an indication that they desire an investigation right there. The minute we get the case, we would go forward with the investigation.

COMMISSIONER-DESIGNATE RAMIREZ. Do you have any record of those, in round numbers, 5,000 investigations that were police brutality cases, and I understand that you, again in round numbers, eventually came up with 57 convictions as a result of a Department of Justice action.

Do you have any record as to how many of those complaints were actually found to be substantiated incidents of police brutality, even though they were prosecuted and prosecuted successfully at the local level and not by the Federal Government?

MR. MULLEN. I'll have to consult, if I may.

[Pause.]

We do not have that information, Ms. Ramirez. I do not know if the Civil Rights Division would have it. We do not.

COMMISSIONER-DESIGNATE RAMIREZ. You would have the information in raw form?

MR. MULLEN. Yes, we could tell you how many were police brutality complaints and how many were prosecuted at the Federal level, but a final determination, how many were prosecuted locally, we do not have that information.

COMMISSIONER-DESIGNATE RAMIREZ. Do you know whether it exists anywhere, whether there is any national sense of how many cases of police brutality there are?

MR. MULLEN. We have it from the standpoint of allegations but, of course, some are unfounded, many are not, many are prosecuted. All I can tell you, the FBI does not have that information.

COMMISSIONER-DESIGNATE RAMIREZ. Just one final question. You did say you had five supervisory persons within the Civil Rights Division?

MR. MULLEN. That's correct.

COMMISSIONER-DESIGNATE RAMIREZ. Do you know how many of those five are minorities or women?

MR. MULLEN. I indicated earlier one was a female, one was, I know, a minority. I'm corrected. We have one black FBI working in that unit.

COMMISSIONER-DESIGNATE RAMIREZ. In the supervisory?

MR. MULLEN. Female is assigned to the particular section. She is handling applicant matters at present, however.

COMMISSIONER-DESIGNATE RAMIREZ. Thank you very much.

MR. MULLEN. One is a minority.

CHAIRMAN FLEMMING. I just have one question, possibly an observation. I was very were interested in the dialog that took place relative to the fact that in the sixties, possibly into the seventies, when the FBI conducted training programs for police officers, it did include a unit on civil disorder and that in recent years that unit has been dropped.

As I understand it, at the moment there is no plan to reinstate a unit of that kind. Over the years I have come to realize that the FBI does occupy a position of leadership among the law enforcement agencies, and I realize that the training programs that are provided by the FBI for the police departments are programs that are valued very highly by the police departments.

In the light of what has happened in recent weeks and in the light of what we hear about conditions in various communities throughout the country, I would just simply express the hope that the decision to drop out the unit on civil disorders would be looked at again, because you indicated, for example, in response to one question that some of the things that are considered when that unit was included. It seems to me that the consideration of those matters on the part of the police who come in for training might prove to be very helpful and might help to prevent serious difficulty.

I say that's more an observation than it is a question. My understanding of the situation is factually correct, is it?

MR. MULLEN. Yes, and I would like to clarify just a bit. Crowd control really isn't an FBI responsibility and we are not really the experts in that area and we have many local departments, for example—and I am not being facetious when I say this—in New Orleans, where I served as special agent in charge, police observers come from

all over the world to observe their tactics in crowd control, and really many local agencies are more knowledgeable and more effective in this regard.

With regard to whether it involves brutality, though, and civil rights complaints, we are expert in that. If you would, we have made available the FBI Law Enforcement Bulletin and contained in here are articles on the police use of deadly force and I see another one in "Modern Day Approach to Crowd Control"; however, it is at the local ball stadium.

COMMISSIONER HORN. I listened to your exchange with Commissioner-Designate Ramirez and I am unclear on something. Is it correct that the Attorney General asked the FBI to continue the investigation only in the Miami case and did not make it a general policy?

MR. MULLEN. General policy in Dade county.

COMMISSIONER HORN. What do you think as a professional that in police-community shooting incidents when nonwhites are the alleged victims that it would be a feasible guideline for the FBI to promulgate in terms of the continuation of the investigation that if an all-white jury was involved in deciding the local indictment, those investigations would continue?

MR. MULLEN. I must say no to that. It is not the FBI's place to criticize the jury make-up. I just don't know on what evidence a jury would make its decision. I wouldn't think we would be in a position to criticize racial makeup of the jury. If the fact later is determined to be an unfair decision—all the evidence wasn't considered—I think that should be the basis for an FBI investigation rather than racial makeup of the jury.

COMMISSIONER HORN. If the Department of Justice Attorney General, Deputy Attorney General, Assistant Attorney General mandated that be done, the FBI would do it?

MR. MULLEN. We would do it.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Just one followup question to Dr. Flemming. You indicated you are not at the moment presently involved in giving guidance and counsel on civil disorders but at one time you were.

MR. MULLEN. That's correct.

MR. NUNEZ. The question I raise, and it is a factual one, did you ever, as far as you know, give counsel and advice regarding, dealing, with civil disorders, how to deal with it by cordoning off an area or sealing off an area—a black ghetto area or Hispanic area? Has that ever occurred as far as you know?

MR. MULLEN. It has not, not to my knowledge, that we would say, "Seal off the area," that "nobody comes and nobody goes." Quite the contrary. As I pointed out in my earlier testimony, you would leave an outlet. That's the secret to crowd control, an escape valve so they don't pen people up and force them to take violent action. It would just be the opposite, rather than seal it off, you would want to leave outlets.

MR. NUNEZ. You have never heard of that kind of a solution to that problem?

MR. MULLEN. I have not and I wouldn't recommend that as a solution.

CHAIRMAN FLEMMING. We are very, very appreciative of Judge Webster's statement. You indicated he worked on it. We are very appreciative of your being here, your responding to our questions, and it has been very, very helpful to us.

MR. MULLEN. I hope so. I hope I leave you with the impression that we are very sincere when we do testify at this type of hearing and with regard to our civil rights investigation. They do receive priority attention, not only on a day-to-day basis but we do brief Director Webster once a week for several hours on all of our investigations in the Civil Rights Section, that portion of the briefing. He is well aware of that and monitoring it today.

CHAIRMAN FLEMMING. Thank you very, very much.
Call the next witness.

MS. STEIN. Drew Days III.

[Drew S. Days III was sworn.]

CHAIRMAN FLEMMING. Thank you. We are delighted to have you with us as always.

TESTIMONY OF DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

MR. DAYS. Thank you, Dr. Flemming.

MS. STEIN. Mr. Days, would you state for the record your name, your title, and the years that you have held that particular position?

MR. DAYS. My name is Drew S. Days III. I'm Assistant Attorney General in charge of the Civil Rights Division and I have been in that capacity since March 10, 1977.

MS. STEIN. Could you describe to us, briefly, the nature of your duties in regard to the prosecution of Federal criminal civil rights violations?

MR. DAYS. Under the regulations of the Department, I am delegated the Attorney General's responsibility for prosecutions under the criminal civil rights statutes. The principal ones that we use are sections 241 and 242 of the Federal criminal code, 18 U.S.C. There are a number of other statutes that we enforce as well, having to do with, for example, peonage and involuntary servitude. I have the final decision with respect to prosecutions of allegations of civil rights violations, criminal prosecutions.

MS. STEIN. Have you brought a prepared statement with you this morning?

MR. DAYS. Yes, I have, and I believe I provided counsel with a few copies last night.

MS. STEIN. Mr. Chairman, I know the members of the Commission have had very little chance to look at this statement. I wonder what your preference is as to whether the witness should read his statement.

CHAIRMAN FLEMMING. Due to the fact we did not get it until this morning, I would make this suggestion, that it is a fairly long statement but possibly you could sort of lead us through the statement and in that

way we'll be sure that all members of the Commission are thoroughly acquainted with the main parts of the statement before we get into the question period.

MR. DAYS. That would be fine, Mr. Chairman. Let me apologize for getting my statement to you so late. Part of the difficulty was the result of my having to wear two hats this morning, not only speaking on the part of the Civil Rights Division but on behalf of the Attorney General as well and the entire Department.

CHAIRMAN FLEMMING. That is my understanding, that your statement is a statement in behalf of the Attorney General as well as in behalf of the Civil Rights Division; is that correct?

MR. DAYS. Yes, Dr. Flemming, I am pleased to appear before you today on behalf of the Department of Justice and the Civil Rights Division. The Attorney General regrets very much that he is unable to be here. Since he became Attorney General in August of last year he has emphasized throughout his very high level of commitment to civil rights enforcement, mentioning in places where he's not likely to be popular often the fact that civil rights is one of the priorities in his administration.

As a matter of fact, today the Attorney General is speaking to the convention of the International Association of Chiefs of Police, and without going too far to characterize that organization, I'm certain what the Attorney General will be saying today will not be responded to with unanimous assent and support.

The Attorney General and I, of course, share the concern expressed by the Commission in its July 1980 statement about the crisis affecting the United States insofar as police misconduct and brutality is concerned. It is an urgent matter and it is one that we have kept before us throughout in dealing with problems of allegations of police police conduct since we took office.

As I have indicated in my prepared statement, the dilemma, which the Commission fully understands, simply posed, "How can our society exert effective control over an institution like the police which possesses so much potential for depriving each of us of our constitutional liberties without at the same time thwarting the legitimate peace-keeping function of that institution?"

I have made reference in my statement to several studies, including studies of this Commission which point out, it seems to me, a meaningful distinction between police brutality on the one hand and police abuse on the other and that while there is certainly police brutality, the fact there is police abuse, rousting, frisks, searches, insulting language, stopping and searching of homes and cars for no good reason, searching of homes in minority communities, more than isolated cases of police brutality tend to reinforce in the minds of people who live in minority communities that they are confronted with an occupying army of people who have bias toward them and racism that can only end in brutality or violation of their civil rights.

Of course, these activities not only create a crisis in police-community relations, they violate the Federal law. We, as I indicated earlier, enforce several statutes but the most important of them are 241 and

242—241 is the conspiracy statute. It has a felony punishment attached to it and 242 prohibits violation of civil rights by people acting under color of law, both State and Federal.

I describe in my testimony the process for investigation and you have gone into that with much detail with Mr. Mullen. Let me touch on how we became involved. We receive numerous public complaints not only from individuals, from the NAACP, from the ACLU, from MALDEF, and a number of groups around the country, both from the national and local level. We, of course, also are very finely attuned to the possibility of civil rights violations throughout the country.

We have over 200 lawyers in the Civil Rights Division, all of whom travel a great deal, and when they are in a community, they are alert to indication of the local press or in discussions with community members of matters that appear to evidence police brutality problems. United States attorneys' offices are also responsible for providing information to us and triggering the investigation of complaints, and, as Mr. Mullen probably indicated, the FBI itself is responsible for watching television and listening to the radio and reading the newspapers, in addition to accepting complaints from individuals or organizations, to determine whether there is some basis for believing that a violation of civil rights has occurred.

As a result, we get total each year of about 11,000 complaints. Mr. Mullen, I think, explained that in many of the cases that we receive they are not, on their face, indications of civil rights violations. They tend to be matters outside the jurisdiction of the Federal Government or the Civil Rights Division, and they either refer those complaints to the appropriate entities or we simply notify the people that there is no basis for pursuing those investigations further.

In the area of simultaneous investigations, as Mr. Mullen indicated, it is our practice to initiate simultaneous investigations where there appear to be violations of the civil rights laws, in police brutality cases and in other cases, for that matter. We continue our investigation until local charges are brought. If local charges are brought and there are local prosecutions initiated, we monitor that prosecution. We receive newspaper reports, we receive reports from the FBI offices, and we also ask the United States attorneys' offices to keep us apprised of developments in that case.

So, to address the concern that you had, Commissioner Ramirez, about how do we get back into these cases after local prosecutions is ended, that is part of the monitoring process. We are informed when local prosecutions terminate what the results of those prosecutions are and based upon that information we in the Civil Rights Division determine whether there is a basis for going forward, whether we should get the transcripts of the local prosecutions, whether we should do a number of other things to reach our conclusion about perhaps a second prosecution by the Federal Government.

There was a major modification of our procedure in the Dade County situation by Attorney General Civiletti. As was indicated earlier, rather than awaiting the outcome of local investigation after the outbreak in Miami, we have conducted simultaneous investigations of

civil rights complaints since that time, and the FBI and the United States attorney and my own staff are on notice that they should follow through on their investigations irrespective of what is happening at the local level. Certainly we are not going to engage in simultaneous prosecution so that defendants would have to be in two places at the same time. We don't want to make a mockery of the process, but we do want to communicate and did want to communicate down there we're not going to be particularly tied to the schedule of the local prosecutors.

The Attorney General felt this was particularly important because the local attorney's office is, I believe, still the subject of a gubernatorial commission investigation to determine to what extent it has been adequately responsive to charges of police misconduct or charges of discriminatory and selective prosecution.

While that office was being investigated, the Attorney General felt it was particularly important to communicate to the people of Miami and of Dade County that an agency was following through, that it was engaging in thorough investigations, and would prosecute where necessary and was not, as was the case with the local prosecutor, under some type of external review and investigation which, while I think it probably was appropriate, has to have a chilling effect upon much of the activities of such an office.

With respect to dual prosecution policy, which is a matter that we reach if there has been a local prosecution which has reached a termination on the merits, we have to make a decision with respect to a second prosecution. In those cases where jeopardy has not attached, for example, where there has been a hung jury, we do not confront the dual prosecution problem. The policy was changed, as you probably know, in January of 1977 by Judge Bell. He reviewed the policy that Attorney General Rogers had established which tended to tip the balance against dual prosecutions where the locals have taken some action, then the Federal Government had a very heavy burden to carry in initiating second prosecutions.

Instead of following that earlier procedure, he emphasized the importance of an independent Federal evaluation of what had taken place at the local level to determine whether Federal civil rights had been adequately vindicated by that process. Attorney General Civiletti has issued within the Department a more comprehensive document after he became Attorney General which deals with dual prosecutions, not only in civil rights matters but across the board, what types of considerations. Certainly there has to be a showing of compelling Federal interest to bring a second prosecution.

The document that was promulgated by the Attorney General emphasized that civil rights prosecutions would presumptively fall into the category of those matters of compelling Federal interest, but we generally do not consider a second prosecution a dual prosecution unless we expect, in the event that there was no conviction at the local level, we are going to be able to get a conviction. If an evaluation of a local prosecution determines there are gaps in the record, that there are inconsistencies in testimony that we don't believe, after a thorough

evaluation, we can remedy, and we think that perhaps we're going to end up not obtaining a conviction as was the problem at the local level, then the policy dictates that we not bring a second prosecution.

Where there has been a conviction at the local level and sentence imposed, we have to determine whether a prosecution by the Federal Government will produce a greater sentence. This is, of course, not a matter of exactitude. It is not a scientific process but using our best judgment by evaluating the record, evaluating the evidence, evaluating the vigor and skill with which the local prosecution was pursued, we have to reach some determination. We, of course, look for flaws in the local prosecution. We look for evidence that perhaps the jury was swayed by forces that were improper, by an environment that was particularly racist or discriminatory, pretrial publicity that might have affected the ability of the jury to reach a just conclusion, and so forth.

In the area of prosecutive decisions, it should be emphasized that the FBI reports; it does not recommend. In fact, every document that we get from the FBI has on it that "this is not a recommendation; it is a report" and that's as it should be. The FBI is not a prosecutorial arm of the Justice Department; it is an investigatory arm. We don't want the FBI making judgments for us about whether cases should be pursued. We are interested on the FBI's views on the credibility of witnesses. We are interested in the FBI's pursuing inconsistencies in statements, making certain that the physical evidence is protected, and so forth, but we are not interested in their prosecutorial judgment.

After the FBI completes a report, we seek a recommendation from the local U.S. attorney and, of course, we make our own judgments about it. We look at those recommendations and then make a decision to whether we are going to go forward. There are several ways in which we proceed.

Where the evidence seems to be particularly strong, we go to the grand jury, having made a decision that we're going to seek an indictment unless something surprising occurs during a grand jury proceeding. In most instances, however, we go to the grand jury because we want to test out our case. We want to make certain that we have seen all there is to see and have made certain that the witnesses' statements have been taken under oath, there's been an opportunity to see the demeanor of the witnesses, and after we go through that process, then we make a decision as to whether there should be an indictment.

There are many instances in which, after the FBI has done about as thorough an investigation as it can do, where we still don't feel we have enough to go to a grand jury with and ask for an indictment—there are inconsistencies, there are gaps—so we go to the grand jury, hoping in the grand jury we can sort out some of these problems and thereafter make a prosecutive decision.

The relationship between the Civil Rights Division and the United States attorney is one that gives to me, or persons in my capacity, final approval for essentially civil rights criminal enforcement in the United States, but what we have tried to do is detach that policy role that a person in my capacity has to play with decisions on specific cases, particularly cases that don't raise significant policy considerations. All

241—those are conspiracy prosecutions—or 242 felony cases have to be authorized by the Assistant Attorney General. In other matters we have gradually given more authority to U.S. attorneys to make decisions, and I want to turn to that right now.

We have, at Attorney General Civiletti's direction, been working very diligently, and, in fact, this happened before he became Attorney General, to bring the United States attorneys back into the fold. There is a lot of history about which this Commission knows more than any other entity in Washington, but there were times, as you will recall, when some U.S. attorneys were very uninterested, to be charitable, in civil rights investigations and prosecutions. There were times when the United States attorneys did not want civil rights department lawyers, if not in their districts, certainly not in their offices. They wanted to disassociate themselves from criminal civil rights enforcement.

We have seen a great change in attitude, particularly in this administration. We have a group of, I think, quite excellent U.S. attorneys as a rule who are aware of civil rights concerns, sensitive to these considerations, and who, I think, generally are aware of the fact that their credibility in their jurisdictions is very much dependent upon their taking visible and vigorous activity in the area of civil rights. They can't sit back and say, "Well, all we do is prosecute white collar crime. All we would do is prosecute fraud upon the government."

I think they recognize that this is a major issue, particularly in large metropolitan communities, and they have been responsive to that. With that idea in mind, the Attorney General authorized the creation of civil rights units. As of June of this year, there are 36 units in U.S. attorneys' offices. They vary from their size and organization, but generally they are separate units in most of the major offices. In the middle-sized offices they tend to be units with a person assigned full time to work on these matters, and in the various small offices several U.S. attorneys have, as part of their assignments, working on civil rights matters.

U.S. attorneys' office at Butte, Montana, was used, where there may be one United States attorney and three assistant U.S. attorneys. It is kind of hard to create a unit but there is a presence, and I have been heartened by the extent to which U.S. attorneys have publicized, on their own, the existence of civil rights units. This has been particularly outstanding in California. All U.S. Attorneys in California have gone to great lengths to publicize the creation of the units. United States attorney in New Jersey recently held a press conference and announced the creation of his unit. The United States attorney in the Northern District of Illinois, in Chicago, has held several meetings recently to explain to the public what's gone on in his office. They generally tend to be in large metropolitan areas. We have had an emphasis on the Southwestern United States, and we have tried to pinpoint offices where there seemed to be more than passing problems with civil rights enforcement.

In July of this year, I delegated greater authority to the United States attorneys, such that they are, with two or three exceptions, authorized to proceed in criminal civil rights matters on their own. This is something that I think has come with the assuming, on the part of the

United States attorneys, of greater responsibility in civil rights enforcement and greater indication of interest on their part in these matters.

Going hand in hand with the creation of the civil rights units and the greater delegation has been an effort on the part of my division to train U.S. attorneys and assistant U.S. attorneys in civil rights enforcement. We have had two major training conferences and we have another one planned. They have been well received and I think U.S. attorneys and their staffs have gone back armed with the material that they need to handle a number of these cases, but I think, perhaps more important than materials, armed with an attitude that is necessary to pursue these matters forcefully.

In the area of lethal force, the Attorney General has expressed himself quite frequently since August of last year on the problem of lethal force and his determination that there is a Federal role—a Department of Justice role—to play in this area.

In March of 1980 the Attorney General established a high level task force to look into the question of lethal force, to study its implications and to develop uniform guidelines. With me today is Dan Rinzel, who is the Chief of the Criminal Section of the Civil Rights Division, and he has been my representative on the task force consulting with me, and I am quite frankly amazed at the fact that there is a draft under consideration in the Department after only a few months of work on these issues.

I have seen a lot of task forces in the government come and go since March '77 and I have seen few reports coming out of those task forces. I have read portions of the draft and I think it is an excellent effort and will represent, it seems to me, a significant contribution by the Justice Department in the Federal Government.

You are also probably aware of the LEAA grants to the International Association of Chiefs of Police and to the National Urban League, the National Council of La Raza, we are working with the University of California at Irvine to deal with lethal force from a number of perspectives: from minority perspective, from a more academic perspective, and certainly from the law enforcement perspective.

I also point out in my testimony the fact that LEAA has also provided funding, not only for evaluation of the problems of lethal force and some theoretical context, but has also funded units to handle investigations of police shootings. The most notable example is that in Los Angeles where the DA's office has been funded for a year to create a 24-hour unit of attorneys and investigators to go to the scene of these shootings to get the evidence while the evidence is available and in a fashion that is independent of the local police department. I sent a member of my staff out to evaluate that unit and he came back with very favorable reports as to the way that unit had been set up and the way it appears to be operating.

I will not go into the Memphis agreement. Your report recognizes that you are aware of it but I do mention it once again in my testimony.

I also make reference to three activities that we have been carrying on in the Department that relate to our determination that there needs

to be not only more effort by the Federal Government but greater effort at the State and local level. After all, when we pay our taxes to support State and local police, we expect those agencies to protect our rights in terms of civil rights as well, and where there are violations by persons who are employed by those agencies, there should be adequate discipline and adequate efforts to protect the public, as Director Webster's testimony indicates as well.

I have been lecturing for the past 2 years four times a year to the National Police Academy. By my count that means I have spoken to 2,000 police executives about civil rights enforcement and about their responsibilities at the local level to deal with these matters. I explain the work of the Civil Rights Division, the civil rights laws, and try to make a point that they are the first line in dealing with these problems. They are in the communities and their failure to act probably results not only in our responding but also a community's responding in ways they may not appreciate. I indicate in my testimony these are lively sessions. That is a major understatement. You talked about civil disobedience. There are situations, and I encourage this, where I feel like I'm a punching bag or a target on a shooting range when some of the questions come to me, but it is a two-way street and I've come away from those sessions feeling that I understand better the legitimate concerns about law enforcement, about some of the things that we do.

I have also spoken to the National Executive Institute, which is designed for the big city chiefs, and I have done that for a couple of years as well, reaching about 20 of the commissioners or police chiefs of major departments, talking primarily about employment discrimination, which I indicate in my testimony, I think, is tied very closely into the whole question of dealing with police misconduct, and to a lesser extent I have talked about lethal force.

And I wanted to emphasize the Attorney General's periodic meetings with the International Association of Chiefs of Police. I have attended a few of those and I can attest they are pretty lively also, but, once again, we are trying to keep those channels open to explain to law enforcement executives exactly what's going on in our operations. In fact, Dan Rinzel, at my request, prepared a very excellent description of how we go about investigating and prosecuting police brutality cases, and the IACP, I think, has published that in its national magazine, so that's going out to literally thousands of police officers. While they may not like what we do, the important thing is they understand what we're doing and do not misconstrue some of the actions we take.

In terms of public information, which was another concern that the Commission had, we make no public announcements of investigations or actions before grand juries. We will acknowledge that investigations are ongoing if we are asked about them, and FBI agents, as Director Webster pointed out in our public information offices, as well are authorized to respond to inquiries where it is clear that everybody in the community knows that there is an investigation and it makes us all look silly to play cat and mouse and deny or refuse to comment on the investigation. In fact it may be counterproductive, we feel, to remain silent under those circumstances. We, of course, announce indictments

once they are issued. We do that in a very abbreviated and very straightforward fashion. This is a result of Judge Bell's concern that we not make media events out of the announcement of indictments—very straightforward.

We are concerned about the rights of the defendants in these cases. We speak a great deal about the work of the Civil Rights Division in this area, and I think that has had a salutary effect, and Judge Webster describes the notice procedure that we've developed.

I might emphasize that notice procedure was an outgrowth of my sometimes painful presentations to the National Police Academy. One of the great concerns that these police executives had was that they didn't get systematic information about what was happening to our investigations. Having been a civil rights lawyer on the outside before I came to the Justice Department, I also know, because I handled police brutality cases as a private practitioner, that complainants very rarely knew what was going on in the Civil Rights Division.

We have now instituted a policy and a system that will produce about, we think, 11,000 letters a year to police officers who are the subjects of investigations, complainants, and victims—to the extent there's a difference between the complaining party and the victim—and I think that is good for our work. I think it is helpful to police officers, who deserve to know when they are no longer under active investigation. It helps us, I think, in those investigations where we do have a meaningful role to play.

In terms of your relationship with the local investigators and prosecutors, we try wherever possible to act in a collaborative and cooperative way. For example, while we have simultaneous investigations, we are sensitive to the fact that sending a local investigator and then having an FBI agent show up a few minutes later to talk to a person who has been the alleged victim of police misconduct, or who is the family of someone who has died as a result of the police use of lethal force, is not a good policy both in terms of public relations and community relations. It is also not a good policy in terms of criminal investigations, because there is a great potential for developing inconsistent statements where, in fact, there are no inconsistencies, simply because there is not adequate preparation of the investigation, so we try to orchestrate our investigations so there are not undue complications.

In terms of modifications of existing law, I have spoken to this Commission before and it is in my testimony, before we continue to be concerned about the specific intent requirement under the law that we enforce and, of course, we agree with the Commission that noncitizens should be covered under 241 and we think the penalty should be increased for civil rights offenses.

I want to bring to your attention something that you may have picked up in the papers last week. On September 12 LEAA announced that police brutality based on race, creed, or color was prohibited under the LEAA statutes and funds would be cut off if departments were found to have engaged in that type of practice. It seems to me that's an important statement for LEAA to make. It is one that has been long overdue and it reflects the consistent and very deeply held

policy in the Department that on all fronts we have to be concerned about police brutality.

With respect to resources, I have talked in my statement about the United States attorneys offices becoming more involved. I have talked about our encouraging State and local officials to become more involved, but I don't want to miss an opportunity to say we in the Civil Rights Division need additional resources also. We think we have an expertise that is unique. The success of efforts at the U.S. attorneys' level or at the State and local level, I think, very much depends upon our ability to continue outreach and to educate and demonstrate through prosecutions of complex cases how they are done, and we have asked for additional resources. The Attorney General has been supportive. I am hopeful that the administration and Congress will see fit to give us the resources that we've sought. Thank you very much.

CHAIRMAN FLEMMING. Thank you.

Ms. Stein?

MS. STEIN. Mr. Days, would you explain to us the considerations that underlie the policy that an FBI investigation will be suspended when State charges are filed? In other words, what are the reasons that favor that policy?

MR. DAYS. Well, the reasons are largely pragmatic. It is almost impossible to conduct an investigation while a local or State prosecution is going on. Witnesses are going to be unavailable. They are going before local grand juries; they are going to have to appear in prosecutions. Subjects in these cases are not going to be available. I think there is generally a clamping down of people with respect to providing information when that I know that a criminal proceeding at the local level is ongoing.

The other consideration is, we really want to encourage local prosecutions. We want to demonstrate that when local officials proceed promptly to investigate, to take the grand jury and to prosecute cases of this kind that we're not going to be tripping over them in the process. We want to give them the latitude they need to conduct their investigations, to go to the grand jury and actually prosecute and try.

As I said, we can't really have simultaneous trials without causing significant problems, and we just have, over the years, developed the view that that's the most appropriate way to proceed. There might be exceptions from time to time, as in Miami, but, as a general rule, we think the policy we have now is the appropriate one.

MS. STEIN. Are there any disadvantages that you have found in having the investigation suspended when later you decide that dual prosecution is appropriate?

MR. DAYS. Yes, there are disadvantages. One of the major disadvantages is the staleness of the record. After there's been a local investigation, a local grand jury perhaps, a local trial, perhaps months, if not years, have passed. In many instances, the transcript of the proceeding has not been prepared, so we have to go back and ask for the transcript of a proceeding that may be several months old. We run into problems of court reporters dying or losing records or just a variety of practical problems that we hope to avoid.

One of the ways we've dealt with this problem of the staleness of the record is by working out with local prosecutors the sharing of their investigatory reports and their grand jury proceeding transcripts. We did this, for example, in the Eastern District of New York a couple of years ago. We permitted the local prosecutor to go forward but we asked for almost weekly copies of their investigatory reports. When the prosecutor went to grand jury we asked for, if not daily, ever other day, copy of the transcript, so we had attorneys following that proceeding very closely as it went on.

When it was completed, we were able to make a fairly quick evaluation of whether we were going to go forward. We didn't have to start absolutely cold from scratch and recreate what had happened at the local level. My position has been since that time that where it is a highly celebrated prosecution, and where we think that there is a likelihood that we would want to proceed after the local prosecutors have made an attempt, I try to strike agreements with the local prosecutors to get this type of support. We are doing that right now in Chicago at the very celebrated case, simply because we don't want to be left in the lurch if and when the local prosecution is terminated.

MS. STEIN. Did you play a role in the decision to change this policy in Dade County?

MR. DAYS. Yes, I did.

MS. STEIN. Can you tell us what was the nature of that role? Did you recommend the change?

MR. DAYS. Yes, I did. It was the result of having lengthy discussions involving the Attorney General, the United States Attorney for the Southern District of Florida, and myself on the scene when we went down during the Miami disturbances. We tried to make a very quick assessment of ways in which the Federal Government might demonstrate that it had a safety net, as I think Commissioner Ruckelshaus mentioned earlier, to deal with ongoing complaints of civil rights violations. In fact, there were complaints of civil rights violations during the disturbances. I think there were many questions in the minds of community people as to who was going to do that. Was the local prosecutor going to do that also? Was the Federal Government going to sit back and let the local officials investigate those complaints as well?

Given an assessment of the entire record, we made a decision to change the policy. We communicated with the State's attorney in Dade County. Members of my staff subsequently went down and met with Janet Reno, who was the prosecutor there, to explain to her exactly what procedure we were following, that we were not engaging in any determination on the merits of whether her office was acting properly or improperly. That was something that was being done by the Governor's office, but we did see this need for a very strong presence while her office was under scrutiny by the Governor's commission.

MS. STEIN. What do you think would be the appropriate criteria or considerations that would dictate similar change in policy in a future situation?

MR. DAYS. Well, I think that—

MS. STEIN. Is my question clear?

MR. DAYS. Yes, I understand your question. I'm just trying to search for an answer that makes some sense. I don't have a ready set of criteria in that regard, but I think that where we conclude that an environment in a community is so cynical, or attitudes in a community are so cynical, toward the ability of a local prosecutor to do justice in terms of investigating and evaluating and prosecuting complaints of police misconduct, that might well be a situation where we want to go ahead, irrespective of what was happening at the local level.

For example, if there are public statements by the local prosecutor about a mayor or members of the city council or by people who are setting public attitudes in that community that might thereby affect the ability of jurors in that specific community to render a just verdict in the event a trial took place, or where there seems to be interference with the local investigation, where it appears to be sloppy, where there appears to be some ambivalence about the local prosecutor in terms of going forward, then we might well alter our standard policy and use the approach that we have taken in Miami.

I have been in situations with State prosecutors and I'm not certain I did the right thing under the circumstances, given 20/20 hindsight, but I was determined that the local prosecutors would not pass the buck to us without demonstrating that they had made every effort they could under their statutes and given their resources to investigate and prosecute those cases.

I think it is very unfortunate for local prosecutors to say, "Well, we really can't handle that. Let the Feds do that because we can't be impartial." I think that is such an abdication of their responsibility. In fact, it makes our job harder, not easier, because, after all, when we come, we're going to talk to local law enforcement officials; we're going to have to look at their records and do a number of things that involve the law enforcement community, and, if there is an attitude that it has washed its hands of the matter, I think perhaps the credibility of our investigations might be affected in that regard.

MS. STEIN. You said in your statement that you cooperate with local prosecutors when they have determined to carry on an investigation and prosecution. In what does that cooperation consist?

