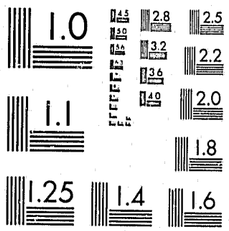

RACIALLY MOTIVATED VIOLENCE

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BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

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WITNESSES

RACIALLY MOTIVATED VIOLENCE

WEDNESDAY, MARCH 4, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 2237, Rayburn House Office Building, Hon, John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Edwards, Hall, Sensenbrenner, Kindness, and McCollum.

Staff present: Thomas W. Hutchison, counsel; Oliver Quinn, assistant counsel; and Raymond Smietanka, associate counsel.

Mr. CONYERS. The subcommittee will come to order.

This is the first of a series of hearings on what appears to be an increase in incidents in recent years of criminal violence directed against minority group citizens.

I welcome my colleagues who have joined us, and we will begin the hearings by approving, as is necessary, the coverage of this hearing by videotape and photography, that motion pictures and other things be permitted in accordance with rule 5 of the rules of procedure.

If there is no objection, permission will be granted.

Mr. SENSENBRENNER. I am reserving the right to object, Mr. Chairman, and I will object. I am very strongly opposed to violence against minority groups or anyone else in this society. But this is the second hearing that has been held on this subject by a subcommittee of the House Judiciary Committee.

In the last Congress the Subcommittee on Crime, which the gentleman from Michigan chaired, held a hearing subsequent to the election. That hearing proved to be a three-ring circus. There was a representative of the Ku Klux Klan who deliberately obstructed and interrupted the hearing, and as a result, the news media representatives in attendance, in violation of subsection 6 of the committee's rule 5, went out in the middle of the hearing into the hallway. The result was the Ku Klux Klan representative got more media coverage than did the witnesses before the committee.

I would read that subsection. It says:

> Equipment necessary for coverage by the television and radio media shall not be installed in or removed from the hearing room while the committee or subcommittee, as the case may be, is in session.

Now, in order to prevent this from happening, again, and obstructing a very serious hearing of the Congress, I think that it

probably would be wise for us to forgo having radio and television cameras in the hearing room for the first couple of hearings, in hopes that matters settle down.

For that reason, Mr. Chairman, I do object.

Mr. CONYERS. All right.

Is there any further discussion?

Mr. KINDNESS. Mr. Chairman.

Mr. CONYERS. The gentleman from Ohio.

Mr. KINDNESS. Mr. Chairman, it was my pleasure to serve with the late Leo Ryan, who was chairman of a subcommittee of the Government Operations Committee in the 95th Congress, who stated we weren't going to have committee hearings; we were going to have media events. That experience is one which I felt caused more heat than light to be shed on the subject matter we dealt with in that Congress, which had to do with the back end of the nuclear fuel cycle. And, of course, there were emotions raised on an issue such as that, just as there are likely to be emotions that are raised in the hearings that the chairman has apparently projected for the future and for today.

I wish to state, with malice toward none in the news media or certainly on this subcommittee, that we can conduct hearings of a more meaningful sort, I believe, by not causing them to be media events. The circus atmosphere is not one in which to get to the heart of the issues and the determination of problems in a clear light and to arrive at solutions.

I think we have seen subcommittees in this Congress used time after time after time as events for publicity, for the chairmen of subcommittees and members of subcommittees, and it doesn't help us to get at the problems that are supposed to be dealt with.

In lieu of dealing with the real oversight questions, oftentimes subcommittees are used for more popular emotional issues that are counted on for more publicity. If that is the way the subcommittee is going to operate, that will have to be determined by the members of the subcommittee. But if that's the way it's going to be, however, it is going to be a struggle for the whole Congress.

I join the gentleman from Wisconsin in objecting to the circus atmosphere.

Mr. CONYERS. Does the gentleman from California seek recognition?

Mr. EDWARDS. Yes. Thank you, Mr. Chairman.

I have served with the gentleman from Michigan, the chairman of this subcommittee, for a number of years, and he previously chaired the Subcommittee on Crime. I have always found him to be a most responsible and scholarly chairman, whose hearings and whose legislative proposals have done a great deal for the American people and, indeed, for Congress.

I think this is a very important issue that the subcommittee has under consideration. I don't think that we ought to dig back into history and because the Ku Klux Klan misbehaved at a previous hearing, change our procedures and go into secret session——

Mr. SENSENBRENNER. Would the gentleman yield?

Mr. EDWARDS. I will yield in just a moment, of course I will.

But I think the American people are entitled to see what goes on. I thought both political parties were for sunshine in all the work that is done by Congress.

Now I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. The gentleman from Wisconsin does not advocate a secret session on this subject or any other subject. The public is invited to participate in these hearings and attend these hearings. It can be covered by the print media if the print media is in attendance.

I would point out the electronic media violated the rules of this committee in the last session on this subject, and it says very clearly in the rules that:

> Equipment necessary for coverage by the television and radio media shall not be installed in or removed from the hearing room while the committee or subcommittee, as the case may be, is in session.

The gentleman from California was not present at that hearing. I sat through the whole thing. What happened was that a Ku Klux Klan representative disrupted the hearing and was ejected by the chairman, the gentleman from Michigan, and the news media just migrated from that part of the room and went out the door, in violation of the committee rules, and duly recorded what was going on in the hall by this spreader of hate.

Now, I am not going to judge for the news media what is newsworthy and what is not. But if the news media does come into a hearing room, they had better abide by the rules of the committee that allows them there, and they did not do so last time. So I think we ought to just "cool" the electronic media business for a little period of time.

Perhaps if this subcommittee does calm down and we can hear the witnesses in a dispassionate manner, then they might be allowed back in and I certainly would change my position. But until then, I don't think so.

Mr. EDWARDS. I thank the gentleman for his contribution. I am sure that in the event any of the rules of the committee are violated, at this hearing or any future meetings, those of us who are here will make a point of order and not allow it to happen.

Now, Mr. Chairman, pursuant to rule 5 of the Committee on the Judiciary Rules of Procedure, I move to permit coverage of this hearing, in whole or in part, by means of motion pictures, videotape, and still photography.

Mr. CONYERS. Those members that support the motion will indicate by saying "aye."

Aye.

Mr. EDWARDS. Aye.

Mr. CONYERS. Those opposed, by saying "no."

Mr. SENSENBRENNER. No.

Mr. KINDNESS. No.

Mr. CONYERS. With the addition of a proxy from a member of the committee, Mr. Seiberling——

Mr. SENSENBRENNER. And another member of the committee, Mr. McCollum——

Mr. CONYERS. That makes it 3 to 3.

If we may—well, the motion fails, and the subcommittee will stand in recess for 5 minutes.

[Recess.]

Mr. CONYERS. The subcommittee will come to order.

This hearing revolves around what appears to be an increase in incidents in recent years of criminal violence directed against minority group citizens. No interruptions or disturbances will be permitted at this hearing. Disrupters will be immediately ejected.

These hearings will focus on criminal violence and threats of violence committed by individuals or organizations, and not within their exercise of constitutional rights protected by the first amendment. It is our purpose to conduct a careful, objective, and thorough study of such violence.

A number of citizens from across the Nation will testify before the subcommittee from all walks of life, including the Department of Justice.

There continues to be an abundance of evidence of criminal violence directed against minority group citizens. This violence has manifested itself in a variety of ways—random shootings and sniper attacks, assaults, attacks on civil rights leaders, firebombings, armed confrontations at political demonstrations, and intimidations and threats of violence.

The violence is not confined to any one section of the Nation. On the contrary, it is a serious national problem. This hearing and future ones will examine the causes of this violence, the nature and extent of the violence, the adequacy of local, State, and Federal laws and their enforcement, and steps that might be taken to prevent such violence in the future.

Is it mere coincidence in such a period as the present one, when unemployment is rising and inflation continues unabated, that there is an increase in violence? That is the question. Are popular misconceptions among white Americans regarding the impact of affirmative action policies and the economic position of black Americans exacerbating race relations? That is another question. Is there a relationship between institutionalized racism and racial violence, between the perceived retreat from earlier commitments and promises and increased violence, between an uncontrolled free market economy and race relations? These are considerations that we hope to get into.

Now, the problem of racial violence is not new. Dr. Martin Luther King, Jr., himself a victim of racial violence, was assassinated 12 years ago while assisting in an attempt to address a labor problem that he knew had the potential for violent eruption. These hearings are a further step in the process of identifying and addressing the real causes of racial violence in this society.

TESTIMONY OF DR. KENNETH B. CLARK, NEW YORK CITY

Mr. CONYERS. We are very honored to have as our first witness Dr. Kenneth B. Clark, a distinguished professor emeritus of psychology at the City University of New York, and past president of the American Psychological Association, member of the board of regents of the State of New York, member of the board of trustees of Howard University, and of the board of the University of Chicago. He is an author

noted for his work on the effects of segregation on children, which was cited in the Supreme Court decision in *Brown* v. *Board of Education.*

He is presently the head of a consulting firm specializing in community relations, affirmative action, and race relation issues.

Dr. Clark, knowing how rarely it is your disposition to testify before subcommittees, we feel very honored to have you here. We will have your prepared remarks introduced in full into the record at this point by unanimous consent and invite you to the witness table to proceed in your own way.

Welcome to the subcommittee.

Dr. CLARK. Thank you, Mr. Chairman, and members of your committee.

I would like to address myself to what I suppose one could call it "legal" violence, and raise mainly the undramatic problem of police killings of minorities.

In the 1970's, while I was director of the Metropolitan Applied Research Center, my staff was asked to make a study of persons killed by the police in New York City during the period from 1970 to 1973.

We found in that study that a disproportionate number of individuals killed by police in New York City were black and Hispanic youths. The results of that study were confirmed by other studies that have come to our attention. In these studies, too, the evidence is clear that blacks and other nonwhites and Hispanics were more likely to be shot and killed by police officers than were whites; and that younger blacks and Hispanics, below the age of 24, were more likely to be killed by the police. These findings seem to be consistent in cities such as New York, Los Angeles, Chicago, and Detroit, where there is a high proportion of minorities.

One of the certain things for me as I look over these studies is the consistency of these findings. The evidence is there, consistent and revealing. Even when these authorities offered explanations such as minorities are more likely to perpetrate crimes than are nonminorities, the fact remains that these killings are judgments. When the police kill an alleged perpetrator, the perpetrator has no trial, and there is no way of determining his guilt or innocence. In fact, police killings are a form of capital punishment, a fait accompli.

In recent years there have been some disturbing indications of a complex set of racial factors operating in the area of police killings. In the study of killings in New York City there were incidents of the killing of young blacks where there was not even an indication of crime.

One very dramatic example of this was a police killing of a young, black teenager who was walking along the street, in which there was no crime involved. However, the policeman pulled out his gun and shot and killed the youngster. The policeman was tried and acquitted on the grounds of temporary insanity. He was required to spend a few months in a hospital. At the end of the few months of hospitalization, he was deemed no longer insane and was released.

I think, gentlemen, the pattern is clear, and persistent. So far nothing is being done to address this disturbing problem of legal

violence—legal in the sense that it is violence perpetrated by law enforcement officers along racial lines.

I present the facts in my prepared statement. I did not attempt in the prepared statement to interpret these facts. It seems to me that the interpretation in terms of a racial discrepancy here is clear. The facts support the contention that race is a critical factor in the police killings in our large urban centers.

I am prepared to answer any questions you, Mr. Chairman, or members of your committee, would think to ask.

Mr. CONYERS. What about the consideration of the violence that is going on that is not being committed by law enforcement or Government personnel? Do you notice any change in the number of people that are being assaulted in that capacity?

Dr. CLARK. Well, the press has presented the problems of the killing of minorities, of blacks, in such cities as Buffalo, and the tragic and incredible pattern of killings of young blacks in Atlanta. Those cases have been presented by the press. They are dramatic in that they form a pattern within time and place.

I chose to concentrate on this form of violence because it does not have the same sort of dramatic press coverage. On the contrary, with few exceptions, it seems to be accepted as norm. The killing of minorities by police generally is perceived by the American public as part of law enforcement, as part of law and order.

I am contending that that is a questionable perspective of this particular problem which I am seeking to emphasize here. My personal opinion is that this racial disproportionate factor in police killings is part of the same pattern and context of racism and violence in American society. However, it is not generally so perceived.

Mr. CONYERS. Dr. Clark, is that legal violence increasing or diminishing?

Dr. CLARK. It seems to be remaining constant. As I look at the studies over the last 10 years, the disproportionate number of blacks and other minorities killed by police does not seem to be increasing or decreasing.

Mr. CONYERS. What about the efforts to change this pattern?

Dr. CLARK. Mr. Chairman, I do not know of any systematic efforts to change the pattern because, for one thing, in order to change a pattern, you have to face the fact that there is a problem. On the basis of the evidence which I have seen, my judgment is that this is not generally perceived as a problem. Instead of being perceived as a problem, it tends to be excused, tends to be explained away.

For example, when an officer kills a young person and is brought before his peers or a jury, almost invariably these individuals are found not guilty of a crime. The explanation is that they were performing their duties as police officers. So the issue of dealing with the problem is not existent because it is not seen as a problem.

I am presenting this testimony to assert that this is a problem. It is a problem which should be faced if it is going to be remedied. I don't know whether society is prepared to face it. If the society is not prepard to face it, it will be an accessory to the perpetuation of what I perceive as a problem.

Mr. CONYERS. Thank you very much.

The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Dr. Clark, I am impressed with the thoroughness of your testimony and the studies that you have presented to the committee. But I do have a couple of questions.

First, have you done any correlations between homicide victims involving the police and whether the incident occurred in a high crime area, which would bring along with it increased police patrols?

Dr. CLARK. I have not done the correlations, as you said, but the fact is that these incidents do generally occur in high crime areas. They generally occur—obviously—where the victims are minorities, they are almost invariably occur in ghetto areas

Mr. SENSENBRENNER. If that's the case, wouldn't there be a higher percentage of minority victims because minorities are generally concentrated in ghetto areas? Would that not be an additional factor that has got to be considered in making a determination on whether there was a greater percentage of incidents that occurred in relationship to the higher number of incidents that are investigated by police?

Dr. CLARK. Yes, there is no question that these incidents, when they occur, occur in areas in which the police are concentrated in terms of high crime.

My point, Mr. Congressman, is that the fact of a high crime area is not, in itself, a determinant in the use of a gun as a factor in dealing with crime—or an alleged crime.

This precipitous, impetuous use of a gun is more likely to occur in dealing with crimes in the minority areas than in dealing with similar crimes in nonminority areas. The location of a problem is, to me, not sufficient explanation of the fact that police officers are more likely to shoot and to kill alleged criminals in ghetto areas than they are to shoot and to kill alleged criminals in nonghetto areas.

Mr. SENSENBRENNER. Thank you. I have no further questions.

Mr. CONYERS. The gentleman from California, Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

It is a great pleasure for me to join the chairman and the gentleman from Wisconsin in welcoming to this hearing a very distinguished author and scholar, Dr. Kenneth B. Clark. I really have been an admirer of yours for many years.

Dr. CLARK. Thank you, sir.

Mr. EDWARDS. On page 5 of your testimony, Dr. Clark, you quote an article in the New York Times in 1973 by Mr. Burnham, to the effect that about three out of five people in New York during a certain period who were killed by police were black, and it's about the same as the arrest record. The arrest record for felonies was 62 percent for blacks in that particular study.

We have had a very sharp argument in the last few days about the roots of crime in the United States. One very distinguished jurist said that the way we could reduce violent crime in the country, which is an epidemic situation at the moment, would be through speedier trials, the certainty of jail sentence, rehabilitation efforts in correctional institutions, and some preventive detention in bail cases where the arrestee might be prone to violence.

The other distinguished jurist sharply disagreed with him and said that although he certainly is in favor of speedier criminal trials and the certainty of jail sentences, and all of those recommendations except for the preventive detention remedy, the roots of violent crime in the United States are much more basic than that, that they lie in unemployment, in family structure, in racial discrimination, in poverty. And he proved it by example after example, of children who are raised in very unfortunate circumstances, where jobs are not available for their parents, decent education is not provided to them, family structure is not as stable as in the usual middle class of the United States. Violent crime starts, at a very young age. Those are usually the young people who end up in jail.

What is your observation on this controversy between two distinguished jurists?

Dr. CLARK. I am generally on the side of the latter. My own judgment about the roots of violent crime is that violent crimes are generally perpetrated by individuals who feel they have nothing to lose. Their predicament is so hopeless that even if they are caught and imprisoned, it would be no worse than their day-to-day lives.

In this regard I would like to share with the committee an observation I made in the 1964 Harlem riots, where I actually went into the eye of that storm in order to observe it directly for myself. I was walking beside a group of four or five young black teenagers, say between the ages of 16 and 20. They were boasting about their participation in the riot, and what they had done.

One of these young men said, "Well, I broke in and I got some things, but the man didn't get me tonight. I'll go home, get some rest, and come out tomorrow, and maybe he'll get me." I've never forgotten that, because what I was hearing this young man verbalizing was almost a wish to be caught, to maybe even be shot at.

When you look at the statistics on suicide, you notice that one index of social pathology in which blacks are lower than whites is in suicides. However, those statistics, I think, are incomplete, in that they're dealing only with direct suicide, where the individual actually kills himself. An indirect suicide, as in the case of crime or drugs, or where individuals feel hopelessness, who have a sense of "what the hell do I have to lose." In such cases they place themselves in positions for others to destroy them if they dare. It's a kind of dare relationship with a society which dehumanizes.

Another factor that I would like to add, in terms of a determinant of crime and violence, is related to the evidence which I sought to emphasize here, a disrespect for the law, a disrespect for the agents of law.

I grew up in Harlem and spent all of my elementary and secondary school days in the center of Harlem. It was just generally accepted by young people growing up in Harlem that law enforcement agents were as much a factor in crime as were the number runners or the bootleggers or anyone else. It just was accepted. The only thing that countered a total disrespect for the law, on the part of those of us who did not go the route of crime, was a family that gave us another perspective, another set of objectives, that would counter the realities of our day-to-day observations. Unfortunately, many of my classmates did not have that counter weight, so they

did not see very much distinction between crime and violence on the one hand and so-called law enforcement or police agents or offcers on the other. They saw them more as part of a total pattern, of a rather cynical, corrupt society.

Mr. EDWARDS. Thank you very much, Dr. Clark. I believe my time is up, Mr. Chairman.

Mr. CONYERS. The gentleman from Ohio, Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

Dr. Clark, I want to join in welcoming you and thanking you for your participation in these hearings.