MR. DAYS. Well, in some instances, we make available, if it is through court process, results of investigations that we have done—FBI investigations. We do not hand over those investigatory reports willy nilly. Most local prosecutors, I think, will tell you that they have to fight for them, in the sense that we will not, based upon a telephone call or a handshake, turn over our records, but if a local prosecutor goes through appropriate procedures to get that information, then we will evaluate it and I think in many instances are willing to turn over that information for such purposes.

While it is not a police brutality case, a good example of local Federal cooperation is the prosecution in Greensboro, arising out of the shooting deaths awhile back—the Klan, Nazi party prosecutions. While the prosecutions are being handled by the State officials, we have made available quite significant resources of the FBI and the FBI laboratory to assist local prosecution in ballistics analysis and other types of physi-

cal evidence analysis and a variety of other things, because we think in that fashion we can probably be of greatest assistance to that prosecution.

MS. STEIN. Now, if you have completed your investigation of an incident of police brutality, do you wait before initiating prosecution or presenting the case to a grand jury to see whether the State is going to undertake a prosecution of its own?

MR. DAYS. No, we don't wait. One of the things we ask the FBI to do is to give us an assessment of the likelihood that there will be some local action. One of the points I should have made earlier about deferring or suspending our investigations if there is local action, that local action tends to be much quicker than action by the Federal Government. There are a number of reasons for that and one of the reasons is that in some cases local prosecutors can act without the grand jury. We use the grand jury. We seek indictments.

Prosecutors can use informations to get their matters to trial, but there are many more local prosecutors, many more local juries, there are many more local investigators, so just as a practical matter they are able to move much more quickly, but, no, we don't take a wait-and-see attitude with respect to whether there is going to be action at the local level. This is one of the considerations that goes into a determination as to whether we are going to go forward.

If the local prosecution is on the brink of initiating, or local prosecutor is on the brink of initiating something, we have to think about that. We have to think about whether we are going to be able to do it more quickly. In the case that I mentioned in Chicago, the local prosecutor acted very swiftly and indicted the persons who were charged with police brutality at a pace that was far speedier than anything I think we could have accomplished in Federal Government, and I'm not apologizing for that. I think that's the way it should be. That's why I emphasize in our statement how important I think it is, and the Attorney General concurs, that there be vigorous action at the State and local level.

MS. STEIN. Well, we heard testimony earlier this morning that the goal, anyway, of the FBI is to have their preliminary investigation completed within 21 days, and I'm sure there may be times that the prosecutor needs supplementary information, but assuming that is a goal and that it is at least sometimes met, what is the reason that causes there to be more delay in determining upon a Federal prosecution than one at the State level?

MR. DAYS. Well, as I said, we have made a practice of using the grand jury extensively. I think in the Justice Department, perhaps the Civil Rights Division and the Criminal Division use the grand jury quite extensively to test out the strength of our cases.

We put on, in many instances, a full case before the grand jury to make certain that when we go to trial we have a various strong case. I need not remind you, in terms of problems we encounter in terms of jury nullification. The Criminal Division, I think Dan perhaps can either add to this or correct me if I'm wrong—In white collar crime cases, the Criminal Division uses the grand jury quite extensively in the

way that we do in civil rights cases for much the same reason. There is a need really to pin down evidence. We are dealing, in many instances, in civil rights cases not with pillars of the community as complaining witnesses, people who have significant credibility problems, and that's a long story I won't go into, but they are people who often have criminal records; they are people who are not steady employees, who are poorly educated, and, therefore, it is very important that we go through that process and have the grand jury assist us in evaluating the strength of our cases.

That is a time-consuming process. We try to be very thorough. We do have the forensic support of the FBI. I think the reports that we do are extremely thorough; they are much more thorough than often is the case at the local level. We could do some of these investigations and prosecutions more quickly and that's why we're asking for additional resources; that's why we try to improve our litigation support program using computers and other techniques, but I think however much we increase our efficiency, we still are going to be slower on average in dealing with these cases than our local and State prosecutors.

MS. STEIN. But if I understand you correctly, you are saying you would not defer presenting a case to the grand jury to wait and see whether the State was going to initiate prosecution?

MR. DAYS. No, that's correct.

MS. STEIN. Does it ever happen that the State initiates prosecution after a Federal prosecution has begun or after presentation to a Federal grand jury has begun?

MR. DAYS. Yes, I believe there are such cases. They are rare. There are a couple of situations that we are looking at right now where I think there is some feeling on the part of the United States attorneys that the local prosecutors will probably have a better chance of coming away with a conviction than we would prosecuting in the Federal court.

You have to understand, as I'm sure you do, that local prosecutors have a panoply of offenses and charges that they can bring under circumstances what we call police brutality or abuse. They have lesser included offenses and so a skillful and professional use of those State statutes can, in contrast to what we have to confront very often, present a jury with a variety of options. It is not just up or down. There are ways in which the jury can express itself other than acquit them, which is a problem we sometimes face, expressing its view on the severity of the violation, of the extent to which they believe a particular defendant ought to be punished, so we are not left with murder or some type of felony charge but lesser included offenses that nevertheless get the message across, but it is very rare.

I mean, one does not come to my mind at this point, that after we've done a grand jury, the local prosecutors have nevertheless gone forward.

MS. STEIN. Or when you are in the process of presenting to the grand jury.

MR. DAYS. Or when we are in the process. Actually, the case I mentioned earlier, or was in my own mind thinking of, about my

talking to local prosecutors and trying to force them to take some action, in fact, occurred at a time in which we had already conducted some grand jury proceedings. If I recall correctly, there had been a State grand jury, but we were on the brink of initiating our own grand jury proceeding. It was at that juncture that I talked to the local prosecutor and was able to get him to actually prosecute that case.

MS. STEIN. What would your inclination be, if you were presenting a case to the grand jury and the State indicted or charged the subject? Would your inclination be to proceed or to defer, pending the outcome of the State proceeding?

MR. DAYS. It would depend. I think I would start with an inclination to suspend the grand jury proceedings, but if we concluded that it was very important to get witness testimony down in the record, if there were people who were being brought in from great distances, if we thought we would lose the ability to use a particular prosecutor in the case who had extensive familiarity in the case, we might go forward. But I would start with a presumption that, under those circumstances, suspending the proceedings would make more sense.

MS. STEIN. In your statement you indicated the awareness that cases of police brutality often give rise to discontent in the community and perhaps resulting in civil disorder or racial disorder.

MR. DAYS. Yes.

MS. STEIN. Do you feel that you acquire knowledge of whether this is a significant problem in a given case, and, if so, how does that knowledge come to you?

MR. DAYS. It is very impressionistic. It is largely drawn from community reaction, newspaper reports, calls that were received, telegrams, media reports. That's not always true; there are situations where, quite properly, organizations help mobilize public opinion with respect to a particular case. I don't criticize that; I don't quarrel with it at all, but there are situations where that type of reaction appears to be spontaneous, where the public reaction is one of such revulsion and outrage over a particular shooting or a alleged beating, we hear about it promptly.

The FBI hears about it quite readily and we try to be sensitive to distinctions among cases, not that we put that case necessarily up at the top of the list, where we are on the brink of resolving another case that perhaps came to our attention earlier, but there is no ready way of assessing on a very accurate scale whether a particular incident may spark community disturbances or civil disturbances or will not.

I see that Gilbert Pompa is here, Director of Community Relations Service, and while it is an independent agency within the Justice Department, it is not engaged in law enforcement; while it is not expected, not authorized, to provide investigatory information or prosecutorial information to the litigating divisions of the Justice Department, it does provide ongoing assessments of community attitudes toward police misconduct cases, police brutality cases, and I read Mr. Pompa's weekly reports quite carefully. Dan Rinzel receives copies and I send them to other members of my staff.

I have called on Gil and he has always been responsive where I thought there was some potential for civil disturbance, based upon information we had received, and I think that is the appropriate role for the Community Relations Service, among others, to go into the community, and he has been very forthcoming with assessments of situations in terms of the need for more than regularized responses to a particular complaint in a community where there is a lot of discontent and concern about a case.

MS. STEIN. If you received information indicating that the potential for disorders resulting was significant, what effect, if any, would that have on the way the investigation would be conducted or the way you would handle the decision to prosecute?

MR. DAYS. Well, first of all, I think we would be more concerned that the community understand that the Federal Government was looking into the matter and was prepared to take action if the investigation pointed to a likely violation of the civil rights laws, to make the community aware that the Federal Government is concerned, is interested that people are not left to their own devices, there is someone else looking into the matter.

Secondly, in terms of our investigations, we have asked for expedited investigations by the FBI in special cases. Now, one has to make a decision between an expedited investigation and a hasty investigation, because a hasty investigation is not something that benefits us or benefits the community, so within professional limits we will try to move an investigation forward.

Director Webster has been extremely cooperative in providing additional agent assistance when we felt there was a need to do a particularly quick investigation of the situation. Again Greensboro comes to mind, where within a matter of 24 hours there were, I think, a couple of dozen FBI agents in the Greensboro area conducting an investigation. Vernon Jordan was the same way and, of course, Miami. Chattanooga was another place where we got very prompt response from the FBI.

Once the investigation is completed, it is very hard for us to speed up the grand jury process and the process of making a prosecutorial decision. That just has to go in the normal course, not that we put it on the back burner and forget about it. These are very difficult decisions and I certainly would not like—and I don't think anybody here would like—the Department to be perceived as rushing to judgment on cases that are very complicated. We have to evaluate these and make a decision and sometimes the delay that we take leads us to conclude there's nothing that we can do, and yet when we reach that decision, which is a very difficult decision where there's a lot of community interest and, as I said, reaction to allegations of police misconduct, we have to really be certain when we make those judgments. We have to be able to face the music and willing to face the music, and we have been and we have looked at the investigations and looked everywhere and concluded there's no action to be taken. We have had no regrets about that and are able to stand behind the investigations that we conducted.

MS. STEIN. Would the possibility of disorders have any effect on the decision whether to prosecute as opposed to speeding up that decision? In other words, would it make you more inclined to tip the balance toward asking for an indictment?

MR. DAYS. I don't think so. We are all human beings and not robots, and not automatons, so I would think that all of us are affected in some way by either the imminence of civil disturbances or the actuality of civil disturbances in looking at a particular case, but to the extent humanly possible we try to divorce ourselves from that in making a decision.

MS. STEIN. I would like to ask a final question that concerns testimony we heard this morning about statistics. The FBI maintains, as I understand it, statistics that detail a number of complaints of police brutality that they have received, but they do not break them down by police department or by race of the victim or race of the alleged perpetrator. I wonder if your office does so and whether breakdowns of that type would be valuable to you in terms of where to focus your attention, both in making decisions about prosecutions in individual cases and decisions about overall suits, such as the Philadelphia case that you brought last year?

MR. DAYS. Well, we don't do this as a systematic matter. We have, from time to time, made evaluations on a police department by police department basis to determine where we appear to be getting the greatest number of complaint per capita. We also have made assessments from time to time with respect to the race of the subject, the race of the victim, but we do not, on an ongoing basis. We can, on perhaps a current basis, provide that type of information, but I guess my sense is that that is not really our role to keep those types of statistics.

We are equal opportunity prosecutors. We prosecute black on black brutality, Indian on Indian, and so forth. I understand the pertinence of that type of information for some of your considerations, but I'm not certain that we are the agency to do that type of recordkeeping on a systematic basis, not that I would resist it but I want you to know we have not done it that way. From time to time we try to determine for purposes of allocation of resources what the picture looks like in a particular community and will continue to do that.

MS. STEIN. Do you think the compilation of that information would be valuable, and, if so, do you have an idea as to what agency would be the appropriate agency?

MR. DAYS. I don't think it would be valuable in making decisions about individual cases. In other words, it would affect my judgment that we should go into a case that didn't appear to be meritorious because the department was a bad department. It might have some pertinence if we were confronted with two cases to prosecute and one involved the department that seemed to have a pretty bad record and one that did not, but I must admit we have not gone through that type of analysis in terms of allocation of resources. We know where we have had a number of complaints over the years and they continue to come

from those communities, so we don't have to do a case-by-case assessment of these problems.

We have this type of information in other areas in the civil area; for example, employment discrimination—we have a statistical way of doing that. I don't want to sound like a resisting witness before you, but I am very uncomfortable with the idea that word would get abroad that the Civil Rights Division, Criminal Section, goes through a racial analysis as it's investigating and determining whom to prosecute under civil rights laws, so that's really my concern. I don't know quite how to articulate that, other than to say that, but we are sensitive to those concerns. We are aware of many instances in which departments perhaps need to be scrutinized more than others. But it is the type of internal prosecutorial judgments that are made every day throughout the country. They are not for publication and we don't keep a box score in that regard.

MS. STEIN. Thank you very much.

CHAIRMAN FLEMMING. Commissioner Berry?

VICE CHAIRMAN BERRY. Mr. Days, to follow up on counsel's last question, isn't it the case that kind of information, the race of the people who are involved in the police brutality incident, would be helpful in sort of taking the temperature of places where racial violence may or may not break out? Couldn't it at least be valuable for that purpose?

MR. DAYS. If you could come up with a statistically valid model. In other words, I'm not certain that because we receive 200 complaints in a year from a city where the department has 12,000 officers, those are more or less meaningful than receiving 24 or 25 from a community that has 500 officers. I'm not sure of the calculus but—let me back up a little bit.

You know about the Philadelphia case, the civil suit that we filed. It was our sense that in bringing civil actions, precisely the information that you're talking about ought to come into play. How many complaints we received, how many suits had been filed by private parties alleging that there was brutality and there appeared to be a discriminatory element, so in civil matters, it seems to me, that this information can be used openly and without apologies. It is just when one gets in the criminal process that my discomfort arises.

VICE CHAIRMAN BERRY. Would it be helpful in trying to prevent civil disorders involving police brutality as a triggering incident or failure of State and local prosecution to have FBI investigations completed so that you would be able to make a decision about whether you wanted to prosecute immediately in the case of an acquittal as, for example, in McDuffie?

MR. DAYS. Well, you really can't, unless we do more than I have described with respect to the local proceedings. If we had people who could analyze and sit in court every day, daily transcripts, and do evaluations of witnesses and make certain all that information was available to us by the time that the local prosecution was over, I suppose that would help us a great deal, but I'm not certain that would

be an effective use of our resources. In particular cases it might be something that could be done.

But we look at a number of situations where they have no local prosecutions, and it is hard for us to say that all those cases would warrant this type of a close scrutiny, ongoing evaluation of the local proceedings that you were just describing. I think in some celebrated cases that might serve to speed our process along but there are pitfalls. There are, for example, evidentiary problems that we might encounter if we had agents or representatives observing these trials.

We've run into it in the McDuffie case because there are matters that can be used in some State proceedings that we are not allowed to use in Federal proceedings, so we have to make very certain that we are not cutting off the possibility of making our independent judgment and, I think, there is something about independence.

I would not like the impression to be that we sat around and looked at what the locals did and we bought what they did. We want to be in a position to demonstrate that we have looked in a dispassionate fashion at what went on at the local level, perhaps with some brief removal of time from the event to be able to make a thorough and objective evaluation, but what you suggest is certainly a possibility.

VICE CHAIRMAN BERRY. There seems to be some statistical ambiguity—a difference in your testimony and Director Webster's testimony on the number of complaints. You say about 10,000 a year police misconduct and his testimony says about 5,000 allegations of police misconduct. I wouldn't want to delay the hearing by pursuing the disparity, but perhaps counsel or someone could get your numbers and his numbers and see what the differences are. I just want that out.

MR. DAYS. When we talk about complaints, we're talking about in all forms and with all manner and degree of substantiation, and there are many matters that are not investigated at all because on their face they appear to be incredible. We can't find any corroborative information. Limited investigations are done, for example, by going and talking to the complainant, and if the complainant said nothing happened, then that's the end of the investigation.

I don't know to what extent the Director's testimony reflects their having culled out those matters that the Bureau is not asked by us to pursue to the extent conducting preliminary investigation.

VICE CHAIRMAN BERRY. You state that you can prosecute only 50 to 100 of the worst the cases every year when these complaints arise.

MR. DAYS. I didn't say the worst the cases.

VICE CHAIRMAN BERRY. Egregious I took to mean worst cases. I'll use your language then.

MR. DAYS. Perhaps I should qualify that a little bit more because there are many egregious cases, but there are quite a few of them we couldn't prove in court in our estimation. Where we have no corroboration, where there is one-on-one, where we're confronted with throw-down situation, a gun, or a knife, while we might investigate and take the grand jury from now until the year 2000, we would not be able to, based upon what we know of the criminal process, to prove that case. We probably couldn't even get a grand jury to agree.

So in reviewing files—and I'm sure the Criminal Section feels the same way and the U.S. attorneys feel the same way—we often come away with a gut sense that a violation took place and there was a civil rights abuse that took place. We know we can't prove it, so we don't go to grand juries to have grand jurors tell us what we, using our own judgment, know to be the case. We take only those cases where we want to get other information or where we want to test out the case before the grand jury before seeking an indictment and prosecuting it. I don't think it is fair to say we have good cases that we ignore and don't pursue.

It's just that this process is a very difficult one. If a police officer is going to engage in misconduct, he or she does not normally do it in broad daylight with 50 objective witnesses present. In some instances, these instances occur under circumstances where there's no way to prove them, so when we go to a grand jury with about a hundred or so cases, we are picking those cases where we think we have a good chance of making a case.

Let me define egregious for you, because in some instances we are talking not merely about death or brutality but we're talking about blatant violations of people's civil rights, and this happens in some relatively minor circumstances where fellow officers have come forward and said, "We just can't believe what the subject did in this case and we're willing to testify," and we have gone to trial on cases that didn't involve serious bodily injury because we wanted to reinforce the fact that officers themselves had come forward and were willing to testify.

VICE CHAIRMAN BERRY. That's not so much these cases were more egregious than all the others; it was egregious but you also could prove them?

MR. DAYS. That is right, but let me say that in expanding the United States attorneys' activities in this area, I am confident that the number of complaints will increase and perhaps the number of complaints that can be proven as violations of civil rights. The problem now is, I'm not certain that—in fact, I am certain; I am certain that everybody doesn't come to us. In some instances they don't know we exist, they don't know what role we play, and if they know both of those things, they don't trust us. I think that by establishing a presence in the local jurisdictions with people who, if they are doing their jobs right, have some credibility, we are going to get more feedback, more complaints from organizations. I remember talking a couple of years ago to a United States attorney who said, "No one ever talks to me. I'm ready to handle civil rights complaints but I don't get any complaints."

I said, "Well, why don't you take time out of your busy day and call civil rights groups in your town and have them over for lunch and talk to other groups that might be concerned, civic groups, about this problem and you may see some change."

Indeed we have seen a change. People are now coming to U.S. attorneys' offices and filing complaints, so out of that, I think we will probably increase the quality—I don't want to sound like a production manager—but the quality of the complaints that we get.

VICE CHAIRMAN BERRY. Do you have any idea what happens to those complaints you don't pursue?

Do you happen to have any idea or statistics about whether the State, local people prosecuted all of them or threw most of them away or most of the, bad complaints.

MR. DAYS. I don't have any statistical information or systematic way of answering that question like that, but my sense is nothing happens to them, that is, in terms of criminal action. Many of them result in private damage suits.

VICE CHAIRMAN BERRY. That leads to my next question. Do you think that—given the fact you only handle about 50 to 100 cases that you can prove and that are egregious cases—that the real remedy for this problem in the absence of good, fair local prosecutors who really are interested in doing it—they have private damage suits or private actions in this area or what's the—

MR. DAYS. That's certainly a major part of it. I think damage actions have become more and more successful. The Supreme Court has, by its recent constructions of 1983 and the whole question of municipal immunity, has made it now more possible to get at the deep pocket in these cases, and to the extent that one gets at the deep pocket, not only is the money available but there perhaps will be greater institutional response and reform where there are allegations of police misconduct that are proven in civil proceedings. I don't think it is the total answer but it is a very important ingredient in dealing with problems of police misconduct.

VICE CHAIRMAN BERRY. Do you think the 50 to 100 prosecutions are more likely to be successful or a real deterrent to police abuse and police brutality at the local level?

MR. DAYS. I think they serve some deterrent function. I don't think that they are a major deterrent to police misconduct. Attorney General Bell and I concluded when we decided to file the Philadelphia case we were dealing with something that went beyond individual acts of misconduct. We were dealing with institutional problems that—if an officer on the beat perceives that he or she is going to be shielded and protected by the institution from an investigation and from prosecutions, that the counsel is going to be provided, and even when damages are awarded that not the officer but the city is going to pay, then I think what we have is a situation where even prosecuting individual officers is not going to change the environment, and if we prosecute an officer, quick to convict that officer, send him or her to jail, or get that officer off the police force, then there may well be another one coming to take the place that's been left vacant, because the system hasn't changed, the structure hasn't changed.

I think I have spoken to this Commission before about the Philadelphia experience. We prosecuted six homicide detectives for systematically forcing confessions out of people who are charged with killings. They were convicted; their convictions were affirmed on appeal. They engaged in the most horrendous activities in exacting and extracting questions from people, in one instance in question, a false confession. The mayor, at the time, of Philadelphia kept the officers on the force,

promoted one of the men who had been convicted, and asserted they were innocent until proven guilty at the Supreme Court level.

I don't want at this point to beat on, to use the vernacular, Philadelphia, because I think Mayor Green and Commissioner Solomon have really taken significant steps since they came into office to deal with many problems. The recent shooting in Philadelphia and prompt response by the Commissioner and by the mayor—that's what's needed. That's the type of institutional response that I think begins to get the message across to people up and down the line that they cannot violate citizens' rights with impunity.

I see it as a group of responses to police misconduct—criminal prosecution, civil actions that seek institutional reform, the political process, certainly, and damage actions, and there may be several others that I can't think of right now, but it would be, I think, very unfortunate for us to believe that there is any single answer to this problem.

VICE CHAIRMAN BERRY. just have two more questions. In the police practices consultation in 1978 that the Commission held, there was some discussion of some complaints submitted to the Justice Department by MALDEF, and MALDEF submitted some 55 complaints, and quite recently MALDEF, or at least it has been indicated to me—they assert that only 2 of the cases ever got any attention from the Justice Department out of the 55 that they submitted. Are you familiar at all with what I am saying?

MR. DAYS. Yes. I'm very familiar. I got the letters from Miss Martinez. I responded to the letters of Miss Martinez. I've overseen the investigation and reviews of the complaints that she brought to our attention, and it is correct. We have prosecuted only two out of the group of complaints that she sent to us, but we did investigate and review every one. In some instances we already conducted investigations and determined to close them. In some instances there was lack of cooperation by the victim. In some cases the victim or witnesses were unavailable, and I can just go down the list, but I'll be happy to provide the Commission with copies of my correspondence on that issue.

VICE CHAIRMAN BERRY. I would like to see that.

MR. DAYS. You could review that.

COMMISSIONER HORN. Can we get it in the record at this point?

MR. DAYS. I'll be happy to submit it for the record.

CHAIRMAN FLEMMING. That will be received, without objection, in the record at this point.

VICE CHAIRMAN BERRY. Only other question is, one of those complaints that MALDEF was cited was about Mr. Jose Sinohui.

MR. DAYS. Sinohui.

VICE CHAIRMAN BERRY. And I'm aware, too, that you received, at least the Justice Department received, a letter on August 21 in addition to a number of other letters from various people, from 17 Members of Congress, including Senator Edwards who is the chairman of our oversight committee, asking whether you are going to go forward again with this case, and there have been some people in the Hispanic community who have said the Department seemed not to follow a

consistent pattern in handling police brutality cases. For example, in the McDuffie case, they allege you moved quickly after the riots started but in the Sinohui case, who was shot and killed 3 years ago, there have been State court proceedings and grand jury proceedings and grand jury now is impaneled, I understand, and that you seem to be moving slowly to determine what you are going to do, and that's the letter from the Members of Congress encourages you to move in this area.

Are you familiar with this?

MR. DAYS. I'm intimately familiar with the case. All I can tell you it has been a long time in the Department in our reviewing it, but I am not here to apologize for the process we followed. We have done an extensive review of the case. I have personally met with Mrs. Sinohui, the mother of the deceased. We have conducted extensive grand jury proceedings in that case. In fact, the United States Attorney for the District of Arizona personally handled the Sinohui grand jury to demonstrate the importance of the case to the Department and our interest in it.

There have been a number of proceedings. There was a local prosecution. There have been two civil actions—one civil action, two trials in the civil action, and, quite frankly, one of the things that we've had to deal with in ultimately coming to some result in the Sinohui case is that we keep receiving what is alleged to be new evidence that we haven't considered, and we have to go back and kind of gear up and try to determine, "Well did that person appear before the grand jury who also appeared before the State trial? Let's compare the testimony. Is there information in that testimony that we didn't get?" There are people who didn't appear before the grand jury that we ought to look at the deposition of.

We have spent a great deal of time evaluating this case, and I hope very soon we can reach some decision. There has been a great deal of local and national interest in it. The Members of Congress have expressed interest. Senator DeConcini on more than one occasion reminded me of the fact that this matter was still in the Department, and I might say that I use Department because it is not just in the Civil Rights Division; it has been a matter of concern at the Deputy Attorney General level. The Criminal Division has been consulted in some respects, so I think that while it would be a happy occasion for us to reach decisions in these difficult cases promptly, sometimes it is just not possible. We have to take the heat and that's what we're doing.

VICE CHAIRMAN BERRY. Thank you very much.

CHAIRMAN FLEMMING. Commissioner Horn?

COMMISSIONER HORN. Besides the changes to 18 U.S.C. 241 and 242, about which this Commission and the Department of Justice agree, do you believe we need additional Federal statutes to handle some of the problems in these areas, and, if so, what do you believe we need?

MR. DAYS. Well, under the criminal code revision one of the things that I think would be helpful to us is the concept of lesser included offenses, that we would have a greater range of options in terms of bases for charging and getting convictions. There would be greater

clarity in our proceedings. Right now we have to talk to judges and juries essentially in constitutional terms when we write and prepare our indictments, and we get our indictments when we make introductory statements to the jury and our summations, and that creates a level of obscurity that I think makes it difficult sometimes for us to get our message across.

I might say that even in the Congress there appears to be some lack of information, although we've been providing as much as we can about why certain things are civil rights violations, why acting under color of State law doing X, like engaging in intimidation in a union setting might involve civil rights violations, so to the extent we could pin down as the revisions attempt to do with some differences between the Senate and House versions, the better off we would be. So I'm supportive of that.

COMMISSIONER HORN. Any others besides those?

MR. DAYS. I talked about the specific intent and you picked that up.

COMMISSIONER HORN. I just wonder if there are any in the Department that haven't surfaced, for various and sundry reasons, that should surface. That's what I'm fishing for.

MR. DAYS. I don't believe so. I don't believe so. I think that what we try to do in the criminal code provisions is expand the penalties, expand the lesser included offenses, address some of the specific intent concerns, and, generally, put us in a position to speak English to judges and juries when we conduct our prosecution.

COMMISSIONER HORN. You heard this question I'm about to ask you when I asked Mr. Mullen, but I'm curious, on these guidelines that determine whether an FBI investigation should continue when you have got a police misconduct case and you've got the potential for a civil disturbance, how you would feel about enunciating a policy that in police-community shooting incidents when nonwhites are the alleged victims, would it be feasible as a guideline for the FBI to continue its investigation regardless of the State prosecution going on if an all-white jury was involved in deciding the local indictment?

MR. DAYS. No, I would not be in favor of that.

COMMISSIONER HORN. Why not?

Don't you think we've just got a powder keg in our midst? Aren't we just playing catch-up all the time if you aren't prepared to go? And then we have this Miami and then the Attorney General flies there and then we run around like rabbits—it seems to me we're talking about preventive medicine here.

MR. DAYS. I think it would be preventive in a way that would undermine the judicial process and the criminal process. I would not like it, although there is this perception in very many minority communities that the minute an all-white jury is convened, that tells you that justice is not going to be done. I would hate for the Federal Government to communicate that message. It has been a problem historically. It is still a problem in some cases. We have seen situations where that is not the case, where we've gone before all-white juries or juries that were majority white or nonblack or non-Hispanic and got indictments and got guilty verdicts, so I think what we have to do is ensure that

the jury selection process has integrity, that members of the community are adequately able to serve on juries.

I'm concerned about the use of preemptory strikes, preemptory challenges, but the Supreme Court in *Swain v. Alabama* at least gave some latitude to prosecutors to use preemptory strikes in a way that could remove minorities from particular juries. Where it is systematic, then I think that would be one of the considerations that go into our determination to waive our normal policy and go forward, but I would like to do it on an ad hoc basis, not on a categorical or general basis.

COMMISSIONER HORN. Okay, but if we're doing it ad hoc, then aren't we always subject to the fact that we will be caught short when an incident occurs?

MR. DAYS. Well, we may be caught short, but I don't think we're caught short because we haven't done what you recommend. For example, I went to Chattanooga and while the newspapers widely reported that the civil disturbance was caused by the verdicts in the local prosecution against people who have alleged they were members of the Klan who had shot four black women in Chattanooga, I believe in April, that was in part the cause for the civil disturbance. But when I went there and I talked to local officials and I talked to community leaders, the most significant concern in the community was housing—that public housing was terrible and there was a lack of responsiveness on the part of the local officials to terrible conditions under which many blacks had to live.

Now, the point I'm making is that a result in the case perhaps served to galvanize the community reaction, but the underlying problems went far beyond this criminal proceeding. In fact, as you know, there was a conviction. You may quarrel with how much of a conviction there was but there was a conviction in that case. We weren't talking about exoneration entirely. The other thing was that in Chattanooga there seemed to be less connection on the local level between the men who engaged in the shooting and the Klan, as we know it, than there was in terms of national media discussion.

These are complicated matters and I'm just trying to suggest we should not identify techniques that may have very significant counter-productive consequences, thinking that they will serve to prevent civil disorder or reduce the extent to which outbreaks occur, because I don't think they will.

COMMISSIONER HORN. On page 3 of Director Webster's statement he said, "It should be noted that in matters involving mass demonstrations and major confrontations between local law enforcement officers and groups of persons, no investigation is conducted by the FBI on its own initiative or upon the United States Attorney's request without prior clearance from the Department of Justice." I just would like to know, have any such requests from the FBI or the United States attorney been turned down by the Department of Justice?

MR. DAYS. Well, as you might have gathered, those policies were established at a time when it was widely asserted by civil rights groups that the FBI showed up at demonstrations to take names and license plate numbers and not to really engage in any information gathering

that might result in prosecutions against local law enforcement. I don't know whether the times have changed in that regard or what the community perception is, but I certainly continue to believe that a visible FBI presence during certain types of demonstrations is not a wise idea.

For one thing, FBI agents may, under those circumstances, be called in to serve a law enforcement function. I mean, if some violence is occurring with respect to an individual, an FBI agent has to decide whether he or she is an observer or a participant and unless we're going to have FBI contingents that are like the National Guard, I don't think that's feasible. I think the more significant consideration is that there may be chilling consequences having the FBI on the spot. We have not received any requests, I think, because we have engaged in various close coordination with the FBI and with the United States attorney's offices in these situations. I think, for example, of Decatur, Alabama, or Greensboro for that matter, where it was our determination that we would not have FBI agents on the scene, that is, actually watching the demonstration, but we would have FBI agents in the community available to go in and collect information and initiate investigations if that proved to be necessary. We have done that on a number of occasions.

COMMISSIONER HORN. I take it from reading that paragraph we've got two problems here. One is, should any presence of the FBI occur during the incident or potential problems? and the other is the investigation after the incident.

He uses the word, "No investigation is conducted by the FBI on its own initiative." As I understand it, Justice's policy is, basically, you don't want the FBI present during what might become a potential incident because of its chilling effect, so, in terms of his paragraph, he is forced to only ask for your clearance after the fact in the conduct of an investigation; is that correct?

MR. DAYS. That's correct.

COMMISSIONER HORN. And there is in existence a Justice policy that says you really shouldn't be present during "mass demonstrations and major confrontations between local law enforcement officers and groups of persons." Is that correct?

MR. DAYS. Yes.

COMMISSIONER HORN. Now, in terms of requests for investigation, do I take it that you have received no requests for investigation?

MR. DAYS. You are quite right, and the direct answer to your question is, we have never confronted that because in every instance we've ordered an investigation, so that there has not been a need for the FBI to ask us whether it was all right to conduct an investigation.

COMMISSIONER HORN. Or the United States attorneys?

MR. DAYS. Or the United States attorneys. I have, I think, without exception, where there have been disturbances of this kind, you immediately requested an FBI investigation.

COMMISSIONER HORN. Well, that also surprises me because it seems to me with the diverse country of 50 States, while you will know the obvious that gets on television, there could be incidents that do not

trickle into Washington, and I'm sort of amazed we don't have initiative from the FBI or United States attorney to request their activity following a particular incident. This all has to come out of the Civil Rights Division?

MR. DAYS. Let me return to the other part of my answer. We do, I think, have a very good working relationship with the FBI and with U.S. attorneys' offices, and they are much more willing to approach me or people on my staff informally because we know perhaps that a demonstration is about to take place. We talk about the strategy that we should use. We talk about the extent to which an investigation might be needed if problems arise during a demonstration.

If they do arise, we go forward with the investigation. So I think the reality is that those guidelines were established for another time when there was some feeling in the Department that the FBI or the United States attorneys might run wild and get themselves embroiled in something that was highly political and perhaps would cause greater problems for us as prosecutors after the fact.

In this time, we have not confronted that problem. We have been able to orchestrate these investigations quite well.

COMMISSIONER HORN. Okay. You're doing it on an ad hoc basis by close collaboration and cooperation. Do you feel that the guidelines should be changed?

MR. DAYS. I think that's worthy of consideration. There are several things that perhaps ought to be changed in the U.S. attorney's manual that we have not got to. We did a complete reworking of the directions to the FBI and to the United States attorneys' offices late last year and one of the things that we came across in the material that had been in the United States attorneys' manual has quite a bit of an anachronism. I mean references to things that the FBI agents should look into, that they shouldn't be looking into, like whether—affiliations of people who are involved in alleged police brutality situations. So we've removed that type of anachronistic material. We brought it up to date. I think you're quite right, we should look at these guidelines as well.

COMMISSIONER HORN. You mentioned another topic I was going to question a little later, but since you brought it up, let me ask you on those instructions to the United States attorneys and also the guidelines for FBI investigations in areas such as this, are those classified documents?

MR. DAYS. They are not classified but—

COMMISSIONER HORN. Has the General Counsel asked for them?

MS. STEIN. No.

COMMISSIONER HORN. Could we have as an exhibit in the record, and we will work it out to the mutual convenience of Justice and the Commission between counsel, what those guidelines are? I am interested in what are your instructions in this area—we're talking about police brutality, civil disturbance, U.S. attorneys, FBI.

MR. DAYS. Be happy to provide them.

COMMISSIONER HORN. I would like them as an exhibit at this point in the record.

CHAIRMAN FLEMMING. Without objection that will be done.

MR. DAYS. We've tried to be forthcoming with that information. As I've said, we provide them to the International Association of Chiefs of Police, a model of how we conduct investigations, what types of things we look for, what materials we gather, so I don't think there's any problem in providing the Commission with that information.

I think you have a manual in the possession of the Commission, but we can provide you with the update of these instructions that I think will give you the best sense of where we are going.

CHAIRMAN FLEMMING. So the record is clear, without objection, that material is to be made available and will be inserted in the record at this point.

COMMISSIONER HORN. You mentioned your own anticipation in addressing police executives on the problem of education, civil riot considerations, and in this area has the Civil Rights Division reviewed the syllabus used by the FBI at Quantico or at other programs to train local law enforcement officers, and, if so, to what degree do you feel that the civil rights considerations addressed in that training program, or those training programs, are adequate.

MR. DAYS. I really can't speak to the question of the time in the training program that is devoted to civil rights matters. Perhaps Dan Rinzel can, but I do know that the material is well done; it is consistent with our policies, and I know the people who are lecturing at the National Police Academy on these issues are thoroughly familiar with our practices, the laws that we enforce, and I think are very active themselves in dealing with these problems, so I have no criticism whatsoever. In fact, I have to be laudatory to the extent to which the FBI academy in the National Police Academy addresses these issues because, while I go and speak for an hour four times a year, they are in for several hours with police executives who have a lot of probing and not-so-friendly questions about why the Federal Government is engaged in police brutality investigations.

In the past, we have helped the FBI develop the material that is used in those training programs, and I and my staff participated about a year ago in a training program at Quantico that went several days with supervisors on civil rights matters, not just criminal matters but civil rights matters that we investigate as well through the FBI.

COMMISSIONER HORN. Let me ask you, has the lack of an Assistant Attorney General for Internal Security who could pursue the activity of extremist groups, such as the Klan, which might lead to civil disturbances therefore police-community confrontations, been a hindrance to the operation of the Civil Rights Division of the Department of Justice?

MR. DAYS. Well, not ever having had one I don't miss the fact that there is no such colleague in the Department. I think that the guidelines that were established—promulgated by Attorney General Levy—are good guidelines. They have, by and large, kept the FBI within appropriate limits in terms of the use of informants and investigation of domestic security problems. Where domestic security investigations have been established, they have been established under circumstances, I think, that were extremely appropriate. I think, on balance, while their having informants in every Klan klavern or in every white su-

premacist group or black supremacist group might move us along sometimes, I think we know what the threats are to first amendment rights of having a more openended policy, so I'm very comfortable with the guidelines. I don't know whether you need anybody to look over domestic security. I think not. I think the FBI is doing a very good job in that regard.

COMMISSIONER HORN. On page 6 of your prepared testimony, you note that you must personally give your approval before a dual prosecution can either begin or continue. You state that "since March 1977, I have approved seven dual prosecutions."

My curiosity is about requests for dual prosecutions.

MR. DAYS. Well, once again, I think you are formalizing the process more than in fact is the case. I review with my staff a number of matters that come forward and we make a judgment, reviewing all the records as to whether there should be a dual prosecution. I get recommendations from Mr. Rinzel and my deputies and I make a judgment. I do not recall a situation where I declined to bring a dual prosecution where such a prosecution was recommended to me, that is within my—no, there was—let me correct that. There was a case that got quite a bit of discussion over the past couple of years where there were mixed recommendations with respect to what we should do, and I recommended against the dual prosecution.

COMMISSIONER HORN. You did turn down one. On page 8 you note, "The Civil Rights Division can also request such an analysis from a United States Attorney's office," and this refers to an attorney in the Criminal Section—let me read the paragraph:

When an attorney in the Criminal Section believes that a matter investigated by the FBI has prosecutive merit, he or she will prepare a written analysis of the evidence and the law, called a "prosecutive summary." The Civil Rights Division can also request such an analysis from the United States Attorney's office which has recommended prosecution of a civil rights violation.

My curiosity is to what extent has there been disagreements between your office and the U.S. attorneys on prosecutions of civil rights violations?

MR. DAYS. There have been some differences of opinion. I think if I were to count the instances, probably those where the United States attorney did not want to go forward outnumber those in which the United States attorney wanted to go forward and we didn't want to go forward. There have been such situations, though, but I think that they have in almost every instance been resolved by consultation between us and the United States attorney's office—sometimes me and the United States attorney personally—because often we are concerned about proceeding with a case because we don't think that a United States attorney's office has done as thorough a preparation of the case as we believe ought to be done.

For example, there are occasions where we differ with U.S. attorneys on the role of the grand jury. Some U.S. attorneys have indicated to us that they want to go to trial without testing their evidence in the grand

jury, and our procedure is to use the grand jury except in very special cases, because we find that strengthens the cases that we ultimately present, so we work out an accommodation on that basis. Sometimes we disagree over the style of the indictment. There are charges that should be there or shouldn't be there, and we have to negotiate, but I think in most instances they have been worked out. They are worked out every day at Mr. Rinzel's level as head of the Criminal Section. I become involved quite rarely in discussions of that kind.

COMMISSIONER HORN. I suspected your answer would be that and I would agree with you that the likelihood is that you would be prodding for more action in a civil rights sense than most U.S. attorneys.

MR. DAYS. I think that's true.

COMMISSIONER HORN. That leads me to the obvious. In terms of the earlier questions of Commissioners on data gathering, is it not important that your office have as a monitoring tool, in terms of sort of judging the attitudes that might be at play, knowing to what degree particular victims, investigators, prosecutorial review staff in the Federal hierarchy are of the same race or a different race than the victim? It just seems to me as a matter of monitoring, if over time you find in one district you have all-white FBI agents, all-white assistant U.S. attorneys investigating Hispanic victims or black victims of police brutality cases and they never seem to get the case, that one at Washington could legitimately say, "Folks, maybe we've got a problem there and why don't we assign some new staff in that area?"

MR. DAYS. I approach it from the other end. I mean, we know how many complaints we get from certain districts, and we also know which U.S. attorneys' offices are active and we have identified U.S. attorneys' offices where there appears to be very little activity, and we have gone into those offices to try to determine why there isn't more activity. It may be that things are well handled and the matters that have come to our attention were not worthy of pursuit, but one of the things that I have required, for example, is that U.S. attorneys give us their recommendation on every case. That was not the practice in the past.

We would get FBI reports that said nothing about U.S. attorneys' views, and I have made it clear that the agents must consult with U.S. attorneys. When I get nos or maybes or perhaps from U.S. attorneys, I begin to question whether there is a commitment to pursuing these matters, and we do the same thing with the FBI.

We have identified offices and so has Director Webster where things don't seem to be going very well, despite a volume of complaints the investigations don't seem to come out right. There seems to be a drop in midstream. We find out, for example, in one jurisdiction that the United States attorney, rather than requiring the FBI to submit reports on certain cases that were of colorable concern to the government under civil rights laws, would allow the FBI special agent in charge or one of his staff to call over to the United States attorney and say, "We just got X, Y, and Z complaints in our office. Should we do anything with it?" and let the assistant United States attorney say, "No, that doesn't sound like it's worth anything. Forget it."

We have been sensitive to those problems and we have, for example, required that United States attorney to enter into an agreement with us and to have the local special agent in charge of the FBI enter into an agreement, so it is completely understood that the old procedure was not the one that should be followed. We have been educating U.S. attorneys to the fact that they should not deal with the FBI in that fashion.

COMMISSIONER HORN. Okay. On page 9 you refer to the July 25—I take it it is 1979—memorandum when you delegated—

MR. DAYS. That is 1980.

COMMISSIONER HORN. That is 1980?

MR. DAYS. Yes.

COMMISSIONER HORN. And you delegated to United States attorney authority to proceed under many criminal civil rights statutes without obtaining your prior approval.

I would merely like a copy of that inserted in the record at this point.

CHAIRMAN FLEMMING. If there is no objection, that will be done.

COMMISSIONER HORN. On page 10 you note the various State fleeing felon statutes make it difficult for you to establish the specific intent necessary to prove a violation of the civil rights statutes. Has Justice compiled an up-to-date set of those various State statutes so they could be furnished to the Commission?

MR. DAYS. Well, it is in the draft of the task force on lethal force that the Attorney General established. I don't see why that information couldn't be provided. I don't think we're in a position to provide a draft to you. Certainly I'm not. Maybe the Attorney General would be willing—

COMMISSIONER HORN. I'm just interested in the statute.

MR. DAYS. No, we do—we have a breakdown by various categories.

COMMISSIONER HORN. I would like to—

MR. DAYS. 36 States, I believe, or something like 36 that have fleeing felon statutes.

COMMISSIONER HORN. I would like that to be furnished and appropriate portions inserted in the record in relation to this.

CHAIRMAN FLEMMING. To clear up one thing at this point, when do you anticipate that the task force report might be released?

MR. DAYS. I really can't say at this point.

CHAIRMAN FLEMMING. Will the task force deal with the fleeing felon statute issue?

MR. DAYS. Certainly, its draft does in some detail.

COMMISSIONER HORN. Without objection to that, I would like that furnished in the record at this point. Staff will work it out.

CHAIRMAN FLEMMING. The summary of the statute?

COMMISSIONER HORN. The summary of the statute on the fleeing felon.

CHAIRMAN FLEMMING. Okay, without objection, that will be done.

COMMISSIONER HORN. You note further down on page 10 that you were working with the Attorney General to obtain adequate resources

to reduce substantially your present review time and that refers to the complexity of these death cases.

Have you requested such additional staff? How much are we talking about?

MR. DAYS. Well, we have asked for additional resources for FY 81 and we are seeking additional resources for FY 82, particularly in light of the problems we had this summer dealing with the various outbreaks of violence and the various allegations of police misconduct occurring in the summer.

COMMISSIONER HORN. Are you talking about one attorney, two attorneys?

MR. DAYS. No, no. We are talking about, I believe, four staff, additional staff people for FY 81, and I'm trying to remember what we've sought for FY 82, but we are seeking these resources with the expectation that the civil rights units in the United States attorneys' offices will also be augmented in some way, not necessarily they will get large numbers of additional staff but their responsibilities for being more focused on civil rights matters.

COMMISSIONER HORN. Well, where is that FY 81 request right now?

MR. DAYS. It's sitting in the Congress.

COMMISSIONER HORN. In other words, your request for four was approved by Justice and OMB and is part of the President's budget?

MR. DAYS. That is right.

COMMISSIONER HORN. So you had no restriction on the resources you asked for, or did they cut you back?

MR. DAYS. My recollection is that we asked for more and did not get all that we asked for.

COMMISSIONER HORN. How many more?

MR. DAYS. I don't recall offhand.

COMMISSIONER HORN. Would you mind furnishing it for the record, please?

MR. DAYS. Certainly.

CHAIRMAN FLEMMING. Without objection, that will be inserted at this point.

MR. DAYS. Let me emphasize, Mr. Horn, in that regard we are not talking about minimal support versus maximum support. In other words, the resources that we asked for were not of a magnitude of 50 to 100 additional and we got only 4. What we got was within the range of what we were seeking but we will provide that information.

COMMISSIONER HORN. On page 13 you mentioned that "we got more than 10,000 complaints of police misconduct per year. Yet we can only prosecute between 50 and 100 of the most egregious cases."

Is this simply because you lack the investigative staff in the FBI or is it because you lack prosecutorial resources? Is it because there is simply no time to review these cases at the United States attorney or what? In other words, I'm trying to get at how adequate are the numbers of prosecutions you pursue in relation to the volume of complaints?

MR. DAYS. Well, I think the "only" in that line perhaps conveys the wrong message. I think Commissioner Berry asked much the same question about whether we had made some type of administrative

decision about how many cases we could pursue as opposed to deciding to prosecute all the good cases, the cases that we thought we could make, and it is the latter, not the former, and, as I said, if we have cases that deserve to be taken to grand jury and prosecuted, I am confident that we can, in most instances, find the resources to pursue those cases.

We're sometimes really strapped. I felt it this summer when I called the Criminal Section of the Civil Rights Division and wished to speak to the Section Chief and talked to a lawyer who had been on my staff for about a year. Dan Rinzel was in Texas, I believe, looking into a case involving a border patrol; another deputy was trying or handling the grand jury in the Miami case and my second deputy was out in Arizona trying the Hannigan case, and some of the other senior attorneys were away, so I don't want to assert, because it would be a lie, that we have all the resources we could use in this regard.

It is just not true. We could use additional resources but I don't see the Civil Rights Division's Criminal Section becoming kind of a SWAT team that flies on a moment's notice to every part of the country where there might be some problems.

COMMISSIONER HORN. My last question concerns page 17 of your testimony. You note, "Prosecution decisions can only be made on the basis of the evidence developed in the course of the investigation. If the evidence shows a violation of the Federal criminal civil rights statutes, such that a fairminded jury should vote to convict, a prosecution will ordinarily be instituted."

My question is, in your experience, do you feel the juries have generally supported you based on the evidence? Does the Department see any differences between the jury results in civil rights cases where you felt that a fairminded jury should vote to convict and noncivil rights cases where they might have felt that a fairminded jury should vote to convict?

MR. DAYS. I think that in the last few years we have seen better responses from grand juries and petit juries than was true in the early 70s, but we have not reached the millenium. Things have not changed entirely. We still run into quite a bit of jury nullification. There have been a couple of cases this year where I think we were frankly shocked that we didn't get indictments. We got all the evidence there, not just to prove that there was probable cause for believing that there was a violation and that the subject committed that violation, but we thought we had a case that could go to the jury and we could win it and the grand jury said, "No dice." We encounter that from time to time. We encounter it in terms of trials themselves.

We have a major prosecution in Texas where we thought we had a very good case and the jury seemed to ignore our evidence. That is its prerogative but this is a problem. We can test my assumptions statistically, I think, and with some type of objectivity by comparing the conviction rate that we encounter in prosecutions against police officers, first, against the normal success rate in criminal prosecutions, and, secondly, comparing our success rate in prosecutions against police officers against our prosecutions against non-law-enforcement person-

nel, and the picture is, I would say, that in a normal prosecutorial situation the conviction rate would be in the upper 90 percentile.

If we look at our conviction rate, we fluctuate between 45 to 70 percent in any given year in terms of our success rate when we're prosecuting police officers, but if one looks at our conviction rate in involuntary servitude or peonage cases, one sees, interestingly enough, the pattern that is more common in normal prosecutions, that is 95, 96, 97 percentage conviction rate. So there is still—assuming we really are applying the same standards in determining when to go forward in all of these cases, there is clearly a discrepancy in the way that the juries respond to our cases when police officers are defendants.

COMMISSIONER HORN. Does this mean that in cases which have the sensitivity of interracial conflicts, etc., that perhaps there ought to be another process to secure an indictment, and Justice should be recommending that to the Congress or the Constitution in either case?

MR. DAYS. In my spare time I speak to the Constitution. Well, first of all, we encounter jury nullification where there are no racial considerations whatsoever. I think that we're talking first about resistance, public resistance, to the idea that someone who has been hired to uphold the law, who is sworn to protect people, who knowingly violate someone's rights, and we have white and white, black and black, and so forth, and we still encounter jury nullification where the jury just says, "We're not interested," in effect. "We don't believe this is a matter that should result in a conviction," so that's part of the response.

The other part of the response is, I don't think there is a better system. And while I was preparing for this testimony, I thought once again about greater use of informations rather than going to grand juries and seeking indictments, but I think that would simply cause us to confront reality at the trial stage. One of the things that we have to be very concerned about is community expectation as to what we're going to be able to accomplish, and I think, knowing what we know about resistance of juries to our cases, we owe the public the consideration of our going to a grand jury and trying to test out our case so we know something about what the reaction is going to be before we actually try to try it. As we have very good cases and we lose them, we develop even greater cynicism, it seem to me, not only about police process but about the judicial system itself.

COMMISSIONER HORN. Thank you.

CHAIRMAN FLEMMING. Just a couple of things that I would like to follow through on briefly. First of all, I would like personally to express my own appreciation for the way in which you, since you have been in office, have involved U.S. attorneys in the civil rights area. I think it is very, very encouraging that they feel that they have responsibility in this area, and I think it is very encouraging that there are now civil rights units in some of the larger offices and so on.

I think your delegations of authority to act to the U.S. attorneys and to the civil rights units and the U.S. attorneys' office is very encouraging because it gets down closer to the grassroots, and this Federal

presence that we talk about as being so important at the community level becomes all the more apparent.

I also would like to say that I personally, of course, am in complete agreement with the objectives of the 1976 guidelines to which reference has been made. They were long overdue and I feel they constitute a great service to this country, but I do like Commissioner Horn's suggestion. Conceivably, in the light of the experience that we've had over the last 4 or 5 years, they might be looked at to see whether or not the pendulum might have swung too far in one direction, because I have the feeling that situations do begin to fester in the area of administration of justice and in other areas at the community level. When they do begin to fester, if someone would take the initiative in conducting some type of investigation, they might bring some things on top of the table that, in the long run, would prevent civil disorder.

I get that feeling as I meet from time to time with some of our State Advisory Committees and listen to them talk about the way they perceive Klan activity to be going on in particular States. I mean, I just get the feeling that situation is beginning to fester, so it does seem to me that it is worth taking a look at them from that point of view.

The second point is, I am delighted that you made reference to your Philadelphia suit. You noticed in our report that we commended Justice for having appealed the adverse decision you got from the United States district judge. You probably also noticed that we recommended that consideration be given to giving you a clear statutory mandate to pursue that kind of a civil remedy.

Personally, I agree with the thrust of your comments that, if we're really going to prevent some of these things, we've got to get at the institutional aspect of it, and we welcomed, as you know, your Philadelphia suit, growing out of our own experience in Philadelphia because we had conducted hearings there and had gotten some firsthand indication of how the institutions were operating.

It was a very hopeless type of situation. I am just wondering whether the Department has given any consideration to the possibility of putting before Congress the question of the Department having a clear-cut statutory mandate to follow that route?

MR. DAYS. Well, Commissioner Flemming, as you probably know, we've been this route before, both before my time and since my time. Before my time in terms of dealing with things like school desegregation and voting and so forth, but most recently, as you know, we confronted the same challenge to the Attorney General's inherent authority to deal with violations of civil rights insofar as institutionalized persons are concerned, and after we had done what we had thought we could do in the courts to get a support for our theory and were unsuccessful, we turned to the statutory route. I think to the extent that we are unsuccessful in getting the Third Circuit Court of Appeals to uphold the theory that we advocated in the district court, I think it would be timely for the Department to consider going after statutory authority from the Congress, because I think it is very needed. We would not have brought the Philadelphia suit if we had not felt it was such a critical need for the government to play a role in this area.

The appeal in the Philadelphia case is being argued on October 10. I will be arguing it. I hope I do a good enough job to convince the court of our position.

CHAIRMAN FLEMMING. We certainly hope that you are successful. Just one other comment. I was very appreciative of your reference to the Chattanooga situation from the standpoint of pointing out that, yes, there is an administration of justice issue in Chattanooga, but you also ascertained there was another very basic, fundamental issue in the civil rights area that was contributing to the intense situation there.

You are in the same position that we are; you look at the total civil rights area. Obviously, your testimony today has been in the area of administration of justice, but you are constantly looking at education side, the employment, fair housing, and so on, and, as you probably know, we are going into Miami not for the purpose of just taking a look at the administration of justice but for the purpose of trying to get a bird's eye view of where that area is in the total civil rights field. In other words, try to get a feel of what the total picture is because of our feeling that, one, a breakdown in one area does contribute to these mounting tensions, and undoubtedly as we proceed along that particular line we'll be back talking with you further, but I just wanted to express my own appreciation of your calling your Chattanooga experience to our attention.

MR. DAYS. Well, if I may follow up just very briefly on that: after Miami we went not only forward in terms of criminal investigations but we are also investigating employment matters, housing matters, and voting matters in the Dade County area, because, as an outgrowth of our trip there, those seemed to be problems also that deserved some attention.

In Chattanooga, one of the things I promised the mayor of Chattanooga when I was there about these housing concerns—and promised some of the community leaders—these housing concerns would be brought to the attention of the appropriate people here in Washington.

Upon my return and upon my making a report to Judge Renfrew, the Deputy Attorney General—the Acting Attorney General was out of the country—he as Acting Attorney General wrote Secretary Landrieu a detailed letter, which I prepared, which set out the problems that we had identified there, and I am hopeful there is going to be some followup. I know Mayor Rose of Chattanooga will not miss the opportunity to meet with the Secretary and try to get better support for public housing.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. The hour is late so let me be as brief as I can. I appreciate the distinction you made between police abuse and police brutality. In the area of police abuse, I assume that the credibility of the vehicles for redressing concerns to citizens is a very important part of alleviating, ameliorating, this atmosphere—which contributes, I guess, to what is included within the generalization of police abuse, the confidence with which the citizen looks upon the institutions and feels that the institutions care about him, that they count. And from that

point of view, even within our own Commission, I have been concerned over the years about how complaints are handled.

Are they effectively handled? Is too much promised and nothing given? Is this a response from the agencies? I imagine you receive complaints in your agency by mail and other things. Is there a response to every complaint, to every letter that is—

MR. DAYS. No, there is not.

COMMISSIONER SALTZMAN. There are letters addressed to the Civil Rights Division that are never answered?

MR. DAYS. Well, we try to answer all the letters, but we get telephone calls, we get information secondhand from people about problems. We don't, in all instances, respond adequately to those types of inquiries. When I got to the Civil Rights Division there were boxes of unanswered correspondence in the correspondence unit. We no longer have boxes. We have developed mechanisms for responding to all the letters. Sometimes we make mistakes and they are sent out without my signature, which is done by an electronic process, or the addresses are wrong, but I think by and large we do let people know we have received their complaints and are looking into them.

COMMISSIONER SALTZMAN. I think that's crucial, and recognizing the personal relationship we have, friendship over the years that we have developed, I want to tell you I have written you twice in, I think, over the last 2 months. Once I sent the letter and having received, after several weeks, no response, I sent an additional letter.

MR. DAYS. Is it on the deprogramming question?

COMMISSIONER SALTZMAN. Yes.

MR. DAYS. Yes, I got the mail. Let me say that sometimes I am responsible for someone else—Dan Rinzel or one of my deputies is responsible for holding up letters back from the Civil Rights Division to people who write in from the outside. Sometimes I think we say too much, sometimes I think we say too little, and we try to strike a balance. In your case, I would be happy to say a lot.

We really, I think, are in a position of trying to avoid giving legal opinions to people on the outside, so we have a very careful process of looking over letters that appear to raise more than passing thoughts. Your point is well taken. We do not respond as promptly and perhaps as openly as we ought to, give the people the sense we are there. We've got their message. We are looking into it. They will hear back from us over a short period of time.

COMMISSIONER SALTZMAN. I think that's important. If an answer can't be given, fine, but I think, and I tried to address this concern of mine within our agency, that there be a response of some sort so that there is an acknowledgment, because I think out there in Chattanooga or Miami the citizen has to feel that the government cares, there are institutions that are responsive, and, as I reflect, if I didn't get an answer from you, just—

MR. DAYS. Then you know how other people are being treated.

COMMISSIONER SALTZMAN. Well, yes.

MR. DAYS. Let me say, Rabbi Saltzman, one of the things we are doing, we are moving in the direction you suggest. One of the first

things, for obvious reasons, is to make certain we respond to congressional inquiries promptly, and it has gone so far that we have a computer printout that kicks out letters that have not been responded to, and in my weekly reports from the sections they indicate where a certain congressional letter stands in terms of their possibility of being responded to, and when I see something that is over a month or less, or more, I send a note up and ask what's being done. So that message has got across.

Now, if we could only treat the American people with the same respect that we treat members of Congress, I think we will achieve what you suggest.

COMMISSIONER HORN. Murray, next time send your letter to your Congressman.

CHAIRMAN FLEMMING. Over a period of 40 years I have been accustomed to people saying, "You know, I wrote you a letter." Then I say, "Oh, oh, what's coming next?" I know the situation from experience.

MR. DAYS. What's really embarrassing is to have someone say, "I wrote you and you wrote me and then I wrote you again and you sent me back the same response as you did the first time." That has happened.

COMMISSIONER SALTZMAN. I think I won't proceed further but I, too, have found your testimony here this morning very helpful. I appreciate it.

CHAIRMAN FLEMMING. Commissioner Ruckelshaus?

COMMISSIONER RUCKELSHAUS. Mr. Days, I know that protection of civil rights before they are violated is also in the interest of your division, and when you describe what happens, when you see the profile of a conflict such as in Greensboro or what could have been anticipated in Skokie, you see what is likely to result so you are able to make some plans in advance so that, and I am sure that somehow even if there is not an institutionalized process—and I'm getting back to the fact that you don't collect the statistics on complaints of brutality that involve black against white, white against black, and I'm sensitive to the reason you don't do that, and that can lead to all kinds of trouble with other groups if you collect information like that without some justification.

Still, when the FBI acknowledged they don't pay attention to that, there is no feeling for evaluating that kind of data, they don't collect it, it is there but you really have to go looking for it, I sort of assume somewhere along the line somebody would be watching that because that's, in a way, a social indicator as important as the minority unemployment level, the housing prospects that you mentioned in Chattanooga. In predicting or maybe even fitting into a profile that shows where spontaneous civil disturbance might arise as a result of a triggering incident, such as a police brutality against the minority, and I wonder maybe if there's no institutionalized process for doing this, no regular way.

Can you explain to me is there some informal way in your division in which you sit down with people who come across those statistics with somebody from the Community Relations Division, maybe with infor-

mation you get from your U.S. attorney, and you begin to look at cities where it seems to you the profile is beginning to develop, there is a community situation there that could be triggered by a racial incident?

MR. DAYS. I indicated the role the Community Relations Service plays but also this summer, after Miami, we canvassed all the United States Attorneys to try to identify in their community situations where there might be the seeds of some type of civil disturbance, and we tried to look at those cases very carefully and get out through the United States attorney the fact that we are looking into those problems so there would be a sense that the Federal Government wasn't ignoring problems that the community viewed as being very significant.

But let me tell you, in terms of my impression, I have not seen many police departments where we have significant numbers of complaints where only minorities are being beaten by nonminority police officers. It is part of a pathology that often ticks off a young white, whites who are kind of on the margins of the community, nonminorities who challenge police authority, so that where there are problems with minorities, there are usually problems with nonminorities also.

What I am suggesting is, looking at minority complaints alone would not necessarily tell you anything more than looking at the overall picture. Where there are a lot of complaints of police misconduct, I think we can assume there are also problems in the minority community.

COMMISSIONER RUCKELSHAUS. I certainly would not suggest you would just look at them alone, but perhaps a police jurisdiction that has the propensity for that kind of incident in an area that has a high minority population that is impacted with all these other social problems. That strikes me as a significant piece of information.

MR. DAYS. Well, it is. But there are other indicators like the degree to which police officials in various communities cooperate with our investigations. Once again, Philadelphia wasn't a place where we could get anything unless we went to a grand jury; whereas there are other departments that are more forthcoming, that provide us with the results of their internal investigations, will make subjects available to the extent they weren't providing us with information, and so forth, so there are a number of indicators but we haven't tabulated them in any way. We don't have a check list, perhaps we should. But I think there is an institutional sense in a Civil Rights Division where the problems are and where we ought to be directing our resources.

COMMISSIONER RUCKELSHAUS. Could you tell me if you manage to identify some places, maybe throughout the attorney's office, or did you discover that the attorneys weren't that sensitive? But if the attorney's office helps you discover areas in which—

MR. DAYS. United States attorney offices?

COMMISSIONER RUCKELSHAUS. Yes—in which there is likely to be a problem, then what do you do about that?

MR. DAYS. If the United States attorney brings a matter to our attention?

COMMISSIONER RUCKELSHAUS. Sure, if all the other kinds of intelligence you are getting shows you that this is a city that's likely to have some kind of a spontaneous problem, if there is a—

MR. DAYS. Dan Rinzel has suggested I sent him to Chicago. One of the reasons I didn't go to Chicago last night for a community hearing on police brutality there was because you had invited me to appear this morning, but Mr. Rinzel did the impossible and went to Chicago last night and got back this morning, courtesy of Midway.

In any event, I met 2 weeks ago with a group of black officials and leaders, Reverend Jackson, the State comptroller, the highest ranking black official in Illinois, several State senators, several members of the board of aldermen, and they talked about problems and cases they thought would serve as perhaps the basis for some type of civil disturbance if the cases were not adequately addressed.

As a result of that meeting, I supported the idea of their convening a series of four public meetings to talk about these problems, and I committed myself, or someone on my staff, to attend. The United States attorney's office in Chicago did the same thing and the first such session occurred last night. So, we are trying to do things of that nature where there is an interest in the local community in surfacing some of these problems and airing them and being able to say to the community, "Justice Department is here, not from Washington but from the United States attorney's office, and we're going to be looking into these problems, and if you have any further information, you should provide it to us; if any further incidence occurs, you should bring those complaints directly to our attention."

I think that makes a difference and we are going to do more and more of that. We should have done that in the past.

COMMISSIONER RUCKELSHAUS. Is that the first time that's happened, public hearings?

MR. DAYS. Not at all. In Memphis in 1977 or '78, I made a trip at the request of the United States attorney's office and some local people to Memphis to hear complaints, to talk to police officials, to talk to citizens, and while I don't have a ready reference of the trips I've made that would fit into this category, I'm confident I've made a number of them.

COMMISSIONER RUCKELSHAUS. The public hearing nature is just very valuable, I would think, in that sort of situation.