I would like to direct your attention to your statement on page 1, so I can understand that better. During that period of 1970 to 1973 of the analysis done by the Metropolitan Applied Research Center, in relation to that period, it indicates there were 248 alleged perpetrators who were killed by New York City policemen, and of the 248 victims, 73 percent were from minority groups.

In the following paragraph it is indicated that in this period, 96 minority persons were killed by white policemen, which would seem to indicate that if we took the remainder of 248, that would be 152 who were killed by minority policemen.

Do you happen to have any figures that would indicate the percentage of minority police officers, as compared to the total, during that period of time? Would they be a larger proportion of the officers—Well, I guess particularly in the areas where this occurred, I suppose those figures would be difficult to obtain.

Dr. CLARK. No, there is no percentage of police officers, for minority officers, and that's still true. In New York City there's a case before a Federal court now which is seeking to increase the percentage of minority officers.

I wish that I had brought the total report here——

Mr. KINDNESS. That seems to indicate then a disproportionate number of these killings were perpetrated by minority police officers.

Dr. CLARK. Nonwhite? No, that's not my recollection of the study at all. It's a rather small proportion. But you're right, that it would seem to be indicated here. But that is not the case in terms of my recollection of the study.

I pulled that study out of the files in preparation for this hearing but I did not bring the complete study with me. I will seek to correct or to look at that factor and let you know.

Mr. KINDNESS. Might I ask, with the consent of the subcommittee, that what you can develop in that area be made a part of the record of the hearing?

Dr. CLARK. Surely. I'll get the staff on it right away.

Mr. CONYERS. Without objection.

Mr. KINDNESS. Further, Dr. Clark, in your statement on page 5, there is a chart which is related to an article appearing in the New York Times on August 26, 1973, which has been headlined "Three of Five Slain by Police Here Are Black, Same as Arrest Rate." That is followed by the statement, "The disproportionate involvement of minority in shooting incidents is not related to their involvement in felony arrests"——

Dr. CLARK. By another study here.

Mr. KINDNESS. I am wondering whether there is further explanation the subcommittee might have for that statement, since the percentages of shooting opponents versus felony arrests seems to be somewhat related but not right on target.

Would it be possible for you to provide us with information that would help to substantiate the statement that "The disproportionate involvement of minority in shooting incidents is not related to their involvement in felony arrests"?

Dr. CLARK. I certainly will.

That statement came from looking at other studies in various cities in which there seemed to be no consistent relationship between the shooting of minorities. Now, this study is of one city, New York City. If I remember correctly, and I should have put it in here, in Philadelphia, for example, there appears to be no consistent relationship between felony arrests and the shooting of minority perpetrators.

Where there is no relationship, the percentage of minorities shot is higher than even the percentage of minorities arrested. But I will get that information.

Mr. KINDNESS. I certainly would appreciate that.

I wonder, in that connection, if there are other metropolitan areas where such facts are available to you, if those might be submitted as a part of the record of this hearing, and would you be so kind to allow us the opportunity to perhaps follow up on understanding that information if we have further questions?

Dr. CLARK. Yes, sir.

Mr. KINDNESS. Thank you very much, sir.

Mr. CONYERS. The gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman.

Dr. Clark, I, too, would like to welcome you to this hearing and to thank you for your testimony.

There are one or two questions I would like to ask. One, you stated that—those who participate in violent crimes do so because they feel they have nothing to lose.

Do you mean by that that they feel they have nothing to lose in society as a whole, or there is not sufficient penalty attached to the commission of violent crimes in which they might receive a severe sentence, or under some circumstances——

Dr. CLARK. My feeling is that penalty is irrelevant to those who feel they have nothing to lose in society as a whole, that life couldn't be worse anywhere.

I have read about those who believe they can control crime by increasing penalties, by swifter justice, by more severe sentences, by building more prisons. It is my considered judgment that those sorts of alleged remedies are by no means corrective, but are likely to increase the problem. I certainly believe that society has a right and responsibility to protect itself, but I do not believe that society protects itself by increasing hopelessness in an already oppressed or depressed group of citizens.

To come back to your question, my personal point of view is that, with the exceptions of crimes of passion and of white collar crimes which are calculated crimes not generally seen in terms of violence, but violent crimes, crimes of assault, homicides—it is my considered judgment these are perpetrated by individuals who have

given up on any possibility of a quality of life that is positive for them. They have given up on the possibility of any constructive role in society, and in fact, operate on the assumption that they don't have a damned thing to lose.

In fact, in some cases—and I'm now really speaking as a psychologist—they may have a "moment in the sun" in the case of being caught.

I noticed you had some question about the television media. The one opportunity for such an individual to have some sort of ego support is the consequence in the perpetration of a crime to be caught and to be publicized.

Mr. HALL. Then it's your position, I assume, that punishment has nothing to do with whether a person is deterred from committing a crime or not?

Dr. CLARK. That's my personal position.

Those like you gentlemen, middle-class individuals, have a particular perspective of punishment and penalty, which is a reflection of your status in society. You have something to lose. You will be embarrassed. You will be disgraced if your son or daughter were caught committing a particular type of crime.

What is difficult for you to understand is that this society has made it possible for a large, too large a group of individuals not to have this perspective of punishment or disgrace.

Mr. HALL. I'm thinking of the Criminal Code that we have worked on in this committee over the past year. Are you stating that the penalties that we have set out in that code dealing with violent crime are not sufficient, or are you saying that they are too extreme or not extreme enough?

Dr. CLARK. No, sir. I am saying they're not necessarily particularly relevant to——

Mr. HALL. Do you think we should not have any penalties for violent crime?

Dr. CLARK. No, I did not say that. I am trying to communicate to you something that may be difficult for you to understand. I am trying to put myself in the position of an individual who literally, and whose day-to-day realities support the contention, that he does not have anything to lose by violating what you consider to be the normal and acceptable rules and regulations of the society. From the standpoint of the perpetrator those rules and regulations have already been so violated as far as his life is concerned, we are talking different languages, you see. You talk penalty, you talk punishment, you talk about the kinds of things that make sense for individuals in the society who are more privileged. They do not make anywhere near the same sort of sense for those who have been rejected by society. You would not be able to explain the high rate of recidivism, if your concept of punishment was the concept which these individuals understand. Their concept of punishment may more likely be loss of status with others who share their rejected role in the society, such as cowardice, or informants.

Mr. HALL. Well, you're not advocating two standards of punishment, are you, for those in the middle class and for those who have not attained that——

Dr. CLARK. No, sir. What I am advocating is that if you are really going to eventually address yourself to the roots of violence, the

roots of racially related crime, you will have to do something that is extremely difficult; mainly, a total reexamination and restructuring of some of the givens and the assumptions and the explanations of the society of which you are a part.

I do not believe that this is going to happen. I am not sure this society wants to do this. I think we are going to continue to deal with the problem in ways that will intensify it. We're going to continue to deal with it in terms of the perspective of the middle class who, understandably, wants to protect itself from the manifestations of the desperation and frustration of the underclassed citizens. We are going to continue to accept criminally inferior schools which block the ability of these individuals from having any hope of upward mobility. We are going to continue to have a pattern of relationship between law enforcement officers and these individuals based upon our assumption that they need to be and must be controlled.

Mr. HALL. Doctor, don't you think that people who commit crimes should be under some type of control?

Dr. CLARK. I certainly do. I think that people who commit crimes, should be controlled. I believe society should do everything within its power to prevent the commission of crimes. I am contending, however, that this society is not doing that. It is not doing everything within its power to reduce crime.

I think the society is permitting crime to increase and is dealing with it in terms of allegedly punishing the crimes rather than preventing the crimes. I certainly am not, and I am sure you gentlemen will not believe, that I'm here advocating that crimes should be permitted. Obviously not.

I am trying, and probably not too successfully, to say, "Look, if we really want to control crime, it's not as easy as increasing punishment and in building more jails, and having tougher police officers who will shoot first and ask questions later." All these things do is increase the adversary relationship between the underclassed, which provides a disproportionate amount of the crime, and the rest of society. You will, in fact, be perpetuating a kind of enormitive guerrilla warfare in this society. And if you continue to do it, you will continue to have crime and violence.

Mr. HALL. Thank you, Doctor.

Mr. CONYERS. The gentleman from Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

Dr. Clark, I just realized I have one other question in which I would appreciate your help. I failed to follow up in relation to these statements on page 1 of your testimony with regard to the race of the police officer or policemen involved.

It is stated that black and Hispanic policemen each killed one white alleged perpetrator out of that 248, which I believe would mean that 23 of the 25 white victims of shootings would have been shot by white police officers.

Dr. CLARK. White, yes.

Mr. KINDNESS. Our figures don't seem to work out together. I just wanted to direct your attention to that fact.

Dr. CLARK. I'm going to get the whole original report and submit it to the committee.

Mr. KINDNESS. Thank you very much.

Mr. EDWARDS. May I ask one quick question?

I'd like to clarify something you said earlier, Dr. Clark. Let me ask you: Apparently it is your considered opinion that violent crime is almost certain to get worse in this country because the root causes are not being addressed either at the State, local, or Federal levels; is that correct, sir?

Dr. CLARK. Right, and that budget cuts will—someone asked me not too long ago what was my opinion as to the present economic program of this administration and whether it was going to work. My response was I didn't know. They said, well, how will we know? I said it would seem to me that one barometer might very well be the crime rate. If the crime rate decreases, it's working; if the crime rate increases, it's not working.

However, I do not believe that that index—which I believe will be a critical index of the effectiveness of any economic program—will be used by others as an index of whether the economic program is working or not. But I sincerely believe that if one wants to know whether this particular approach to social services and the responsibility of the Federal Government and State government in meeting the basic needs of human beings is or is not sound, I think there is probably no better index of it than what happens to crime, particularly in underclassed areas of our society.

Mr. KINDNESS. Would the gentleman yield in that connection?

Mr. EDWARDS. Yes.

Mr. KINDNESS. Dr. Clark, have you done any studies or do you know of any studies that would help us to get a better idea of this factor: It seems to be my observation that in modern societies that have experienced high rates of inflation, there is a parallel between those economic conditions on the failure of the value of exchange and the regard that people have for the rights of others around them and the hopelessness that they encounter in their lives.

Paralleling that seems to be a rise in violent crime, or various types of crime in total, but particularly when you have a highly inflationary circumstance.

I'm not suggesting that inflation causes violence, but rather, that there is a parallel. Do you have any thoughts you would care to share with the subcommittee?

Dr. CLARK. No, I have no studies and know of no studies, but it certainly would seem to me to be a very valid hypothesis that would be worth looking into.

There are general studies of the relationship between the economic status of a group and the rate of crime, violent crime—by the way, every time I say this, I really feel that another thing that our society obscures are the various types of crimes. Violent crimes tend to be concentrated in lower economic status groups. Nonviolent crimes, white-collar crimes, tend to be concentrated among more educated groups.

The society does not talk very much about nonviolent crimes, even though it may very well be that if one looks at the consequences of white-collar crimes in terms of individuals, it might be even greater than the consequences of violent crimes. But violent crimes are obviously more dramatic. They can be published.

Mr. KINDNESS. Thank you.

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Dr. CLARK. I thank it's a very valid hypothesis.

Mr. CONYERS. You have been very helpful, Dr. Clark, in giving us some perceptions that I think will be very important in terms of the violence that is going on in this Nation and how we might legislate and oversight the law enforcement responsibilities that are connected with it.

Dr. CLARK. Mr. Chairman, I would just like to add that I don't know that my ideas are practical or politically—you know, it seems to me that simplistic approaches to the problems seem to have much more political sex appeal than any serious look at the deep-rooted problems.

I just wanted to make it very clear that I am aware of the fact that the ideas which I shared with you are not likely to have any immediate appeal.

Mr. CONYERS. Well, I am reminded of what prehaps your Representative in Congress at one time said: "Keep the faith, baby."

Thank you very much.

Dr. CLARK. Thank you.

[The prepared statement of Dr. Clark follows:]

RACE AND POLICE KILLINGS: A SUMMARY OF FINDINGS

(By Kenneth B. Clark)

The available evidence consistently supports the contention that blacks and nonwhites are more likely to be shot and killed by police officers than are whites. Younger blacks and Hispanics, below the ages of 24, are more likely to be killed by the police. These findings are consistent in such cities as New York, Los Angeles, Chicago, Detroit.

In May 1974, the Metropolitan Applied Research Center (MARC) released a preliminary report entitled "An Analysis of 248 Persons Killed by New York City Policemen, 1970–73." This study indicated that in the 4-year period, between 1970 and 1973, 248 alleged "perpetrators" were killed by New York City policemen. Of the 248 victims, 73 percent were from minority groups (52 percent were black and 21 percent were Puerto Rican) and 10 percent were white. The racial identity of the remaining 17 percent was unknown.

When the race of the policeman involved in the killing was noted, the results were also significant. In this period, 96 minority persons were killed by white policemen. Black and Hispanic policemen each killed one white alleged perpetrator. In considering the age and race of the victims, an important factor emerged. In this 4-year period, 39 of the victims (27 blacks and 12 Hispanics) were under 21 years of age. Eight (8) of the white victims were under 21.

The staff of the MARC was able to gather this information from a search in the New York Times Index supplemented by information supplied by the Firearms Discharge/Assault Reports maintained by the New York City Police Academy's Firing Range. [The cooperation of the New York Police Department was an invaluable asset to this study.]

In the 7 years since May 1974, there has been an increase in the use of deadly and excessive force by police officers. Community awareness has also increased. Community groups and human rights agencies and concerned citizens have met to discuss the problem and develop strategy for stemming the spreading practice of police brutality and killings. In an address delivered on November 10, 1979, Assistant Attorney General Drew S. Days, III, mentioned that Kerner Commission's remarks "that police brutality and abuse were not viewed in a vaccum. Instead, lawless behavior on the part of police was identified as an overwhelmingly important factor in exacerbating racial tensions in urban centers * * *. Police abuse * * * reinforces in the minds of minorities the symbolism of the police as an occupying army, as representative of the segregated racist society which they feel exists * * *." [1]

[1] U.S. Commission on Civil Rights, "Police-Community Relations in the City of Wichita and Sedgwick County," U.S. Commission on Civil Rights, July 1980, p.1.

In a presentation before the Academy of Criminal Justice Science in March 1979, James J. Fyfe gave the racial distribution of New York City police homicides for a 5-year period which slightly overlapped the MARC 4-year Analysis. The figures show that for the period between January 1, 1971 and December 31, 1975, 64.1 percent of the New York City population was white (5,076,022) and 17.5 percent of the victims (549) of police shootings were white. The minority population comprised the remaining 35.9 percent of the population (2,838,140), however, 82.5 percent (2,590) of the victims of police shooting were minority.[2]

Dr. Lawrence W. Sherman in October 1978 spoke before a workshop in which he discussed the practice of pretrial execution by police who kill in the process of arresting a person for an alleged crime. Shooting a fleeing burglar in the back cannot be justifiable self-defense. In his nationwide study, Dr. Sherman found that most of the police homicides happened at night, in central cities, with few witnesses present. Most of the victims of police homicides are males, between 17 and 30, and about half of them are black. While Dr. Sherman found no breakdown of the Hispanic victims, he was nevertheless able to state that "in certain cities, we know that up to 80 percent of the victims of police homicide are members of minority groups.[3]

The 1977 data used by Lenox S. Hines showed that "the rate of blacks killed by police remained at least nine times higher" than the rate of whites. "Although blacks only comprise 12 to 14 percent of the Nation's population, they comprise at least 50 percent of those killed by police."[4] In the 10 years between 1960 and 1970, police killings in Philadelphia, which has a black population of 22 percent, were nearly 90 percent black.[5] In reviewing the Index crimes, Gerald D. Robin found that 37.5 percent of those arrested were black, yet 87.5 percent of those killed by legal intervention of the police were black.[6]

The issue of pretrial execution is clearly illustrated by a table Fyfe presented.

RACIAL DISTRIBUTION OF NEW YORK CITY POLICE SHOOTING OPPONENTS, AND PERSONS ARRESTED FOR FELONIES AGAINST THE PERSON—JANUARY 1, 1971 to DECEMBER 31, 1975

	Shooting opponents (percent)	Felony arrests[1] (percent)
White	17.5	22.2
Black	60.2	62.4
Hispanic	22.3	15.4
Totals	100.0	100.0

[1] Calculated from a sample of 700 persons arrested for murder, non-negligent manslaughter, robbery, felonious assault and forcible rape in New York City, 1971. Source David Burnham, "3 of 5 Slain by Police Here are Black, Same as Arrest Rate," the New York Times, August 26, 1976, p. 50

Origin: Fyfe James J "Race and Extreme Police-Citizen Violence." The American University, The Police Foundation. March 1979. p.7.

The disproportionate involvement of minority in shooting incidents is not related to their involvement in felony arrests.

Even more alarming is the information regarding the racial distribution of the shooting incidents and the homicide victim.

[2] Fyfe, James J. "Race and Extreme Police-Citizen Violence." Presented at the Annual Meeting of the Academy of Criminal Justice, March 1979.

[3] Lawrence W. Sherman. "What Do We Know About Homicides By Police Officers?" In: "Police Use of Deadly Force: What Police and Community Can Do About It." A Workshop Conducted by U.S. Department of Justice, Community Relations Service at the 1978 Annual Conference of the National Association of Human Rights Workers. October 1978, pp. 8–19.

[4] Lenox S. Hines. "Police Use of Excessive and Deadly Force: Racial Implications." In: "A Community Concern: Police Use of Deadly Force." U.S. Department of Justice, Law Enforcement Assistance Administration. January 1979. pp. 7–12.

[5] Takagi, Paul. "A Garrison State in a Democratic Society." Crime and Social Justice. V. 1, Spring-Summer 1974.

[6] Robin, Gerald D. "Justifiable Homicides by Police Officers." Journal of Criminal Law, Criminology and Police Science. 1963.

RACIAL DISTRIBUTION OF NEW YORK CITY POLICE SHOOTING OPPONENTS, JANUARY 1, 1971 TO DECEMBER 31, 1975 AND VICTIMS OF MURDER AND NONNEGLIGENT MANSLAUGHTER, JANUARY 1, 1973 TO DECEMBER 31, 1975

	Shooting opponents	Homicide victims
White (percent)	17.5	22.5
Number	549	1,069
Back (percent)	60.2	51.0
Number	1,889	2,419
Hispanic (percent)	22.3	26.5
Number	701	1,259
Totals	100.0	100.0
Number	3,139	4,747

[1] Source: New York City Police Department, Homicide Analysis Unit, Annual Report, 1976,

Origin: Fyfe, James J. "Race and extreme Police-Citizens Violence." The American University, The Police Foundation. March 1979. p. 9.

Police seem to have "one trigger finger for whites and another for minorities." [7]

In New York City police shooting rates between 1971 and 1975 were strongly associated with variations in homicide rates and violent crime arrest rates among the races. This is true in other cities as well. For example, Fyfe found that in Memphis, between 1969 and 1974, the likelihood that a black property crime suspect would be shot during the course of his arrest was more than twice that of a white in the same situation. Moreover, more than half the blacks shot and killed by Memphis police officers were unarmed, while only 12.5 percent of the whites killed were unarmed.[8]

In a report on the use of deadly force by the police, a group studied the data in seven cities: Birmingham, Alabama; Detroit, Michigan; Indianapolis, Indiana; Kansas City, Missouri; Oakland, California; Portland, Oregon; and Washington, D.C.[9] The report claims that "During the past 10 years the American police have exercised increasing restraint in hostage situations, civil disturbances, protest demonstrations, even in making arrests and dealing with juveniles." (Emphasis added.)

In the analysis of the findings of 370 shootings in the year 197[illegible]-74, the following observations were made:

"The rates of shootings by police officers vary widely among jurisdictions, and it is impossible, within the limits of this study, to say that specific factors are responsible for these differences. In Kansas City, however, it is possible to document variations in kinds of shooting of juveniles except in self-defense. After the enactment of this regulation, the number of persons under 18 years old shot by police officers declined sharply.

"The number of blacks and other minorities shot by police is substantially greater than their proportion in the general population, but is not inconsistent with the number of blacks arrested for serious criminal offenses. * * * Shootings of minority juveniles, in particular, have been responsible for increased tensions and occasionally violent disturbances in ghetto neighborhoods."

Catherine H. Milton and her associates provide demographics of victims, which is important:

Sex.—In the 320 instances noted, 308 of the subjects shot by the police were male, 6 were female, and the remaining 6 cases reported were incomplete or the victims escaped unidentified.

Age.—While the ages of victims range from 14 to 73 years old, 34 percent were between 19 and 24. Almost three-quarters (73 percent) of the victims were under 30 years of age, and 50 percent were 24 or younger.

Race.—Of the 169 citizens nonfatally shot almost 80 percent were black. In the case of those who were killed by police use of firearms 78 percent were black.

An examination of the national figures on crime rates and the rate of use of deadly force by police officers in the seven cities shows no consistent relationship. In some cases, crime rate increases as shooting rates decrease. In other cases the reverse is true.

[7] Fyfe: 1979.

[8] Fyfe, James J. "Race and the Police: An Early Report on a Change Effort." Presented at the Annual Meeting of The American Society of Criminology. November 1980.

[9] Milton, Catherine H., Jeanne Wahl Halleck, James Lardner and Gary L. Abrecht. "Police Use of Deadly Force." Police Foundation, 1977.

In a study covering the period 1974–79 in Los Angeles, Marshall W. Meyer found that of the 584 suspects shot by police, 321 (55 percent) were black, 126 (22 percent) were Hispanic, 131 (22 percent) were white, 6 (1 percent) were nonwhite "other." [10] In this period 55 percent of all persons shot at by police officers were black, 53 percent of those actually hit were black, and 50 percent of those black persons actually hit were fatally shot. Not only were blacks shot at, hit and killed by police, at a rate which was far over their representation in the general population, but also at a rate which exceeded their representation in the criminal population.

TESTIMONY OF M. HARVEY BRENNER, PH. D., SOCIOLOGIST, SCHOOL OF HYGIENE AND PUBLIC HEALTH, JOHNS HOPKINS UNIVERSITY, BALTIMORE, MD.

Mr. CONYERS. Our next witness, Dr. M. Harvey Brenner from Johns Hopkins University, has been before congressional committees many times. He has taught at Harvard and at Yale Medical School, serves on the editorial board of the Journal of Socio-Economic Planning Sciences, and has been very concerned about the subject matter that he brings the subcommittee here today.

Without any further ado, we will incorporate your carefully prepared remarks in their entirety into the record and allow you to proceed in your own way. Welcome again to our subcommittee.

Dr. BRENNER. Thank you very much, Mr. Chairman, and members of the subcommittee.

Much of the testimony I would like to discuss with you this morning is contained in chart form, which I would like to explain. These charts appear in the back of the summary statement that I am giving, and I would like to refer to these as I read from the prepared statement and make general comments.

Evidence of the increasing violence directed against minorities has been presented over the past several months to the Criminal Justice Subcommittee of the House Committee on the Judiciary. It is the argument of this testimony that the national and regional economic situations, and especially the rates of unemployment, represent the dominant influence on violence against minorities, as well as on violence in the United States in general.

Research over the past decade, especially reports by Brenner and others to this committee, to the Joint Economic Committee of Congress, the House Budget Committee's Task Force on Human and Community Resources, and the Senate Finance Committee, has shown in detail the strong relation between deteriorating economic conditions, and particularly increased rates of unemployment, and violent crime, including homicide and property crime.

It is not a simple matter to measure the incidence of substantial violence against minorities, but one outstanding instance of this phenomenon is found in the mortality rate of nonwhites due to homicide, as reported by the National Center for Health Statistics. Over the past 20 to 30 years, the pattern of homicide and violence in general has changed so as to reflect not only deleterious economic conditions in general, but those for youth in particular.

The youth unemployment rate, expressed as a ratio to the overall unemployment rate, has been the single most important factor

[10] Meyer, Marshall W. "Police Shootings at Minorities: The Case of Los Angeles." The Annals (American Academy of Political and Social Science on The Police and Violence). November 1980.

in the national rate of homicide and criminal violence in general in the United States at least since the 1960's.

Statistical evidence for this statement is shown in table 1 and figure 1. May I ask you to turn to those, first perhaps to figure 1a as it's given here. The title of figure 1a is "The Total Nonwhite Male Homicide Mortality Rate," where the predictor is a multivariate model, meaning that we are explaining statistically the historically relationship between a number of factors and in this case the nonwhite male homicide mortality rate.

The picture, the graph indicates by the solid black line the actual nonwhite male homicide mortality rate since 1950 in the United States. The dotted line is what we would predict on the basis of several variables, including the youth unemployment to total unemployment rate, the proportion of the population, and the proportion of the population aged 15 to 24 years of age.

These data occur on the first table, table 1: The rate of youth narcotics arrests, and the average of per capita income trend over the period.

The most powerful factor influencing the nonwhite male mortality rate and the rate for nonwhites in general is the unemployment rate for youth as a ratio to the total unemployment rate. This occurs in the equations on table 1, the equations 7 and 8 for nonwhites and nonwhite males.

On the next graph, which is figure 1b, we see the total male homicide mortality rate without considering race. The white mortality rate over time, the shape of that trend, set of trends, is very similar as it turns out to that of nonwhites, and has many of the same—indeed, nearly all of the same predictors. As one can see by an examination of the chart, the combined effect of these predictors predicts very well, as indicated by the dotted line, the movement, and turn of the solid line, which is the actual male homicide mortality rate.

What is involved, again if we turn back to table 1, what is involved in the prediction of that rate is in a very dominant way the youth unemployment rate to total unemployment rates. The per capita income changed, but not the rate of youth narcotics arrests. On the other hand, the proportion of the population 15 to 24 years of age continues to be an important predictor for this source of mortality among males.

Mr. KINDNESS. Mr. Chairman, may I ask a question?

The mortality rate indicated in figure 1a, both lines go down from about 1971, I guess it is. Could you comment on that?

Is that the decline in the age group——

Dr. BRENNER. It is partially that. That's mainly, in effect, as it turns out, on white homicides, the white homicide rate, but not nearly so much on the nonwhite. There is, in fact, a decline and it is real. The way it usually operates on the nonwhite homicide rate is apparently to increase the proportion of younger persons in the population who are nonavailable or able to participate in the labor force, thus increasing their relative share of unemployment.

The reason we know that that is the proper explanation is that in the case of the nonwhite homicide rate for males—this is equation No. 8 on table 1—the population aged 15 to 24 years of age is not a significant factor, whereas the youth unemployment rate

ratio to total unemployment rate is a very powerful factor. So that this may well operate, this proportion of youth, may well operate and continue to operate in the case of white homicide, but does not seem to operate directly in the case of the nonwhite homicide rate, nonwhite male homicide rate.

It can be seen that the impact of this unemployment factor was considerably greater on the homicide death rate of nonwhites as compared with whites, and males as compared with females. By comparison with the impact of this unemployment factor, youth narcotics activity, as measured by the arrest rate, for example, tended to affect only the white homicide rate.

The significance of youthful unemployment has been overshadowed during most of the 20th century by the adult unemployment rate as the outstanding predictor of criminal aggression, as can be seen in figures 2 through 4.

If we can turn to those figures, starting on 2a, we have some indications of how the overall rate of employment acts essentially as a preventive to imprisonment and violent mortality. For example, figure 2a itself deals with total prisoners received from courts by State penal institutions in the United States. These are State prisons.

The chart on the left, on the extreme left, shows the raw data in numbers and shows that there was a trend in those data. That trend is largely explained by changes in population.

When we hold that trend constant by removing it, we obtain the graph that occurs right in the middle of the page, and it's called detrended data. When we now superimpose that graph on the employment rate for the United States as a whole, we observe a very clear inverse relation between the two, so much so that the imprisonment frequency holding constant the trend is virtually predicted by the unemployment rate or inverse to the employment rate in the United States. This is again all prisoners received from courts during the year by State institutions.

Figure 2b analyzes these same data in greater detail, using engineering methods and econometric methods. For example, one of the more popular methods used by engineers is the Fourier analysis to look at changes in the wave-like patterns of cycles in various sorts of geophysical and natural activity. We are able to examine these data in much the same way because our economy goes through periods of cycles, as can be seen in figure 2b, in the right-most of these graphs, for example, where the data are depicted in terms of their usual cyclical patterns. Once again we observe a very close to perfect inverse relation that the eye can easily discriminate between changes in employment, as we saw on the previous graph in 2a, and prison admissions in the United States for all of the States.

In figure 3a we are looking now in particular at one prison so as to focus on a concentrated area in the United States. This is New York State and we will be examining imprisonment at Sing Sing prison in Ossining, N.Y. We are looking in particular at imprisonment for the crime of murder. These are persons who have been sent by the courts to prison for the crime of murder.

The lack of a picture, the lack of a graph in the left-most section of figure 3a indicates that these data have no trend, neither upward or downward, and indeed, when we look at the picture in

the middle, we observe that at one point, just within the period of the Second World War, there in fact was zero admissions to prison for the crime of murder. This number rises to as high as 71, which occurred during the Great Depression in the United States.

As we match this curve with employment for the State of New York, as we did for the Nation as a whole in previous graphs, we see once again how very clearly even the frequency of persons in prison for murder replicates inversely the state of employment for the State of New York. Once again, the more technical and detailed analyses, as performed through Fourier and polynomial and other technical analytic devices, occurs in figure 3b. One can see perhaps even more clearly the nearly perfect inverse fit of imprisonment for murder in New York State—in this case at Sing Sing Prison—to changes in employment.

Mr. CONYERS. Dr. Brenner, in figure 3a, is there some danger in singling out murder as the crime component, when we have been told that murderers are a unique breed in the prison population, that they frequently are model prisoners, because of the increasing number of crimes of passion they often do not otherwise have criminal records and that they may be asymptomatic of the point to which their work is directed.

Dr. BRENNER. Yes, sir. That is a very appropriate question that one hears from time to time, which is why I have in figures 4a and 4b a companion crime of violence that is also associated with property crime, namely, that for robbery, the instances of imprisonment for robbery at Sing Sing Prison. One sees virtually the same type of relationship.

I might say, Mr. Chairman, that for nearly all major crimes, major indicating those which the FBI has included them in its index, for nearly all of those one would see virtually the same type or relationship. Indeed, whether it is property crime for which imprisonment occurs, whether it is forgery, for example, or assaultive behavior, the general patterns are quite similar. And so they are if one would examine not imprisonment but the arrest rate or crimes known to the police, as I have testified earlier before you.

This then takes us, of course, to figures 4a and 4b, which is an analysis of robbery. The reason they are presented here today is that they themselves concern violence as well.

Returning to the text of the testimony itself, it should perhaps not be surprising, therefore, that we in this country are facing, simultaneously, relatively high unemployment rates in a disturbed national economy, extraordinarily high rates of criminal violence, and unusually high rates of violence against minorities.

The statistical evidence indicates that the current violence against minorities would appear to be part of a more general pattern of increased criminal aggression in the United States at this time. The question still must be answered as to whether the direction of this violence is more sharply pointed toward minorities than toward other populations.

In my judgment, there is an added factor at work which also stems from national economic distress. During periods of a generally depressed and anxiety-ridden economic climate there is a tendency toward national conservatism and a powerful desire among

many in the population to embrace older values and older prejudices associated with those values.

Some individuals who are especially distraught under conditions of economic stress are prone to mental disorder and even suicide. I would like to call your attention to figure 5a, in which we have represented the suicide rate, the entire suicide rate in the United States as it has occurred from the beginning of this century. That is the crossed hatch line. You will notice its very fine inverse graphic relation to employment, which is the same economic indicator that you have been looking at in earlier graphs.

Turning to 5b on the next page, we can make a very similar statement about the homicide mortality rate. In this case I have not asked you to focus on nonwhites but rather on whites specifically to make it clear that there is very little, indeed, racial discrimination with respect to the magnitude of the violence directed against persons in the society.

In this case we have a rather important source of mortality for young black males in the ages 25 to 29 and in the homicide rate, again quite as inverse to changes in employment as we saw for the suicide rate.

Finally, as a comparison piece, to indicate the importance of stress generally as emanating from disturbed behavior on the national economy, as they have an impact on mortality patterns that are clearly associated with stress. Graph 5c shows the relationship between circulatory system disease mortality, which is mostly heart attack, and the employment rate, with a lag of approximately 3 years. We are looking at a sample here of young black males—nonwhite males; I'm sorry—in the age group 35 to 39. If we were to look at in the other age of black men or women, or any age virtually of white men or women, we would see a pattern that is very similar.

Others, however, become prone to great hatred and violence directed toward others—especially those minorities which are traditional scapegoats and subjects of pejorative stereotyping.

The meaning of this sentence in the testimony is that in addition to the general sense of stress that occurs among people who most directly feel it, and who are then subject to violent and other stress reaction, there is a general tendency toward extreme views in the society, extreme ideological positions, whether of the left or right, however we may characterize it, whether in religious behavior or otherwise understood ideological points of view, which seems to temper and which seems to influence further the climate in which the violence takes place, and by the studies I am familiar with, often has the feature of directing the course of violence toward one group as against another. But in general, the evidence seems to be—from this paper and other statistical studies—that the overall level of violence is quite consistent with the general state of the economy.

There are those who argue that the most powerful, if not the most effective or efficient, method of reducing criminal aggression is to insist on considerably harsher prison sentences or the death penalty. Their voices are often loudest during periods of national economic distress, when many individuals in the population are more willing than usual to show hostility toward their fellow citi-

zens. Thus, one can see that aggression only leads to even greater aggression.

More tragic, perhaps——

Mr. CONYERS. Do you mean the aggression of the private sector is met by aggression from the Government? Is that what you were——

Dr. BRENNER. Yes, sir, that's what our statistical evidence indicates.

More tragic, perhaps, is that execution itself usually occurs under distressed economic conditions—I might say that these are new findings that have not been presented elsewhere—and increased unemployment in the short-to-intermediate term in particular, referencing table 2. This is the case for executions of both whites and nonwhites.

May I point out that on table 2, the top two rows of which represent the statistical relationship between the impact of economic and demographic factors on the rate of executions, in this case it is the executions of white persons in the United States over the 20-year period of 1951 to 1970.

Mr. CONYERS. Which figure?

Dr. BRENNER. I'm sorry. It's table 2. There is no figure represented for this material.

The interpretation of these equations is that the total unemployment rate at zero lag within the year, and the total unemployment rate occurring 2 years before, has the effect of increasing significantly the rate of executions of white persons in the United States

If we add to that the state of the general economy, as indicated by per capita income, we will find that it is the decline in per capita income that is responsible for a decline in executions—I'm sorry. It's the reverse. The decline in per capita income that is responsible for an increase in executions, and the increase in unemployment that is similarly responsible for increased executions. No doubt the proper interpretation of these data is that with the deterioration of the economic situation, that is, added unemployment and lower income, we have considerably more very severe violent crime with, in turn, a higher rate of executions of whites. We will see the same type of relationship in the execution of nonwhites, the numbers of which, the absolute frequency of which, is rather similar to that of the frequency of executions of whites. Also, the population of nonwhites is obviously nearly 10 percent of the white population.

In any case, we observe the very same factors operating. In this case, the important unemployment indicator is the ratio of nonwhite unemployment to total unemployment, as, in other words, quite regardless of the economic cycle and features of structural change in the economy.

As the nonwhite unemployment rate increases, relative to that of the general unemployment rate, we find a considerably higher instance of executions of blacks, almost certainly due to an increasingly higher severe rate of criminal violence by them, as we do similarly for whites in previous equations. Thus, overall, the statistical evidence indicates for us that it is predominantly the economic situation that influences that most extreme measures taken by the society to attempt to punish and deter; namely, execution itself.

It is a feature which responds to the crime rate and responds to unemployment and decline in the economy, and from this evidence it lags, that is, it follows the rate of crime. It does not deter, the subsequent rate of crime as can be indicated statistically.

We observe, then, that far from being a source of reduction of aggression, capital punishment has usually been the result of criminal aggression which, in turn, has been heavily determined by economic distress.

It seems clear that unless and until we, as a nation, come to grips with unemployment, economic distress in urban areas, and regional economic dislocation, we shall not make significant progress in dealing with criminal aggression in general or violence against minorities in particular. Rather, we will find the society spending even greater resources on criminal justice and invoking increasingly severe penalties, but with little of the intended effect.

Mr. CONYERS. Thank you.

What is the understanding and support for these findings that you have presented to us, many of which are expansions of your previous work and some of which are proofs that are now being offered for the first time? To what extent are these relationships understood and supported in several communities: one, your own professional community, and two, in the general population?

Dr. BRENNER. My understanding is that in the population or researchers who deal with matters of criminal justice, both economists and sociologists, and, indeed, medical researchers and psychologists, as Dr. Clark testified immediately before me, that these are the plausible relationships and confirm what the literature otherwise indicates from studies that we have had with us for several generations in the United States, in much of Western Europe, studies sponsored by international organizations, studies sponsored by agencies of the U.S. Government, including the National Institutes of Mental Health and the National Institute on Criminal Justice.

As to the general public, my own sense of its response—and I'm only able really to garner that through the media themselves. I believe it was last week that the U.S. News and World Report published a major front page and a subsequent followup piece on what appeared to be a crime wave and criminal violence in the United States in the past few months.