MR. DAYS. Yes. In Chicago we had to make clear, however, that we were not there to testify. We were there to observe and certainly the people understood that, and Mr. Rinzel reports to me that it went fairly well.

COMMISSIONER RUCKELSHAUS. Thank you.

MR. DAYS. There are other groups: the Minority Advisory Council to the LEAA and CRS also hold hearings, and we are able to get, of course, your hearings. We get copies of them and we read them very carefully and follow up, as we did in Memphis, assertions that things are about to boil over and there's a need for Federal investigation and action.

COMMISSIONER RUCKELSHAUS. But I think being there and being visible in the community and being there to listen before it gets to that stage is invaluable.

MR. DAYS. Exactly. I think that's why the United States attorneys' offices are so critical to this effort. Really it has made a difference already.

CHAIRMAN FLEMMING. Commissioner Ramirez?

COMMISSIONER-DESIGNATE RAMIREZ. Mr. Days, I have the greatest appreciation for the spirit with which you seem to have attacked the problem on a number of fronts, and I also have the greatest appreciation for your mail problem because I had a similar one when I was in HEW and it was the bane of my existence.

Yet, in spite of that, I have to call back to my experiences working in very poor communities, mostly Hispanic communities, in the Southwest, and I know that police brutality and police abuse occurs on a daily basis; that many, many of these incidents never get reported to you, never called to your attention, and I'm sitting here trying to understand—and you have been very helpful, let me say, in helping me to understand the nature of the problem.

I still have the problem that out of all of those incidents, some of which never come to your attention but are certainly felt in those communities, that if there are 5,000 which do come to your attention, that somehow these get sifted down to 50 to 100 which are prosecuted and that out of those you get a 45 percent response, and from my experience and my limited knowledge in this area, I know that in some cases a successful prosecution may result in 1 year's sentencing of a person who has killed another human being because they had power, and in most instances they were white and the person that they killed were Hispanic or black. I have tremendous difficulty living with that, as I'm sure you do, too, and my question is, is the bureaucracy too complex? Is the law too complex? How is it that we can take a frontal attack on that reality?

I think I understand to some extent that the law is extremely complex and that there are limited areas in which you can prosecute, but it seems to me that the rage that I feel in my community, the rage that I felt in my community when in Miami after the riot there was extraordinary action, and when the conditions that led to the riot in my community had not resulted in a riot and there was not extraordinary action, the rage in that community is something that I don't think we can suffer as a nation. So my question is, have you given any thought—and I'm sure you have—and can you share with us any possibilities for getting ahead of that situation, for creating a kind of streamlined law that would reverse that situation?

I cannot overemphasize that sifting to justice is something we have to live with. Can you give us your thoughts on that?

MR. DAYS. Well, there are undoubtedly things that can be done that might improve the situation, but I wouldn't expect revolutionary change in the situation, simply because we're dealing with criminal law, and if you don't have a case, you don't have a case. Unless you move

to a point where you can alter certain constitutional or procedural protections for defendants, you are not going to be winning these cases.

One of the things I should have said in terms of the number of cases that we bring is that—and I said part of it but I didn't give you the whole story—cases where an upstanding member of the community is beaten up by the police and has a lawyer and is going to file a civil damage action, we rarely are invited to conduct a criminal investigation and a prosecution. Those are people who can protect themselves. They have a good chance of getting relief in the courts.

The people that we deal with are at the very lowest rungs of society where, as I described before—not usually very well educated, not knowledgeable in the law, don't have ready access to attorneys, they don't know about the civil process, so we get the hardest cases in many instances to bring, and I don't apologize for that. But there should be some understanding of the quality problem that we have in prosecuting these cases, not because people haven't been brutalized, not because they haven't had their rights violated, but because the conduct occurs under circumstances that make it very difficult to prove.

As I said earlier, I just hope that we can, through greater outreach, receive more information more quickly about incidents of misconduct so that we can get the testimony of witnesses while the testimony is fresh, while the recollections are fresh, so we can get physical evidence before it is destroyed, and so forth.

In that regard, I think we can do a better job, but I do believe when we do bring a prosecution and we are successful it has some impact on the community. It tells the police department that we're watching and it tells the community that there may be some redress. I remember hearing a black police officer who had been very much involved in police misconduct problems in Chicago describe the first day that a Chicago police officer was sent to jail for police brutality. He described the courtroom and the fact that officers were totally stunned, even after the conviction took place. The fact this man was going to serve time in a penitentiary had a very sobering effect upon them.

I'm sure it didn't deter those who were perhaps psychotically inclined to beat people up to change their behavior, but I think for those who felt it was open season, this was some warning. There are many communities in this country where there has never been that practice.

We focus on Miami and New York and Los Angeles and the large cities, but imagine a place like the western corner of Arkansas where nobody has ever been prosecuted for anything. For us to go in and prosecute and demonstrate that police officers can't get away with all kinds of violent behavior—a little community in the back woods of Georgia where the sheriff and the mayor conspire to brutalize several people for political purposes—those are lessons we have to teach as well, and it is very difficult sometimes to sort out how one goes about allocating resources to deal with these problems.

There are a number of lessons we are trying to teach. I share your rage; I share your concern. I've been doing this for a relatively long time and I hope not merely by increasing our prosecutorial action but on these other fronts we'll finally make some change in the status quo.

COMMISSIONER-DESIGNATE RAMIREZ. I just have one other very brief question. Where are the loopholes in a situation in which a community group or a group of persons who are concerned about the death of a person at the hand of the police— Well, to put it in simpler terms. Very often in my own community there has been a sense of nonresponsiveness from the Justice Department. The Justice Department is looking into whether it should get into this case. Sometimes it seems to me that there is not a connection, that there is not a talking to between the people who want your intervention and your help.

Are there places where that communication may fall through the cracks? Do those communities not come to you in a direct way?

MR. DAYS. They do from time to time but I must say that we don't encourage—other than meetings to describe the problem and the nature of the complaint. We don't like to have meetings to talk about where our investigation stands, or what inquiries we have made, or whom we have interrogated, or who has gone before the grand jury. There are all kinds of legal restrictions upon us, and we don't see the process as one of an ongoing dialogue while we're trying to make a prosecutorial decision.

If we go too far in terms of consultation, we run the risk of tainting the entire process, but, for example, a couple of months ago I was visited not only by community representatives who felt that a murder had taken place in the community, a cold-blooded assassination by a police officer of a citizen, but I also met with the mayor and the police chief; they asked to see me after the local community had met with us, and I will give anybody one bite of the apple. They can come and talk to me once, but if groups begin to see some type of collaborative effort in which they are going to help me make a decision, then I have to call off those meetings, because I don't think very much is achieved. But certainly we could do more in terms of meeting.

Again, I don't want to sound like a broken record but it is so much easier for community people to go down to the United States attorney's office in Phoenix, or Tucson, or in Chicago, for that matter, than flying into Washington, or in the case I was describing that occurred 2 months ago, people drove overnight to get to Washington to meet with me, to make their views known. And I think that's very important. I think we ought to provide that service, as long as we can make clear to them that it is not a partnership, that the NAACP and we, MALDEF and we, or the ACLU and we are not working together to make certain that justice is done in a case, because I think that taints the process.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. I'll do everyone a service and not ask any questions at the moment.

CHAIRMAN FLEMMING. I have a couple of announcements. First of all, I want to express to Mr. Days our deep appreciation for his statement and for his response to the questions that have been addressed to him. This is going to be extremely helpful to us as we keep digging into this very important area and as we carry forward the

program that we've outlined for Miami, which may be the forerunner of similar programs in other communities.

If you follow the work of the Commission, you know this is a little departure from our approach. We normally have been conducting field investigations, holding hearings, maybe on desegregation, maybe on fair housing, and so forth, but here we are going to try and get a bird's eye view of the total field in a particular area. This has meant a great deal to us. We are obviously behind schedule. We owe our apologies to Mr. Pompa who is Director of the Community Relations Service who has been here and he has provided us with a statement and Mr. Nunez has talked with him and members of the Commission will read your statement this evening and we will have the opportunity of doing that, and then we will resume this hearing tomorrow morning at 9 o'clock at the offices here.

The regular meeting of the Commission will convene somewhere around 2:45 to 3 o'clock this afternoon to give the people an opportunity for a short break. Again, thank you very, very much.

MR. DAYS. Thank you very much.

CHAIRMAN FLEMMING. Thank you, Mr. Pompa, for adjusting your schedule in this way. We appreciate it very much.

Morning Session, September 17, 1980

CHAIRMAN FLEMMING. I'll ask the hearing to come to order. Counsel will call the next witness.

MS. STEIN. Gilbert Pompa.

CHAIRMAN FLEMMING. If you will raise your right hand.
[Gilbert Pompa was sworn],

CHAIRMAN FLEMMING. Nice to have you with us again.

MR. POMPA. Thank you, Mr. Chairman.

TESTIMONY OF GILBERT G. POMPA, DIRECTOR, COMMUNITY RELATIONS SERVICE, U.S. DEPARTMENT OF JUSTICE

MS. STEIN. Would you please state for the record your name and title and the number of years you've been in that position?

MR. POMPA. My name is Gilbert G. Pompa. I'm the Director the Community Relations Service of the United States Department of Justice. I was appointed to that position in 1978, and I have been with the Department of Justice with the Communities Relations Service for 13 years, having started work with that agency in 1967.

MS. STEIN. Thank you. And did you bring with you yesterday to the hearing a prepared statement?

MR. POMPA. Yes, I did.

MS. STEIN. Mr. Chairman, I would like to have that statement admitted to the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

MS. STEIN. Thank you.

Mr. Pompa, I would like to try to discuss with you the concrete details about how the Community Relations Service becomes involved in a situation and how it takes action when it has become involved.

In your statement you said that many problems are referred to you by local officials and community leaders with whom you have worked in the past. Are there any other ways in which the Community Relations Service becomes aware that a problem is developing between a segment in the community and its police force?

MR. POMPA. Yes, we become involved in community relations cases through various means and ways. First, as I indicated, our primary source comes about through complaints received directly from citizens in a particular community. However, because of the outreach capability that the Community Relations Service has established over the years, that is, the establishment of contacts with mayors, governors, police chiefs, community representatives from all the geographic areas represented in the United States, this particular outreach gives us the capability of receiving information and complaints from these people when an incident occurs or is about to occur.

Beyond that, each regional office is equipped with wire service machines, and the regional directors are instructed to stay abreast through newspapers from major cities that are within their geographic responsibility, so they receive the information either from individuals, from the media, or sometimes from Washington itself when we receive information that an incident has occurred somewhere that may not have come to the attention of a particular region.

MS. STEIN. Does the local government ever itself ask you to come into the situation?

MR. POMPA. Yes, there have been instances where either the mayor's office or perhaps the State Governor's office has asked us to provide our service to a particular community.

MS. STEIN. Do any other entities in the Department of Justice ever provide you with information suggesting that there is a troublesome situation that you might perhaps become involved in?

MR. POMPA. There have been instances when situations have been brought to our attention by the Civil Rights Division of the Department of Justice and in a few instances some information has been brought to our attention by the FBI itself, by representatives of the FBI in particular regions or areas.

MS. STEIN. Does the U.S. attorney in a jurisdiction ever refer a matter to you?

MR. POMPA. Yes, there have been instances also where the U.S. attorney's office has referred cases to us that were not quite within their jurisdiction but within ours.

MS. STEIN. Can you give us any rough idea about how often this occurs, that is, a referral from another Justice Department entity?

MR. POMPA. I would say probably less than 1 percent.

MS. STEIN. How does the Community Relations Service assess the extent of the danger of civil disorders in a troubled community? In other words, when it has been brought to your attention or when you are considering a community, how do you or what criteria do you use to decide whether there is a likelihood of civil disorder?

MR. POMPA. The criteria usually can be something as minimal as a potential for disruption or a potential for a dispute or disagreement within a community. Since the mandate of the Community Relations Service authorizes us or places a responsibility on the Service to provide, you know, its offices when relations within a community are threatened, that gives us a pretty wide latitude for intervention. So based on the many years of experience in this business, we can pretty much determine in advance when a situation has a potential for escalation to a disruption, so we pretty much make that determination on the ground at the regional level.

Some of the cases are classified as A-type cases, which require intervention at a higher level and deployment at a much more extensive level than we would have probably deployed had it been handled at the regional level. By that I mean that—for example, in the Miami case would have required and did require intervention at the national level and was classified as an A case in that regard, with deployment at a much more extensive level than we would have deployed had it been a regional case.

MS. STEIN. Do you have standards or criteria for deciding what cases will be classified as A cases?

MR. POMPA. Yes. We do have standards of criteria. A case that we consider of national significance is classified as an A case. If it has potential for a broader involvement, say, a spillover effect in terms of what's happening there versus what it may catalyze in other parts of the country, that case becomes a case of national importance and is classified as an A case.

MS. STEIN. And does your assessment of the potentiality for spillover or national effect, is that dependent on your assessment of the likelihood that violence will occur or that sizable violence will occur?

MR. POMPA. Yes, that is one of the factors in the criteria.

MS. STEIN. Are there other factors?

MR. POMPA. I think, primarily, we would be looking at their spillover effect, plus the number of people that would be involved, the size of the community that would be involved in a particular case. Those two would be the most important factors we would be looking at: the one that you've mentioned, and the spillover effect.

MS. STEIN. When you identify a situation with potential for serious problem, I would like to know what steps you take and, first of all, is there any notification of other Federal agencies or an attempt to coordinate with other Federal agencies when you decide to become involved in a situation?

MR. POMPA. Yes. Generally, we are the first agency not only from within the Department but probably in government that is on the scene when the problem begins to surface or is about to surface. We are generally the first agency there and the last to leave. What we do in

terms of our process within the agency is, first, alert the case, the situation—we first alert it and give it a number. Then we make a determination as to whether it should be assessed either telephonically or onsite. After that assessment, we determine whether the incident should be referred for conciliation or mediation, depending on the type of case that we're dealing with.

Once that determination is made at the regional level, deployment decision is made and the regional director decides the number of individuals to be assigned to that case. It can be by racial team or it can be just one individual or it may be three people or four people deployed to a particular situation. That process is carried on at the regional level. That determination is made at the regional level and deployment is made on the basis of the assessment by the particular individual that is sent to the scene.

MS. STEIN. Now, what services can this individual or this team provide? You mentioned conciliation and mediation. Can you explain what they are and the difference between them?

MR. POMPA. Sure. I think the best way to describe it is to give you an idea of the typical situation that we would be going into. The most common type of occurrence that we respond to is a police shooting of a minority person. That's been generally our number-one category for many years in the Community Relations Service. The typical incident involves a white police officer shooting a minority, a reaction from the minority community to that situation, to that occurrence. We come into that scene with a conciliator who attempts to sift through the facts and tries to determine whether the situation can be abated by his presence or her presence on the scene.

That whole process that that person is involved in is called conciliation. It is attempting to abate what we generally find to be heightened feelings within a community—the police department, the minority community, the white community, all involved in perhaps a heated exchange over what actually occurred in that situation. That particular person is a conciliator that tries to sift through that and tries to calm the situation. That's his or her job on the scene initially.

MS. STEIN. Can you give me an example of what measures that person would take in the abatement effort?

MR. POMPA. Generally the first thing that person does is set up a series of meetings with the minority community, with the police department, with the mayor's office, with all elements of the community, including the business community, that may have a bearing in solving the situation.

Once that process begins, you usually have an abatement of the tension. In those situations, typically you'll find one side calling for the police officer's immediate detention or arrest or incarceration or some action against the police officer on the one side. On the other side, you usually find a very defensive action taking place, the police department trying to justify what happened, and in that type of situation, you generally have to come in and give something to everyone, perhaps a meeting between the police department and the representatives of the

black community to try, at least for that period of time, just to calm the tension that is going on at the time.

Now, we generally find that the issues that led to that incident are more deep rooted or deep seated than the incident itself. It may be as a result of our assessment we may determine that the police department has a long series of complaints lodged against it that has been unresolved. It may be that they lack an affirmative action plan within their hiring policies. It may be they do not have a firearms policy or, if they do have one, they don't enforce it. It may be a series of things that the minority community is concerned about and has been concerned about but no one has done anything about it.

Now, once the conciliation phase is completed, that is, the series of meetings are conducted between the minority community and the majority community and the police department, a mediator is assigned to the case. Now, the mediator's role is more formal than the conciliators. Our mediators are table negotiators and they may come in, if it is agreeable to both sides, they will come in and try to get both sides to agree to negotiate some of the issues that have been raised during the conciliator's assessment of the situation, all of those things that I just enumerated for you, and if it is agreeable to all parties at the end of the negotiation, if the police department agrees to adopt an affirmative action plan or to consider a firearms policy, those things are reduced to writing and an agreement is signed and, hopefully, incorporated as part of an ordinance for that particular municipality. That function is carried out by a mediator. Those are essentially the two roles that our people play.

The third role is technical assistance. That is provided by our technical assistance unit as part of either the mediation or conciliation process. We have experts in the area of education and police-community relations, ex-police officers or ex-educators who would come in and provide onsite technical assistance, buttressed by consultants that we have on our rolls, to assist the minority community or majority community in trying to resolve some of the issues that have been surfaced by the conciliator while he or she were conducting the assessment.

MS. STEIN. Now, if I understand you correctly, conciliation would be done at once in any case but mediation would only occur if all parties were willing to have it occur, agree to it?

MR. POMPA. That's correct.

MS. STEIN. Can you give me some idea of what reception you typically get from the local police department or local government? If there isn't a typical reaction, can you give me an idea of how it breaks down?

MR. POMPA. Let's say we get a respectable reaction because of the credentials that we carry through the Department of Justice. The credentials are an essential part of the process for us, because, as I indicated once to Judge Bell when he was Attorney General, without the credentials our work would be probably not as well received, or our service would not be as well received as it is now.

I don't think that going into a police department with HUD credentials and saying that you represent the Federal Government and are

looking into a situation that has been brought to your attention by the minority community regarding police or the police department would get the kind of receptivity that we get now with the credentials from the Department of Justice.

MS. STEIN. Do you know what percentage of the cases that you undertake and go through conciliation with and mediation is accepted by all the parties?

MR. POMPA. We handle about 40 mediation cases a year, which represents about 4 to 5 percent.

MS. STEIN. 4 to 5 percent of what, of all the cases in which you became involved?

MR. POMPA. Right.

MS. STEIN. Now, in some of these, you said the typical case was where there has been a shooting of a minority person by a police officer. In some of these cases probably there is involvement by Federal prosecutors and perhaps the FBI in the same incident; is that correct?

MR. POMPA. That's correct.

MS. STEIN. Can you tell me what, if any, relationship you have with the Federal investigators and prosecutors while you are carrying out your work and they are carrying out theirs?

MR. POMPA. We have a good relationship with them, not necessarily an interwoven relationship, in terms of what they are doing versus what we're doing on a similar case. I guess Miami would be a good example where the FBI and the U.S. attorney's office is pursuing the litigative route while we're pursuing a more long-range solution to the problem. We're looking at the causes of the problem in Miami and trying to get at some of the basic solutions that we could implement there and hopefully get long-range solutions after we determine what the ultimate causes were and what some of the things that we could apply that would help would be.

MS. STEIN. Do you share information? Do they share with you information they've gained through their investigation or do you share with them information that you have learned?

MR. POMPA. Only on a very informal basis. The information that we get in the process of conducting our work is confidential. The Title X provides that all the information procured during the process of conducting our work is to be held confidential, so we are not authorized to share that information with anyone, including sister agencies within the Department of Justice, but on an informal basis, when we are trying to get at some of the overall problems or issues within a particular community, we will exchange information that will not violate either our mandate or the mandate of the other agency that we're dealing with.

I'm trying to explain that, contrary to what sometimes may be inferred, we do not gather intelligence information for the purpose of sharing with the FBI or other agencies within the Department.

MS. STEIN. Would it hinder or have an effect on your effectiveness if the general perception were that you were gathering information to be shared with the prosecutor?

MR. POMPA. Very definitely. I think it would undermine the credibility of the agency and the confidence that many of the communities have in working with us throughout this country.

MS. STEIN. On page 3 of your statement you say, "138 instances of alleged use of excessive force by police were alerted by CRS in the first half of fiscal year 1980. A 146 percent increase over the same period of the previous year. The number of cases we were able to resolve increased from 24 to 58."

What do you mean by "resolve," in that sense?

MR. POMPA. Those are the cases that we take from assessment to conciliation. As I indicated the process earlier, the cases that we were able to resolve are the cases that we took from the assessment stage ultimately to conciliation and actually produced a result as a result of our involvement in the case.

MS. STEIN. Are they all the cases that went through the conciliation stage, or are they cases that went through the conciliation stage plus achieved some particular result that you use as a measurement of resolution?

MR. POMPA. I don't quite understand the question. Would you repeat it?

MS. STEIN. Well, you said that these represent cases that went through the conciliation process.

MR. POMPA. Right.

MS. STEIN. Which is the step before mediation, is that correct?

MR. POMPA. No, it can be the final step. It depends on what kind of case it is. If it is a conciliation case and it went to conciliation, we consider that a case that was completed.

MS. STEIN. Resolved?

MR. POMPA. Resolved.

MS. STEIN. I see. Thank you. Your statement also refers to a three-step process that you have undertaken to anticipate problems before there is a police homicide or a police abuse of force. You say that three-step process includes providing information that you have learned through research or otherwise, face-to-face discussions between police and minorities, and then collaborative efforts in the community.

Can you explain to us a little more what collaborative efforts in the community are—what would that typically be?

MR. POMPA. I try to use the Texas consultations as being an example of the type of collaborative efforts that we do with community groups and the national consultation that we did with the National Urban League and with the League of United Latin American Citizens as an example of the collaborative efforts that we do with community groups. In Texas, because of the number of, really a disproportionate number, of incidents that occurred in 1978 where the allegations were that 16 Hispanics were killed by police, either while in custody or about to be in custody, in 18 months.

The situation was considered serious enough for us to provide a concerted effort in the State of Texas, so we convened a meeting with a series of Hispanic organizations, including the League of United Latin American Citizens, American GI Forum and Image and other Hispanic

organizations active in the State of Texas, together with my agency and police officials from throughout the State in an effort to promote some dialog between the two to see if they could mutually reach some accord on how to handle some of the problems should they manifest themselves in their own community. This is an example of preventive maintenance type of work that we do in advance of the possibility of a similar situation occurring.

MS. STEIN. Can you tell us what the present staff and budget is of the Community Relations Service?

MR. POMPA. It—our latest budget figure was, I think, \$5.2 million.

CHAIRMAN FLEMMING. Is that fiscal 1980?

MR. POMPA. Fiscal '80 plus 111 full-time, permanent positions and 25 temporaries.

CHAIRMAN FLEMMING. What is your pending 1981 budget?

MR. POMPA. The same, except for whatever increases are allowed for inflation.

CHAIRMAN FLEMMING. Did the President's budget recommend increase or did it recommend level funding?

MR. POMPA. It recommended level funding.

CHAIRMAN FLEMMING. Are you far enough along the '82 budget process to know what the Department is going to recommend in '82?

MR. POMPA. The Department has recommended an increase for '82.

CHAIRMAN FLEMMING. What order of magnitude? It doesn't have to be exact. What order of magnitude, within a range of 5 to 10 percent?

MR. POMPA. It would be an increase from 111 to 152 with mandatory—not an increase but a total budget of \$7 million.

COMMISSIONER HORN. The position increase is 111 to 152?

MR. POMPA. Yes.

COMMISSIONER HORN. How many of those are professional positions who will be doing community relations work?

MR. POMPA. Excuse me, I'd like to introduce Mr. Bert Levine, who is our program officer and also our budget officer.

COMMISSIONER HORN. Why don't you file that for the record?

CHAIRMAN FLEMMING. Fine.

COMMISSIONER HORN. Let me ask my next question to clarify it. Did Justice give you what you asked for or to what extent were you cut internally in Justice for fiscal year '81 which begins October 1, 1980?

MR. POMPA. Well, I can't really say that we were cut, but we did not receive an increase. We got level funding.

COMMISSIONER HORN. Well, compared to what you requested from CRS to do what you feel is necessary to solve some of these problems, what happened to you in the internal budget process of Justice?

MR. POMPA. Well, we asked for 143 positions for fiscal year '81 and received 111. I think out of that, if I may elaborate on it, I had a note here of the number of positions we had asked for for conciliation work in the area of administration of justice, which I think is what you're getting at.

COMMISSIONER HORN. Well, actually, I want to pursue—I'm interested in the whole area. This is one of the questions—we might as well

clean it up now. I'm interested in what happened to Justice's request for fiscal '81 when it went to OMB.

MR. POMPA. Well, Justice's request to OMB was level funding and that's what we got.

COMMISSIONER HORN. So OMB kept it with the previous year?

MR. POMPA. Yes, they did.

COMMISSIONER HORN. What happened? What is your experience in the last 2 or 3 years in the case of Congress? Has Congress been sympathetic of adding positions?

MR. POMPA. The authorization committee has been very sympathetic. The committee that we testified before for funding has not been receptive. In terms of level funding it has been, but it has been very difficult to go beyond that.

COMMISSIONER HORN. Okay, if we could just file for the record for the last 3 years what CRS has requested in professional positions within Justice, what has Justice recommended, what have OMB and the President recommended, what has happened at the authorization level, and then what has happened at the appropriations level over 3 years. I just would like to see it for professional positions. We might include it in the record.

CHAIRMAN FLEMMING. Without objection that would be done. That will be very helpful.

MR. POMPA. The only clarification I wanted to make was that specifically the number of positions that we have requested over the last 3 years for administration of justice problems, and really to address the issue of police-community relations, has been—in fiscal year '79 we had broken it down; we were asking for 39 additional positions. In fiscal year '80 we asked for 33, fiscal year '81 we asked for 28, and fiscal year '82 we asked for 31.

CHAIRMAN FLEMMING. I might say we're interested in that breakdown, obviously, and focus here on police-community relations, but you were here yesterday when Assistant Attorney General Drew Days was testifying. You will recall that point. All of us agreed on the interrelationship between administration of justice and other civil rights issues within the community, so actually we are interested in your total resources as well. Pardon me?

MS. STEIN. Do these budget and staff figures limit in any way the services that you can provide in troubled communities?

MR. POMPA. Well, I would have to say that they do. Obviously, we cannot provide the type of service or give the level of attention to certain areas of the country that we feel could receive and should receive that attention.

MS. STEIN. Can you tell us how the decision is made whether to open a temporary or satellite office in a certain community?

MR. POMPA. It's pretty much a call on my part. We have opened within the last 3 to 4 years temporary offices in Detroit, based on the concern that we had over the implementation of the desegregation plan in that community.

We opened up, based on similar concerns, temporary offices in Louisville, an office that has since closed; temporary offices in Dayton that

has since closed; and a temporary office in Cleveland, which is still open, based on the fact that we were made a part of the court order in that city's desegregation plan.

We also opened a temporary office in Houston on the basis of a series of complaints that we were receiving regarding police abuse in and around that city. That office is still open. We have a temporary office in Miami that was opened as a result of the assessment that was made by my agency and a decision made by the Attorney General when I accompanied him on May 19 to Miami.

MS. STEIN. My final question to you would be whether you have any opinion as to what additional steps could be taken by the Federal Government or any of its agencies to deal preventively with problems of civil disorder?

MR. POMPA. Civil disorders in general as opposed to just civil disorders based on police abuse complaints?

MS. STEIN. Let's say racial disorders and we will be particularly interested that arise out of incidents of police misconduct.

MR. POMPA. From the perspective of the Community Relations Service, being involved in monitoring and measuring racial discord in this country and at the same time being the barometers of the racial feelings that go on in this country, that are going on in this country, I feel that perhaps one of the most useful things that could be done by not only the Federal Government, but the government at all levels, is to become aware that the racial climate in that country is not as good as a lot of people would like to believe that it is.

There are still many issues that are unresolved, that are of significant concern to minority communities throughout this country, that have the capability of catalyzing themselves into the type of disorders that you had in Miami. My recommendation would be to government at all levels to keep that in mind when they are in the process of making decisions on a year-to-year basis in terms of what problems to deal with either in their States or in their communities.

MS. STEIN. Thank you very much.

CHAIRMAN FLEMMING. First of all, I would like to say that yesterday afternoon at our regular meeting we received a report from Ed Rutledge, our regional director for the mid-Atlantic States, relative to developments within that region. In the course of his report, he spoke in enthusiastic terms about the service that had been rendered by your Service in a number of situations that have developed recently within the middle Atlantic region, referring specifically to an incident in the Commonwealth of Virginia and then, of course, the latest incident in the city of Philadelphia. He expressed admiration for the way in which the Service responded. Obviously, you have limited resources, but I though you would want to know that we received that kind of a report from the field.

Do you have an office in Los Angeles?

MR. POMPA. No, sir, we do not.

CHAIRMAN FLEMMING. Have you been following the Los Angeles desegregation situation at all as a service?

MR. POMPA. We have assigned staff to that case and have been on top of it since its inception.

CHAIRMAN FLEMMING. Well, I won't pursue that any further. Your answer indicates that you do regard it as a serious situation.

MR. POMPA. Yes, we do.

CHAIRMAN FLEMMING. You know of the developments within the past few days. I had a briefing on it first thing this morning from an official of the Department of Education who has spent a few days there and I'm delighted you are following it.

Let me ask this general question. As a result of the experiences that you and your associates have in various communities, do you have the feeling that the top leaders of the community, public and private, sometimes referred to as a power structure of the community, are really involved in the setting of civil rights goals and in the development of action plans designed to make it possible for their communities to reach those goals?

MR. POMPA. In the absence of any specific facts to back up my personal opinion—

CHAIRMAN FLEMMING. That's all I'm asking for.

MR. POMPA. I would have to say that the answer is no. I do not have that feeling.

CHAIRMAN FLEMMING. All right. Just following up briefly on our question relative to the budget situation. From my point of view, and I'm sure my colleagues share this, this is a very important function for a government to perform, the function that you are performing. I am interested in the way our system works in dealing with a function of this kind.

Your response to the questions related to budget indicates that the oversight committee, your legislative subcommittee, I gather on both sides, the House and the Senate, seems to be more responsive to the importance of the function than any other part of government. Just to highlight that, what is your current authorization figure as contrasted with your proportion figure?

MR. POMPA. I don't have that figure, Mr. Chairman, but I'll have it—

CHAIRMAN FLEMMING. Commissioner Horn's question included that, so you'll be providing that. I was just trying to get the feeling as to whether or not there is a considerable gap between the amount appropriated and the amount authorized. In other words, enough of a gap to indicate that there is a difference of opinion between the legislative subcommittee, the oversight committee, the committee that's following developments in the field of civil rights rather closely, and the appropriations committee. Obviously, there's some difference of opinion between the executive branch and the oversight committee in terms of the authorization figure that they have. Thank you very much.

Commissioner Berry?

VICE CHAIRMAN BERRY. Mr. Pompa, do you have any information that would lead you to believe that some of the police departments in which there have been problems have been infiltrated by the Ku Klux Klan?

MR. POMPA. We have no information to that effect.

VICE CHAIRMAN BERRY. Have you paid any attention at all to that issue or do you intend to?

MR. POMPA. Yes, we have. That's one of our other high categories, responding to incidents involving the Klan. But in terms of their involvement with or infiltration into police departments, I have no indication of that in the process of conducting our work.

VICE CHAIRMAN BERRY. Do you think, based on your experiences, that if an announcement were ready to be made and made by the FBI, for example, or by the Justice Department, immediately after the acquittal of the alleged perpetrators in cases where police shoot minority groups or citizens or beat them up or kill them, that the FBI was continuing with its investigation with a view toward decision about Federal prosecution, that that might help to alleviate tension in some of these cases?

MR. POMPA. I believe that it would have a deterrent effect. I think our presence on the scene—because generally the average person does not differentiate between the FBI and the Civil Rights Division and the Community Relations Service. Usually the headline reads, "Justice Department Officials on Site," immediately after an incident. It has the same effect as though the FBI was there, even though it may be two of our people who are there to assist the situation.

VICE CHAIRMAN BERRY. So if people felt there was a Federal presence immediately involved and there were some other recourse, it might keep some of these instances from happening.

MR. POMPA. That is the key, Federal presence; that's what we provide immediately when we receive word of an incident. That's why I say generally we are the first on the scene, because it takes the FBI and the Civil Rights Division a little bit more start-up time because they have to determine jurisdiction. We don't have to wait for that since our mandate is to provide the service either on our own initiative or at the request of someone else. We don't have to wait for that while they're making a determination as to whether they have jurisdiction in the situation; we're already there.

VICE CHAIRMAN BERRY. I don't get the feeling from the testimony yesterday and your testimony, both written and oral, there is a great deal of coordination and communication within the Justice Department on these matters. Do you, in fact, have meetings and discussions with the FBI staff or with people in the office of the Civil Rights Division on a regular basis about these matters?

MR. POMPA. No, we do not.

VICE CHAIRMAN BERRY. So, is it fair to say that my impression that a bit more coordination or communication may be desirable is not altogether misguided?

MR. POMPA. I think probably it would help. We do have probably better coordination with the Civil Rights Division than we do with any other agency within the Department. But on a weekly basis, I provide a written report, a little synopsis of the major activities that we've been involved in for the week and that is distributed to all of the agencies within the department that have a bearing on the kind of work that we

do, the Civil Rights Division, the FBI, and the—let me correct that, I don't believe the FBI gets a copy of that.

VICE CHAIRMAN BERRY. Let me be a little more specific with my question. When the Justice Department is making a policy decision about, for example, whether it makes sense to have simultaneous Federal and State investigations of incidents of alleged police murder, does your office get involved in advising before the decision is made as to whether that would be a good policy in terms of alleviating tensions nationwide or whether it wouldn't be a good policy or not on a regular basis?

MR. POMPA. No. Therein lies probably one of the problems that not only the Department of Justice but any Federal agency has. You know, you get—it is not necessarily a question of turf. I think it has to do with the determinations that are made by individuals who feel they have responsibility for responding to a situation.

Of course, we sometimes, in the rush to get into a situation, fail to touch base with the U.S. Attorney in a particular jurisdiction who gets his feelings hurt, who calls the Department and says, "You know, here's the Department of Justice in a situation that I don't know anything about it. We run into that kind of problem as far as U.S. attorneys are concerned.

We haven't had that problem with the Civil Rights Division or other agencies within the Department. As a matter of policy, I have instructed my people to touch base with the U.S. attorney when they are going into a situation, advise them. We don't ask for permission from the U.S. attorney to become involved in a situation but merely advise them that we will be working in his jurisdiction, responding to certain complaints that have come to our attention.

VICE CHAIRMAN BERRY. Do you think it would be useful or desirable to have your office involved in giving advice when policy decisions are made concerning what will or will not alleviate racial tension with the possibility of violation in certain communities?

MR. POMPA. I think we do to a certain extent become involved in making those types of recommendations that have a bearing on policy, particularly with this Attorney General more than any other that I've served under, and I've served under 12 since I've been with the Department, and I have a close enough working relationship with Attorney General Civiletti where I can pick up the phone and give him my opinion about a situation.

VICE CHAIRMAN BERRY. My question was not directed at any particular individual. I just meant as a part of regular decisionmaking processes in the Department, whether you were there or somebody else, whatever, would it make sense to have your office involved in giving formal advice when formal policy decisions are made without such matters?

MR. POMPA. The answer is yes.

VICE CHAIRMAN BERRY. The only other question is, it is my impression that in instances where the police have allegedly killed someone, a citizen in minority communities, that in Hispanic communities it is less likely there would be riots if there were an acquittal or if there was no

prosecution and the like, even in black communities. Take for example the Hannigan case and a similar case out in Tucson and other cases that MALDEF has called to the attention of the Department. Is my impression correct or incorrect there is less likelihood, at least in the past, that there would be riots?

MR. POMPA. I don't believe I can characterize it as that. If you can use the reaction in Newark to police enforcement over an incident involving Puerto Ricans during Labor Day a few years ago and the reaction that occurred there and the number of deaths that occurred as a result of that reaction. If I could also use the Elizabeth, New Jersey, experience where a number of Cuban Americans were involved in an altercation of police that also resulted in major destruction and deaths; if I could use the Chicago experience where a number of Puerto Ricans reacted as a result of what they perceive to be police abuse, and a number of injuries and destruction that occurred there, I don't believe that I could say that Hispanic rage would be any less over these type of issues than black rage.

VICE CHAIRMAN BERRY. Is it a question then of the Southwest, because all those cases you cite about Texas in your testimony and then the other cases that MALDEF has reported involving Mexican Americans. I'm not aware there were any riots in any of those cases in the Southwest.

Am I mistaken, were there, or do you know?

MR. POMPA. The incident involving the Jose Campos Torres case in Houston, and the verdict that followed the Jose Campos Torres case was really the forerunner of Miami. If you recall the riots that occurred in Moody Park in Houston as a result of the verdict in the Jose Campos Torres case you will see there is a similarity between what happened in Miami on a smaller scale.

VICE CHAIRMAN BERRY. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Horn?

COMMISSIONER HORN. Let me pursue for a minute the question Commissioner Berry asks about your reporting of information within the Department of Justice.

To whom do you report?

MR. POMPA. I report to the Associate Attorney General John Shenefield.

COMMISSIONER HORN. To whom does the Assistant Attorney General for Civil Rights report?

MR. POMPA. He also reports to John Shenefield.

COMMISSIONER HORN. To whom does the Director of the FBI report?

MR. POMPA. He reports to Judge Renfrew, the Deputy Attorney General.

COMMISSIONER HORN. And the Associate Attorney General also reports to Judge Renfrew, is that correct?

MR. POMPA. No.

COMMISSIONER HORN. He reports directly to the Attorney General?

MR. POMPA. Yes.

COMMISSIONER HORN. Now, in the determination of who receives your weekly report, who makes that decision, you or the Associate Attorney General?

MR. POMPA. I make that decision.

COMMISSIONER HORN. So you could send a copy to the FBI?

MR. POMPA. Yes.

COMMISSIONER HORN. But you do not?

MR. POMPA. I don't believe we do at this point, no, we do not.

COMMISSIONER HORN. You send it to the Assistant Attorney General of Civil Rights, you send it to the Associate Attorney General, your superior. To whom else do you send it?

MR. POMPA. It goes to all the agencies that report to the Associate Attorney General, including Antitrust.

COMMISSIONER HORN. Is there a reason why you have not sent it to the Director of the FBI?

MR. POMPA. Primarily because we had made a determination only to the Associate and all of the agencies that report to him. There is no reason why we shouldn't and I suppose that we could. We just have really restricted it to the Associate's office.

COMMISSIONER HORN. Does the Deputy Attorney General and the Attorney General receive a copy?

MR. POMPA. Yes.

COMMISSIONER HORN. In other words, the FBI coordination problem is your problem, not the FBI's problem?

Now, the question was also asked by Commissioner Berry on the continued investigation situation. Yesterday I asked each witness this question; I would also like to ask you the question. Should the Department of Justice promulgate a guideline for the FBI that is essentially as follows: that in a situation where there is a racial difference—these are now police brutality cases or allegations—between victim and aggressor, if you will, and indictments have been made at the local level and that case is being tried before an all-white jury, in your judgment do you believe the FBI should continue its investigation while that case is in progress?

MR. POMPA. From a community relations standpoint, if your question is whether it would help abate or prevent the possibility of continued concern or disruption as a result of this concern, I would say yes.

COMMISSIONER HORN. Now, Chairman Flemming mentions the very high praise which our mid-Atlantic regional director had for CRS in yesterday's session with the Commission. Mr. Rutledge, as perhaps you know, has had long experience, much in the same work that you've had, in human relations, dealing with the community at the grassroots.

One impression he left with us, which has also been my impression if not bias over the years, is that one of our problems today is that we've got an awful lot of lawyers and accountants that are deeply involved in many of these cases, and sometimes we have forgotten the importance of community human relations work and development at the community relations level. In essence you are really the only, or one of the few, Federal agencies that really tries to get down to the grassroots and

keep your ear open, listen to people, try to bring people together, and try to really resolve community problems.

I would just be curious, based on your long experience, serving under 12 Attorneys General, as to whether you have seen a change in the civil rights context where we have become—well, perhaps where we thought the only solution is the litigious one and we've sort of forgotten the idea of bringing people together, or if we have been successful in our litigious solution, it has been a paper success and we haven't really dealt with the attitudes and the behavior patterns that exists under that legal solution. What is sort of your reflection on that?

MR. POMPA. I'm going to be speaking almost against myself here because I am an attorney and I was a former prosecutor for 8-1/2 years, and I was a former law enforcement officer in the military, but I agree with you that the litigative route as a solution to the kind of problems that we've been dealing with, in my opinion, are not the best and most productive.

We have found in dealing with the type of cases that we've handled over the last 16 years that the more lasting solutions are procured through the involvement of individuals, particularly the entire community and we use that as our tool in solving the kind of problems that we are called into.

I sincerely believe that litigation is not the answer in many of these cases, and in particular in the cases involving police abuse complaints. If you could take the testimony of Mr. Days yesterday, you can see that the litigative route, while it may be a desired objective of a lot of communities in terms of a redress for a particular complaint, is not necessarily a very productive one. We have felt that the involvement of the Community Relations Service in many of these incidents have resulted in more long-range solutions and, in my opinion, better solutions than a verdict that convicted a particular police officer that was charged as a result of a complaint of abuse.

COMMISSIONER HORN. In terms of training, does the FBI ever consult CRS as to its civil rights component at, let's say, Quantico in educating local law enforcement officers?

MR. POMPA. No.

COMMISSIONER HORN. Has CRS made known to the FBI its good offices that it has some experiences to share in this area?

MR. POMPA. I think over the years we certainly have been known to the Department, I mean to the Bureau and I have, on various occasions, mentioned the availability of our people to assist FBI. Sometimes, it becomes a little difficult for us to work very closely with the Bureau, Mr. Commissioner, because of the almost apparent inconsistency of the mission.

I guess, maybe it was best illustrated in our dealings or our response to some of the complaints that came out of the Indian community, and it was more apparent during past administrations than it has been at least under the leadership of Director Webster. We generally found ourselves almost in a competitive posture with the Bureau in many of these cases. Our people went in with the sole objective of resolving the issue without the intervention of a Federal investigation process being

conducted as an alternative to litigation or enforcement, so we were almost placed in a competitive situation with the Bureau in terms of how to get at the solution or problem. This became apparent during the occupation of Wounded Knee where we saw the solution one way and the Bureau saw it another.

COMMISSIONER HORN. Are your good offices called for in a training sense by any non-Federal programs?

MR. POMPA. Oh, yes. We are asked periodically by the private sector to provide training and, if it is conducive to our programmatic objectives, we will provide it.

COMMISSIONER HORN. Would you say that CRS provides more training and input for those in the private sector or local government than it does for enforcement agencies at the national level?

MR. POMPA. Yes.

COMMISSIONER HORN. Well, again, it seems to me we've got a coordination problem at a higher level than the Department of Justice. Now, I think we have got a problem of an Associate Attorney General, a Deputy Attorney General, and an Attorney General meeting to introduce some components of Justice to each other.

Let me ask you, is there a staff meeting that's held of the principal Bureau chiefs within Justice that would bring together people outside of the Associate Attorney General's area with others that report to the Deputy or directly to the Attorney General?

MR. POMPA. Periodically there have been such meetings.

COMMISSIONER HORN. Periodically means what, quarterly, half year, yearly?

MR. POMPA. I'd say at least twice a year.

COMMISSIONER HORN. Twice a year. Okay. Not exactly an emergency response mechanism. Now, I was interested in your comment as to where you had located some of your temporary offices, because I agree with you on the need to be responsive, and it sounds like you've tried to anticipate situations of desegregation or police misconduct or racial strife and be responsive. I take it your regional offices generally follow the Federal pattern of being located in the principal cities where the Federal establishment is designated by OMB?

MR. POMPA. Yes, I do.

COMMISSIONER HORN. As you know, there are various field mechanisms that have been set up in the last decade to coordinate regional representatives of Federal agencies, Federal Executive Council, so forth. To what extent does CRS regional representatives actively participate in those meetings?

MR. POMPA. I would say to a large extent.

COMMISSIONER HORN. Well, that means they attend regularly?

MR. POMPA. Yes.

COMMISSIONER HORN. To what extent do CRS representatives get on the agenda of those meetings where people from HUD, HEW, Labor, etc., are also attending, issues of concern in the civil rights area, the community relations area?

MR. POMPA. It varies from region to region, but in those regions where our people, our regional representatives, are more active, we have no problem getting on the agenda.

COMMISSIONER HORN. What is your feeling as to how successful discussions of these matters are in that setting, in terms of improving the responsiveness of the old line Federal agencies to solving some of the problems for which they are given hundreds of millions of dollars to do at the local level?

MR. POMPA. Again, I think it varies on a region-by-region basis, Mr. Commissioner. I think in the Rocky Mountain area where the regional director is very actively involved, I think his input is considered in the distribution of resources by various other Federal agencies, but I would again say that that is not an across-the-board situation. More likely than not, our people are usually relegated to advisory roles in those regional setups so that we wind up primarily giving them an assessment of what we think will occur if that grant is made or if that action is taken.

COMMISSIONER HORN. Mr. Chairman, I would like, as an insert in the record at this point, to get from the Director of CRS by region the agenda items which CRS has put on the Regional Coordinating Council, Federal Executive Council, Federal Regional Council over the last 2 fiscal years— whatever is convenient—so we get a feel for the participation of CRS on these councils, which have long been of concern to me in the civil rights area.

MR. POMPA. Mr. Chairman, we will make that available.

CHAIRMAN FLEMMING. Without objection, that will be entered into the record at this point.

CHAIRMAN FLEMMING. Commissioner Ruckelshaus?

COMMISSIONER RUCKELSHAUS. Did I miss it or have we discussed whether or not CRS was present in Miami before the incident?

MR. POMPA. I wasn't asked that and I haven't commented on it. We had been providing service to Miami on a periodic basis. The staff resources available in the southeast region, which covers Miami, were such that we were responding more to Klan activity that has been on the rise in that region for the last 2 years.

We provided service to Miami up until the riot on a periodic basis and on an as-needed basis when we receive complaints from community groups that certain incidents were intolerable and we should come down and talk to someone.

During the influx of the Cuban refugee situation down there, we began to get a series of complaints that required me to make a determination as to how we were going to handle it, and I knew we could not handle it through periodic deployment out of Atlanta, so I instructed my deputy on or about May 2 to go to Florida and to make a statewide assessment of the problem. He did. He completed his report on May 10 and submitted it to me on May 15.

I prepared the report for submission to the Attorney General on Friday and sent it over that week and he got it on Monday, because the riots occurred on Saturday and Sunday. The report to the Attorney General contained a recommendation for the opening up of a temporary office in Miami to deal with what we perceived to be a volatile

situation that was building in that community. I guess that's a long way of answering your question.

COMMISSIONER RUCKELSHAUS. Well, that wasn't exactly a straightforward response, was it?

MR. POMPA. Yes.

COMMISSIONER RUCKELSHAUS. I'm interested, because of our talks with the FBI and the Civil Rights Division we discover that each of them are gathering information that is very useful in shaping profile communities in which there is a lot of volatility present and pressures are building, but we've had a little trouble finding who was the person who really digests and sifts through that and says, "This is not a place where we're going to have to respond to something but where we're going to anticipate something."

I'm not sure that the FBI thinks at all that's their responsibility; they're more in the hardware business and the Civil Rights Division didn't take that responsibility, either. It seems to me you are in a uniquely valuable position to be able to anticipate and to do something before it gets to a question of responding and seeing that justice is carried out after there's been an extreme case of civil rights violation. So it seems to me then your access to the information they have and their close communication with the kind of information you're getting from your local offices is just terrifically important. That's why Commissioner Horn's questions, I thought, were so pertinent.

MR. POMPA. I think you're correct. Unfortunately, the type of information that the FBI gathers is usually of little value to us because they are looking at it from a different perspective. They are looking for violations of Federal statutes and we're looking at community tensions which may be building as a result of just perceptions of, as in Miami, over the dispensation of unequal justice.

COMMISSIONER RUCKELSHAUS. Right, but what they gather is number of incidents of police brutality; they even have in their raw data the information of minority, white, police brutality, but they don't sift that out. That's just another component, but I notice in your statement that kind of perception by a community due to repeated incidents of their inability, or the minority's inability, to get justice from the local law enforcement people is present in almost all of the cases of civil unrest. Is that true?

MR. POMPA. That's true.

COMMISSIONER RUCKELSHAUS. So that's an important factor. It doesn't seem to be lifted out and matched with the kind of information you're getting.

MR. POMPA. One of the things, Commissioner Ruckelshaus, I think sometimes gets lost on this whole question of police abuse is that the police are usually the crosscutting edge of any problem, whether it is the education case, whether it is housing, whether it is community development; whatever you have, the police are generally the first line of confrontation with the community and the first incident is usually lodged against the police.

If you are arguing about unequal housing, the first governmental unit that you're going to run up against is going to be the police. That's

why incidents of police-minority conflict is our number one priority, because that's generally the first incident that we log, and that kind of information generally does not get picked up by the FBI.

I don't believe that it is felt and, properly so, that it is their responsibility to log a confrontation between a protest group on the issue of housing and the police. They don't begin to pick it up until a fatality or an assault occurs and it gets logged and gets picked up by them, but by that time sometimes the feelings are so high that the reaction requires that we provide some type of service to alleviate it or keep it from escalating.

COMMISSIONER RUCKELSHAUS. But you are logging that kind of information?

MR. POMPA. Yes, we are. I was going to say we are logging it to the extent that we can with the limited resources that we have. Obviously, we're not on top of everything but we're on top of most of the major situations that occur or are about to occur. What we can do with what we've got, I feel, has been tremendous, but we can't handle as many of the incidents that we perceive may occur in advance as well as I would like.

VICE CHAIRMAN BERRY. Can I ask him a question about that answer?

COMMISSIONER RUCKELSHAUS. Yes.

VICE CHAIRMAN BERRY. In your answer, as I understood your answer, you don't have the resources to be able to pick up that kind of information because you're small staff and budget and the rest of it. Did I understand that correctly?

MR. POMPA. That is right.

VICE CHAIRMAN BERRY. The FBI has many more people than you do and they are in more places than you are. If they did report that kind of information that Commissioner Ruckelshaus was taking about, wouldn't that be helpful to you when there is a demonstration, police confrontation, logging in that kind of information, maybe sharing it with you? Maybe you could get on top of matters faster, since you don't have nearly as many people as the FBI does. I mean they are just in aid of your effort.

MR. POMPA. There's a plus and minus to that, Commissioner Berry. If we get into a posture of receiving information from the FBI, and obviously the feeling is that you are conversely sharing information with the FBI and that undercuts your credibility with the groups that you're working with, so you get into that kind of situation. I frankly avoid leaving that kind of impression. I don't believe, for example, that—if we can use Flint, Michigan, as an example—that the FBI, and I may be wrong, but I don't believe that they would have had it in their reports that Michigan or that Flint was experiencing some problems that were building in Flint.

We had been responding to Flint on a periodic basis. I had personally made a trip into Flint last October and met with some people there that had some concerns over the way that the police were handling minority citizens in that community.

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COMMISSIONER RUCKELSHAUS. How would you characterize the police awareness of this kind of role they play, contact point for all of these hostilities? Do you find you're aware of that? Are you called in to go to national police chief meetings and discuss this kind of thing, and do most police forces have their own kind of community relations outreach to try to deal with this?

MR. POMPA. Right now I'm not aware of training sessions we conducted last year, but a significant number of them involved training for police to make them aware of the role they do play and the potential that their response has for either promoting good relations or a bad confrontation. That's part of our training processes, to make them aware of the fact that the manner in which they carry out their mission can have an effect on what may happen in that community.

COMMISSIONER RUCKELSHAUS. But do you think your experiences are being well used by the national police forces?

MR. POMPA. I think so. In those jurisdictions where we provide the training and where police departments have attended we provide training. For example, in Fort Lauderdale, we have had a slight incident in Fort Lauderdale. I think that was pretty well handled shortly after Miami. That incident in Fort Lauderdale occurred shortly after the Miami riot. We also provided training for the police department in St. Petersburg and Tampa. I think that the way that they handled their situation, also, might be indicative of the fact that some of our training might have played a role in minimizing what might have been or could have been a worse reaction.

COMMISSIONER RUCKELSHAUS. That's one of the interesting parts of the work you do; it is very hard to trace exactly what it is you kept from happening.

MR. POMPA. It is very difficult to convince Congress of that. Generally, they want to know how many riots you stopped and it is very difficult to show that, but we can track how much money we saved as a result of our intervention and we feel that that is a significant factor to consider in supporting the kind of work that we do.

COMMISSIONER RUCKELSHAUS. Could you, based on your experience in this area, give me your best judgment on whether or not a minority community feels the same relationship as the police department or a greater confidence in the police department depending on the use of minorities in that department, their presence in a representative number in the department, the success of the affirmative in the department?

MR. POMPA. If I can use Detroit and Newark and Atlanta as an example of municipalities that have black chiefs, good affirmative action program, and black mayors and correlate those facts with the number of incidents that have occurred since they took over, I think that the obvious conclusion would be that the fact that those communities have a representative number, or closer representative number, of minority police officers on their force correlates with the reduction and incidence of police abuse.

COMMISSIONER RUCKELSHAUS. Thank you. In general, would you say that the ability of minority group members to identify with civic

leaders who are in a power structure has something to do with their basic confidence about that?

MR. POMPA. Particularly in Detroit where Mayor Coleman Young, who is black, and Police Chief Hart, who is black, have created a climate and produced an atmosphere that makes police abuse something that is not going to be tolerated, has, in my opinion, resulted in a reduction of those type of complaints in the city of Detroit.

COMMISSIONER RUCKELSHAUS. What, in your opinion, caused the breakdown in the relationship between the minority groups in Miami and their ability to find any solace and hope in the power structure of that city?

MR. POMPA. I think it was the perception of dispensation of unequal justice in Dade County. I think definitely that was the number one problem. I think that it was compounded by the further perception that they were not getting the type of attention that they felt they should be getting. I think that caused an exacerbation of the problem.

COMMISSIONER RUCKELSHAUS. When you go into the community, do you find it hard to get the community leaders to pay attention to incipient problems as opposed to one that has exploded and you're there to pick up the pieces?

MR. POMPA. We have no problem in getting the community leaders to respond to our involvement in a particular situation. We had an initial problem in Miami, not in getting the community leaders because the community leaders were willing to work with us, it was in getting, generally, the community to respond to community leaders.

I think that was one of the factors that has been somewhat different in Miami as opposed to other areas of the country where we responded to major disorders, and that is that in Miami the general community was not responding to either the local leadership or the national leadership, and we were looking at that situation as a possible indication of maybe a change in the protest pattern of minorities in this country, whether perhaps the former process that had always been utilized, that is, bring in minority leaders to speak to the issues that had brought about disorders would help.

In Miami the situation didn't turn out that way initially and we were concerned that perhaps the general pattern was going to change and perhaps our general pattern of response was going to have to change, also. But so far it appears that the situation has stabilized and the local leadership has begun to gain response from the general community.

COMMISSIONER RUCKELSHAUS. Thank you very much.

CHAIRMAN FLEMMING. Commissioner Ramirez?

COMMISSIONER-DESIGNATE RAMIREZ. Thank you very much, Chairman Flemming. I have a number of questions and I beg the indulgence of my colleagues.

I, of course, lived in Texas during the period preceding the 16 deaths in 18 months, and one of the things that I was very conscious of during that time was an increase in, what I would categorize as, hate statements or derogatory statements about minority communities by significant public officials.

Everyone from district attorneys to city managers just were not very careful about what they were saying, and it seemed to me that there was a relationship between the hate statements and then the emerging police crisis and then the emerging community dissatisfaction.

Do you have any sense about that, first of all, and, secondly, do you, as a Community Relations Service, intervene when a district attorney or a city manager makes such statements? Do you even talk to the person about the possible consequences of those kinds of statements?

MR. POMPA. We, of course, would be inclined to bring it to the attention of the official that his statements would not make it conducive to settling the situation that we would be dealing with there. I agree with you that statements that are made, such as were made—I presume you're talking about Odessa, San Antonio, Houston—

The district attorney, as a result of the intervention of one of the Mexican American attorneys in the killing of the Mexican American by some of the guards in the jail in that particular community, and the statement made by the district attorney certainly was the type that was inflammatory to the point that it was not conducive to abating the rising tension that was prevalent there within the Mexican American community.

I don't know whether we brought it to the attention of the district attorney, and I doubt that it would have made any difference if we had.

COMMISSIONER-DESIGNATE RAMIREZ. Let me go on to another topic. In the State of Texas, also, we have had a number of incidents with Southeast Asian immigrants, the Seabrook murder, and it seems to me—and in Denver, also, there were a number of problems with Southeast Asian immigrants being imbedded in minority communities.

Are you paying any attention to what may be a trend as cultures come into conflict at the very lowest rung of the socioeconomic scheme?

MR. POMPA. Our involvement in the Indochinese resettlement camps in this country has been extensive, and we have worked closely with the State Department in terms of anticipating the areas where the resettlements are going to take place.

We have done what we call community assessments throughout the country, based on the type of impact factors that we have isolated over the years, worked in our business, and as a result of these assessments have determined that the level of receptivity for Indochinese resettlement, and geared our offices to respond to possible problems and also to work with some of those communities in anticipation of the resettlement, hopefully, to minimize any adverse action.

I might say that Indochinese resettlement has produced a strange phenomenon for us. It is probably the only problem that has produced an across-the-board negative reaction both from black groups, Hispanic groups, white groups, and the Ku Klux Klan, seem to be all in the same boat in terms of the response to it.

COMMISSIONER-DESIGNATE RAMIREZ. Do you see it as a continuing problem and do you have the resources both in terms of some Southeast Asians or Indochinese who could help in resolving that situation, or do you think it is pretty much behind you?

MR. POMPA. No, we don't think it is pretty much behind us. We still anticipate some problems and we asked for additional positions in our fiscal '82 budget to deal with some of the problems we see.

COMMISSIONER-DESIGNATE RAMIREZ. Do you have a specific strategy for dealing with that?

MR. POMPA. Yes.

COMMISSIONER-DESIGNATE RAMIREZ. I think my next question has to do with a situation alluded to in Commissioner Ruckelshaus's last few questions, having to do with the relationships between minority groups in a volatile situation or in a potentially volatile situation. It seems to me that in Miami you did have a perception on the part of the black community, in a climate of limited opportunities, that perhaps their opportunities were getting ever more limited in that they did not have the kind of spokespeople that they needed to defend their interests.

In Houston, you had a similar situation in terms of Hispanics not having a visible presence. It is better now with single-member districting but not having a visible presence and blacks having a much more visible presence in the city of Houston—I'm greatly concerned that this kind of situation may again be a new kind of community relations problem in many of the major cities and as people come in through immigration, whether legal or illegal, that those problems might be exacerbated.

Do you have any kind of strategy for anticipating these kinds of problems and, secondly, do you have the resources to implement the strategy?

MR. POMPA. The answer to the second part of your question is no, and to the first part is yes, we do have a strategy. We've done a national assessment of the country to determine what areas of the country have the potential for problems similar to Miami. We feel that some of the factors that were present in Miami are also present in some of the other areas of the country.

We used various impact factors in Miami that, if you overlay them in other communities throughout the country, you could form your own opinions and draw your own conclusions about the potential for problems, one being a discontent within a particular community over a longstanding series of complaints regarding police abuse, with inaction on the part of the local community; the presence of other problems related to housing, unemployment, and things of this sort; plus the perception of an intrusion by a new group or element in a community that is perceived as eroding the opportunities, as you have indicated, of the longstanding minority group in that community.

I think that this is probably one of the reasons that there has been a negative reaction to Indochinese resettlement in some parts of the country. I think that some of the traditional minority groups, you know, have perceived it as an intrusion and has produced a reaction. I think that most of it has been ill-founded and part of our job is to correct the misperception that sometimes occurs as a result of that.

CHAIRMAN FLEMMING. Could I follow up on that a minute?

COMMISSIONER-DESIGNATE RAMIREZ. Sure.

CHAIRMAN FLEMMING. How much of that information that you've been discussing do you feel you could put into circulation without interfering with your primary mission? First of all, I think we as Commissioners would be interested, at least looking at the criteria that you use and maybe some of the results and the application of criteria, but then also crossing my mind we do have State Advisory Committees who are serviced, as you know, by our regional offices, and whether any of that information could be of help to them in providing leadership within their particular States, but particularly the communities represented by their States.

Now, you may want to think about it and respond a little later, but I'm just raising that with you.

MR. POMPA. Well, Mr. Chairman, of course I thought about that before I made the statement. The information has been procured, of course, through conversations with individuals throughout the country, which is held in confidence, so—

CHAIRMAN FLEMMING. You don't want to—

MR. POMPA. I'd be in a little bit of a difficult situation to provide that information. I have had general discussions about the areas of the country that we're concerned about with the Staff Director, and I don't have any problems in discussing things in general, but I'd have problems with discussing specifics.

CHAIRMAN FLEMMING. We fully understand that and we recognize the importance of your maintaining your reputation—maintaining the confidentiality of material that you can gather in that particular area.

COMMISSIONER-DESIGNATE RAMIREZ. I guess my next question was going to be somewhat along the lines of the Chairman and that is, to what extent is there a process by which the information, in its analysis form, not the specific raw information but in which your analysis is shared with the critical government agencies, either within the Justice Department or across the government so that we can begin to plan a more comprehensive response as a government?

MR. POMPA. Well, my information is shared with the Associate and with the Attorney General and, of course, the Deputy. To the extent that it is utilized, I don't know. I know that when something is grossly apparent to us, we will—I mean, I have no problem in picking up the phone and calling the Attorney General and alerting him in advance that we may have a problem in X community within the next day or so, and that various other elements of the Department should be alerted. But I usually don't do that unless someone is on the ground and has really indicated to me that something is about to happen and we need to be alerted.

COMMISSIONER-DESIGNATE RAMIREZ. Referring back to your overall analysis of this problem and what it means for the next several years for our country, do you consider it to be serious, a potentially serious, problem for the fiber of our country?

MR. POMPA. Police abuse cases or—

COMMISSIONER-DESIGNATE RAMIREZ. The police abuse, limited opportunities, feelings of intrusion between one group and another? Do you consider it to be a serious problem?

MR. POMPA. Yes, that is what I was trying to allude to when I said that the racial climate in this country is not as good as a lot of people would like to believe that it is, and I base that not on lack of information but on the basis of the kind of work that we do. I think that when you see the rise in activity by the Ku Klux Klan, when you see the lack of support for police-community relations units in police departments, when you see the lack of support for affirmative action programs, when you see the level of activity in terms of responses to the police mission, in terms of the what is perceived to be as intrusions by outside—

COMMISSIONER-DESIGNATE RAMIREZ. New groups.

MR. POMPA. I'm trying to find the proper word because in the vernacular of the kind of work we do, sometimes they are referred to as "foreign element groups," be they undocumented workers from Mexico or be they Indochinese, be they Haitians, whatever groups, there is a perception of a "foreign element" in these communities that produces a negative reaction.

COMMISSIONER HORN. "New immigrants" is one phrase that has been used.

MR. POMPA. "New immigrants" is as good as any. I think the reaction that we've been getting to this is an indication of the level of, maybe, intolerance that the country is experiencing. Someone has referred to it as "compassion fatigue," that the country has reached the level of saturation in terms of compassion, and I think that is producing enough reactions and enough feelings on the negative side that it's demanding more and more that we react to some of these indications.

COMMISSIONER-DESIGNATE RAMIREZ. I want to explain that the Commission hopes to look at all of these issues with a fresh look, if you would, and I was interested in getting your observations, because I think that's part of the perspective that we need as we take a fresh look and, hopefully, come up with recommendations for a revitalized effort in civil rights.

I just have a couple more questions, one which is very important to me, and that has to do with strategy differences on the part of your agency in a rural situation versus an urban situation. I'm particularly concerned about the kind of situation we had in Castroville, Texas, when the Morales young man was killed, and my concern comes from my observation that in an urban center, to whatever degree, there tend to be organizations that are support groups for minority communities and usually some degree of continued watchdog activity.