Nearly every opinion that they were able to solicit from persons in positions of unusual ability to observe the crime pattern, as well as the general public—and I really have never seen quite this amount of unanimity before—seemed to indicate, virtually without exception, that the feeling generally was, across the United States, that this is quite clearly attributable to an unusually depressed economic situation in many different parts of the United States.

Mr. CONYERS. The more I struggle to put this area of our legislative responsibility in perspective, the more I am concerned about the unscientific approach in the United States toward law enforcement criminal deterrence, and criminal justice generally. There is, to me, a huge bias growing in several different subject matters and very unscientific and unprofessional approaches to the problem of crime are not uncommon.

So I'm asking, do you have any views that are similar to or dissimilar from mine?

Dr. BRENNER. Perhaps slightly dissimilar. The similarity is that it is evident that for reasons that I, as a professional, am not able to explain, despite the evidence of so very many studies over so many decades in our country and abroad, the sense of this material and much of the evidence has been available to our legislators and to our academic professionals, to our jurists, and there would seem on the face of it to be no reason in a democracy that this information should not have come to them.

At the same time, my sense—and this is the dissimilarity in our views—my sense is that since our legislators are certainly also members of the general public and, indeed, especially sensitive men and women who feel much more clearly than many the sense and tempo of the general public, I would be extremely surprised if our legislators were not very well acquainted themselves with the public view on the basis of criminal aggression, the criminal justice problem by and large in our country, and my sense is that in general this information is not unusual, is not peculiar in any way, and will not be surprising to our legislators. In fact, most, I would imagine, would be rather unsurprised and would find it rather old stuff.

Mr. CONYERS. But I'm not referring to the relationship that you have rather brilliantly reexamined here today, the relationship between crime and economic conditions. I'm talking about the failure of the professional sciences to address this subject. I base this upon my attendance at a number of national meetings of criminological associations, and associations of law enforcement officers, correctional specialists, juvenile justice experts, psychologists, sociologists, and even medical practitioners.

The fact remains that legislators are frequently operating in a vacuum without the help of the economists. It is not unnoticed to me that you come here as a social scientist; but where are the economists who are addressing the relationship of crime and economic factors? Why don't the national organizations I've referred to, these great bodies of scientists, come forward in a more organized way to help the Government and the lawmakers make decisions on the basis of something more than "gut" reactions to increases in crime?

Dr. BRENNER. The question, of course, is very well taken. I have cited the very, very many studies on this subject. Your own subcommittee in the last 2 years conducted extensive investigations, sessions into unemployment and crime, and produced a tome of testimony and multiple thousands of pages, with some excellent papers by some of the most important academics in this field in this country. The evidence was consistent.

Your question provokes me, if you will, to make an observation that perhaps we have come to the point in our society where the evidence is, indeed, so overwhelming that we are unable to pay attention to it. It is perhaps the situation of "not seeing the forest for the trees," where the situation is really rather plain, and perhaps both the situation of the academic researchers, the scholars and the legislators, is that there is nothing to do, nothing that one can do. It lies within the social and economic fabric and unless that is in some way reconstructed we shall be living with this problem, yet from time to time we can try repair efforts by adding more in the

way of criminal justice personnel, harsher measures. But fundamentally we must live with it, even though it grows.

I think the magnitude of the problem—and it's unusually large among Western countries, in our country—the magnitude of the problem and its very intrinsic relationship to the social and economic structure has made people feel that it cannot be dealt with. There then perhaps is a tendency—as your question seems to lead to the feeling—there is perhaps a tendency for people to look to other kinds of modalities of attacking it where, of course, in comparison to the fundamental issue, fundamental sources, it is not attackable, and indeed grows and will continue to grow.

Mr. CONYERS. Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

I was moved by the chairman's question about economists. I remember that George Bernard Shaw said that if you took all the economists and lined them up in a single line, they would not reach a conclusion. Someone else—I think it was President Truman—said that if you did that they would all point in different directions.

The observation—and this is with all due respect to our economists and the professionals in the various fields of study that bear upon crime and criminal justice—an element of commonsense does sum this up, that in bad economic times we have, throughout modern history, we have observed lawlessness of one sort or another, violence affecting the interactions between people. That is an inevitable element in our society I think which causes us to be pointed in the direction as legislators of getting at the economic problems.

Of course, there again, the economists can either help or hurt us, and there are those who follow one theory and those who follow another theory as to how we best reduce inflation and unemployment and the problems besetting our society that flow from it.

Perhaps if we could get together in that area we might have some better answers to the questions relating to crime. For example, in that connection I would certainly urge an across-the-board income tax rate reduction of 10 percent per year for 3 years, and that would help get more people back to work.

Mr. CONYERS. Yes, the rich would be put back to work by that proposal.

Mr. KINDNESS. The gentleman has to understand where the investments come from. It comes from those who have it to invest. That's a part of our capitalistic system.

Mr. CONYERS. My colleague sounds like those economists he was describing earlier. [Laughter.]

Mr. KINDNESS. We aren't going to get at the solution to these criminal problems if we don't get at the solution to the economic problems.

I do want to thank Dr. Brenner for his participation today. It has been helpful in putting in focus the subject matter. But I would ask for a short course in interpretation on one of the tables after our session. I just want to be sure what the symbols mean.

Dr. BRENNER. May I just respond to the question of the short course? I hope I will be forgiven for the use of those tables. This is, I'm afraid, the standard method of presentation of these statistical

relationships. I was called on an emergency basis, I'm afraid, only a couple of days ago to the meeting, and I was not able to put together a more extensive interpretation. But statisticians and economists who are familiar with the standard time series methods of regression will be able to comment on that. I, too, will be able to do that for you, if you wish, sir.

Mr. KINDNESS. Thank you. I would ask, Mr. Chairman, if in the examination of these tables we come up with questions, that we might direct questions to Dr. Brenner and have his cooperation and understanding of the subject matter more deeply, and that those might be made a part of the record of these hearings.

Dr. BRENNER. Certainly.

Mr. CONYERS. I think that's an excellent idea.

Mr. KINDNESS. Thank you very much.

Mr. CONYERS. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Dr. Brenner, I too thank you for your testimony. I find your statistics very persuasive, but I think they were predictable. I think your statistics are something that people who have studied this problem have understood for a long while. You have put them in very specific scientific terms and I think it's a great contribution.

However, I am sure you understand that our views unfortunately are not likely to be popular in Washington or in State legislatures because they cost a lot of money. You really are calling for a fairer and more equal society where we don't have an uneducated, unemployed, underclassed, especially young black minorities. That's the heart of the matter, isn't it?

Dr. BRENNER. Yes, sir.

Mr. EDWARDS. So don't expect accolades or being invited to the "Today Show" or the "Donahue Show." But certainly, I find your views very welcome.

Let me ask you just one question that struck me when Dr. Clark testified that he grew up in Harlem. It just happens that in 1941 I was an FBI agent in New York City and worked in Harlem quite a lot of the time. There was very high unemployment in those days, as you know, in 1941 before the war, perhaps 25 or 50 percent, for whites, too. Yet the crime rate was very low in Harlem at that time. One could walk the streets of any part of New York in comparative safety.

Tell me, why didn't unemployment in those days cause crime?

Dr. BRENNER. Well, it did cause crime in those days, too, but there are continually several factors operating. There is not a singular cause that operates in isolation, obviously, from the others.

The prewar situation that you speak of in 1941 is rather significantly different, as I tried to point out in the testimony, from the postwar. This situation of unemployment has become a considerably more powerful and sensitive factor among youth in relation to crime than ever apparently in the Nation's history, as far back as the middle of the 18th century.

Since the Second World War, as the date in this material indicate, it is particularly the youth unemployment rate in relation to the total unemployment rate. It appears to be the situation, in other words, not only that the youth in question are unemployed,

but that they are much more heavily unemployed than the rest of the population. It is a comparatively especially bad situation.

There requires to be not only a distinction between employed and not employed nowadays, since the Second World War, but one in which there is something of an isolation of the groups involved and the concentration of them among particular subgroups of the society well, well beyond what the society ordinarily has in terms of unemployment, be it cyclical or structural, as it's referred to. This particularly heavy and unusual concentration among youth, particularly minority youth, has become especially important, not only, by the way, in the United States, but in other countries of the Western World, this concentration on youth it is argued largely because our ability to incorporate lower socioeconomic status of rather poorly educated youth into a highly advanced technological society such as our own becomes more and more difficult. The distance between the skills that the young people in question come out of school with and the requirements of the society in terms of a reasonable level of employment, a reasonable job, an ordinary job, becomes more and more distant as we are apparently not able to take more advantage of our increased sophistication, our increased gross national product, since our minority youth in particular, lower socioeconomic status youth, are not acquiring skills at a rate sufficient to catch up with the growth of the economy and technology.

This is not just a problem for our country. It occurs in Sweden, for example, with an extremely low crime rate, but with one that is rising, particularly among youth, and of course with Germany—the United Kingdom is another extraordinary example, Canada. It is a problem of developed society, generally. But it happens to be an exquisite problem, an unusually severe problem in the United States because we seem to complicate it with a racial discrimination overlay and an educational system that has not been able, for one reason or another—and this is arguable—to keep pace with the skill requirements of industry.

Mr. EDWARDS. Thank you.

Mr. CONYERS. Could you reconcile these two statements that have been made here this morning:

One, that the views you have presented here have met with a surprising unanimity among the law enforcement community, but second, that they are unpopular and will probably not lead to having their conclusions effectuated.

Dr. BRENNER. I would have to give an opinion.

Forgive me, but let me say first that I very much hope you are incorrect—and you may well be correct—and I hope not. But it is possible that with the concentration on the problems of unemployment that are quite particular to those individuals who are most susceptible by their social and economic background to criminal violence and criminal injury generally, that the Government of the United States can, in fact, offer means of helping deal with the strict social and economic problems if it wishes to.

It very much would seem to depend on the vision of our current administration on where the priorities should lie. To the extent that they are concentrated on this group, the benefit that the administration will be able to secure will be both obviously in the

general health and well-being of our overall population and that of the minority population, but in addition, economic and social policy here is criminal justice policy and to the extent that is successful, it will have the double benefit according to our historical data of having a very pronounced effect on the rate of criminal violence.

Mr. CONYERS. You pointed out that even in the weekly news magazines there was surprising unanimity around the subject of the relationship between violence and the economy. Our colleague, Mr. Edwards, observed that your views are probably unpopular and will not be well received and probably not fully implemented.

Can you reconcile those two observations made within the course of one hearing?

Dr. BRENNER. I will take, if I may, sir, the most hopeful view of the lack of reconciliation of those comments, which is that my hope is they can be reconciled, that they may in the first instance, in the short run, be seen as fundamentally opposing each other, but that as we perhaps as a nation ultimately come to see that the most cost-effective, in terms of our own national resources, the most cost-effective and efficient and overall beneficial to our Nation activities concern the economic and social welfare of our lower socioeconomic status persons, that this, indeed, can be seen as the instrument of reconciliation of views that in the short term look really quite opposed.

I have a hard time with your question when stated in the simple realities and which you presented them, because I, forgive me, would prefer not to believe them, especially over the long run.

Mr. CONYERS. Well, maybe we have reached the point that we can at least agree on the premises. And then when you ask us collectively to deal with the solutions that are based on resolving the problems posed within those premises, that's a different ball game.

Dr. BRENNER. Yes.

Mr. CONYERS. There seems to be a great deal of difficulty in arriving at and implementing solutions that are based upon the premises.

Dr. BRENNER. Yes, there really are two issues, it seems. One is questions of fact, what occurs, what can we believe, in terms of the relationships to crime, a variety of factors that people ordinarily understand associated with them.

The second issue is, once that is understood and accepted by people generally, especially those who have some legislative effect, then what then is the most efficient and effective solution, yes, sir.

Mr. CONYERS. I am very pleased to welcome a new member to the subcommittee on behalf of all the members of the Subcommittee on Criminal Justice. We welcome Mr. McCollum from Florida and will yield to him at this point.

Mr. MCCOLLUM. Thank you, Mr. Chairman. I wanted to say that I'm delighted to be here. I apologize for being late. I was among several of the freshmen over at the White House this morning and I really looked forward to more fully participating with this hearing and in the future, Mr. Chairman.

I would like to ask a couple of questions.

In 1967-68, my State of Florida opened a couple of facilities in the corrections area which I am very familiar with, because of my interest and my later being on the corrections committee of the

Florida Bar, a couple of facilities that were designed to rehabilitate youthful offenders.

These operated for 2 to 3 years. They were primarily geared to teach skills. Many of the offenders were blacks and minorities, and I think from the studies that I have seen from down there, they were very successful.

But they only operated for 2 or 3 years because taxpayer support for holding those who were major offenders gave way and since we did not have the facilities these became maximum security prisons, just the opposite of what they were intended.

I do not know the overall national statistics. I don't know how other States have fared in trying to do this, and I do not, having come in late, know the extent, if any, to which you touched on this this morning.

But do you believe, that we were to actually have a youthful, first-time rehabilitation program in isolation in our prison systems, either Federal or State, that we could, in fact, turn away a great many of the youths today who are going back on the streets time and time again for these crimes?

Dr. BRENNER. That's a very complicated question. I think the ultimate criterion would be whether, in fact, the skills being taught and developed under this system were actually geared toward utilization by industry, and there were some reason to believe that the industries in question would take advantage of those newly developed skills and bring those individuals into the labor force. That would be the criterion.

My impression is that for that to take place there would have to be something of a quite different attitude of the garden variety of employer toward persons who had been in prison, a matter that would not be very easy to establish, that you would have to establish situations of trust, which would be at the present moment quite unusual, I think, but not inconceivable. But above all, it would have to appear to industry that they benefited, truly benefited over the long term by bringing these individuals with newly developed skills into their employment service.

If that took place, and there were new hearings, and there were potentials for very ordinary kinds of job careers by these offenders, then it seems to me that the chances are excellent that these programs would be effective. The evidence from an evaluation of some like the Florida case that you mentioned up to the present time really is very good, unusually good, better than I would have expected. I'm usually an optimistic person about these things.

Mr. MCCOLLUM. You have been very pessimistic about public support. Of course, I have cited the case where it failed, mainly in the taxpayer sense, because we weren't willing in Florida to build more prisons to house those who were the stronger offenders and, therefore, we let go of a program which had great potential to work.

What do you think about the possibility of some tax-incentive program, some business-oriented program, that would actually encourage industry to support such rehabilitation programs for first offenders and perhaps gradually working them into the system on an out-of-prison work basis? Is this something that, to your knowledge, has been discussed among industry at all?

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Dr. BRENNER. I have not seen or heard of it being discussed. As you presented, it seems to me an extremely innovative and creative approach, and one terribly worthy of certainly experimentation and demonstration.

The kinds of programs I have seen somewhat familiar with in Europe that have been successful, especially in Germany and France, use not exactly a tax incentive mechanism but things close to it, essentially a partnership with industry that offers some very clear benefits to industry analogous to tax incentives, where tax incentives is probably the more appropriate mechanism in the United States since we're more familiar with it.

I think it is terribly innovative and——

Mr. MCCOLLUM. It might help to support that type of rehabilitation prison system which otherwise the taxpayers wouldn't support, is what I'm getting at.

Dr. BRENNER. That it will, certainly, and benefit the industry.

Mr. MCCOLLUM. I am very interested in that and I appreciate your comments.

Thank you, Mr. Chairman.

Mr. CONYERS. We have appreciated your contribution and we will look forward to working with you in procuring the information that has been requested by the members.

This is the subcommittee's first experience with some of the data relating crime to economic conditions, and we are particularly appreciative of your testimony.

Thank you very much Dr. Brenner.

Dr. BRENNER. Thank you, Mr. Chairman.

Mr. KINDNESS. Mr. Chairman.

Mr. CONYERS. Yes, Mr. Kindness.

Mr. KINDNESS. Dr. Brenner, if I might just ask one other question. Has any work that you know of been done which isolates as a separate factor, such things as inflation?

Dr. BRENNER. Yes, my own work does extensively. The last major published version of it was as a result of testimony, very extensive testimony, to the Joint Economic Committee of Congress in December 1976. I will be happy to furnish you with that paper, paper No. 5, of the 1976 hearings under the then Chairman Humphrey.

Yes, indeed, along with unemployment, inflation was used by myself, and per capita income and other measures such as presented here.

Here's the difficulty with it. It depends on how we understand income, essentially. If, as seems to be the case, the general impact of increased income is salutary, that is, it decreases crime generally, and it is also true that inflation erodes income, then it certainly must be true, logically, that inflation is significantly involved in these same crimes. The more sophisticated way this is studied, however is not to isolate the inflation as such, but to work with real per capita income, rather than to take, as an explanation of trends in crime, personal disposal income, as such. We know that it is deteriorated because of inflation, and so we will deflate that typically into its 1967 or 1940 value in order to make it comparable over time.

Once that is done, the inflation is already built into the equation. In all of the equations given in the testimony today, where income

is used—notice, please, it is given as per capita income—and it always is deflated. That occurs on table 1. Notice the 11-year moving average of real per capita income, and on table 2 the exponential trend of real per capita income. So that inflation is built in to the equation.

Notice, for instance, on table 2 with the executions. We see that, in fact, with the decline in income, there tends to be an increase in actual executions per population, the number of whites and nonwhites. So it is a real factor.

Additionally, there are occasions where inflation, in studies I have done for the White House Task Force on Youth Employment Problems, there are occasions in certain property crimes—auto theft is one good example—where inflation, quite independent of the general state of real disposable income in the country, also seems to affect the crime rate above and beyond what real income would ordinarily predict. So yes, this kind of work has been done. I'm certainly not the only one to do it.

There is an economic literature, not a very large one, but there is some dealing with crime in which inflation is a moderately important factor, but particularly important with respect to property crime, where one might imagine it would have more real and direct consequences.

Other than that, its importance seems to lie in its effects on the general growth rate of the economy, which is the powerful determinant, negative determinant, of so much of our pathology that is with the general state of the economy doing better, which means that there is real income increase and there tends to be an increase in employment as well, and we have the added synergistic effects of these positive sets of circumstances which overall in these equations lowers the crime rate.

Mr. KINDNESS. Thank you, Dr. Brenner.

Mr. CONYERS. Thank you very much.

[The prepared statement of Dr. Brenner follows:]

VIOLENCE AGAINST MINORITIES, AND CRIMINAL AGGRESSION IN GENERAL, AS RELATED TO NATIONAL ECONOMIC DISTRESS AND HIGH UNEMPLOYMENT RATES

(By M. Harvey Brenner, Ph. D., Division of Operations Research and Department of Behavioral Sciences, the Johns Hopkins University, Baltimore, Md.)