When people in a rural setting confront the police, my sense has been there may be a Federal presence for a short time but afterwards the people who do not have organizational strength are still left to face very difficult situations.

How do you deal with a small town in Mississippi or in Texas or wherever, where a very small percentage, in terms of the population, of minority persons may be abused?

MR. POMPA. Well, I might say the vast majority of our cases are in the rural areas. We of course have found that the large urban areas have vast amount of resources that they can utilize to get at a problem. Obviously, in a city like New York, even though we have an office

there, we wouldn't make a dent in any kind of a problem. We could spend all of our agency's resources in one city, New York; the same thing in Chicago.

I do feel that we probably would make a difference in Los Angeles as opposed to these other areas, but, unfortunately, when we come into those rural situations, and we do make a difference in terms of the resolution of the problem, we have absolutely no capability for follow-up.

When the agency was a lot larger, we used to make followup a responsibility. In other words, if we resolved a case through conciliation or mediation, we would keep the case open and provide followup to make sure that the situation did not slip and had the potential for another problem. We do not have that capability now.

COMMISSIONER-DESIGNATE RAMIREZ. Just another question. The Chairman talked about talking to the power structure. I commend you on your efforts in talking with minority groups and the police department, but do you think that your agency could launch an effort for engaging the power structure in the resolution of these problems, or do you believe that it would take leadership by someone like the Attorney General or the White House itself?

MR. POMPA. I think that leadership has been provided. I think that the Attorney General has publicly stated that the Department will not tolerate police abuse in this country. I think that his efforts to set up task forces and provide funding for the looking into of police abuse in this country, I think all of those efforts indicate and send out a message that it will not be tolerated. I think that our responsibility is to implement what his goals and objectives are in these areas and we simply do not have the resources to be able to convene, say, a national consultation with the business community, to bring to their attention some of the concerns that I feel, some of the information that I feel that we have available that they should be aware of.

CHAIRMAN FLEMMING. If I could interrupt—

COMMISSIONER-DESIGNATE RAMIREZ. That's all my questions.

CHAIRMAN FLEMMING. If I could follow on that. When I talk about the power structure, I'm not talking about the national power structure, I'm talking about power structure in X city and that has failed to get into the civil rights movement and failed to provide leadership that results in setting civil rights goals in the employment area, in the education area and so on, and has failed to take the initiative in developing action programs designed to achieve those goals.

Now, I think Commissioner Ramirez's question is how do we get to that power structure in X city? I happen to know an effort was made at the highest level to get to the power structure in X city—I won't go beyond that in identifying it—and so far it has been a failure. I mean, they just haven't been willing to listen, and they haven't responded and that's one of the reasons why you got some difficult problems in that particular city, why all of us have got some difficult problems in that particular city.

I think Commissioner Ramirez's question was really how do we get a breakthrough there? How do we reach from X city to Y city to Z city?

I don't have an awful lot of confidence in national conferences in dealing with this at all. You know, you talk to them and they go back home and they won't do anything. What I'm interested in is, how we get at them where they are and in terms of the specific problems that their community is up against.

MR. POMPA. Unfortunately, the only way that we have discovered so far is through a confrontation and that's the only way that it has occurred so far, but some of it—

CHAIRMAN FLEMMING. That only lasts for a little while, too, doesn't it, typically?

MR. POMPA. That's true. But I think that part of it, Mr. Chairman, is the police perception on the part of the majority community and in particular the business community about what the situation really is. I think that there is a general feeling in this country that everything is okay now, that blacks and Hispanics and other minorities have made it.

CHAIRMAN FLEMMING. Civil rights is behind us.

MR. POMPA. The Civil Rights Commission, Community Relations Service, and other agencies that perform these kinds of service are really irrelevant to the times.

CHAIRMAN FLEMMING. We'll be thinking with you further along these lines. You made one statement and I would just like to get the information on it. You said, "When the agency was a lot larger." When was it that agency was a lot larger and what was its size?

MR. POMPA. 1972 we were close to 400.

CHAIRMAN FLEMMING. You had 400 in 1972?

MR. POMPA. 300 and some.

CHAIRMAN FLEMMING. Where did it go in '73?

MR. POMPA. It went down to 126.

CHAIRMAN FLEMMING. That's the breakpoint?

MR. POMPA. We lost two-thirds of the agency in 1972. We lost our technical assistance and we lost our support.

CHAIRMAN FLEMMING. That took place as a result of the initiative on the part of the executive branch. In other words, that was reflected in the President's budget to the Congress, or was it the result of the initiative of the Congress?

MR. POMPA. OMB.

CHAIRMAN FLEMMING. That's the executive branch. Okay. Thank you very much.

CHAIRMAN FLEMMING. Commissioner Horn.

COMMISSIONER HORN. I agree with the comments many of my colleagues have made about how do we get an early warning system in this country without having to have a riot, which is your recent comment. I think the administration has done some good work in trying to target certain urban areas and coordinate the economic development thrust in those areas from Commerce, Labor, etc., in the Urban Cities Project. That effort was initiated at the White House, I believe, largely by Mr. Watson, in his intergovernmental relations role. Was CRS at all involved in all those discussions as to what cities should be targeted?

MR. POMPA. Yes.

COMMISSIONER HORN. Do you feel there are other coordination efforts that ought to occur through the domestic policy group in the White House and are they occurring?

MR. POMPA. They are not occurring. We do feel that they should be.

COMMISSIONER HORN. I would like you to give me your impression, after looking at these disturbances and disorders in various cities, as to whether the people who are participating in these disturbances and disorders are generally of a lower socioeconomic group, I mean the very bottom, or are they individuals who are rising out of the lower socioeconomic group and almost in what would be a minority middle class? And may I say the reason for that question is based on the analysis of the New York City blackout riot and some reports I have seen out of Miami. What is your impression?

MR. POMPA. I can't really venture an opinion on that, Mr. Commissioner. One of the things that I hope we will get out of our office in Miami is precisely that, the profile of the average protester in Miami, and just right offhand I would say that certainly the concern that was expressed to us came not only at the lower level but it came at all levels of the black community in Miami.

COMMISSIONER HORN. You see some people have said, you know, it is one thing to riot for food when you're starving, etc., but it's another thing to riot and break stores and take TV sets. That might be a very cynical view but I think we have to address it as to what is going on here.

Frankly, I don't know, and that's why I'm asking the question.

MR. POMPA. Well, I could just generalize and say that the looting and all of the things that occurred in the frenzy of a riot are not necessarily the reasons why the riot occurred, from our perspective.

I think we would have to look at the overall frustration that was present in that particular community and really as a reason for an involvement in the first place and not as a reason for what is going on from a law enforcement or statutory violation standpoint.

COMMISSIONER HORN. Thank you.

CHAIRMAN FLEMMING. You have been very, very helpful. As you know, I'm sure, I have had the opportunity of testifying on a number of occasions on the Hill in behalf of the Commission, and on those occasions have tried to say in no uncertain terms that we believe that this nation should be investing additional resources in your work. We usually couple you with the Office of Civil Rights in the Department of Justice.

Certainly the kind of testimony that you have given here today reinforces my own conviction along this line. I think it was a sad thing for the executive branch to take the initiative in cutting back the service from 400 to 100 when you consider the magnitude of the issues that we're dealing with, and when you consider the role that, really, conciliation and mediation can play in dealing with the issues.

As we proceed along the lines of this public hearing, along the lines of our field work and our public hearing in Miami and other cities, of course, we'll be keeping in very, very close touch with you and your associates. Thank you very, very much for very helpful testimony.

MR. POMPA. Thank you, Mr. Chairman. If I might, if you have a minute, I would like to violate a cardinal rule practiced by attorneys that, if they don't ask the question, don't volunteer the information, but I would like to comment briefly on a personal opinion on the basis of the kind of work that I've been involved in for the last 13 years and also based on the experiences of a former prosecutor, that one of the greatest senses of frustration that occurs in police abuse cases is the the lack of attention or the lack of perception, lack of concern by anyone about these type of complaints, and consistently over the years I have found that most of these issues immediately escalate from the incident to a demand for Federal intervention. As a former prosecutor, I think I need to bring to your attention the fact there is one level of responsibility that continuously gets left out and gets left off the hook in terms of these type of problems and that is the district attorney's office.

I mean, they are the first level of accountability for these type of problems, and until we begin to focus in on all levels of accountability, whether it is the internal affairs division of a particular police department or the district attorney's office, we're going to be continuously faced with that.

We're going to face another level of frustration. We're going to be faced with looking at those statistics that Drew Days testified to yesterday, that is, 10,000 complaints and 100 or less actual cases, with only 45 percent actually resulting in a conviction. We haven't even looked at what the sentence—the average sentence was in those convictions.

We're going to reach a certain level of frustration when we find out that the Federal intervention is not necessarily the answer, and you are going to have to go back to the initial first two levels of accountability and raise it at that level to see if you can get a better response than you're getting from Federal intervention. I think Federal intervention is fine when you can no longer get relief at the local level, but I think that the accountability, particularly at the second level, which is the district attorney's office, needs to be emphasized a lot more than it has.

I have attended hundreds of conferences on police problems and they always focus on the role of the Department of Justice and what the Department of Justice should do, and I think that is fine, but I think that if you look at and analyze what Mr. Days said yesterday you'll find that is going to be frustrating to a lot of people when they learn you're not getting enough there.

VICE CHAIRMAN BERRY. Since you raise the question, I have a comment on that. Isn't it a case most of the time they're asking for Federal intervention because they don't have much luck at the local level in getting a response either from the police department or the district attorney?

It seems to me, my experience has been that that's why people ask for Federal intervention. If you mean that the Federal Government isn't going to respond either, or that if it does, the kind of sentences you get out of these cases, if you have success, are not very long, indeed, I agree with you, but the reason the people are making the complaint is because they don't have confidence that they will get any response at the local level.

So as I understood Mr. Days yesterday, he said, "Well, there are three ways: local prosecutions and Federal Government or private damage suits," so if what you're saying is there won't be any response in the first two areas, I guess you're left with private damage suits, and then if that doesn't work, we're left with the depressing conclusion there is no remedy anywhere for these particular cases.

MR. POMPA. What I'm trying to imply here is that second level of accountability, the commonwealth attorney, the district attorney, whatever it may be in a particular area, should be held under the same scrutiny as, say, the Department of Justice.

CHAIRMAN FLEMMING. That district attorney is going to be responsive to the climate that exists within that particular metropolitan area.

MR. POMPA. That's true.

CHAIRMAN FLEMMING. That brings us back to the discussion we were having about the power structure, what are the pressures, the pressure in the direction of vigorous enforcement of the law in these cases, or are the pressures the other way? I think probably you will recall that when we held our public hearing in Philadelphia, we had a representative of the power structure, private sector, on the stand who simply said, "Look, we've made up our minds as a business community that, if you're going to get vigorous law enforcement, you've got to expect some violations of civil rights. That's a price that you've got to pay."

If that kind of attitude prevails on the part of the power structure of a particular community, then you're not going to get very effective operation out of the district attorney's office, so I mean it comes right back again to all of us having to focus on what is the climate within the community, and I think we have tended to skip that. The attitude of the district attorney is one manifestation of that.

I happened to be in LA soon after that shooting there and sat with minority leaders and as I listened to them, they didn't have any confidence in the district attorney, what the district attorney was going to do out there. I mean, that's why they were pressing for Federal intervention. I mean they just skipped over him. They dismissed him on the ground they wouldn't get any response and they base that on past experience.

COMMISSIONER HORN. Well, I agree with your comments on the commitment, but there's another good way to get the district attorney's attention, and this is counter to some of the inferences one could draw from my previous questions, that is the possibility of bringing a suit against the DA for a knowing violation of one's constitutional rights.

Nothing has so shaken the educational community as the Strickland case a few years ago where a school superintendent, I believe, was held by the court for personal damages because he should have known that he was violating a constitutional right, and I'm not sure of the legality as to the degree to which the Federal Government can get into that.

The Philadelphia suit in a way is along that path, but a few cases like that would send some signals around the country, either privately brought or brought at the State level. Of course, that's another way that's been overlooked, is the leap does not have to be from the local

problem to the Federal Government or the local problem to DA; there's also State attorney generals and in California if the district attorney is not pursuing his duty, the attorney general has the authority to remove the district attorney, and that has been done in various situations, usually for criminal problems more than civil rights problems, but are not enforcing the law in regard to criminal problems.

It seems to me that kind of pattern could be pursued. And we found the same thing in desegregation, that the leap again comes from the local level to the Federal Government and somewhere out there vaguely are the State superintendents of public instruction who have the authority to solve some of these problems but the world just seems to be bypassing them.

MR. POMPA. I believe the fraternal relationship that exists between the police and the district attorney's office can be the same fraternal relationships that exist between the FBI and the police departments. If the FBI can investigate a police department and not lose that fraternal relationship, you know, I believe the district attorney's office could prosecute a police officer and not lose that fraternal relationship. It has to be under the right type of climate, and I agree with you that the district attorney has to have the community support to be able to do that.

CHAIRMAN FLEMMING. We appreciate your underlining that point. That's very, very important. Again, thank you very, very much. This hearing is adjourned.

EXHIBITS

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STATEMENT
OF
WILLIAM H. WEBSTER
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE
U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C.

SEPTEMBER 16, 1980

Mr. Chairman, I welcome this opportunity to present to the Commission my views on the role of the Federal government in resolving public crises linked to perceptions of discriminatory practices or excessive use of force by police officers and, more specifically, on the role of the FBI as it relates to particular civil rights issues.

During the past two years, the FBI has handled approximately 8,000 civil rights matters annually. Of this amount, approximately 5,000 matters relate to allegations of police brutality. The FBI's investigations into these alleged civil rights violations are among its most important, and each investigation is conducted in strict conformity with standards established by the Civil Rights Division of the Department of Justice and the FBI. Under these standards, the FBI, on its own initiative, may conduct preliminary investigations into allegations of violations of 18 U.S.C. Sections 241, 242, and 245--the Federal criminal civil rights statutes. Usually, these investigations commence when a complaint is received, but investigations can also be predicated upon information developed by the press and news media. Although the United States Attorney, in addition, is authorized to request FBI preliminary investigations regarding any allegations of violations of these statutes, most of these civil rights investigations are initiated by the FBI.

In brief, a preliminary investigation of police brutality allegations consists of interviews of the victim and subjects, interviews of witnesses, obtaining medical records and a description or photographs of complaint-related injuries, and collecting and processing of physical evidence. The victim and subjects' criminal records are also obtained, including information regarding any other complaints against the subjects, and all relevant police reports are obtained.

Within 21 workdays after the initiation of investigation, the results are submitted in a report to FBI Headquarters, where they are reviewed for adequacy and completeness. The report is then forwarded to the Department's Civil Rights Division for consideration as to whether further federal action is warranted. Once all investigation has been completed and forwarded to the Department, the FBI's role is completed and we take no further action unless specifically requested to do so by the Department.

In those instances where state or local authorities also are investigating allegations of civil rights crimes as possible violations of state statutes, the FBI continues with its own contemporaneous, independent investigation until local or state charges are brought against the police officers involved. Pursuant to Departmental policy, when local prosecution is begun, the FBI discontinues its own investigation, but monitors the local prosecution in order to keep the Civil Rights Division and the United States Attorney apprised of its status. Naturally,

where state and local authorities undertake prosecution of state law offenses which would also violate Federal statutes, it is our policy to cooperate fully with the local prosecutor.

It should be noted that in matters involving mass demonstrations and major confrontations between local law enforcement officers and groups of persons, no investigation is conducted by the FBI on its own initiative or upon the United States Attorney's request without prior clearance from the Department of Justice.

Given this general outline of the FBI's investigative approach to police brutality matters, several other comments are warranted in light of the sensitivity and seriousness of this type of case. First, we recognize that the close working relationships between many of our Agents and local and state law enforcement personnel could raise a question as to our impartiality. As a result, we do not permit Special Agents who have close relationships with either the subjects or the department involved to do the actual investigating. Agents who themselves are former policemen are also excluded.

Second, while it is important that we notify the head of the state or local police department involved of our investigation for the purposes of securing the cooperation of that department and avoiding unnecessary interference with a simultaneous investigation by that department, we do not reveal

the identity of the complainant in order to negate any chilling effects on future complainants and to protect complainants from potential harm or harassment.

Third, we recognize the need for prompt, competent, and thorough investigation in this area. Unless the public perceives that the law enforcement services are willing to and do respond in such a manner to allegations of police brutality, the risks of civil disturbances such as those that have recently occurred in several of our cities increase. Thus, it is the FBI's policy to give civil rights investigations immediate, preferred and continuous attention. We seek to increase our expertise in this area by including civil rights training in our New Agents training. Also we require strict adherence to the 21 workday rule for reporting the results of the preliminary investigation. If a field office cannot comply with the rule, an explanation for the delay must be submitted to Headquarters. Adherence to this strict time schedule not only assures the public that the Federal government is responding to the specific problem, but it also assists in assuring that the FBI's investigation will be completed prior to the initiation of state or local prosecution. If at least this initial investigation were not completed, the risk of the evidence becoming stale would increase.

Finally, we recognize the critical role close communication and coordination with the Department of Justice at both an informal and formal level play in these cases. In addition to the mentioned written communications, Headquarters supervisory Special Agents maintain daily telephonic and personal contact with the Civil Rights Division staff for the purpose of coordinating, clarifying and expediting investigations. Also, I am in close personal contact with the Assistant Attorney General of the Civil Rights Division, Drew S. Days about civil rights matters.

In sum, the role of the FBI is to resolve civil rights and police brutality complaints in a fair, impartial, and competent manner. FBI policy is designed to ensure that all investigations are so conducted and presented promptly to the Department of Justice for prosecution, if warranted.

Turning to some of the specific areas of concern which have been discussed in recent reports issued by the Commission and between our staffs, the responsibilities of the FBI concerning civil unrest and disturbances are governed by the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest, which became effective April 5, 1976. Under these guidelines, the FBI is authorized to obtain information regarding civil disturbances through public sources, public officials, and concerned citizens. Should information be obtained indicating a civil disturbance is to occur, the details are

immediately provided to the Department of Justice, U. S. Secret Service, as well as the appropriate United States Attorney, and state and local authorities.

Before any investigation under these guidelines can be initiated, the Attorney General's approval must be obtained. However, if during the process of obtaining information regarding a civil unrest situation, details emerge indicating that a Federal violation within the jurisdiction of the FBI has occurred, an appropriate investigation will be initiated and conducted in conformity with current Department of Justice policy. For example, a civil rights violation where police brutality is involved would be investigated under our civil rights jurisdiction and the results of such an investigation then would be expeditiously furnished to the Civil Rights Division for prosecutorial consideration.

Further in this regard, the FBI currently monitors the number of complaints received by each Field Office. While an increase in complaints received is not necessarily indicative of a potential civil unrest problem, it may justify the reassignment of FBI resources to deal with the increased workload.

Also, as this Commission noted in its July 19, 1980, Statement on Police Practices and the Prevention of Civil Rights,

there is a lack of reliable sources of information as to the level of police brutality in any given area or in the nation as a whole. In recognition of this, the FBI's Uniform Crime Reporting (UCR) program has over the last year begun tabulating data concerning the use of force resulting in death by law enforcement officers. While the FBI is most likely not the appropriate agency to undertake the analysis of these figures, the FBI is ready to cooperate fully with the appropriate agencies so that the effects of various policies on matters such as the use of deadly force may be objectively evaluated.

Just as effective communication between the FBI and the Department is critical in this area, so is effective communication between the Federal government and both the public and the state and local law enforcement communities. While the FBI is limited by fair trial considerations as to the amount of information that may be publicly disclosed during an on-going criminal investigation such as a police brutality case, we do recognize the important role that the dissemination of information regarding Federal actions may have in preventing or alleviating civil disturbances. Under Departmental guidelines, the Special Agent in Charge of an FBI Field Office may confirm the existence of an investigation if the incident precipitating the investigation has been publicized. Further, in a cooperative effort with the

effort with the Department of Justice to inform the principals involved in police brutality cases, the FBI has taken an active and positive role in developing a system to advise subjects, complainants, and victims of action taken by the Department. The system was implemented by the Department in April, 1980.

Also, information relating to the Bureau's civil rights efforts and accomplishments has been made available to the public in a variety of printed materials and through the public tours of our Headquarters Building. It is the FBI's hope that through dissemination of these materials, public awareness of the FBI's civil rights responsibilities will be increased and the public will be more willing and likely to report complaints to the FBI.

The FBI also seeks to communicate effectively with state and local departments not only on specific cases, but on the overall police brutality problem. In this regard, we include materials on civil rights and police brutality in our training programs directed to state and local agencies. In fact, at our National Academy training course at Quantico, which is designed primarily for higher level officers from throughout the country, Assistant Attorney General Days regularly appears to discuss these issues. We also include articles on such matters as the use of deadly force in the FBI Law Enforcement Bulletin, a monthly publication which is disseminated throughout the law enforcement community. Prominent among those appearing in the Bulletin are "Use of Deadly Force to Arrest a Fleeing Felon--A

Constitutional Challenge" by SA S. Paul Boutwell of the FBI's Legal Counsel Division (LEB, September, October, and November, 1977); "Civil Rights Statutes and the Law Enforcement Officer" by Joseph G. Kelley, Special Agent of the FBI, (LEB, October, November, and December, 1977); "Deadly Force" by James J. Fyfee, Ph.D., an Associate Professor at the American University School of Justice in Washington, D. C., (LEB, December, 1979); and "Police Use of Deadly Force" by James Q. Wilson, Ph.D., Henry Lee Shattuck Professor of Government, Harvard University, Cambridge, Massachusetts (LEB, August, 1980). In these and in other ways such as a recent meeting between FBI, Department of Justice, and Philadelphia Police Department officials, we attempt to keep the lines of communication open so that the problems in this area might be more effectively addressed.

On the issue of the use of deadly force, the FBI has, in addition to its investigative role, a role to play in conducting all of its investigations in a way that shows respect for individual rights. Our policy and practice concerning the use of deadly force demonstrate our commitment to this role. In training, we instruct all of our Special Agents that the use of deadly force is permitted only when the Agent or an innocent party is threatened with death or grievous bodily harm. A Special Agent of the FBI will not discharge his or her weapon unless one of these conditions is met. While I recognize that as a primarily investigative agency the FBI generally does not

become involved in potentially violent situations as often as other law enforcement agencies do and, thus, our policy may not be fully applicable to all such agencies, I encourage the Commission to continue its work in this area where there is a need for reasoned and definitive policies.

Further, I continue to believe that there is more here than a constitutional issue. The real issue is one of weaponry. Sooner or later someone will devise a weapon, available to a police officer, in addition to his lethal weapon, which will permit the officer to stop a fleeing suspect without the unacceptable choice between allowing him to escape and executing him. I think if we can put a man on the moon, we can devise such a weapon.

Finally, I would like to express the FBI's support for the legislative changes to 18 U.S.C. Sections 241 and 242 suggested in the Commission's July 9th Statement. I believe that the elimination in Section 241 of the requirements that the victim be a citizen and that the prohibited actions be a part of a conspiracy, coupled with classifying as felonies all Section 242 color of law violations involving serious bodily injury, would lead to more effective civil rights protection.

In conclusion, I commend the Commission for its work and pledge the FBI's full cooperation in assisting the Commission in its efforts to bring about even more effective protection of the civil rights of the members of the public.

Exhibit 2



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D.C. 20535

November 28, 1980

Ms. M. Gail Gerebenics
Assistant General Counsel
United States Commission
on Civil Rights
1121 Vermont Avenue, Northwest
Washington, D. C. 20425

Dear Ms. Gerebenics:

This is to acknowledge receipt of your letter dated November 6, 1980, requesting additional information from the FBI as a result of my testimony before the United States Commission on Civil Rights on September 16, 1980.

The following information is provided in response to your inquiry:

- 1) The twenty-one day rule concerning reporting of civil rights investigations is a self-imposed FBI policy designed to insure allegations of civil rights violations are promptly investigated and reported. However, extenuating circumstances, such as unavailability of witnesses or the complexities of the case, may cause the deadline to be extended for one or more twenty-one day periods. Each case is maintained and reviewed on an individual basis and no statistical data is available which will allow the retrieval of information concerning the number of civil rights cases, involving police officers, which failed to meet this self-imposed deadline or the number of deadlines which were extended due to extenuating circumstances.
- 2) Data concerning the number and nature of complaints involving police officers from each of the field offices is not maintained. Data is only available which will show the number of cases received involving use of force or violence which would include, but not be limited to, those cases in which police officers are involved. Attached are tables which breakdown by field offices all cases in which the use of force or violence

Ms. M. Gail Gerebenics

was indicated for fiscal years 1979 and 1980. Our field offices have investigative responsibility for a particular territory. It can be several states, one state, or a part of a state and the figures for the field office include the entire territory not just the city where the field office is located. Civil rights cases of this nature not only include cases in which police officers are involved but also contain cases involving non-law enforcement persons who use force or violence to deprive others of their rights as guaranteed by the Constitution and laws of the United States. The majority of the enumerated cases involve police officers; however, no exact breakdown can be determined.

3) The following indicates the total number of Special Agents employed by the FBI, broken down by race and sex as of October 31, 1980:

	<u>Males</u>	<u>Females</u>
White	7,011	301
Black	214	16
Hispanic	231	9
American Indian	21	2
Asian American	51	1
	<u>7,528</u>	<u>329</u>

4) Data is not maintained which will indicate the specific source of complaints received by the FBI.

Sincerely yours,

Francis M. Mullen, Jr.
Francis M. Mullen, Jr.
Executive Assistant Director
for Investigations

Enclosures (2)

FISCAL YEAR 1979					
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
1. Albany	17	17	13	19	66
2. Albuquerque	12	28	22	21	83
3. Alexandria	6	8	3	8	25
4. Anchorage	2	4	0	1	7
5. Atlanta	29	23	28	33	113
6. Baltimore	12	14	15	9	50
7. Birmingham	26	31	26	21	104
8. Boston	82	72	46	56	256
9. Buffalo	12	6	13	14	45
10. Butte	4	1	0	2	7
11. Charlotte	33	28	33	41	135
12. Chicago	16	18	16	22	72
13. Cincinnati	17	20	27	20	84
14. Cleveland	17	19	15	17	68
15. Columbia	17	8	10	13	48
16. Dallas	63	59	67	64	253
17. Denver	14	7	11	20	52
18. Detroit	14	26	14	12	66
19. El Paso	13	9	10	6	37
20. Honolulu	3	5	9	4	21
21. Houston	105	127	94	78	404
22. Indianapolis	28	26	23	15	92
23. Jackson	20	24	24	35	103
24. Jacksonville	22	24	20	22	88
25. Kansas City	17	22	37	22	98
26. Knoxville	20	15	20	19	74
27. Las Vegas	7	10	8	12	37
28. Little Rock	16	26	20	25	87
29. Los Angeles	36	36	37	43	152
30. Louisville	30	14	24	21	89
31. Memphis	30	13	32	37	112

(cont.)

FISCAL YEAR 1979 (cont.)					
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
32. Miami	10	17	19	22	68
33. Milwaukee	6	6	16	8	36
34. Minneapolis	23	14	14	9	60
35. Mobile	33	30	29	17	109
36. Newark	24	15	12	46	97
37. New Haven	10	16	10	14	50
38. New Orleans	75	46	68	76	265
39. New York City	20	33	20	30	103
40. Norfolk	1	2	3	4	10
41. Oklahoma City	45	54	50	54	203
42. Omaha	5	7	7	4	23
43. Philadelphia	21	17	54	74	166
44. Phoenix	4	17	14	15	50
45. Pittsburgh	38	26	23	15	102
46. Portland	5	6	6	3	20
47. Richmond	4	7	4	6	21
48. Sacramento	10	10	14	17	51
49. Saint Louis	33	37	43	46	159
50. Salt Lake City	6	7	2	3	18
51. San Antonio	70	38	42	37	187
52. San Diego	8	6	12	19	45
53. San Francisco	18	25	20	7	70
54. San Juan	33	28	42	42	145
55. Savannah	17	8	7	10	42
56. Seattle	11	6	5	5	27
57. Springfield	13	13	11	11	48
58. Tampa	18	18	9	17	62
59. Washington Field	6	6	6	6	24
Total					5176

FISCAL YEAR 1980

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
1. Albany	13	18	18	12	61
2. Albuquerque	17	18	14	11	60
3. Alexandria	10	8	3	10	31
4. Anchorage	0	2	0	4	6
5. Atlanta	36	32	24	43	135
6. Baltimore	27	14	21	24	86
7. Birmingham	26	21	37	26	110
8. Boston	83	52	52	61	248
9. Buffalo	14	10	11	7	42
10. Butte	6	5	7	4	22
11. Charlotte	39	25	44	35	143
12. Chicago	26	18	27	34	105
13. Cincinnati	18	11	14	18	61
14. Cleveland	22	13	27	20	82
15. Columbia	11	9	16	18	54
16. Dallas	56	71	77	73	277
17. Denver	12	12	18	10	52
18. Detroit	15	20	24	15	74
19. El Paso	7	10	9	13	39
20. Honolulu	4	2	6	6	18
21. Houston	73	90	102	97	362
22. Indianapolis	23	17	32	27	99
23. Jackson	41	32	38	19	130
24. Jacksonville	21	37	41	34	133
25. Kansas City	22	32	30	23	107
26. Knoxville	25	14	14	15	68
27. Las Vegas	15	9	10	7	41
28. Little Rock	17	18	23	19	77
29. Los Angeles	50	39	35	43	167
30. Louisville	29	15	20	20	84
31. Memphis	27	42	27	25	121

(cont.)

FISCAL YEAR 1980 (cont.)

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
32. Miami	18	22	36	24	100
33. Milwaukee	3	13	19	11	46
34. Minneapolis	9	11	10	20	50
35. Mobile	28	16	27	32	103
36. Newark	33	22	15	13	83
37. New Haven	15	16	10	13	54
38. New Orleans	106	73	78	77	334
39. New York City	37	38	37	29	141
40. Norfolk	3	1	14	12	30
41. Oklahoma City	63	44	47	50	204
42. Omaha	3	13	17	20	53
43. Philadelphia	352	10	12	26	400
44. Phoenix	8	13	6	14	41
45. Pittsburgh	33	28	24	23	108
46. Portland	10	9	8	11	38
47. Richmond	8	14	14	14	50
48. Sacramento	26	21	27	15	89
49. Saint Louis	52	29	41	33	155
50. Salt Lake City	5	11	10	4	30
51. San Antonio	26	36	53	44	159
52. San Diego	12	1	11	8	42
53. San Francisco	14	12	15	13	54
54. San Juan	39	37	35	28	139
55. Savannah	23	16	30	21	90
56. Seattle	4	5	8	7	24
57. Springfield	28	20	12	15	75
58. Tampa	24	15	16	11	66
59. Washington Field	6	7	4	8	25
Total					5876

121

Exhibit 3

REMARKS

BY

DREW S. DAYS III
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE

THE

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.

ON

TUESDAY, SEPTEMBER 16, 1980

I am pleased to appear before you today on behalf of the Department of Justice and the Civil Rights Division. The Attorney General regrets that he cannot be present today to underscore his decision to make civil rights enforcement a top priority of the Justice Department, including enforcement of laws prohibiting discriminatory practices in police departments and excessive use of force by police officers. The Attorney General and I share the concern expressed by the Commission in its July 9, 1980, statement about the crisis surrounding the role which police play in our society. Given the urgency of that concern in light of recent events, I appreciate the opportunity to re-emphasize in a public forum such as this, the Justice Department's commitment to vigorous civil rights enforcement. I commend the Commission for its timeliness in holding these hearings and issuing its July report on matters of grave concern to all of us.

I have been asked to comment on several areas relevant to the Commission's current inquiry including Department of Justice policy regarding investigations of allegations of police misconduct and the institution of criminal proceedings, and the communication and decision-making process in this area.

Since 1931, when the National Commission on Law Observance and Enforcement (The Wickersham Commission) reported to President Hoover on the widespread extent of police brutality, Americans have been asking perennially "who will watch the watchmen."