SUMMARY STATEMENT

Evidence of the increasing violence directed against minorities has been presented over the past several months to the Criminal Justice Subcommittee of the House Committee on the Judiciary. It is the argument of this testimony that the national and regional economic situations, and especially the rates of unemployment, represent the dominant influence on violence against minorities, as well as on violence in the United States in general.

Research over the past decade, especially reports by Brenner and others to this Committee, to the Joint Economic Committee of Congress, the House Budget Committee—Task Force on Human and Community Resources, and the Senate Finance Committee, has shown in detail the strong relation between deteriorating economic conditions, and particularly increased rates of unemployment, and violent crime, including homicide, and property crime.

It is not a simple matter to measure the incidence of substantial violence against minorities, but one outstanding instance of this phenomenon is found in the mortality rate of nonwhites due to homicide, as reported by the National Center for Health Statistics. Over the past 20 to 30 years, the pattern of homicide and violence in general has changed so as to reflect not only deleterious economic conditions in

general, but those for youth in particular. The youth unemployment rate, expressed as a ratio to the overall unemployment rate, has been the single most important factor in the national rate of homicide and criminal violence in general since at least the 1960's.

Statistical evidence for this statement is shown in table 1 and figure 1, where the ratio of youth to total unemployment rates is observed to predict the rate of homicide, holding constant the effects of trends in real per capita income, youth narcotics arrests, and the proportion of the population 15–24 years of age.

It can be seen that the impact of this unemployment factor was considerably greater on the homicide death rate of nonwhites as compared with whites, and males as compared with females. By comparison with the impact of this unemployment factor, youth narcotics activity—as measured by the arrest rate—for example, tended to affect only the white homicide rate.

The significance of youthful unemployment has been overshadowed, during most of the 20th century, by the adult unemployment rate as the outstanding predictor of criminal aggression, as can be seen in figures 2–4. It should perhaps not be surprising, therefore, that we in this country are facing, simultaneously, relatively high unemployment rates in a disturbed national economy, extraordinarily high rates of criminal violence, and unusually high rates of violence against minorities.

The statistical evidence indicates that the current violence against minorities would appear to be part of a more general pattern of increased criminal aggression in the United States at this time. The question still must be answered as to whether the direction of this violence is more sharply pointed toward minorities than toward other populations.

In my judgment, there is an added factor at work which also stems from national economic distress. During periods of a generally depressed and anxiety-ridden economic climate there is a tendency toward national conservatism and a powerful desire among many in the population to embrace older values, and older prejudices associated with those values. Some individuals who are especially distraught under conditions of economic stress are prone to mental disorder and even suicide (Figure 5). Others, however, become prone to great hatred and violence directed toward others—especially those minorities which are traditional scapegoats and subjects of pejorative stereotyping.

There are those who argue that the most powerful, if not the most effective or efficient, method of reducing criminal aggression is to insist on considerably harsher prison sentences or the death penalty. Their voices are often loudest during periods of national economic distress, when many individuals in the population are more willing than usual to show hostility to their fellow citizens. Thus, one can see that aggression only leads to even greater aggression.

More tragic, perhaps, is that execution itself usually occurs under distressed economic conditions, and increased unemployment in the short-to-intermediate term in particular (Table 2). This is the case for executions of both whites and nonwhites. We observe, then, that far from being a source of reduction of aggression, capital punishment has usually been the result of criminal aggression which, in turn, has been heavily determined by economic distress.

It seems clear that unless and until we, as a nation, come to grips with unemployment, economic distress in urban areas, and regional industrial dislocation, we shall not make significant progress in dealing with criminal aggression in general or violence against minorities in particular. Rather, we will find the society spending even greater resources on criminal justice and invoking increasingly severe penalties—but with little of the intended effect.

TABLE I.1

MULTIPLE REGRESSION EQUATIONS[1] OF NATIONAL ECONOMIC INDICES ON U.S. HOMICIDE BY AGE, SEX, AND RACE[2,3] (1950–1976)

Homicide Rates	RHO[1]	Constant	11-Year Moving Average of Per Capita Income	Ratio Youth Unemployment Rate to Total Unemployment Rate	% Population 15–24 Years of Age	Rate of Youth Narcotics Arrests, Lag 2	R^2	D.W.	F-Statistic
All Ages									
1. Total	.26 (1.40)	-12.48** (-6.89)	.00089+ (1.92)	1.93* (3.02)	78.85** (5.07)	- -	.97	1.83	284.07**
2. Males[4]	- -	-23.46** (-9.18)	.00066 (1.10)	3.66** (3.96)	155.69** (8.86)	- -	.97	1.67	283.60**
3. Females[4]	- -	-2.54* (-2.94)	.00056* (2.76)	.051 (.16)	23.46** (3.95)	- -	.94	1.65	121.87**
4. Whites	.49* (2.87)	-1.73 (-1.35)	.00067* (3.13)	.54 (1.65)	5.45 (.58)	.19* (3.30)	.99	1.67	401.64**
5. White males	.56* (2.46)	-4.10+ (-1.99)	.0012* (2.62)	1.03+ (2.02)	15.95 (1.10)	.30* (3.37)	.99	1.38	451.35**
6. White females[4]	- -	-.05 (-.08)	.00049** (3.94)	-.07 (-.38)	2.13 (.49)	.06+ (2.11)	.97	1.73	180.23**
7. Nonwhites	.78** (6.42)	-33.33* (-2.75)	.0064 (1.62)	9.92* (3.01)	126.49 (1.39)	- -	.95	1.45	143.42**
8. Nonwhite males	.79** (6.49)	-56.34* (-3.01)	.011 (1.55)	18.44* (3.10)	243.85 (1.48)	- -	.95	1.45	147.93**
9. Nonwhite females	.26 (1.38)	-8.07+ (-2.39)	-.00052 (-.61)	2.51+ (2.11)	100.79** (4.02)	- -	.89	1.99	58.35**
Ages 15-24									
1. Total	.67** (4.57)	-7.13 (-1.46)	.0019 (1.56)	3.28* (2.86)	8.76 (.26)	.53* (2.53)	.98	1.80	215.94**
2. Males	.79** (6.66)	-14.54 (-1.71)	.0042+ (1.77)	5.40* (3.06)	5.25 (.10)	.71+ (2.11)	.98	1.41	236.86**
3. Females	.51* (3.04)	-.18 (.09)	.0051 (1.16)	.67 (1.33)	1.38 (.094)	.28* (3.14)	.97	1.69	177.52
4. Whites	.54* (3.24)	-1.99 (-1.02)	.0013* (2.94)	1.15+ (2.36)	-8.29 (-.58)	.37** (4.33)	.99	1.91	307.60**
5. White males	.60** (3.79)	-4.73 (-1.44)	.0023* (2.98)	1.81+ (2.25)	-9.18 (-.39)	.47* (3.33)	.98	1.88	332.03**
6. White females[4]	- -	1.82 (.90)	.00061 (1.46)	.12 (.19)	-16.22 (-1.11)	.24* (2.39)	.88	2.05	42.16**
7. Nonwhites	.77** (6.09)	-52.72+ (-2.45)	.010 (1.47)	14.43* (2.39)	169.04 (1.02)	- -	.94	1.41	117.89**
8. Nonwhite males	.76** (6.00)	-105.43* (-2.61)	.02 (1.23)	29.74* (2.62)	337.46 (1.08)	- -	.93	1.46	101.13**
9. Nonwhite females	.72** (5.25)	-4.75 (-.64)	.0035 (1.50)	.85 (.39)	36.59 (.62)	- -	.89	1.47	62.16**

[1]Cochrane-Orcutt transformation used in order to minimize residual autoregression.

[2]t-statistic and F-statistic: significance at the .001 level = **, .01 level = *, and .05 level = +.

[3]Per 100,000 population.

[4]Ordinary least squares regression.

Table 2

Regression Equations Showing the Impact of Economic and Demographic Factors on the Rate of Executions, by Race
United States, 1951 - 1970

(t values in parentheses)

Whites	Constant	Total Unemployment Rate, t = 0	Total Unemployment Rate, t - 2	Exponential Trend Real Per Capita Income	R^2	F	D.W.
Rate of Executions to Population	.190 E-03 (.369)	.930 E-03 (1.79)		-.310 E-06 (-9.87)	.858	51.38	1.79
Rate of Executions to Population	-.787 E-04 (-.135)		.113 E-02 (2.04)	-.279 E-06 (-7.12)	.865	54.50	1.82

Nonwhites	Constant	Ratio of Nonwhite to Total Unemployment Rate	Exponential Trend Real Per Capita Income	Total Homicide Mortality Rate	Nonwhite Population Size	R^2	F	D.W.
Rate of Executions to Population	.936 E-02 (8.86)	.106 E-02 (1.71)	-.414 E-05 (-10.75)	.334 E-03 (3.20)		.943	88.60	1.72
Number of Executions	209.72 (2.52)	22.66 (1.80)	-.148 (-1.25)	7.29 (1.80)	.768 E-02 (.653)	.920	43.36	1.96

Note: Cochrane-Orcutt transformation used to minimize residual autoregression.

Figure 1a

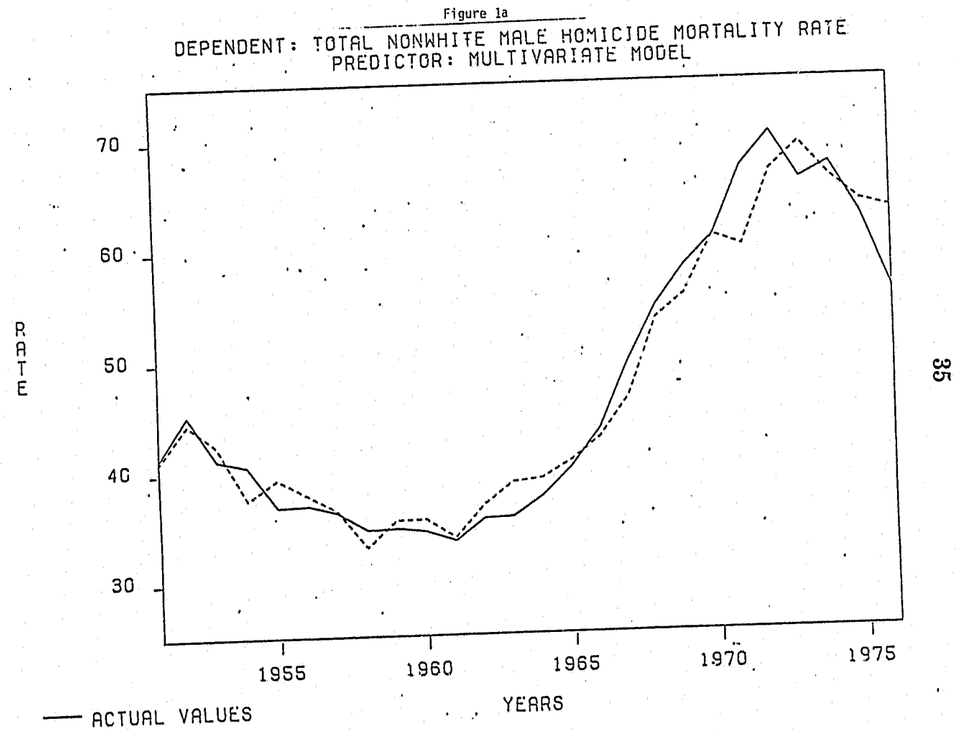

DEPENDENT: TOTAL NONWHITE MALE HOMICIDE MORTALITY RATE
PREDICTOR: MULTIVARIATE MODEL
70
60
50
40
30
RATE
1955
1960
1965
1970
1975
YEARS
ACTUAL VALUES

Figure 1b

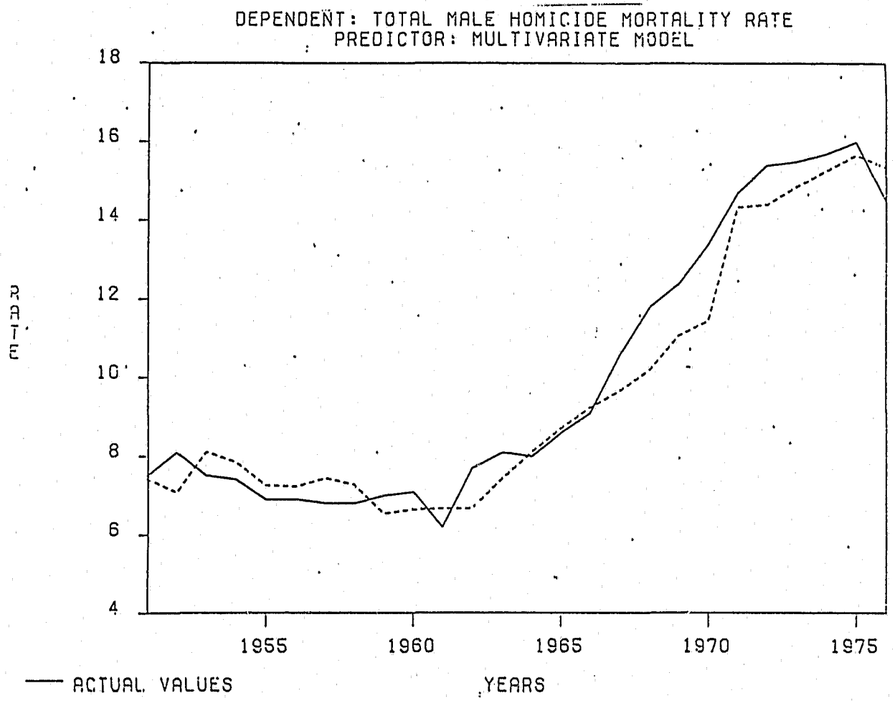

DEPENDENT: TOTAL MALE HOMICIDE MORTALITY RATE
PREDICTOR: MULTIVARIATE MODEL
18
16
14
12
10
8
6
4
RATE
1955
1960
1965
1970
1975
YEARS
ACTUAL VALUES

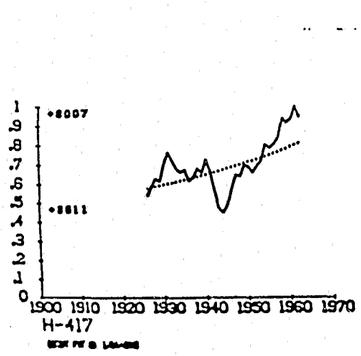
Figure 2a

ANALYSIS OF RELATIONSHIPS BETWEEN ANNUAL CHANGES IN THE INVERTED UNITED STATES UNEMPLOYMENT INDEX

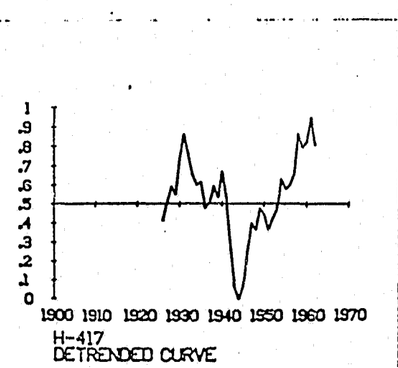
and PRISONERS RECEIVED FROM COURTS (DURING YEAR), STATE INSTITUTIONS, U.S.

Fitting and Detrending of Secular Trends prior to representing relationships between series

Raw Data Fitted for Trend



Detrended Data



Matched Detrended Series

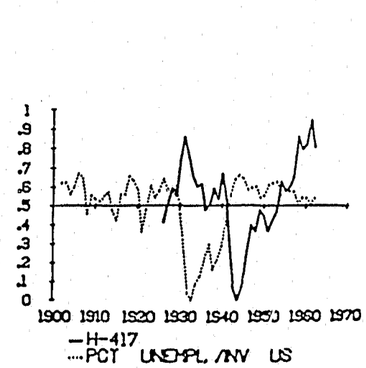


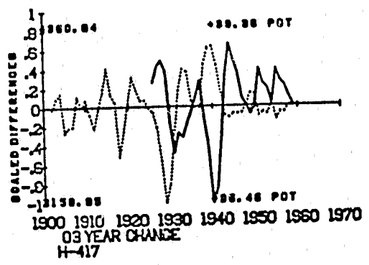
Figure 2b

ANALYSIS OF RELATIONSHIPS BETWEEN ANNUAL CHANGES IN THE INVERTED UNITED STATES UNEMPLOYMENT INDEX

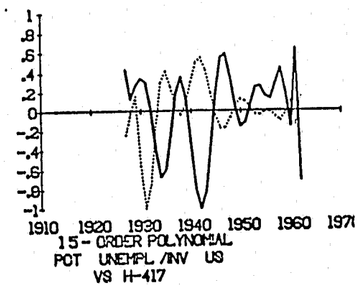
and PRISONERS RECEIVED FROM COURTS (DURING YEAR), STATE INSTITUTIONS, U.S.

Moving Average, Polynomial and Fourier Representations of Annual Changes (first difference)

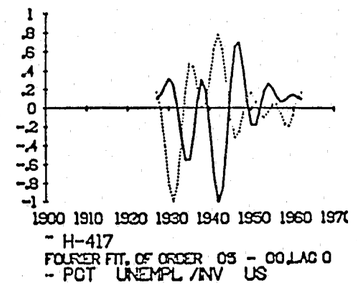
Moving Average



Polynomial Fit



Fourier Fit



... Percent Unemployment Inverted, U.S.
___ Prisoners received from courts (during year), State institutions, U.S.