A commission appointed by President Truman (The President's Commission on Civil Rights) made a similar finding in 1947 and the United States Civil Rights Commission in 1961 determined that police brutality was still a serious problem throughout the United States.

The dilemma, simply posed, is how can our society exert effective control over an institution like the police which possesses so much potential for depriving each of us of our constitutional liberties without thwarting the legitimate peace keeping function of that institution. These earlier studies, however, tended to view the problem of police brutality and abuse in isolation, as violations of individual liberties which somehow threatened our system of government. The important contribution of two more recent presidential commissions -- The Commission on Law Enforcement and Administration of Justice in 1967 and The National Advisory Commission on Civil Disorders (The Kerner Commission) in 1968 -- was that police brutality and abuse were not viewed in a vacuum. Instead, lawless behavior on the part of police was identified as an overwhelmingly important factor in exacerbating racial tensions in urban centers and as the sparking incidents which ultimately resulted in the catastrophic riots of 1968. Both Commissions contended that police brutality -- that is, actual physical injury inflicted upon third parties by the police -- was probably minimal. However, police abuse of minority groups, notably of blacks, Mexican-Americans and Puerto

- 3 -

Ricans was widespread, sowing distrust, contempt and even hatred for policemen and law in general in minority communities of urban centers. Police abuse -- the use of derogatory and insulting language, unreasonable rousts, frisks and searches on streets, the stopping and searching of cars for no good reason, and the indiscriminate searching of homes in minority areas -- perhaps more than isolated cases of outright brutality -- reinforce in the minds of minorities the symbolism of the police as an occupying army, as representatives of the segregated, racist society which they feel exists beyond the boundaries of their neighborhoods. Equally as important, both Commissions recognized that, apart from whatever objective statistics could be marshalled to support the contention, most ghetto residents believed that police brutality and abuse were widespread. They were convinced that lawless, unbridled police activity was being perpetrated upon their number in gross disproportion to that inflicted upon other groups in the city. This latter situation stemmed, the Commissions concluded, primarily from the failure of police departments to open adequate channels of communication to minority communities and to provide easy, efficient and effective mechanisms for receiving citizen complaints.

Where police officers indulge in summary punishment or, to quote one U.S. Attorney, "the gratuitous use of official violence," they are not only in many instances provoking police-community friction, they are violating federal criminal civil rights statutes.

- 4 -

The Federal Government has the responsibility to prosecute such criminal civil rights violations. The two federal statutes which have the greatest impact on the area of police misconduct are 18 U.S.C. 241 and 242. These statutes, passed during Reconstruction and designed to effectuate the requirements of the 14th Amendment, make it unlawful to conspire against or, while acting under color of law, to deprive an individual of rights guaranteed or protected by the Constitution or federal laws.

As the investigative arm of the Department of Justice, the Federal Bureau of Investigation investigates allegations that police officers have violated federal criminal civil rights statutes, usually either 18 U.S.C. 241 or 242. Section 241 prohibits conspiracies to deprive citizens of civil rights, and is a felony offense. Section 242 prohibits the substantive offense of acting under color of law to deprive an inhabitant of civil rights, and is a misdemeanor, unless death results in which case it is a felony.

Under current procedures, the FBI will begin a "preliminary" investigation of a possible violation of 18 U.S.C. 241 and 242 whenever it receives information which sets forth a prima facie violation. Such information may come from a complaint by an alleged victim, by some person with knowledge of an incident, or from news reports. If the FBI is not certain whether the complaint or information sets forth a prima facie violation, the complaint will be forwarded to the Civil Rights Division for review. Investigations also are initiated at the request of the Civil Rights Division, or the United States Attorney, based upon infor-

mation received directly from one of the three sources described above. Most investigations are initiated by the FBI, however. Regardless of the type of investigation, or who initiated the investigation, the FBI furnishes copies of its investigative reports both to the local United States Attorney and the Civil Rights Division.

In those instances in which state or local authorities investigate allegations of civil rights crimes as possible violations of state statutes, the FBI will proceed with its own independent investigation unless and until state or local charges are brought against the police officers involved. Shortly after he took office, Attorney General Civiletti broadened the mandate for federal investigations when local or state investigations are also being conducted. Simultaneous investigations are now the rule rather than the exception. In this way, the Department is not confronted with a stale case in the event that the local investigation does not result in prosecution. When a local prosecution is begun, the FBI ceases its own investigation and "monitors" the prosecution, in order to keep the United States Attorney and the Civil Rights Division apprised of its status. Where state and local authorities undertake vigorous prosecution under state law of offenses which would also violate 18 U.S.C. 241 or 242, it is Department policy to cooperate fully with the local prosecutor.

I should point out that Attorney General Civiletti has modified this policy as it applies to Dade County, Florida. In that jurisdiction, at least for the time being, we will continue with our investigation and make a prosecutive decision even though a local prosecution has been initiated.

Before continuing with my description of this process, let me briefly advise you of the Department's dual prosecution policy, which I was also asked to describe.

Under the Department's dual prosecution policy, as amended by former Attorney General Griffin Bell in 1977, and further refined by Attorney General Civiletti in 1979, prosecution of a police officer on federal civil rights charges will be neither begun nor continued following a state prosecution based on substantially the same act unless there is a "compelling federal interest" supporting the dual prosecution. As Assistant Attorney General in charge of the Civil Rights Division, I must give my approval before a dual prosecution can be either begun or continued. Since March 1977, I have approved seven dual prosecutions. The dual prosecution policy applies whenever a prior state proceeding has resulted in an acquittal, a conviction, or other termination of the case on the merits. It does not apply where the state proceeding did not get to the point where jeopardy attached. I evaluate requests for dual prosecutions on a case-by-case basis to determine whether the state proceeding has left "substantial federal interests demonstrably unvindicated." Because civil rights cases come within priority areas of the Department, such cases are more likely to meet the "compelling federal interest"

requirement. Even so, under Department guidelines a dual prosecution is not warranted unless a conviction is anticipated and, if there was a conviction at the state level, unless a greater sentence in the federal prosecution is also anticipated. However, dual prosecution may be warranted where the state proceeding was affected by one or more of various factors, such as ineffective prosecution, court or jury nullification in blatant disregard of the evidence, failure of the state to prove an element of the state offense which is not an element of the federal offense, or unavailability of significant evidence in the state proceeding.

In most cases, the process of determining whether to prosecute a matter begins after the FBI has submitted copies of its investigative reports to the United States Attorney and to the Civil Rights Division. The FBI then requests a prosecutive opinion of the United States Attorney which is furnished to the Civil Rights Division. If it appears that the matter may have prosecutive merit, either the United States Attorney, the Criminal Section of the Civil Rights Division, or both offices working together, will arrange to present the matter to a grand jury. Although federal law permits the government to prosecute by means of an "information" signed by the prosecuting attorney if the offense involved is a misdemeanor, the Department's policy ordinarily is to prosecute all civil rights crimes, felony or misdemeanor, only after obtaining a grand jury indictment.

All prosecutions of violations of 18 U.S.C. 241, and all felony violations of 18 U.S.C. 242 must receive the approval of

the Civil Rights Division prior to submission of an indictment to a grand jury.

Even in cases involving § 242 misdemeanors, which do not require prior approval by the Civil Rights Division, the Criminal Section of the Division and the local United States Attorney will usually work in close consultation prior to seeking an indictment. There are no precise rules for determining whether a civil rights case will be handled by the United States Attorney's office, by the Criminal Section of the Civil Rights Division, or jointly by attorneys from both offices. That decision is made on a case-by-case basis through consultation between the two offices.

When an attorney in the Criminal Section believes that a matter investigated by the FBI has prosecutive merit, he or she will prepare a written analysis of the evidence and the law, called a "prosecutive summary." The Civil Rights Division can also request such an analysis from a United States Attorney's office which has recommended prosecution of a civil rights violation. The prosecutive summary is reviewed in the Criminal Section, and indictment of the matter is either approved or disapproved. In most instances, the decision as to whether to ask the grand jury to indict is not made until the close of the grand jury presentation. The decision is usually the product of consultation between the Criminal Section and the United States Attorney's office. The Chief of the Criminal Section is authorized to approve grand jury investigations and indictments in all cases in which the United States Attorney concurs. In those instances in which the Chief

of the Criminal Section and the United States Attorney disagree about investigation or prosecution, I will make the decision.

It has been my objective to involve United States Attorneys more completely in every stage of the prosecution of a civil rights case. I am happy to report that an ever-increasing number of United States Attorneys are routinely taking an active role in the presentation of civil rights prosecutions. In addition, at the direction of the Attorney General, we are establishing civil rights units in United States Attorneys' offices in large metropolitan areas, in the Southwestern United States, and in other areas with a history of civil rights violations. Our goal is to increase the number of people in the Department with expertise in civil rights law enforcement, and to provide citizens with a neutral place in their communities where they can comfortably lodge civil rights complaints.

Consistent with the establishment of civil rights units in local United States Attorneys' offices, I extended additional authority to all United States Attorneys to enforce various civil rights laws. In a July 25, 1980, memorandum, I delegated to United States Attorneys the authority to proceed under many criminal civil rights statutes without obtaining my prior approval.

As I indicated in testimony I gave to the Commission in 1978, and it is no less true 2 years later, in our vigilance to serve the interests of justice, we are particularly sensitive to cases in which the victim has been killed at the hands of the police. These incidents are potential volcanoes in police/community relations and tend to exacerbate language and cultural differences

as well as racial biases which also insinuate themselves as hostile and alienating forces. In addition, the public controversy which often shrouds these cases is complicated because these "death cases," as they are known, are usually difficult to prove. Not only is the victim unavailable to give an eyewitness account but state "fleeing felon" statutes make it difficult for us to establish the specific intent necessary to prove a violation of criminal civil rights statutes.

The Department is aware of both the volatile nature as well as the complexity of death cases. We are aware, however, that undue delay in our resolution of civil rights complaints, particularly death cases, can serve only to heighten tensions between police departments and the citizenry. Consequently, we are working with the Attorney General to obtain adequate resources to reduce substantially our present review time. Moreover, we are sensitive to the fact that there is a certain unfairness to charged police officers inherent in our delaying beyond a reasonable period review of complaints that ultimately prove baseless.

Under Attorney General Civiletti's leadership, the Department has initiated several actions to address problems created by police use of deadly force. In November, 1979 a high-level Departmental task force was established by the Attorney General to consider the question of police use of deadly force and the possibility of developing uniform guidelines for use of such force. The task force is presently in the process of drafting its report. Moreover, LEAA has funded several projects which compliment the work

of the task force. It has awarded funds to the International Association of Chiefs of Police, and the National Urban League. And an award has gone to the National Council of La Raza to investigate the police use of deadly force in Hispanic communities. The interlocking grants total \$816,000.00, and will be used to examine the use of deadly force from both minority and law enforcement perspectives. In an effort to continue the dialogue on the use of deadly force, the Attorney General has met periodically with the International Association of Chiefs of Police, and is in fact addressing their second general session today in St. Louis.

Moreover, just as LEAA is funding programs to study and standardize principles of law enforcement at a national level, so LEAA is also awarding grants to local jurisdictions that have set up special investigative units to handle police shootings of civilians.

For example, in Los Angeles, the District Attorney's office has received a 1-year grant to provide independent investigative capability on a 24-hour basis to respond to and investigate adequately police shootings in the Los Angeles area. An attorney in the Civil Rights Division who met recently with officials of the District Attorney's office was very enthusiastic. He reports that the Los Angeles District Attorney can dispatch a Deputy District Attorney and an investigator, in addition to police personnel alerted by the police department, to the scene of all officer-involved police shootings. These attorneys are available on a 24-hour basis and will be dispatched immediately

upon notification of a shooting incident. In addition, they conduct complete follow-up investigations in all cases.

But while the Justice Department is committed to using its resources to prosecute police officers who violate the law, to promulgate national standards that police departments can draw upon to draft individual policies and training programs on appropriate use of deadly force, and to improve our own relationship with local police and community groups, we cannot do it alone.

It is neither proper nor feasible for the Federal Government to become the law enforcement body of first resort. Although we see ourselves as part of the law enforcement establishment, we also think that the community of interests among the Federal Government, the local police and the minority communities can only be served by a collaborative effort. In addition to the goals of punishment and deterrence in federal prosecution, the Civil Rights Division, in its enforcement capacity, is also seeking to strengthen state and local systems. We want to encourage local authorities to police themselves, to develop sound administrative and state procedures to deter, to detect and to discipline police misconduct at the local level.

Our efforts to encourage responsible law enforcement on the local level have met with great success in Memphis, Tennessee for example. We initially investigated the Memphis police department upon receipt of complaints which the Commission

forwarded regarding racial discrimination in police services, police misconduct, and unwarranted use of deadly force. As a result of discussions with city and police officials over an 18-month period, we deferred further investigation and in April 1980 signed a comprehensive agreement that requires thorough police investigation of charges of police misconduct, appropriate discipline where warranted and strict adherence to a new policy limiting use of deadly force. While the agreement, which remains in effect for 2-1/2 years, represents a commitment by the city to the same goals of fair and effective law enforcement which we at the Department are seeking, the agreement does not prevent investigations of possible violations of federal criminal civil rights laws by individual police officers.

There are very good reasons for enlisting and institutionalizing support of local authorities. We get more than 10,000 complaints of police misconduct per year. Yet we can only prosecute between 50 and 100 of the most egregious cases. Our jurisdiction is limited. We must demonstrate specific criminal intent beyond a reasonable doubt, which may be a concept understandable to lawyers, but the standard of conduct described is often misunderstood by juries.

So, it is critical that we work with police chiefs and local officials to deal with some of these problems. Our job is not only to prosecute, but to try to educate and to try to encourage state and local officials to be more responsive, to identify bad actors early on, to act responsibly. At the invitation of FBI

officials, I personally have been lecturing four times a year for the past 2 years at the Bureau's National Police Academy to explain the work of the Civil Rights Division, particularly our work in prosecuting criminal civil rights violations. I have also had the opportunity, during these same fora, to explain and/or justify the Department's lawsuit against the Philadelphia Police Department. It is fair to describe these fora as "lively," in which various viewpoints are vigorously expressed.

In talking to approximately 1,000 top police executives a year about the need for redress of complaints of police misconduct at the state and local level, I fervently hope that they will return to their departments with a resolve to deal forthrightly with this problem and that their attitudes will serve to deter subordinates otherwise inclined to violate the rights of citizens.

In addition to encouraging and cooperating with vigorous local prosecutions, we urge police departments and local officials to work to improve their affirmative action profiles. In this regard, I have spoken for several years at the FBI's National Executive Institute on employment discrimination in law enforcement. In contrast to the National Academy which involves police departments of all sizes, the NEI is designed solely for chiefs or commissioners of only the very largest cities in America. As many are aware, there has been much litigation concerning the employment practices of state and local police departments by the Justice Department. Nevertheless, the preferred course of action is for each police department to assess its own situation

regarding the employment of women, of blacks, of hispanics and, if necessary, voluntarily cease discriminatory practices and undertake affirmative action. It is imperative that police departments treat the exclusion of hispanics, of blacks, of females from police ranks as a crisis in law enforcement. A police force can never hope to gain the confidence of the people it serves unless that force includes a reasonable proportion of members of the local community.

I was asked to provide information regarding the process by which the public is informed of the Department's response to allegations of criminal civil rights violations.

The Public Affairs Office of the Department does, of course, issue press releases announcing indictments. Ordinarily, there is no public announcement when evidence of criminal civil rights violations are presented to a federal grand jury. The existence of a grand jury investigation may be acknowledged upon inquiry, although any comment about the nature and extent of the grand jury's investigation is necessarily extremely limited given the absolute secrecy of grand jury proceedings.

I and other members of my staff frequently give speeches to various interested groups advising of their rights and responsibilities in this area of federal law. It is our hope that these efforts will educate the public about the right to complain of violations and also educate law enforcement officers about their obligations under these statutes. In addition, as of April 1, 1980, when a criminal civil rights matter involving allegations of police misconduct is closed without prosecution,

the parties to that investigation, victims, complainants and subjects, receive notification of the disposition by letter. This notification process is expected to involve approximately 10,000 letters each year, since the large majority of investigations of alleged police misconduct are concluded without grand jury presentation or prosecution.

As I previously mentioned, most federal investigations of criminal civil rights violations are initiated by the FBI. However, reports of possible crimes are also communicated directly to the Civil Rights Division by the victims themselves, local civil rights organizations, or other governmental agencies. Our receipt of information regarding the potential for civil disturbances stemming from perceptions of police abuse is not highly structured, and we can obtain such information from a variety of sources, including the FBI and the local United States Attorney, who may be particularly familiar with the community's mood. Indeed, early in the summer of 1980 we asked every United States Attorneys' Office to advise us of the potential for violence and civil disorder in their districts.

Other important sources of information regarding the potential for civil disorders are the Community Relations Service which was particularly helpful in Wrightsville, Georgia this summer, and local civil rights organizations. While a community's, or a segment of a community's, perception concerning police abuse is important and helpful information, particularly in determining whether to initiate a federal investigation, it cannot be a decisive factor in the decision to prosecute. Prosecution decisions

can only be made on the basis of the evidence developed in the course of the investigation. If the evidence shows a violation of the federal criminal civil rights statutes, such that a fair minded jury should vote to convict, a prosecution will ordinarily be instituted.

I was asked to comment on the communication and decision-making process between the Department of Justice and state and local authorities. As indicated earlier, our policy is to cooperate fully with local authorities who are conducting good-faith and aggressive investigations which parallel our own. The decision to prosecute is, however, not a shared one -- state authorities must make their own decision about whether to prosecute a given matter -- as must the Department of Justice. We do try to keep an open line of communication between the Department and state and local authorities.

I was asked finally to provide my suggestions for modification of existing laws and practices that could improve our response to criminal civil rights violations. I concur with the comments made in this Commission's Statement of July, 1980 regarding the citizenship element of 18 U.S.C. 241. There is no rational basis for requiring citizenship for a § 241 violation where only in-habitancy need be proved for a § 242 violation. I also concur in your recommendation that the penalties for violating § 242 should be substantially increased, even where death does not result. As noted by you, legislation proposing these changes is currently pending in Congress.

I would also like to report that the Department of Justice has further demonstrated its commitment to the elimination of police brutality based on race, creed, or color by adopting formal regulations pursuant to the Omnibus Crime Control and Safe Streets Act of 1968. These regulations, adopted September 12, 1980, specifically proscribe discrimination in acts of police brutality and subject recipients of federal criminal justice system improvement funds to loss of federal monies for violations.

While the Civil Rights Division is fortunate to have several attorneys experienced in criminal civil rights prosecutions there is a compelling need for more attorneys. A request for additional attorneys was made of Congress and we have every hope that they will be provided. Our need is particularly great given the long, hot summer of 1980 which generated more than the usual number of complaints of police abuse. While the Civil Rights Division is committed to using the resources of United States Attorneys' Offices wherever possible, it is imperative that the Department's own complement of experienced civil rights attorneys be sufficient.

The Attorney General and I shall continue in our efforts to secure and enforce federal civil rights. We will be assisted in our efforts by dedicated attorneys in the Civil Rights Division and by increasingly more responsive United States Attorneys' Offices. But the work cannot be done by lawyers alone, even those working with the resources of the Federal Government behind

them. The problems surrounding the role and perception of the police in our society to which the Commission refers in its July report are community problems, national in scope but deeply rooted in the patterns and perceptions of local law enforcement. Monitoring the use of excessive force by police officers is not the responsibility solely of the Attorney General or the Assistant Attorney General for Civil Rights. While the Federal Government has a significant role to play, increased vigilance is also needed at the local level. Public distrust of police as a result of patterns of abuse and misconduct must be rooted out in all levels of government. As Justice Brandeis said 60 years ago:

Our government is the potent, the omnipresent teacher for good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J.).

The Department of Justice is committed to working with local police departments and community leaders to ensure that the proper lessons are taught. Only in that way, can we get those who have lost faith in our system of laws to believe once again.

Exhibit 4

U.S. Department of Justice

Civil Rights Division



Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 25 1980

MEMORANDUM FOR UNITED STATES ATTORNEYS

Re: Delegation of Civil Rights Authority

The Attorney General and I have welcomed and encouraged the increased interest and activity of United States Attorneys in civil rights investigations, prosecutions and civil litigation. Consistent with the Attorney General's emphasis on civil rights and his creation of civil rights units, I am extending additional authority to all United States Attorneys to enforce various civil rights laws as outlined below. Currently, United States Attorneys have limited authority to conduct civil rights litigation under the direct supervision and control of the Civil Rights Division.

Criminal

In the area of criminal investigations, the only limitation on United States Attorneys is contained in the United States Attorneys' Manual 8-3.110: "involving actual or threatened civil disorders such as riots, marches, parades, and major confrontations between local law enforcement officers and groups of persons . . ." In such cases, prior approval of the Assistant Attorney General for Civil Rights Division is required before conducting an investigation. Because of the sensitive nature of such matters, this minor limitation shall remain in effect. For all grand jury investigations, pursuant to United States Attorneys' Manual 8-3.130, prior approval of the Civil Rights Division is not required, although prior notice of intent to use the grand jury for investigation of a civil rights matter must be given the Criminal Section of Civil Rights Division.

Currently, prior approval of the Assistant Attorney General for Civil Rights must be sought and obtained for all civil rights prosecutions with the exception of 18 U.S.C. §242 misdemeanors and 18 U.S.C. §1509 in which personal injury does not result and state or local action is not taken against the subject.

I hereby delegate to United States Attorneys the authority to proceed under all criminal civil rights statutes 1/ except for 18 U.S.C. §§ 241, 242 (felony prosecutions) and 245 2/; for these latter-referenced statutes, the prior approval of the Assistant Attorney General for Civil Rights is still required.

In all cases where the United States Attorney has authority to proceed in civil rights matters, once the United States Attorney has determined that an indictment or information is appropriate, prior notification of the grounds for the prospective indictment or information shall be provided to the Criminal Section of the Civil Rights Division. The Assistant Attorney General may require the United States Attorney to submit additional information (e.g., grand jury transcripts, copy of proposed indictment, etc.) necessary to review the case. If the Assistant Attorney General disagrees with the filing of the indictment, the Assistant Attorney General shall furnish the United States Attorney the reasons supporting the Assistant Attorney General's decision along with instructions for the disposition of the case. The Assistant Attorney General will use this review procedure judiciously and only in exceptional cases, e.g., those cases involving important public policy considerations or novel legal issues, or when necessary to ensure uniform application of the law.

The above delegation of authority to proceed in civil rights prosecutions to United States Attorneys shall in no way diminish the authority and responsibility of the Assistant Attorney General, Civil Rights Division, to exercise the Assistant Attorney General's prerogative to prosecute those matters which the United States Attorney has declined, or elects not to prosecute. (See United States Attorneys' Manual 8-3.120; 28 C.F.R. 0.50).

1/ See attached appendix for complete listing of statutes covered by this delegation.

2/ It should be noted that in § 245 cases there is a statutory requirement of prior certification by the Deputy Attorney General or the Attorney General.

Civil

With respect to civil litigation, presently United States Attorneys have concurrent authority to enforce the bilingual election requirements of § 203 of the Voting Rights Act (42 U.S.C. § 1973aa-1a) and Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000A et seq.) which proscribes denial of the right to full and equal enjoyment of places of public accommodation.

Hereafter, United States Attorneys shall also have concurrent authority to enforce Title III of the Civil Rights Act of 1964 (42 U.S.C. § 2000B et seq.) 3/ requiring desegregation of public facilities, § 706 of Title VII of the Civil Rights Act of 1964, as amended in 1972 (42 U.S.C. § 2000e-5) involving individual cases of unlawful employment practices, and, in some cases, Title VIII of the Civil Rights Act of 1968, as amended in 1974 and 1978 (42 U.S.C. §§ 3601-31, the Fair Housing Act).

With respect to cases arising under the Fair Housing Act of 1968, United States Attorneys shall have concurrent authority in cases involving "blockbusting," racial steering, and discrimination in the rental or sale of houses, apartments, and mobile homes. In cases where the law is still developing, centralized control shall remain in the Civil Rights Division. 4/

In areas where the United States Attorneys have concurrent authority with the Civil Rights Division, the United States Attorney shall report on a quarterly basis, the name, nature and status of all civil rights complaints received. Upon initiation of an investigation, the United States Attorney shall notify the Civil Rights Division of the nature and scope of the investigation. This procedure will prevent duplicative investigations by the same department. Once the United States Attorney determines that litigation is warranted, the United States Attorney shall provide the Assistant Attorney General for Civil Rights with a copy of a litigation justification memorandum and proposed pleadings.

3/ It should be noted that pursuant to Titles II and III the Attorney General must personally sign the complaint prior to filing.

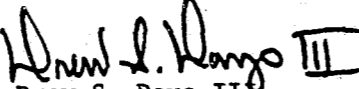
4/ Presently such nascent areas of the law include (but are not limited to) exclusionary zoning, the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.), and combined housing and school violations. Involvement of United States Attorneys in such cases should be closely coordinated with the Civil Rights Division.

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The United States Attorney shall also consult with the Assistant Attorney General for Civil Rights as to the merits of the litigation prior to filing. The Assistant Attorney for Civil Rights shall retain final authority to determine what cases ought to be filed, compromised or settled regardless of the judicial districts in which they arise. The Civil Rights Division will continue its current practice of providing notice and consulting with United States Attorneys prior to filing its cases.

The overall responsibility for implementing this program has been given to the Deputy Assistant Attorney General for Policy and Planning of the Civil Rights Division. In addition, corrections and additions to the United States Attorneys' Manual will where appropriate.

If you have any questions regarding this matter, please contact Mr. John E. Huerta at FTS 633-3845. Your continued commitment and dedication to the enforcement of the civil rights laws I trust will be manifested in the effective implementation of this memorandum.


Drew S. Days III
Assistant Attorney General
Civil Rights Division

APPENDIX

Statutes enforced by the Civil Rights Division and covered by the Assistant Attorney General for Civil Rights delegation of authority to United States Attorneys.

1. 18 U.S.C. §243 (exclusion of jurors on account of race or color)
2. 18 U.S.C. §244 (discrimination against person wearing uniform of the armed forces)
3. 18 U.S.C. §246 (denial or relief of benefits)
4. 18 U.S.C. §371 (general conspiracy statute)
5. 18 U.S.C. §594 1/ (intimidation of voters)
6. 18 U.S.C. §§841-48 2/ (manufacture, distribution, storage and possession of explosives)
7. 18 U.S.C. §875 3/ (use of interstate communications for threats to kidnap or extort)
8. 18 U.S.C. §876 3/ (mailing threatening communications)

1/ The Civil Rights Division has jurisdiction when there is a racial aspect to the matter.

2/ The Civil Rights Division has jurisdiction where the matter arose in connection with a civil rights case.

3/ The Civil Rights Division has jurisdiction when the threatening communications are of a racial nature, or have some racial aspect, or grow out of a racial incident.

9. 18 U.S.C. §1503 (influencing or injuring jurors, witnesses or judicial officers) ^{4/}
10. 18 U.S.C. §1504 (influencing juror by writing)
11. 18 U.S.C. §1508 (recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting)
12. 18 U.S.C. §1510 (obstruction of criminal investigations)
13. 18 U.S.C. §1581 (peonage)
14. 18 U.S.C. §1582 (vessels for slave trade)
15. 18 U.S.C. §1583 (enticement into slavery)
16. 18 U.S.C. §1584 (sale into involuntary servitude)
17. 18 U.S.C. §1585 (seizure, detention, transportation or sale of slaves)
18. 18 U.S.C. §1586 (service on vessels in slave trade)
19. 18 U.S.C. §1587 (possession of slaves aboard vessels)
20. 18 U.S.C. §1588 (transportation of slaves from the United States)
21. 18 U.S.C. §2191 (cruelty to seamen)
22. 18 U.S.C. §2192 (inciting seamen to revolt or mutiny)
23. 18 U.S.C. §2193 (revolt or mutiny of seamen)
24. 18 U.S.C. §2194 (Shanghaiing sailors)
25. 18 U.S.C. §2195 (abandonment of sailors)
26. 18 U.S.C. §2196 (drunkenness or neglect of duty by seamen)
27. 42 U.S.C. §300a-8 (involuntary sterilization)
28. 42 U.S.C. §1971i(c) (giving false information for the purpose of establishing eligibility to vote)

^{4/} The Civil Rights Division has jurisdiction over all cases except when such cases arise out of a criminal prosecution under the jurisdiction of the Criminal Division.

29. 42 U.S.C. §1971i(d) ^{5/} (falsification or concealment of material facts in matters within the jurisdiction of examiners or hearing officers)
30. 42 U.S.C. §1973j(a) ^{5/} (depriving persons of rights secured by the Voting Rights Act of 1965)
31. 42 U.S.C. §1973j(b) (destroying, defacing, mutilating, or altering ballots or official voting records in counties where voting examiners have been appointed)
32. 42 U.S.C. §1973j(c) (conspiring to violate or interfere with rights secured by the Voting Rights Act of 1965)
33. 42 U.S.C. §1974 (retention and preservation of records and papers by election officers)
34. 42 U.S.C. §1974(a) (theft, destruction, concealment, mutilation or alteration of records of papers)
35. 42 U.S.C. §2000e-8(e) (unlawful disclosure of information by employees of EEOC)
36. 42 U.S.C. §2000e-10 (posting of notices by employers as required by Title VII of the Civil Rights Act of 1964)
37. 42 U.S.C. §3631 (interference with fair housing rights)
38. 46 U.S.C. §658 (discharge of crew on account of unseaworthiness; sending unseaworthy vessel to sea)
39. 46 U.S.C. §701 (various offenses by seamen)

^{5/} See footnote 1.

Exhibit 5

Department of Justice

TESTIMONY OF

GILBERT G. POMPA
DIRECTOR

COMMUNITY RELATIONS SERVICE
U. S. DEPARTMENT OF JUSTICE

BEFORE THE

UNITED STATES COMMISSION ON CIVIL RIGHTS

¹⁶
SEPTEMBER 2, 1980
WASHINGTON, D.C.

THANK YOU FOR THE OPPORTUNITY TO APPEAR
HERE BEFORE YOU TODAY TO ADDRESS THE GROWING
PROBLEM OF POLICE USE OF EXCESSIVE FORCE.

DURING RECENT YEARS, CHARGES OF POLICE USE
OF EXCESSIVE OR DEADLY FORCE HAVE BECOME AN
EVER-INCREASING SHARE OF THE CASELOAD OF THE
COMMUNITY RELATIONS SERVICE (CRS).

NOTHING PROVOKES MORE COMMUNITY RESENTMENT
OR MORE MINORITY/WHITE HOSTILITIES, OR HAS MORE
POTENTIAL FOR SPARKING OPEN COMMUNITY VIOLENCE
THAN ALLEGATIONS THAT THE POLICE USE FORCE
EXCESSIVELY AGAINST MINORITIES.

THE INTENSITY OF THE PROBLEM VIRTUALLY
HAS RESULTED IN AN UNDECLARED WAR BETWEEN THE
POLICE AND MINORITIES IN MANY COMMUNITIES
ACROSS THE NATION.

THE EXPERIENCE OF THE COMMUNITY RELATIONS
SERVICE CONFIRMS THE FINDINGS OF THE KERNER
COMMISSION AS TO THE RELATIONSHIP OF POLICE
ABUSIVENESS TO URBAN RIOTS.

DISORDERS DO NOT ERUPT AS A RESULT OF A SINGLE "TRIGGERING" OR PRECIPITATING INCIDENT. INSTEAD, THEY ARE GENERATED OUT OF AN INCREASINGLY DISTURBED SOCIAL ATMOSPHERE, IN WHICH, TYPICALLY, A SERIES OF TENSION-HEIGHTENING INCIDENTS OVER A PERIOD OF WEEKS OR MONTHS BECOME LINKED IN THE MINDS OF MANY IN THE MINORITY COMMUNITY WITH A RESERVOIR OF UNDERLYING GRIEVANCES.

AT SOME POINT IN THE MOUNTING TENSION, A FURTHER INCIDENT -- IN ITSELF OFTEN ROUTINE OR TRIVIAL -- BECOMES THE BREAKING POINT AND THE TENSION SPILLS OVER INTO VIOLENCE.

THE MAY 1980 RIOT IN MIAMI WAS CONSISTENT WITH THIS PATTERN.

OF THE MANY IMPEDIMENTS TO HARMONIOUS RELATIONSHIPS BETWEEN POLICE AND MINORITY COMMUNITIES, ONE OF THE MOST SERIOUS, AND CLEARLY THE MOST INFLAMMATORY, IS USE OF DEADLY OR EXCESSIVE FORCE BY POLICE.

THE COMMUNITY RELATIONS SERVICE OF THE JUSTICE DEPARTMENT, WHICH IS CHARGED BY CONGRESS WITH THE RESPONSIBILITY OF HELPING COMMUNITIES TO RESOLVE RACIAL AND ETHNIC CONFLICT THROUGH CONCILIATION AND MEDIATION, HAS DEALT WITH SUCH MANIFESTATIONS OF THE PROBLEM IN OVER A THOUSAND CASES THROUGHOUT THE NATION IN THE PAST 15 YEARS.

(BACK UP MATERIAL - TAB 1)

ONE-HUNDRED-THIRTY-EIGHT INSTANCES OF ALLEGED USE OF EXCESSIVE FORCE BY POLICE WERE ALERTED BY CRS IN THE FIRST HALF OF FISCAL YEAR 1980, A 146 PERCENT INCREASE OVER THE SAME PERIOD OF THE PREVIOUS YEAR. THE NUMBER OF CASES WE WERE ABLE TO RESOLVE INCREASED FROM 24 TO 58. WE PROJECT A TOTAL OF 110 CASES BY THE END OF FISCAL YEAR 1980.

(BACK UP MATERIAL - TAB 2)

WHILE OUR ASSISTANCE HAS OFTEN BEEN USEFUL TO THOSE COMMUNITIES IN HELPING THEM TO RE-ESTABLISH RUPTURED RELATIONSHIPS AND IMPROVE POLICIES AND PRACTICES RELATED TO THE USE OF FIREARMS AND OTHER FORMS OF FORCE, THE PROBLEM NATIONWIDE IS UNABATED AND RECURRENT.

IN DECIDING TO PLACE AN EMPHASIS ON THIS AREA OF SERVICE WE REVIEWED DATA FOR THE 24-YEAR PERIOD FROM 1950 TO 1973 THAT SHOWS AN AVERAGE OF 245 PERSONS KILLED BY POLICE IN THE YEARS PRIOR TO 1967.

FOR SEVEN YEARS AFTER 1967, THE AVERAGE WAS 359 PER YEAR.

OF THESE, 50 PERCENT WERE BLACK.

OFFICIAL FIGURES FOR MORE RECENT YEARS ARE AT THE SAME LEVEL; HOWEVER, SOME CURRENT RESEARCHERS INDICATE THAT FIGURES TWICE THAT HIGH MIGHT BE MORE ACCURATE.

RECORDS ARE NOT CLEAR AS TO THE NUMBER AND PROPORTION OF THOSE KILLED WHO WERE LATINO.

THIS WASTE OF HUMAN LIFE IS ALL THE MORE TRAGIC BECAUSE IT DOES NOT HAVE TO BE;

CRS HAS LEARNED FROM EXPERIENCE THAT THE NUMBER OF PEOPLE INJURED BY POLICE -- AND THE DISRUPTIONS THAT OFTEN FOLLOW -- CAN BE REDUCED.

IN SOME COMMUNITIES, FORWARD-LOOKING POLICE EXECUTIVES HAVE INITIATED POLICIES AND PRACTICES DESIGNED TO ASSURE THAT DEADLY FORCE IS USED ONLY UNDER THE MOST NECESSARY CIRCUMSTANCES.

THE EXPERIENCE OF CERTAIN POLICE DEPARTMENTS INDICATES THAT CERTAIN POLICE HOMICIDES CAN BE SIGNIFICANTLY REDUCED, AND THAT SUCH REDUCTION CAN BE ACHIEVED BY CHANGES IN POLICE POLICY AND PRACTICES.

IN NEW YORK CITY, FOR EXAMPLE, THE NUMBER OF POLICE HOMICIDES WAS REDUCED FROM OVER 90 IN 1971, TO 63 IN 1972, TO 54 IN 1973. IN 1977 IT WAS 30.

IN OTHER INSTANCES HEALTHY CHANGE HAS RESULTED FROM DIALOGUE AND NEGOTIATION BETWEEN POLICE AND COMMUNITY LEADERSHIP.

UNFORTUNATELY, IN MANY COMMUNITIES NEGOTIATION IS NOT SUCCESSFUL BECAUSE IT OCCURS IN AN ATMOSPHERE OF ACRIMONY.

THE COMMUNITY BECOMES AROUSED AND SEEKS CHANGE ONLY IN THE WAKE OF A TRAGIC INCIDENT, AND THAT SHARP EDGE OF CONCERN QUICKLY ERODES.

AT THE SAME TIME, POLICE AGENCIES, LIKE ALL INSTITUTIONS, TEND TO DEFEND AND JUSTIFY THEIR ACTIONS AND POLICIES MOST VIGOROUSLY WHEN UNDER ATTACK.

EFFORTS TO ARRIVE AT REASONABLE SOLUTIONS RARELY PROSPER IN SUCH A CLIMATE.

AT SUCH TIMES, ISSUES ARE OFTEN MISREPRESENTED AND POLARIZED. ONE SIDE IS DEPICTED AS CONDONING MURDER BY POLICE; THE OTHER SIDE AS CONDONING WANTON CRIMINALITY.

IN ACTUALITY, THE GAP IS MUCH NARROWER.

BOTH THE POLICE EXECUTIVE AND THE MINORITY COMMUNITY SHARE THE GOAL OF CRIME REDUCTION IN MINORITY NEIGHBORHOODS.

BOTH AGREE THAT THE POLICE OFFICER SHOULD BE AUTHORIZED TO USE FIREARMS TO DEFEND HIS

OWN OR ANOTHER'S LIFE WHEN OTHER MEANS ARE INADEQUATE.

NEITHER BELIEVES THAT THE POLICE BADGE SHOULD BE A SHIELD FOR BRUTALITY OR RACISM.

BASIC DIFFERENCES CONCERN THE NATURE OF THE CONTROLS TO BE EXERCISED AND THE DEGREE OF ACCOUNTABILITY TO BE REQUIRED OF POLICE IN THE EXERCISE OF THEIR DISCRETION.

WHILE SUCH ISSUES REPRESENT WIDE DIVISION, THEY ARE AT LEAST RESPONSIVE TO GOOD FAITH NEGOTIATIONS.

WHILE THE CRS PATTERN OF RESPONDING TO CRISES IN THE WAKE OF POLICE SHOOTINGS WAS USEFUL IN CONTAINING AND REPAIRING THE DAMAGE, IT DID NOT REDUCE THE PREVALENCE OF THE PROBLEM.

THAT IS WHY, STARTING ABOUT 3 YEARS AGO, CRS STARTED DOWN A SECOND PATHWAY (AS A RESULT OF THE RICARDO MORALES CASE IN CASTROVILLE, TEXAS.)

-- TO RESPOND TO THESE TYPES OF SITUATIONS BEFORE THEY HAPPEN, TO ENGENDER THE KIND OF POLICE/MINORITY COOPERATION THAT CAN ALTER POLICE POLICY AND PRACTICE SO THAT THE NUMBER OF POLICE HOMICIDES IS GREATLY REDUCED.

THREE YEARS AGO CRS FORMULATED A PROGRAM OF PREVENTIVE MEASURES TO REDUCE THE INCIDENCE OF UNNECESSARY USE OF DEADLY FORCE BY POLICE.

OUR THREE-PHASE PROGRAM BEGAN FIRST WITH GATHERING AND PROVIDING INFORMATION.

WE BROUGHT TO POLICE GROUPS, MINORITY ORGANIZATIONS, STATE LEGISLATORS, AND LOCAL GOVERNMENT OFFICIALS -- THROUGH THEIR OWN CONFERENCES AND THROUGH THE PRINTED WORD -- INFORMATION AS TO THE FINDINGS OF RESEARCH, INFORMATION AS TO THE MORAL AND LEGAL DIMENSIONS OF THE PROBLEM, AND INFORMATION AS TO HOW PACE-SETTING POLICE AND COMMUNITY ORGANIZATIONS WERE SUCCESSFULLY MEETING THE PROBLEM.

AS A SECOND STEP, WE INITIATED FACE-TO-FACE DISCUSSIONS OF THE PROBLEM BETWEEN POLICE EXECUTIVES AND MINORITY ORGANIZATION LEADERSHIP.

TO INITIATE COLLABORATION, WE CONVENED GROUPS AT THE STATE AND NATIONAL LEVELS WHERE DIFFERING VIEWPOINTS COULD BE EXPLORED AND HARMONIZED AWAY FROM THE ATMOSPHERE OF LOCAL CONTROVERSY.

IN DECEMBER 1979, WE COSPONSORED WITH THE NATIONAL URBAN LEAGUE AND THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) A NATIONAL CONSULTATION ON POLICE SAFETY AND FORCE. TWO-HUNDRED BLACK AND HISPANIC COMMUNITY REPRESENTATIVES AND POLICE OFFICIALS IDENTIFIED PROBLEMS AND EXPLORED SOLUTIONS.

THE CONSULTATION PAVED THE WAY FOR FOLLOWUP COLLABORATIVE EFFORTS IN AT LEAST 20 TO 30 LOCAL COMMUNITIES TO DEAL WITH PROBLEMS OF COMMUNITY RELATIONS AND EXCESSIVE USE OF FORCE BY POLICE. THESE COLLABORATIVE EFFORTS IN THE LOCAL COMMUNITIES CONSTITUTE THE THIRD PHASE OF OUR PROGRAM.

. THE CONSULTATION ALSO PRODUCED A NUMBER OF RECOMMENDATIONS, SOME OF WHICH I WILL SUBMIT FOR THE RECORD.

DEVELOPMENTS IN THE STATE OF TEXAS OFFER ENCOURAGEMENT THAT PROGRESS CAN BE MADE. THREE YEARS AGO, THE BITTERNESS BETWEEN POLICE AND THE CHICANO COMMUNITY WAS AT FEVER PITCH OVER ALLEGATIONS THAT 16 MEXICAN AMERICANS HAD BEEN KILLED BY POLICE IN 18 MONTHS.

MASS PROTEST DEMONSTRATIONS WERE HELD IN CITIES THROUGHOUT THE STATE. SOME OF THE INCIDENTS, SUCH AS IN HOUSTON, WERE FRONT-PAGE NEWS ACROSS THE NATION.

AS ONE EFFORT TO TURN THE PROBLEM AROUND, CRS HELPED BRING INTO BEING A STATEWIDE STEERING COMMITTEE MADE UP OF SIX POLICE EXECUTIVES AND SIX STATE LEADERS OF MEXICAN-AMERICAN ORGANIZATIONS.

THE STEERING COMMITTEE HAS SINCE CONVENED TWO REGIONAL MEETINGS OF POLICE AND HISPANIC LEADERS FROM LOCAL COMMUNITIES IN SOUTH TEXAS AND WEST TEXAS.

. THE PRODUCT OF THESE CONFERENCES WERE A COMPREHENSIVE SET OF RECOMMENDATIONS AND A COMMITMENT TO COOPERATE IN DEALING WITH THE PROBLEM BACK HOME.

I WILL LEAVE WITH THE COMMISSION A COPY OF ONE CONFERENCE REPORT AND ITS RECOMMENDATIONS.

I ALSO WANT TO TRACK THIS STATEWIDE EFFORT DOWN TO THE LOCAL COMMUNITY. A MOST NOTABLE FOLLOWUP RESULT IS THE DEVELOPMENT OF THE HARRIS COUNTY COALITION.

HARRIS COUNTY CONSISTS OF 19 POLICE JURISDICTIONS, INCLUDING THE CITY OF HOUSTON.

CRS PLAYED THE PRIMARY ROLE IN BRINGING INTO BEING THIS REGIONAL GROUP OF POLICE CHIEFS, BLACK AND HISPANIC ORGANIZATION REPRESENTATIVES, AND OTHER PUBLIC AND CIVIC OFFICIALS.

THE GROUP HAS DEVELOPED A PROGRAM WITH OBJECTIVES TO REVIEW POLICE ACCOUNTABILITY WITH RESPECT TO SUCH MATTERS AS USE OF FIRE-ARMS, MINORITY RECRUITMENT, UNDOCUMENTED WORKERS, AND OTHER MATTERS TROUBLING THE RELATIONSHIP OF POLICE AND MINORITIES.

CRS, IN ADDITION TO SERVING AS CONVENER AND MODERATOR OF THE GROUP, CONTINUALLY SERVES AS A SOURCE OF TECHNICAL INFORMATION AND ASSISTANCE, AND RECONCILES DIFFERENCES AS THEY ARISE.

WITH RESPECT TO THE RELATIONSHIP OF THE ROLE OF LAW ENFORCEMENT AND OUTBREAKS OF MASS VIOLENCE SUCH AS THE MIAMI RIOT, THE PROBLEM MUST BE SEEN IN TERMS OF RISK AND RISK REDUCTION.

THE KERNER COMMISSION IDENTIFIED 12 MINORITY GRIEVANCES RELLECTIVE OF THE PRE-CONDITIONS OF RIOT.

THE FIRST LEVEL OF MAGNITUDE CONSISTED OF POLICE PRACTICES, EMPLOYMENT, AND HOUSING. EDUCATION WAS NEXT ON THE LIST. POLICE ACTION WAS THE TRIGGERING INCIDENT IN 12 OF

THE 24 CASES STUDIED BY THE KERNER COMMISSION.

POLICE ACTION WAS THE TRIGGERING INCIDENT IN FIVE OF EIGHT CASES OF RACIAL VIOLENCE CHARTED BY CRS IN FISCAL YEAR 1980.

(BACK UP MATERIAL - TAB 3)

SOME OF THESE POLICE INCIDENTS ARE PROPER AND UNAVOIDABLE. OTHERS MAY BE EITHER IMPROPER OR AVOIDABLE, OR BOTH.

THE NUMBER OF IMPROPER AND AVOIDABLE POLICE ACTIONS CAN BE REDUCED BY A VARIETY OF SPECIFIC STEPS.

THEY INCLUDE IMPROVED POLICIES AS TO THE USE OF FIREARMS, DETERMINED ENFORCEMENT OF SUCH POLICIES BY POLICE LEADERSHIP, AND TRAINING OF POLICE IN CONFLICT MANAGEMENT ON THE STREET AND ALTERNATIVES TO THE USE OF EXCESSIVE FORCE.

CAN URBAN RIOTS BE AVOIDED?

THEORETICALLY, THE RISK OF RIOTS CAN BE REDUCED. GIVEN SUFFICIENT RESOURCES, CRS HAS THE CAPABILITY TO HELP A CITY CUT ITS LEVEL OF RISK OF RIOT.

ONGOING CONCILIATION AND MEDIATION OF FESTERING PROBLEMS WILL REDUCE THE LEVEL OF MINORITY FRUSTRATION AND MISTRUST OF ESTABLISHED INSTITUTIONS, WHICH ARE IMPORTANT PRE-CONDITIONS OF RIOT.

IMPROVED FIREARMS' POLICIES AND BETTER TRAINING WILL REDUCE THE NUMBER OF POSSIBLE TRIGGERING INCIDENTS.

OUR IMMEDIATE GOAL IN CITIES WHERE VIOLENCE IS OCCURRING IS TO OFFER CONCILIATION SERVICES TO CITY OFFICIALS AND COMMUNITY GROUPS IN ORDER TO FACILITATE A PEACEFUL RESOLUTION TO THE IMMEDIATE CONCERNS.

OFTEN FURTHER VIOLENCE CAN BE AVERTED OR THE POTENTIAL CAN BE DIMINISHED GREATLY, IF, THROUGH OUR CONCILIATION EFFORTS, COMMUNICATION CHANNELS ARE OPENED AND PLANS

ARE AGREED TO BY ALL PARTIES THAT ALLOW FOR PEACEFUL DEMONSTRATIONS TO PROTEST THE PERCEPTION OF, OR REALITY OF, EXCESSIVE USE OF FORCE BY POLICE.

IN CHATTANOOGA THIS SUMMER, VIOLENCE WAS BECOMING THE RULE AS PROTESTS AGAINST POLICE ACTIONS UNTIL AN AGREEMENT WAS WORKED OUT WITH THE POLICE TO ALLOW BLACK MINISTERS TO PATROL THE PROTESTING AREAS INSTEAD OF THE POLICE.

THIS TYPE OF COOPERATION, FACILITATED BY CONCILIATION, HELPS DIFFUSE VIOLENT SITUATIONS.

CRS' ROLE IN THE PERIOD IMMEDIATELY FOLLOWING THE MIAMI RIOT WAS CLOSELY LINKED TO THE OVERALL DEPARTMENT OF JUSTICE RESPONSE.

I ACCOMPANIED THE ATTORNEY GENERAL TO MIAMI THE DAY AFTER THE RIOT.

THERE CRS ARRANGED COMMUNICATION BETWEEN THE ATTORNEY GENERAL AND GRASS-ROOTS LEADERSHIP IN THE LIBERTY CITY AREA, AND ALSO A MEETING IN MIAMI WITH LOCAL AND NATIONAL BLACK LEADERS.

THE ATTORNEY GENERAL IMMEDIATELY AUTHORIZED THE OPENING OF A CRS OFFICE IN MIAMI. THE OFFICE IS PRESENTLY IN OPERATION.

THE GOALS OF CRS IN MIAMI ARE:

1. TO HELP PREVENT FURTHER INTER-RACIAL DISORDER AND VIOLENCE.

2. TO HELP REDUCE INTER-RACIAL ANTAGONISM AND FACILITATE THE RESTORATION AND DEVELOPMENT OF COOPERATIVE MECHANISMS TO ASSURE RACIAL PROGRESS ... AT THE SAME TIME, TO HELP RESTORE MINORITY CONFIDENCE IN THE POLITICAL, ECONOMIC, AND ADMINISTRATION OF JUSTICE SYSTEMS.

3. TO HELP MOBILIZE PUBLIC AND PRIVATE COMMUNITY RESOURCES TO ADDRESS FUNDAMENTAL SOCIAL AND ECONOMIC PROBLEMS WHICH FOSTER CONDITIONS OF DEPRIVATION AND INEQUITY AND THE RESULTING STRESS AND TENDENCIES TOWARD DISORDER.

AMONG THE SPECIFIC OBJECTIVES OF THE MIAMI OFFICE ARE:

- IMPROVING COMMUNICATION AND COMMUNITY RELATIONS PROGRAMS BETWEEN POLICE AND THE MINORITY COMMUNITY AND BETWEEN ANTAGONISTIC

SEGMENTS OF THE POPULATION.

TECHNICAL ASSISTANCE TO POLICE IN IMPROVING CONTROLS OVER EXCESSIVE USE OF FORCE, INCLUDING THE PLANNING AND PROVISION OF TRAINING, PERFORMANCE MODELS, ETC.

CATALYZING THE CREATION BY PRIVATE ORGANIZATIONS (BUSINESS, BANKING, LABOR, CHURCHES, UNIVERSITIES, CIVIL RIGHTS GROUPS, ETC.) OF COALITIONS WHICH WILL DEVELOP INTER-RACIAL COMMUNICATION AND LOCALLY SPONSORED EMPLOYMENT, HOUSING, EDUCATION, AND COMMUNITY DEVELOPMENT PROGRAMS.

PROVIDING COMMUNITY RELATIONS COUNSEL TO CITY OFFICIALS.

HELPING LOCAL AGENCIES DEVELOP OR IMPROVE MECHANISMS FOR RECEIVING AND ACTING UPON COMPLAINTS AND PROVIDING ADEQUATE REMEDIES.

ASSISTING IN THE ESTABLISHMENT OR STRENGTHENING OF LOCAL CONFLICT-RESOLUTION MECHANISMS.

THE COMMISSION HAS ASKED ME TO COMMENT SPECIFICALLY ON CRS' ABILITY TO BE AWARE OF COMMUNITIES IN WHICH THERE EXISTS THE POTENTIAL FOR SERIOUS CIVIL DISORDER.

CRS HAS HEADQUARTERS IN WASHINGTON, D.C., 10 REGIONAL OFFICES, AND FOUR FIELD OFFICES. OUR TRI-RACIAL, BILINGUAL STAFF WORKS INDIVIDUALLY OR IN TEAMS AND CAN RESPOND TO DISTURBANCES AND DISPUTES ANYWHERE IN THE COUNTRY WITHIN HOURS. WE WORK IN ABOUT 350 COMMUNITIES A YEAR ON ABOUT 800 CASES.

LOCAL AND STATE OFFICIALS AND COMMUNITY LEADERS THROUGHOUT THE COUNTRY WHO HAVE BENEFITTED FROM, OR WITNESSED OUR WORK, IN THE PAST, ALERT US TO PROBLEMS AND SITUATIONS WHERE WE CAN BE OF ASSISTANCE.

YEARS OF EXPERIENCE HAVE EQUIPPED OUR STAFF TO RECOGNIZE THE INITIAL SIGNS OF A POLICE-COMMUNITY RELATIONS PROBLEM THAT MAY EVENTUALLY LEAD TO A FULL-BLOWN DISRUPTION IF NOT DEALT WITH BEFORE IT GETS OUT OF CONTROL.

THIS IS ANOTHER ASPECT OF OUR ABILITY TO PROMOTE PEACEFUL CHANGE. RECOGNIZING DISRUPTIVE SITUATIONS BEFORE THEY GET TO THE BREAKING POINT ALLOWS US TO WORK WITH COMMUNITIES IN BRINGING ABOUT CHANGE BEFORE A LIFE IS LOST OR PROPERTY IS DAMAGED.

BECAUSE THE ORIGINS OF COMMUNITY CONFLICT ARE OFTEN COMPLEX, AND SOLUTIONS DIFFICULT, CRS, AS A MATTER OF COURSE, WORKS COOPERATIVELY WITH A LARGE NUMBER OF FEDERAL, STATE, AND LOCAL PUBLIC AGENCIES, AS WELL AS PRIVATE INSTITUTIONS, DEPENDING ON THE NEEDS OF EACH INDIVIDUAL CASE.

WE MAINTAIN ONGOING RELATIONSHIPS WITH THE OFFICES OF EACH GOVERNOR AND EACH U.S. ATTORNEY.

FEDERAL AGENCIES WE OFTEN RELATE TO INCLUDE, WITHIN THE JUSTICE DEPARTMENT, OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND ASSISTANCE (OJARS), CIVIL RIGHTS DIVISION, FEDERAL BUREAU OF INVESTIGATION, AND U.S. MARSHALS SERVICE.

WE WORK WITH THE CIVIL RIGHTS OFFICES AND VARIOUS PROGRAM OFFICES OF SUCH FEDERAL AGENCIES AS DEPARTMENT OF EDUCATION, HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEPARTMENT OF LABOR, DEPARTMENT OF COMMERCE, DEPARTMENT OF DEFENSE, DEPARTMENT OF STATE, OFFICE OF REVENUE SHARING, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY, AMONG OTHERS.

AT THE STATE LEVEL WE HAVE OCCASION TO HELP OR WORK WITH THE STATE POLICE, ATTORNEY GENERAL'S OFFICE, CIVIL SERVICE OR PERSONNEL OFFICE, CIVIL RIGHTS DEPARTMENTS, AND DEPARTMENT OF EDUCATION.

AT THE CITY AND COUNTY LEVEL WE MAY WORK CLOSELY WITH THE MAYOR'S OFFICE, POLICE DEPARTMENT, HUMAN RIGHTS AGENCY, SCHOOL SYSTEM, ETC.

IN THE PRIVATE SECTOR WE OFTEN REACH OUT FOR THE INVOLVEMENT OF THE LOCAL BUSINESS COMMUNITY, UNIVERSITIES, AND CHURCH AND CIVIC ORGANIZATIONS.

I BELIEVE THAT THE NUMBER OF PEOPLE KILLED BY POLICE OFFICERS CAN BE REDUCED BY 50 PERCENT WITHIN 5 YEARS WITHOUT ANY IMPINGEMENT ON THE QUALITY OF LAW ENFORCEMENT.

THE TECHNOLOGY HAS BEEN ESTABLISHED. THE STATE OF THE ART IS KNOWN.

IMPROVED STATE LEGISLATION, REVISED FIREARM POLICIES AT THE LOCAL LEVEL, DETERMINED POLICE LEADERSHIP, ADEQUATE POLICE TRAINING, POLICE-COMMUNITY COOPERATION, STURDY PROSECUTION OF POLICE ABUSES, AND EDUCATION OF THE PUBLIC AS TO THE STANDARDS OF POLICE ACCOUNTABILITY ARE THE ELEMENTS IN THE STATE OF THE ART.

A CHANGE OF THIS MAGNITUDE WITH REGARD TO THE USE OF DEADLY FORCE WILL AUTOMATICALLY LEAD TO VAST IMPROVEMENT WITH RESPECT TO THE USE OF EXCESSIVE FORCE THAT IS NOT DEADLY.

CHANGES OF THIS MAGNITUDE WILL GO A LONG WAY IN REDUCING THE ANTAGONISM, FEAR, AND MISTRUST BETWEEN THE MINORITY COMMUNITY AND THE POLICE.

IT IS HIGH TIME WE WERE PRACTICING THE STATE OF THE ART.

THE FEDERAL GOVERNMENT, STATE LEGISLATORS, LOCAL POLITICAL AND POLICE EXECUTIVES, ALL HAVE A JOB TO DO -- BUT, IT IS A JOB THAT IS DOABLE.

Exhibit 6



U.S. Department of Justice
Community Relations Service

Director

Washington, D.C. 20530

Honorable Arthur S. Flemming
Chairman
United States Commission
on Civil Rights
1121 Vermont Avenue NW.
Washington, D.C. 20425

Dear Mr. Chairman:

In response to your request during my testimony before the Commission on September 17, 1980, I submit the following information for the hearing:

- Examples of the Community Relations Service activities with Federal Regional Councils (Tab A)
- A three year history of Community Relations Service' submissions (Tab B).

Please feel free to contact me if you have questions or need further information. Thank you for your interest in our work.

Sincerely,

Gilbert G. Pompa
Director

Attachments

EXAMPLES OF CRS ACTIVITIES WITH FEDERAL REGIONAL COUNCILS

REGION I - New England

In Boston the Boston Federal Executive Board (BFEB) is the more active federal coordinating entity substituting in many respects for the FRC. CRS is an active member of the BFEB, serving on the Community Service Committee and successful in getting the BFEB to support several CRS concerns including tutors for Boston public schools and general support for CRS efforts.

Much of CRS' work with federal agencies occurs on a one-to-one basis. Many of these relationships are encouraged and nurtured in the BFEB setting. For example: the former Chairman of the BFEB was especially helpful to CRS in our work with the Boston Youth Coalition. CRS has dealt extensively with HUD in relations to the housing problems in Boston and elsewhere. CRS and the Navy and the Coast Guard work cooperatively with a citizens group (RUFAB) related to racial assaults in the vicinity of Naval and Coast Guard installations.

CRS helped support and attended a major civil rights and equal employment opportunity conference in Worcester in 1979. This conference was sponsored by the FBR and BFEB. In like manner, the BFEB and the FRC strongly supported the conference co-sponsored by CRS in Boston in 1979, entitled "Making Race Relations a Higher Priority in the 1980's."

CRS has worked actively and productively with the Indian Task Force of the FRC. This cooperation was most important during the time when the land claims in Maine and in Mashpee, MA., were being actively contested.

REGION IV - Southeast

The CRS Regional Director has appeared on the FRC agenda twice during the last 6 months to discuss the issue of differential treatment between Cuban refugees and Haitian refugees arriving in the Southeast.

REGION VII - Central

The CRS Kansas City office was on the agenda for the September 1980 meeting of the FRC to discuss the Council's Indian Programs Coordinating Committee. During the past two years the Region VII office has also had the following indirect contacts with the FRC:

A minority community organization in Ft. Dodge, Iowa, asked the FRC to help assure county government compliance with a CRS-mediated agreement.

CRS is working with HHS Region VII officials and others on refugee problems. HHS has lead Federal responsibility for such work.

CRS identified the FRC to the minority community as a potentially useful resource in the Bootheel area of Missouri (South-east Missouri), in conjunction with a visit to that area by White House official Jack Watson.

Examples of Region VII interaction with the FRC in the past:

CRS helped the FRC coordinate response to migrant concerns in the Mississippi Valley area in and near Muscatine, Iowa (1974-75). CRS helped the FRC develop strategies to reduce violence in the Pruitt-Igoe public housing project in St. Louis, Mo. (1972) and CRS worked in cooperation with the FRC to analyze ways in which a Riverfront Development Project, heavily supported by Federal funds in Omaha, Nebraska, could impact positively upon minorities (1972-73).

REGION VIII - Rocky Mountain

The Rocky Mountain Region has had a memorandum of understanding with the Mountain Plains Federal Regional Council (FRC) since 1972. Throughout the years, CRS has also been an active member of the three Minority Committees of the FRC on Hispanics, Blacks, and Indians. Members of the regional staff have chaired all three committees at one time or another.

This has created an excellent relationship between the CRS Denver office and the Regional Directors of the funding agencies belonging to the FRC. On many occasions throughout the years, the FRC provided the initial alert on racial problems in this region.

The most recent example of this relationship is the awarding of a \$70,000 grant to the City of Longmont by the Community Services Administration (CSA) for the creation of a human relations specialist who will act as a liaison between the city manager's office and the Hispanic community. The \$70,000 grant came as a result of CRS first approaching CSA and then making the recommendation to the City of Longmont. The \$70,000 is for two years and it will pay the salaries of the specialist, secretary and other incidentals. This recommendation was made after two Hispanics were fatally shot by police.

CRS also went to CSA in 1979 following violence between Cuicanos and Vietnamese in Denver. On the recommendation of CRS, CSA awarded the City of Denver \$375,000 for three years for the creation of a multi-ethnic, multi-lingual communication center. On the recommendation of CRS, the FRC established a federal task force for the coordination of effort to solve problems involving Indo-Chinese.

CRS has worked with FRC on several major programs involving protest demonstrations by Indians in South Dakota, North Dakota, and Montana. This has involved assistance of housing, sanitation, and security for international treaty conferences held in Wagner, South Dakota and Hardin, Montana.

CRS also has been a member of the Denver Federal Executive Board (DFEB) since 1968. Currently, the Region VIII Regional Director is a member of the Board of Directors of the Denver Federal Executive Board, and Chairman of the Minority Business Opportunity Committee (MBOC). Under the MBOC special program of bank deposits to minority institutions, a luncheon was held 11 September 1980 in which 1.2 million dollars was deposited in the Women's Bank from the Combined Federal Campaign (United Way) and 2.0 million dollars from International Business Machines (IBM).

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A minority community organization in Ft. Dodge, Iowa, asked the FRC to help assure county government compliance with a CRS-mediated agreement.

CRS is working with HHS Region VII officials and others on refugee problems. HHS has lead Federal responsibility for such work.

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THREE YEAR HISTORY OF CRS BUDGET SUBMISSIONS
(Dollars in Thousands)

	Original CRS Request Spring Planning	Submission as Approved by JMD	Submission As Approved by OMB	Level Approved by Authorization Committee	Level Approved by Appropriations Committee	Congressional Appropriation
FY 1979	\$6,367 positions-191	\$5,534 positions-152	\$5,353 positions-136	positions-136	positions-136	\$4,781 positions-136 ¹⁾
FY 1980	\$7,670 positions-198	\$5,428 positions-136	\$4,473 positions-100 ²⁾	positions -136	positions-111	\$4,925 positions-111
FY 1981	\$6,533 positions-141	\$5,054 positions-111	\$5,273 positions-111	positions-136	positions-111	\$5,273 positions-111 anticipated not yet enacted
FY 1982	\$7,268 positions-145	\$6,976 positions-152				

1) After congressional action, a Departmental deferral of Budget authority of \$500,000 was transferred to DEA
2) Initial OMB recommendation was a total phase-out of the agency by FY 1981.