Figure 3a

ANALYSIS OF RELATIONSHIPS BETWEEN ANNUAL CHANGES IN THE NEW YORK STATE

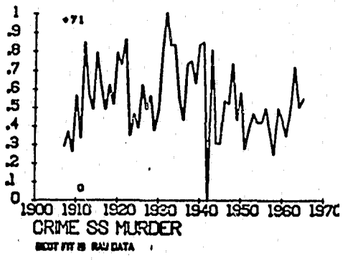
EMPLOYMENT INDEX AND IMPRISONMENT AT SING SING PRISON, N.Y. STATE, MURDER

Fitting and Detrending of Secular Trends prior to representing relationships between series

Raw Data Fitted for Trend

DATA DO NOT CONTAIN MEASURABLE TREND

Detrended Data



Matched Detrended Series

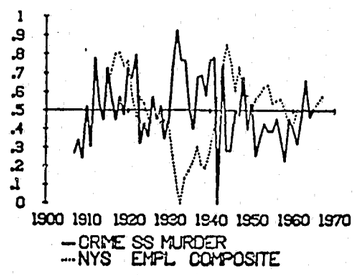


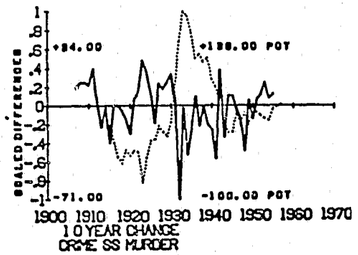
Figure 3b

ANALYSIS OF RELATIONSHIPS BETWEEN ANNUAL CHANGES IN THE NEW YORK STATE

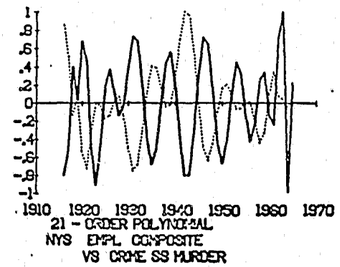
EMPLOYMENT INDEX AND IMPRISONMENT AT SING SING PRISON, N.Y. STATE, MURDER

Moving Average, Polynomial and Fourier Representations of Annual Changes (first difference)

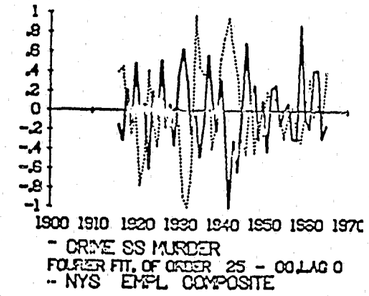
Moving Average



Polynomial Fit



Fourier Fit



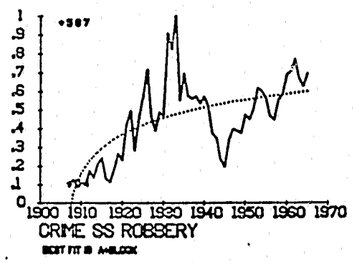
.... Employment Index, New York State
____ Imprisonment at Sing Sing Prison, N.Y. State, Murder

Figure 4a

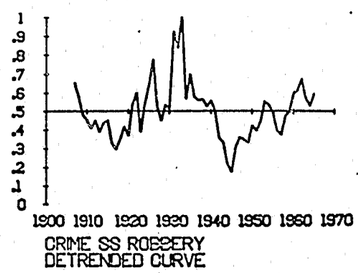
ANALYSIS OF RELATIONSHIPS BETWEEN ANNUAL CHANGES IN THE NEW YORK STATE EMPLOYMENT INDEX AND IMPRISONMENT AT SING SING PRISON, N.Y. STATE, ROBBERY

Fitting and Detrending of Secular Trends prior to representing relationships between series

Raw Data Fitted for Trend



Detrended Data



Matched Detrended Series

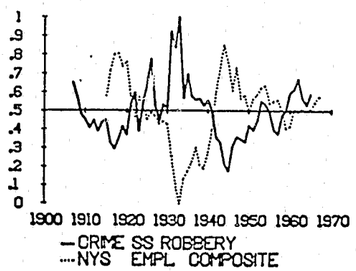
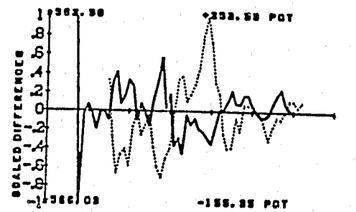


Figure 4b

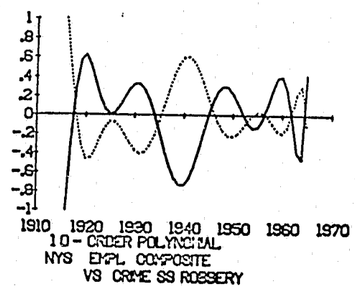
ANALYSIS OF RELATIONSHIPS BETWEEN ANNUAL CHANGES IN THE NEW YORK STATE EMPLOYMENT INDEX AND IMPRISONMENT AT SING SING PRISON, N.Y. STATE, ROBBERY

Moving Average, Polynomial and Fourier Representations of Annual Changes (first difference)

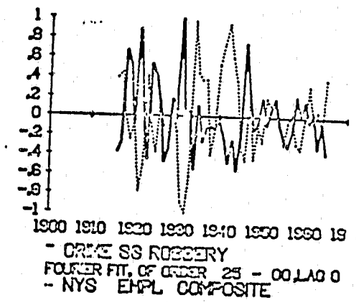
Moving Average



Polynomial Fit



Fourier Fit



.... Employment Index, New York State
____ Imprisonment at Sing Sing Prison, N.Y. State, Robbery

Figure 5a

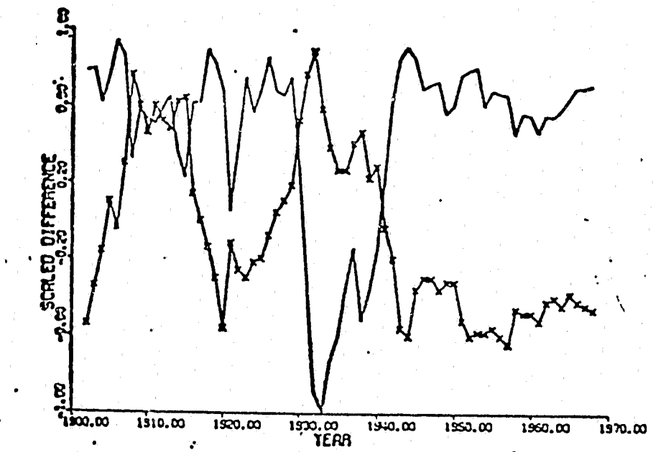


FIG. 1. Graphic analysis of the relationship between the suicide mortality rate and the employment rate, United States, 1902–1970. *Solid line,* inverted unemployment rate; *crossed line,* suicide rate. Scaled difference: Both series are scaled for viewing such that the greatest amplitude from the arithmetic mean of each series, which is set equal to zero, has been normalized to +1.00 if positive, or −1.00 if negative. Del = 0; long-term trends subtracted from the mortality series.

Figure 5b

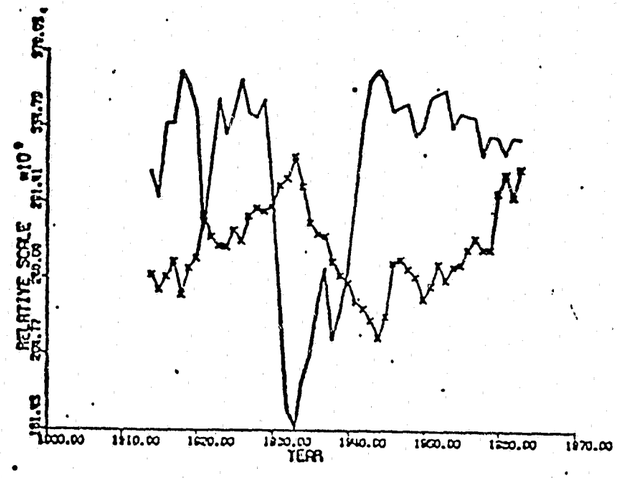


FIG. 2. Graphic Analysis of the relationship between the homicide mortality rate of white males ages 25–29 and the employment rate, United States, 1912–1965. *Solid line*, inverted unemployment rate; *crossed line*, homicide rate. Scaled difference: Both series are scaled for viewing such that the greatest amplitude from the arithmetic mean of each series, which is set equal to zero, has been normalized to +1.00 if positive, or −1.00 if negative. Del = 0; long-term trends subtracted from the mortality series.

Figure 5c

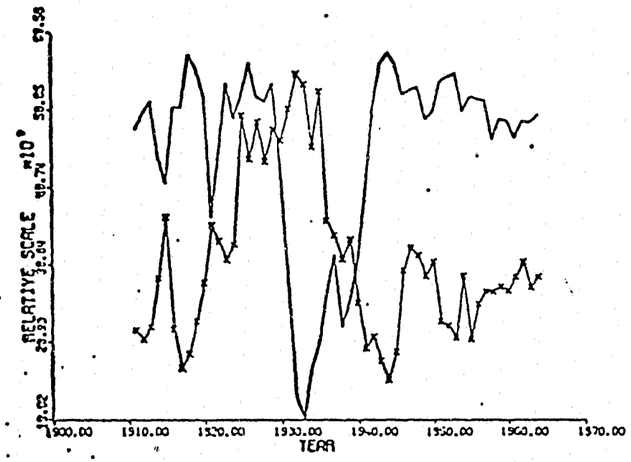


FIG. 3. Graphic analysis of the relationship between the circulatory system disease mortality rate of nonwhite males aged 35–39 at a lag of 3 years, and the employment rate, United States, 1912–1965. *Solid line*, inverted unemployment rate; *crossed line*, circulatory disease mortality rate. Scaled difference: Both series are scaled for viewing such that the greatest amplitude from the arithmetic mean of each series, which is set equal to zero, has been normalized to +1.00 if positive, or −1.00 if negative. Del = 0; long-term trends subtracted from the mortality series.

11-647 O - 83 - 4

TESTIMONY OF CHARLENE MITCHELL, EXECUTIVE SECRETARY, NATIONAL ALLIANCE AGAINST RACIST AND POLITICAL REPRESSION

Mr. CONYERS. Our final witness for today is Charlene Mitchell, executive secretary of the National Alliance Against Racist and Political Repression.

We welcome Ms. Mitchell, whose activities in civil rights and first amendment questions span nearly two decades. We accept into the record your statement, and will carefully scrutinize the large number of exhibits that are attached to that statement. We will make certain that all of the members are furnished copies of the statement and the exhibits.

Welcome to the subcommittee, and you may proceed in your own way.

Ms. MITCHELL. Thank you. I have a couple of others here.

Mr. CONYERS. You have a couple of other exhibits? I see.

I'm not sure, but the Constitution and the Federal Criminal Code may or may not be needed in the hearing record. That's why I reserve the right to have the staff review the exhibits before they are entered into the record.

Ms. MITCHELL. Thank you, Mr. Chairman, and members of the committee.

I will not take a great deal of your time because I know that you will be able to read this at some later time. However, I do want to point to a couple of areas.

Today it is not just a situation where there is a rise in crime, but there is a particular rise, in our opinion, in crimes against blacks and other minorities by ultraright and hate groups, and paramilitary hate groups, and that there is a tactic that is being developed which is essentially a terrorist tactic against blacks and other minorities in the United States. It no longer is confined to the South.

I particularly want to point out that there is a book entitled "The Turner Diaries." It is illustrated by Dennis Nix, a recent book ironically published by a group calling itself the National Alliance, hence to embarrass us a little bit. It is copyrighted in the name of William L. Pierce, Box 3535, Washington, D.C., in 1978. This frightening work, though couched in fiction, is generally acknowledged to be a blueprint and manual for the Klan's race warfare.

It is done in a very futuristic style, but essentially the conclusion of the book is that having killed all black people and all Jews in the United States, and those who have somehow or other escaped and gone, and have been pushed back to the East, that then this future 1984, spoken from the year 2000, would begin to spread to Europe and to the rest of the world.

Finally, the answer is that all people who are not killed who are black will be hung. Those who are sympathetic to black people will also be hung on lampposts and, finally, there would be a food shortage and because of the food shortage those who came to the enclave, the white enclave, to get the food, would have to produce a black head.

I submit that these are not just simple things that appear in Xerox form across the country, for which you can write and receive, but they are, indeed, blueprints in terms of how to conduct

actual warfare, including how to make bombs, how to blow up the White House and a number of other such things.

Our major concern is that there is an inadequate response on the part of the Federal Government's agencies of law enforcement to the crisis of racial violence and terror in our country.

The exhibits or the appendix which you have points to a number of codes that we feel could be used. Indeed, it is our feeling that they have been used on other occasions against many groups, particularly those who struggle for black equality, national independence movements, peace advocates, draft resisters, opponents of nuclear war, and other lesser progressive individuals and groups.

The National Alliance Against Racist and Political Repression also opposes the use of Federal immunity statutes in grand jury proceedings as unfairly coercive measures which deny witnesses the full protection of the privilege against self-incrimination.

But there is no doubt that the grand jury process, particularly when armed with authority to grant immunity, is a powerful investigative weapon. It is routinely used for that purpose by U.S. attorneys all over the country, except, it seems, in civil rights cases.

I want to respond, if I might, just for one moment to the testimony presented by Mr. Drew Days before the Subcommittee on Crime in December 1980. His views were that it was impossible to prosecute on a Federal level, people who were killed but not as a result of carrying out federally protected crimes. In other words, in responding to, I think your question Mr. Chairman, that Mr. Days said, "I am willing to accept that they are racially motivated killings, but I am not willing to accept that they thereby violate Federal law." That's on page 156.

According to Mr. Days, if a group of Klansmen kill a black for no other reason than because they subscribed to the vile doctrine of the *Dred Scott* case, that blacks have no rights that the white man is bound to respect, then the Klansmen do not violate 241 or any other Federal law.

As you know, I am not a lawyer. But as I have read my history, such a killing was precisely the sort of crime that the authors of 241 intended to punish. And if the right of a person not to be deprived of his life solely because he is black is not a right secured by the 13th and 14th amendments, then those amendments have lost all significance.

I would ask that the Civil Rights Division, which has not really prosecuted a lot of these cases under 241, why is there such timidity in asserting jurisdiction over cases that cry out for prosecution? Is it not strange that, unlike all other governmental agencies which make every effort to expand their jurisdiction to its outermost limits and beyond, the Civil Rights Division remains hobbled by a narrow interpretation of its statutory authority which is both self-imposed and unwarranted?

It may be that upon the completion of these hearings your committee will conclude that additional legislation is required to deter and to punish the crimes which the Klan is committing. In particular, I would urge the ratification of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Dis-

crimination, still pending before the Senate Committee on Foreign Relations. But I am skeptical of the efficacy of new legislation at least until we know the reasons and motivation for the failure to enforce statutes that are now on the books.

I have suggested what some of these reasons and motivations for nonenforcement may be. Your committee will perform a distinct public service by thoroughly exploring them—and others which may come to light—here as well as in future national and regional hearings, by publicizing your findings and by calling those responsible to account. This is one means of attacking the grave deficiencies in the enforcement of Federal laws which should afford the black community some measure of protection from Klan terrorism.

As already outlined, the Klan continues to violate Federal law, most particularly those statutes that were expressly written to combat the Ku Klux Klan. In addition to the Federal Government's historic role in eliminating the badges and incidences of slavery, the interstate nature of the Klan places its violent activities well within Federal jurisdiction. Therefore, the Federal Government is under an obligation to enforce these statutes with all available means. Despite our criticisms of the Federal grand jury system, if it is to be used, it should be used to the utmost against the Klan.

The current guidelines on informants used by the FBI should not hamper that body's investigation of the Klan. The Klan is precisely the kind of group that may be infiltrated by the FBI as "engaged in activities which are likely to include the use of force or violence in violation of Federal law."

Finally, I would propose that an interdepartmental task force be set up which would include the Civil Rights Division and Criminal Division of the Department of Justice, the FBI, Bureau of Alcohol, Tobacco and Firearms of the Treasury, Naval and Army Intelligence, as well as nongovernmental agencies and individuals to investigate and prosecute all violations of Federal law by the Ku Klux Klan and other white supremacist paramilitary hate groups.

The role of Congress, Mr. Chairman, does not end with the mere passage of legislation. Congress has a historic obligation to see that laws protecting people from racist terror are enforced and implemented at every stage.

Thank you.

Mr. CONYERS. Thank you very much.

I am reminded that the ratification of the U.N. documents, conventions and treaties, are exclusively within the purview of the U.S. Senate. I personally have subscribed to them and urged their ratification across the years.

I would like to ask if you could help us—and we're not trying to evade our staff's responsibilities—in documenting the usages of the grand jury in terms of civil rights and noncivil rights cases, so that we can clearly argue how the grand jury might be used more effectively.

Ms. MITCHELL. Yes; I will be glad to send in some materials on that. A lot of it has come from prior hearings that were held under your previous committee [Subcommittee on Crime], but also some other hearings on bills that were submitted.

But we know of a number of cases that the Center for Constitutional Rights, for example, handled, where people were given immunity from prosecution and were imprisoned if they refused to testify. Even some who testified were later themselves prosecuted by other grand juries, which were not bound to respect the other grand jury's immunity. For example, the Puerto Rican Liberation Movement, were used in terms of earlier, in the Black Panther movement. They have been in the labor movement. They have existed throughout. However, in no case do I know where immunity has been used in terms of the KKK at this moment.

Mr. CONYERS. Dr. Clark earlier pointed out legal violence as one of the problems that exacerbate the trends that bring this committee into operation today.

Do you agree with the presentation he made, or do you have any exceptions or elaborations you would choose to make?

Ms. MITCHELL. I feel that in the main I agree with his testimony. I would only add that in addition to legal violence, that when there is governmental acceptance of legal violence, it exacerbates an atmosphere in which racial violence is allowed to grow and goes beyond the bounds of what is "legal" violence and begins to be in terms of "Minutemen" type operations.

For example, Tom Metzger from San Diego ran on a platform of the Klan wanting to help the Border Patrol to keep Mexican nationals out of the United States by shooting them as they got to the border, therefore "saving us some money." So I feel that spreads that kind of an atmosphere.

Mr. CONYERS. Do you have any reactions or qualifications of the hypothesis that has been offered by Dr. Brenner today in connection with his findings dealing with the relationship of the economy upon the character of violence in our society?

Ms. MITCHELL. Very much. I am probably one of those few people who would be sitting at this table today who still lives in Harlem. I am one of those people who rides a No. 3 train to work every morning—that is, every morning that the No. 3 train is operating. [Laughter.]

I have watched young people who have become extremely desperate. I have watched as they become desperate they tend to become more often to succumb to drugs, and clearly, as they succumb to drugs, they are more prone to commit crimes.

However, living in New York and working the way I do, I am all over that city. I know that the upper West Side has also become a victim of the very same thing; that we are running into a situation where our mayor has called on more police protection for the downtown stores and the East Side, but has not called for police protection for any of these communities which are hard hit. However, there are killings of young people in these communities by the police all the time.

It is clear to me, and I think it would be clear to anyone looking, that if these young people had jobs, the decrease in the crime rate would be immediately noticeable.

Mr. CONYERS. Doesn't that put into juxtaposition the two potentially conflicting considerations, one, Clark's argument about legal violence, and two, the need for increased police protection in the black community itself?

Ms. MITCHELL. I think there is a need for increased police protection in the community——

Mr. CONYERS. But do you see the conflict that I'm arguing here?

Ms. MITCHELL. Yes, and I want to go on about that for a minute.

It absolutely does exist, because what has happened is that the police do not come in to protect the citizens of the community, but seemingly as to put the community in an armed camp.

I have just heard an example of what happened last Tuesday, a week ago yesterday, in Brooklyn, where a young man was coming up out of the subway, a young black man, 24 years old. Coming up ahead of him was a middle-aged white woman. She felt fear and felt she was going to be robbed. When she got to the top of the stairs, her husband was waiting for her. She said, "I'm going to be robbed." At which point the man, an off-duty corrections officer, shot the young man five times. Luckily, he was not killed. He's in the hospital now, in Kings County Hospital.

The point I'm making is the young man was not armed, the woman was not even sure she was being robbed, and the off-duty corrections officer, not even a policeman, shot the man five times because he thought he saw a shiny object. According to the police, he saw a cigarette lighter.

What I'm saying is, the woman screamed because the idea of black is crime; the off-duty corrections officer immediately thought it was OK to shoot an unarmed young black man. I think as long as the police feel that black represents crime, and with the racism that they have absorbed within the police department, that this will continue and therefore police presence in the community will not necessarily abate crime but may increase legal crime.

Mr. CONYERS. But nevertheless, you want more police in Harlem.

Ms. MITCHELL. I very much would like to see more police protection in Harlem, not necessarily more policemen. We have policemen all over Harlem and——

Mr. CONYERS. But how can you get more police protection without more policemen?

Ms. MITCHELL. Well, the problem is that—on 116th and Lenox, 114th and 8th Avenue, you can find 40 and 50 policemen any time you go up there. And you can also go up there at the same time and buy as many drugs as you want in their presence.

Mr. CONYERS. What are the policemen doing?

Ms. MITCHELL. They are standing around, doing absolutely nothing. They ride around in their cars, and if you were to scream they would go the other way. There are numerous people who can document that.

Mr. CONYERS. I am reminded of another hearing in which I asked the former mayor of New York about a scene that had been described by another witness that day; namely, that there were places in New York City where anyone but a blind person could see the trafficking in drugs going on in the broad daylight, with the physical exchanges of drugs, accompanied by the exchanges of money. The question was put to the mayor and his police associates who were present for the testimony: Why can't that be interdicted? Why are citizens at a community level forced to endure the shameful exhibitions of crime being committed regularly and continually

and literally with no interference from the city that has the largest police force of any city in the United States of America?

I can't accurately recall his response to that, but I think that that question parallels closely the question that you raise now. It leads me to a larger dimension of the discussion in which we're engaged.

It is being seriously advanced that perhaps our national security may more accurately begin with the protection of the home and the community in which people live, as opposed to the global precariousness of relationships between some 200 nations in the family of nations. Maybe if the law enforcement science, criminal justice experts and others who are related to these considerations would begin to examine the possibility of restructuring the criminal justice system so that the security in the community to be protected more clearly became the focal point of the law enforcement personnel; namely, the police and precinct commander, then the community security could become the basis of building up law enforcement in America. At a minimum we might be able to break up those situations where crime of a felonious and very dangerous sort is proceeding unchallenged by the law enforcement agencies. Such brazen flaunting of criminal practices diminishes public respect for law and order, an attitude then which becomes endemic in the community. We quickly reach a point where it is impossible to build up respect for the legal system—and the police system specifically.

Eventually the public perceives that there is basic unfairness in the justice system, and that perception further endangers our national security.

That was not a question—hopefully not even a speech. But the remarks you have made have triggered off those associations, and unless you would care to respond to them, I would then yield to Mr. Kindness.

Ms. MITCHELL. Just for one-half a second, I think in the concepts of national security, I think the money spent in terms of our priorities, if they were spent in our communities, that that would indeed go a long way in terms of determining whether everybody in our country can have justice, since to a large extent it is based on one's ability to have money or not have it.

Mr. CONYERS. The gentleman from Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

Ms. Mitchell, for the record, just so I can understand, is your appearance here this morning in behalf of the National Alliance Against Racist and Political Repression?

Ms. MITCHELL. Yes, it is.

Mr. KINDNESS. Could you for the record explain that organization, it's officers, how it's organized?

Ms. MITCHELL. Sure. The National Alliance was founded in May of 1973, in Chicago, as an organization cognizant of what we considered to be a tremendous amount of repression, both racist and political.

It was a time when what is now, I guess, the celebrated case of the *Wilmington 10* was going on. It was a case in which we felt there was a terrible injustice and felt that we wanted to fight through on it. Along with the United Church of Christ, the Com-

mission for Racial Justice and other organizations, we certainly did that. I think we were proved to be correct in that case.

Some of the other cases that we have taken on have also been victorious. One is the *George Merritt* case, which was a case again of a police situation in New Jersey and a young man was charged with the killing of a policeman. And after three times of being tried, we finally, of course, discovered that the State of New Jersey had covered up the information that would have exonerated him. Again, here the constitutional rights were also involved, and uncovered this material and the case was thrown out.

Mr. KINDNESS. Does the organization have officers and a board of directors?

Ms. MITCHELL. The organization definitely does. There are co-chairpeople, Rev. Ben Chavis, who is a member of the Wilmington 10, Angela Davis, Rev. David Garcia of St. Marks, Episcopal Church; and Abe Feinglass, who is from the Meatcutters Union.

The vice chairpeople are Judge Margaret Burnham of Boston; Ann Braden from the Southern Organizing Committee for Economic and Social Justice——

Mr. CONYERS. If the gentleman would yield; Ms. Mitchell, could you just provide the member a list of the names and titles of the officers?

Ms. MITCHELL. Sure. I'm the executive secretary.

Mr. KINDNESS. Sometimes the question occurs as to whether a person is speaking for an organization or for one's self as a witness, and sometimes there are differences of view on that. I was getting at the question of whether the organization meets and establishes policies which are expressed in your testimony, or whether this is your statement of your understanding of their——

Ms. MITCHELL. I am only authorized to speak as the executive secretary of the organization when the board approves what I am going to say, yes, as in this case.

Mr. KINDNESS. Thank you.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I just wanted to ask about some New York City questions you raised that triggered some thoughts in my mind about police activities there. Being from Florida and only having visited the city and not lived there as you have all these years, I don't fully know all of the problems, but I have certainly read about them and listened to you.

In your estimation today, in the black regions in Harlem and other black regions of the city, what percentage of the police force are black or are racial minorities?

Ms. MITCHELL. Very, very small. As a matter of fact, there are recent decisions that have been handed down that more black and other minority police people have to be hired by the New York City Police Department.

But I think that is true in the areas in your State as well. You know, we're all very cognizant of the *McDuffie* case and——

Mr. MCCOLLUM. It's the Miami area you're speaking of?

Ms. MITCHELL. That's right.

Mr. MCCOLLUM. You don't know the percentages, but it's small, like what, less than 10 percent, or more than 30 percent?

Ms. MITCHELL. Oh, there are less than 5 percent.

Mr. MCCOLLUM. Less than 5 percent minority police officers or blacks?

Ms. MITCHELL. Yes.

Mr. MCCOLLUM. That's minorities all together?

Ms. MITCHELL. Yes, sir.

Mr. MCCOLLUM. In the New York City area?

Ms. MITCHELL. In the New York City area, yes.

Mr. MCCOLLUM. Has there ever been an explanation offered by the mayor or by city officials as to why?

Ms. MITCHELL. Historically, they have not been able to find those who qualify. That's the explanation.

Mr. MCCOLLUM. That's the explanation.

Ms. MITCHELL. But that is not an explanation that has been accepted by anybody, I might add, who is an authority on the question.

Mr. MCCOLLUM. Have you been privy to exploring the tests and the other sources of the way they go about hiring to determine the fairness of it?

Ms. MITCHELL. I have seen some of them, but I have also heard testimony on the part of the Afro-American Patrolmen's League, the black organization of policemen in New York City, those in Cleveland, those in Detroit, and when those tests were looked at, they were able very quickly to be able to hire far more black police officers.

Mr. MCCOLLUM. So do you feel it's an administrative, decision-making problem somewhere along the way, without pointing the finger at any particular individual that's causing the problem?

Ms. MITCHELL. Not solely administrative, but a great deal administrative. I think it also has to do very often with the executive. It's not just within the police department. I do not feel very often that mayors are interested in what their police departments look like in terms of its racial composition.

Mr. MCCOLLUM. How do you propose we, besides holding hearings such as we're doing here today, as Congressmen, can help alleviate that problem?

Ms. MITCHELL. Well, I understand that those areas of LEAA which were directly going toward trying to solve those problems, are the areas that are not being refunded and, as a matter of fact, LEAA is in jeopardy.

I think that the Federal Government has to take a look at the police departments all over this country, as a matter of fact, certainly to see if discrimination is being faced by people who apply—and this applies also to women—and also as to whether there is an attitude of how police who are hired on to the force relate to the communities that they have to serve and, indeed, whether there is any amount of control that civilians have over police departments. I believe the Federal Government should begin to set up committees that would look into that.

Mr. MCCOLLUM. Do you feel we have more problems today of a racial nature in the areas of criminal justice than we do in our schools?

Ms. MITCHELL. Oh, I certainly would not—only in one sense. When a policeman's bullet shoots, it more often than not kills immediately. What is happening to our children in our schools kills them in the long range.

Mr. MCCOLLUM. So there is no clear-cut distinction you would draw——

Ms. MITCHELL. I think they're part and parcel of the same kind of problem. It comes back to the economic questions that the previous witness testified to.

Mr. MCCOLLUM. It's all interrelated. You don't feel we have made a major shift today so that the school area has improved to a degree and the emphasis should be more in the criminal justice area for our concerns——

Ms. MITCHELL. No. Let me——

Mr. MCCOLLUM. It's still an equal problem?

Ms. MITCHELL. Of course.

Let me just say that, while we talk about Harlem and that it's the biggest black community in the country, there is no high school in Harlem. So I would not say that that is any improvement in terms of what existed before.

Mr. CONYERS. Do you mean—excuse me. Would the gentleman yield?

Mr. MCCOLLUM. Certainly.

Mr. CONYERS. Are you saying that within the physical limits of Harlem there is not a public high school?

Ms. MITCHELL. Between 110th Street and 156th Street, between Lexington Avenue and Broadway, there is not a high school.

Mr. CONYERS. Where do the teenagers attend school?

Ms. MITCHELL. Washington Heights, East Side, Martin Luther King High, and other special schools throughout.

Mr. CONYERS. I can presume, then, that this has been a continuing sore point in relationships between the citizens of Harlem and the city of New York?

Ms. MITCHELL. In 1968 and 1969, policemen were chasing us down the streets because we opposed the Harlem State office building being built, because we wanted a high school in the community.

Mr. CONYERS. I thank my colleague for yielding.

Mr. MCCOLLUM. You're quite welcome.

I'm as curious as you were about that. That's rather remarkable. Is that a part of the busing program? Did that cause——

Ms. MITCHELL. No, it did not. That existed——

Mr. MCCOLLUM. I was just wondering if we had any reverse discrimination going on here.

Ms. MITCHELL. No. It existed before and it exists now. These young people have to get on the trains and buses and go to school every morning, not because of busing, but because there is no school for them to go to in their community.

Mr. MCCOLLUM. I really had no further questions. It was an intriguing conclusion.

I yield back my time.

Mr. CONYERS. I want to thank Ms. Mitchell for her excellent testimony. I would also like to express my appreciation to all of my colleagues who have been extremely perceptive in this hearing.

[The prepared statement of Ms. Mitchell follows:]

TESTIMONY OF CHARLENE MITCHELL, EXECUTIVE SECRETARY, NATIONAL ALLIANCE AGAINST RACIST AND POLITICAL REPRESSION

My name is Charlene Mitchell. I am the executive secretary of the National Alliance Against Racist and Political Repression. I offer this testimony out of a deep concern over the alarmingly inadequate response of the Federal Government's agencies of law enforcement to the current crisis of racist violence and terror in the United States.

The Ku Klux Klan and other white supremacist, paramilitary hate groups are today engaged in openly avowed race warfare against the black people of our country. Their terrorist tactics include killing, shooting, kidnaping, arson, assault, and other forms of harassment and intimidation. No longer limited to the South, episodes of Klan terrorism have occurred in almost every State of the Union. The Klan is actively recruiting new members, particularly among young people, indoctrinating them with race hatred and training them in the use of arms.

The National Alliance Against Racist and Political Repression is well acquainted with the extent of Klan violence and terrorism in our country today. In April 1980, our Birmingham, Ala., branch held hearings which documented the frightening resurgence of the Klan. Dozens of community residents described widespread cross-burnings, bombings, shootings, beatings, and harassment by the Klan as well as active Klan organizing among students, law enforcement officials, and the military. (See Exhibit A for excerpts of tesitmony.)

Further, in September 1980, I was personally one of several representatives of the National Alliance Against Racist and Political Repression who were assaulted by Klan thugs after we urged the San Diego County Democratic Party Central Committee to withdraw its nomination of Klan Dragon Tom Metzger for the 43d Congressional District seat.

I refer this Committee to "The Turner Diaries" by Andrew MacDonald (illustrated by Dennis Nix), a recent book ironically published by a group calling itself the National Alliance, though copyrighted in the name of William L. Pierce, Box 3535, Washington, D.C. 20007 (1978). This frightening work, though couched in fiction, is generally acknowledged to be a blueprint and manual for the Klan's race warfare.

Our new Secretary of State has announced a crusade against what he calls "terrorism" in other lands. Putting aside the facts that, for General Haig, terrorism consists of the armed struggles of popular masses to win liberation from brutal fascist dictatorships and neo-colonial oppression and that the United States is itself an adept practitioner of international terrorism, as evidenced by the cases of Mossadegh, Lumumba, Allende, Castro and others, I would simply ask: If we are to have a crusade against terrorism, should it not begin at home with the Ku Klux Klan?

Yet the attitude of the present administration, like that of its predecessors, toward racially motivated terrorism in this country can most charitably be described as one of indifference. This indifference persists in the face of a growing mass peoples' movement that unites whites with blacks and other nationally oppressed groups in a demand for action against the Klan. As a result of this demand, bills to criminalize racially motivated violence and intimidation have been introduced in a number of northern State legislatures, including New Jersey, Oregon, California, and Washington. (See Exhibit B.)

But Klan terrorism is a nationwide phenomenon that demands a national response by the Federal Government. To date, that response has been limited and totally inadequate.

The failure to respond to Klan terrorism cannot be attributed to a lack of Federal legislation on the subject. The U.S. Code contains a well stocked arsenal of weapons against racist motivated violence and terrorism, beginning with the anti-Klan laws and constitutional amendments passed after the Civil War (18 U.S.C. §§ 241, 242, 243, 245 and 42 U.S.C. §§ 1981–86). As you know, Mr. Chairman, I am not a lawyer and I am sure that you are more familiar than I with the full array of Federal statutes that are available. Let me only mention those dealing with civil disorders (18 U.S.C. § 231), riots (18 U.S.C. § 2101), voting rights (42 U.S.C. § 1971), fair housing (42 U.S.C. § 3631), and explosives and firearms control (18 U.S.C. §§ 842, 922). (See Exhibit C.)

The failure to enforce the Federal laws prohibiting many of the activities engaged in by the Ku Klux Klan only serves to increase that activity. It gives the Klan insulation from prosecution and thus legitimizes the organization. This provides a climate conducive to the growth of racial violence and terror. This racist violence and

terror necessarily leads to a violation of the rights of citizens of color to live in a community protected from criminal attacks upon their homes and persons.

Not only have law enforcement agencies failed to enforce the Federal laws, but other governmental bodies (or organizations working at their behest) have failed to address the issue of the Klan activity. Examples can be cited. The Heritage Foundation, Inc.'s 3,000 page report calls for the revitalization of internal security committees. Not once, in its 3,000 pages, does it mention the KKK as a threat to the people of the United States. Senator Jeremiah Denton, chair of the Senate Subcommittee on Security and Terrorism, has neither held nor scheduled discussions on the Ku Klux Klan.

There have been literally hundreds of reported acts of Klan-inspired terrorism over the last 3 or 4 years which have violated one or more of these statutes. Yet, I understand that, of these instances, no more than 50–100 have been the subjects of investigation by the Federal Bureau of Investigation (FBI), the Civil Rights Division of the Department of Justice (DOJ) or the Bureau of Alcohol, Tobacco and Firearms of the Treasury (ATF). And pitifully few—scarcely a handful—have resulted in prosecution. Similarly, despite injunctive authority under Federal civil statutes, the Federal authorities have essentially taken no preventive action in advance of racist acts of terror. I, therefore, cannot share former Assistant Attorney General Days' complacency when he stated in testifying before this committee that:

"We have used these criminal statutes, I believe, judiciously but effectively." (transcript p. 95) Indeed, such complacency in the face of such a record is doubtless one of the reasons why the record of enforcement is so bad.

There are other reasons for this nonenforcement as well, and I urge this committee to make a thorough and complete investigation of why there has been such a failure in this area. I would suggest a few lines of inquiry.

Apart from firearms control, Federal investigation of Klan activity is in the hands of the FBI. We know from the past record that the FBI devoted much of its time, efforts, and energies in the field of race relations to surveillance of and attempts to defame Dr. Martin Luther King, Jr. and other civil rights advocates. We know, too, that many of its special agents were racists with Klan sympathies and that many of the informers whom it placed in the Klan were of the same stripe. These agents and informants not only failed to take timely action to prevent terrorist acts but provoked them as well. This has also been true of ATF informers.

To what extent do these attitudes and practices still persist? Are these attitudes and practices responsible for less than zealous investigations in Klan-related cases and the cause of the fact that investigations are generally closed due to the supposed "inability" to identify the guilty, "refusal" of victims to "cooperate", or reluctance of the agency to "expose informers"? In that connection, it might be well for this committee's investigators to review the FBI's Klan files—files which the FBI has asked the National Archives to destroy as having no further significance. They may well reveal that the FBI's work in this area has been permeated with racism.

Another factor that bears responsibility for the dismal record of the DOJ Civil Rights Division in prosecuting Klan terrorism may be found in its reluctance to make use of grand juries as an investigative tool. In his testimony before this Committee, Mr. Days characterized grand juries as "extremely unwieldy tools" and "difficult things to control." (transcript pp. 137, 138). Because of these fears, which I have never before heard a prosecutor express and which I am confident are entirely unfounded, he testified that the Civil Rights Division does not convene a grand jury unless and until the investigation has been completed and has established that "we have a solid case that deserves to go forward." (p. 140). The only functions of the grand jury, he says, are to enable the prosecutor to see "what the case looks like," and if it looks "solid" enough to get an indictment (ibid). In other words, the Civil Rights Division uses a grand jury only to put on a dress rehearsal of an already completed script. But if there are gaps in the script, the project is abandoned without seeking the help of the grand jury to fill them in.

Now the National Alliance Against Racist and Political Repression has frequently criticized abuses in the use of federal grand juries by the Criminal Division in its attempts to manufacture cases against peace advocates, draft resisters, opponents of nuclear arms, and other left and progressive individuals and groups. We have also opposed the use of federal immunity statutes in grand jury proceedings as unfairly coercive measures which deny witnesses the full protection of the privilege against self-incrimination.

But there is no doubt that the grand jury process, particularly when armed with authority to grant immunity, is a powerful investigative weapon. It is routinely used for that purpose by U.S. attorneys all over the country—except, it seems, in civil rights cases. Why this sudden reluctance when it comes to prosecuting the Klan?

And in how many of the cases that were closed for lack of evidence of the identity of the guilty would the missing proof have been forthcoming before a grand jury? I submit, Mr. Chairman, that these are questions which should be answered before your committee.

Finally, Mr. Chairman, it appears that the Civil Rights Division takes an extremely restricted view of the scope of § 241 of the Criminal Code—one of the anti-Klan laws enacted after the Civil War. The section makes it a crime to conspire: "to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . ."

When Mr. Days appeared before this committee, you, Mr. Chairman, engaged in a colloquy with him on the question of whether a racially motivated conspiracy to commit murder—by the fact of its racial motivation alone—violates this section. At the conclusion of the colloquy, Mr. Days flatly stated that it does not. Speaking of the unsolved murder of six black men in Buffalo, he said: "I am willing to accept that they are racially motivated killings, but I am not willing to accept that they thereby violate Federal law." (p. 156) According to Mr. Days, if a group of Klansmen kill a black for no other reason than because they subscribed to the vile doctrine of the *Dred Scott* case that blacks have no rights that the white man is bound to respect, then the Klansmen do not violate § 241 or any other Federal law.

Again, Mr. Chairman, I am not a lawyer. But as I read my history, such a killing was precisely the sort of crime that the authors of § 241 intended to punish. And if the right of a person not to be deprived of his life solely because he is black is not a right secured by the 13th and 14th amendments then those amendments have lost all significance.

Why has the Civil Rights Division not prosecuted at least one case to test in the courts the view of § 241 which I have described and which I believe you share? Why such timidity in asserting jurisdiction over cases that cry out for prosecution? Is it not strange that, unlike all other governmental agencies which make every effort to expand their jurisdiction to its outermost limits and beyond, the Civil Rights Division remains hobbled by a narrow interpretation of its statutory authority which is both self-imposed and unwarranted?

It may be that upon the completion of these hearings your Committee will conclude that additional legislation is required to deter and to punish the crimes which the Klan is committing. In particular, I would urge the ratification of the United Nations' Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, still pending before the Senate Committee on Foreign Relations (See Exhibit D). But I am skeptical of the efficacy of new legislation at least until we know the reasons and motivation for the failure to enforce statutes that are now on the books.

I have suggested what some of these reasons and motivations for nonenforcement may be. Your committee will perform a distinct public service by thoroughly exploring them—and others which may come to light—here as well as in future national and regional hearings, by publicizing your findings and by calling those responsible to account. This is one means of attacking the grave deficiencies in the enforcement of Federal laws which should afford the black community some measure of protection from Klan terrorism.

As already outlined, the Klan continues to violate Federal law, most particularly those statutes that were expressly written to combat the Ku Klux Klan. In addition to the Federal Government's historic role in eliminating the badges and incidences of slavery, the interstate nature of the Klan places its violent activities well within Federal jurisdiction. Therefore, the Federal Government is under an obligation to enforce these statutes with all available means. Despite our criticisms of the federal grand jury system, if it is to be used, it should be used to the utmost against the Klan.

The current guidelines on informants used by the FBI should not hamper that body's investigation of the Klan. The Klan is precisely the kind of group that may be infiltrated by the FBI as "engaged in activities which are likely to include the use of force or violence in violation of Federal law." (See F.B.I. Manual of Investigations and Operating Guidelines.)

Finally, I would propose that an interdepartmental task force be set up which would include the Civil Rights Division and Criminal Division of the Department of Justice, the FBI, Bureau of Alcohol, Tobacco and Firearms of the Treasury, Naval and Army Intelligence, as well as nongovernmental agencies and individuals to investigate and prosecute all violations of Federal law by the Ku Klux Klan and other white supremacist para-military hate groups.

The role of Congress does not end with the mere passage of legislation. Congress has an historic obligation to see that laws protecting people from racist terror are enforced and implemented at every stage.

NATIONAL ALLIANCE AGAINST RACIST & POLITICAL REPRESSION

27 UNION SQUARE WEST - RM 306 - NEW YORK CITY 10003 - (212) 243-8555

Mr. CONYERS. The subcommittee stands adjourned.
[Whereupon, at 12:25 p.m., the subcommittee was adjourned.]

RACIALLY MOTIVATED VIOLENCE

WEDNESDAY, JUNE 3, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:55 a.m., in room 2237, Rayburn House Office Building, Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Sensenbrenner, and McCollum.

Also present: Thomas W. Hutchison, counsel; Oliver Quinn, assistant counsel; and Ray Smietanka, associate counsel.

Mr. CONYERS. The subcommittee will come to order.

The increase in racially motivated violence, both organized and random, requires that the Congress continue its inquiry into that problem.

Today's hearing will focus on the Federal criminal civil rights laws and their enforcement in order to determine the adequacy of legal protection from racially motivated violence afforded minority group citizens.

We will hear testimony from a number of distinguished witnesses with specific expertise in the area of the Federal criminal civil rights law and constitutional law.

The center of these hearings is the recognition of the obligation constitutionally mandated to provide physical protection to all of the citizens in the United States.

Our first witness is the very distinguished vice chair of the U.S. Commission on Civil Rights, Dr. Mary Frances Berry.

We are very pleased and honored to have you and your assistants here.

Dr. Berry is a professor of history and law and a senior fellow at the Institute for the Study of Educational Policy at Howard University. She has written extensively. I am struggling through one of her books at the present time. [Laughter.]

If you will introduce those who are with you, we will incorporate your testimony into the hearings without objection.

You may proceed in your own way.

11-647 O - 83 - 5

TESTIMONY OF MARY FRANCES BERRY, VICE CHAIR, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY CAROL A. BONOSARO, ASSISTANT STAFF DIRECTOR FOR CONGRESSIONAL AND PUBLIC AFFAIRS, AND GAIL GEREBENICS, ASSISTANT GENERAL COUNSEL

Ms. BERRY. Thank you, Mr. Chairman.

I welcome this opportunity to appear before you to discuss this issue of Federal response to the increasing number and severity of racially motivated acts of violence.

I am accompanied by Carol Bonosaro, our assistant staff director for congressional and public affairs, and Gail Gerebenics, assistant general counsel.

The resurgence of the Ku Klux Klan and the increase of domestic terrorism by extremist groups, whether motivated by racial or religious prejudice, are matters of deep concern to the Civil Rights Commission. We are disturbed about these acts when they occur.

We believe any individual organization that promotes fear, hatred, and violence by one segment of American society against another is a serious threat to the Nation as a whole.

I would like to do two things. First, tell you briefly what the Commission is doing about this problem and then talk about the statutory basis for prosecution when these alleged acts of violence have taken place.

Since 1979 our 10 regional offices have been reporting more and more incidents of racial violence and hate group activity around the country. We have gotten reports that members of the Klan have been arrested and convicted for such acts as cross burnings, beatings, bombings, and murders.

More disturbingly in other cases they committed such acts and have not been prosecuted or apprehended, which means they remain free to act again. That is very disturbing.

Also our regional offices and our advisory committees have reported intensified recruiting by the Klan even among high school and college students. The Klan, the Nazis, and similar groups, according to our reports, have successfully capitalized on the socioeconomic anxieties of whites caused by the current economic problems the country faces by blaming the problems on blacks and other minorities and the fact that they have been provided or are beginning to be provided with equal opportunity under the law.

This problem exists and this success exists despite the fact that we know that the toll on minority groups from the economic problems is much greater than on other groups because they are disproportionately represented among the poor.

The victims essentially are being blamed for the extent of the problem.

The two most graphic eruptions of racial tension in recent years involving violence have been the Miami riots following the acquittal of police officers in the death of a black businessman and the violent confrontation in Greensboro, N.C., where Klan and Nazi gunmen shot five Communist party members to death.

I visited Miami during the rioting and spent time there in the riot area.

In addition, the Civil Rights Commission held hearings in Miami to determine the causes of those riots. Our State advisory committee in North Carolina held an open meeting to discuss the shootings in Greensboro. Witnesses in the Miami hearings and witnesses in North Carolina stressed the importance of local officials involving the minority community in decisionmaking and in the structure of government and stressed that this was important in order to alleviate some of the conditions that led to the violence.

The Commission has repeatedly urged that there be more involvement in decisionmaking on the part of minorities in the larger community in order to alleviate tension so that violence such as the riots will not occur.

There is some good news about this hate group and violent activity that is occurring around the country.

Our regional offices tell us that in some States local governments and private citizens are moving positively to try to reduce the incidence of racial tension and violence. That is important because we all know it is first of all a State responsibility to punish people who commit such violations and to prevent such violent behavior from taking place and the Federal Government steps in when States do not discharge their responsibilities.

In West Virginia and Maryland the Governors have established statewide task forces to consider this problem and the Governor of Oregon has proposed legislation to make race related vandalism a felony punishable by up to 5 years in prison.

The Maryland State Teachers Association has established a system to monitor the Klan and the National Education Association has held meetings as part of the national anti-Klan network. There are many activities of this kind around the country, but the problem remains that the Federal Government has not performed adequately in responding to this problem.

We believe that there has not been a strong enough response from the Federal Government and the Justice Department in particular.

The Commission will continue to monitor the problem. We have had a summary done of violence prone hate groups which is currently being considered by our staff before being presented to the Commission, and we will have some followup action on that and around the country in some of the regions. We will have State advisory committee hearings on the problem in those counties and give leaders there an opportunity to talk about what they are doing about the problem.

In addition, we wrote to President Carter on May 19, 1980, asking him to take strong action on this issue and to issue an Executive order or memorandum designating someone in the cabinet—preferably the Attorney General—to move vigorously in this regard.

We didn't get a positive response from him and in January 1981, in our report to the President and Congress which we sent to President Carter and President-elect Reagan, we stressed the need for the President, the Congress, and the Department of Justice to do more on this issue of racial violence.

We said that it was of critical importance that the national leadership speak out forcefully and that the Department of Justice

monitor the problem and react quickly to counter it. We haven't gotten a response to that either.

Mr. Chairman, I will briefly comment on the adequacies of prosecution under available law, title 18, sections 241, 242, and 245 of the United States Code.

Section 241, which outlaws conspiracies to violate civil rights protected by the Constitution and the statute had a rather checkered history before 1966 when the Supreme Court interpreted it so narrowly that it was not available to protect rights in the way that the Reconstruction Congress had meant. But since 1966, the Court decided some cases involving the murder of some civil rights workers, 241 has been available for prosecution when in fact two or more persons conspire to undermine Federal civil rights, and we think that it can be used aggressively by the Justice Department in this regard.

It has some problems. The Commission has pointed out before what those problems are.

First of all, the person who is harmed must be a citizen. We know today there are allegations that many people who are not citizens who may be immigrants, refugees, are saying that they have been harmed in this way. It probably would be better if the statute were changed from "citizens" to "persons."

Also, having to prove a conspiracy, that two or more people were involved, is a problem when the activities have been engaged in by one person, but the statute is there.

It is available when there is a conspiracy and when the rights of American citizens have been violated. There is no reason for the Justice Department not to use it in that way in our opinion.

Under section 242 it is illegal for individuals under color of law to engage in activities which violate civil rights. We think that that statute can be used successfully.

Since the *Price* and *Guest* cases there is no reason not to use it successfully.

The color of law issue has been cited by prosecutors as a problem.

We also will have to prove that specific intent to violate a civil right took place and that that is a very technical, legal standard and it is hard for juries to understand.

Juries don't know what we are talking about when we talk about specific intent; perhaps that ought to be changed and that the penalty, they say, under section 242 is not as strong as it should be; that even if they get a conviction the maximum punishment in all cases not involving death is $1,000 fine or imprisonment of 1 year or both.

Now, we take the position that it would be nice to have these changes in 242. It would be nice to increase the penalty in all cases. We have said that. It would be nice to do something about the specific intent standard, but the statute is there. It is available. It can be used now and it ought to be used now. We believe that it is better to have some punishment for a civil rights violation involving assault, a murder, than to have no punishment at all, which is what happens very often in these cases.

Finally, Mr. Chairman, even if prosecutors think there are problems with sections 241 and 242, section 245, which was enacted by

the Congress after the civil rights problems of the sixties, provides ample and full opportunity for the Justice Department to go forward with prosecutions.

It does not present any problems with individual activity or conspiratorial activity. It contains a long list of activities that are provided with Federal protection, so there is no doubt about what the activities are that are protected.

And it, in fact, can be used against individuals who act alone, who interfere with the protected rights of any person. We think that section 245 ought to be used.

We would like our recommendations on these statutes to be implemented, but even if they are not, Justice can move forward now to use them.

I became aware of the negative effect on respect for law in the black community by the kind of activities that we have been talking about when I was researching the Justice Department files on the issues of Federal response to violence against and by blacks for a book I published in 1971.

I don't know if that is the one you are struggling through, but what struck me, Mr. Chairman, is that we undermine respect for law in general if people know that there is a category of offenses involving bodily harm that can be perpetrated and the perpetrators are not prosecuted, not apprehended, and they go free.

I was struck with that over and over again. I was struck with all of the complaints that were sent in by black folks to the Justice Department saying people are being murdered or assaulted in our community just because they are black. Can't you do something about it? The local police are even involved. They are helping to do it or they are covering it up.

They would receive a standard response from the Justice Department. Murder is not a Federal crime. Go see your local police. Tell them about it.

I am sure they will help you, even when the complaint said that the police were involved in it.

I suppose after the *Price* and *Guest* cases the Justice Department would not make that response any more because it is clear that if there is a civil rights violation involved, there is statutory authority to proceed, but I wonder if the complaints that people send out to the Department receive the response that prosecutions are difficult, the standard of proof is difficult, the Justice Department is understaffed, we have other priorities; but the statutory basis for enforcement is present and again let me stress that the Justice Department should have no higher priority than stopping the murder and assault of people for no reason other than their race.

Whatever their staffing problems are, I think that since you can have no other civil rights protected, if you cannot be free of murder or assault, that this ought to be an area in which they should move vigorously.

I will be pleased to answer any questions you might have, Mr. Chairman.

Mr. CONYERS. Thank you very much. I have my colleague from Wisconsin with me today. He has, I know, at least two other meetings to attend this morning. If he has any questions or comments, he might be free to utilize this time.

Mr. SENSENBRENNER. I have no questions, Mr. Chairman.

I would like to commend the witness for an excellent, concise statement.

As we all know, the legislative branch of Government only makes the laws. We don't enforce them. It is up to the individual branches of Government to enforce the laws.

I think that you have hit the nail on the head. In many cases laws on the books are not being adequately utilized to protect minorities in exercising their civil rights.

I certainly think that there has got to be more vigilant enforcement by the U.S. Justice Department when, either by omission or commission, some of these atrocities fall through the cracks in the local law enforcement.

Ms. BERRY. Thank you.

Mr. CONYERS. Thank you.

I, too, want to join in thanking the witness for a very concise presentation and very thorough submitted remarks.

On page 9, Dr. Berry, you stated the following:

> The case law demonstrates that section 241 has been viewed as protecting those rights flowing from the Federal powers. *Guest* and *Price* make it clear the statute encompasses those rights guaranteed under the 14th amendment. It should be noted, however, that both cases sufficiently alleged conspiracies between private individuals and State officials.
>
> Whether section 241 reaches purely private conspiracies, absent State action, to deprive an individual of 14th amendment rights, has not yet been settled by the case law.

Would you elaborate?

Ms. BERRY. All that means is that there have not been any cases in which the Supreme Court has definitively stated whether or not 241 reaches a conspiracy in which only private parties are involved, and there is no allegation that there is any color of law or any State action or any public officials in any way involved.

That is only because in the *Price* and *Guest* cases, where a decision was fully considered, there was some involvement by some public officials.

That was the kind of case that the court had before it.

I had written a little note for myself which I did not say in my oral presentation, that if more cases were brought by the Justice Department, we would get an answer to the question.

If they would aggressively use the statute, bring it there, I am sure that the court would be happy to answer the question.

In my opinion the answer to the question would be that you would not need any kind of involvement on the part of State officials because the statute does not require that, but it is just that there has not been that kind of case.

One of the things that happens, Mr. Chairman, is, when you do not have cases brought, you do not get clarification in the law.

Mr. CONYERS. Could I invite any one of your assistants to make any additional comments?

Ms. GEREBENICS. I have no comment.

Ms. BERRY. She agrees with me. [Laughter.]

Mr. CONYERS. Well, that is the problem we always have when a witness brings assistants.

Would you like to make an additional comment?

Ms. BONOSARO. I think the only thing that might be useful to point out is that the Commission has released a statement, "Police Practices and Preservation of Civil Rights," and that we will presumably in July of this year be releasing a report entitled "Who is Guarding the Guardians?" which will address the general question of police authority and operations.

I think it is important for the committee and others to understand that the Commission has been active and has studied the issues and, as usual, has a basis for its recommendations.

Mr. CONYERS. We will be looking forward to examining the report.

Ms. BERRY. I think, Mr. Chairman, since my colleague mentioned the police practices study, and we keep talking about police, we ought to point out that the police issue is a two-edged sword.

On the one hand, we say that the police at the State level ought to protect people from being murdered and assaulted while they are trying to exercise their civil rights and that clearly is a police responsibility.

On the other hand, in many of the cases of brutality and violence that have occurred over the years, there has been complicity by the police, either actions, illegal violence, use of deadly force, for example, by police officers themselves which is particularly egregious when one is trying to protect civil rights and have law enforcement officials involved in it, or in cases like *Price* and *Guest,* where police or public officials are in fact involved somewhere tangentially in the activities.

That has happened over the years. It is a two-edged kind of proposition.

Mr. CONYERS. Are there any indications in the literature of the law as to what the answer to this as yet unsettled problem is concerning whether or not private conspiracies could be punished under 241?

Ms. BERRY. Well, I would think just based on a reading of the cases that have been decided that if the court had a case like that, that the court would decide 241 did cover that particular instance. I don't have any doubt about it in my own mind. It is just that the court can only decide the cases that are brought before it.

Mr. CONYERS. Are there—have there been law review articles written, or lawyers, judges, or civil rights organizations that have speculated on this question?

Ms. BERRY. Oh, yes; there is a whole body of literature which I could cite to you for the record, but I could not cite off the top of my head; such persons as Professor Kinoy and others who have written about this subject who indicate that that is their view. I share that view.

Mr. CONYERS. Do any of your assistants remember anything from this body of literature that could help us? You can submit any other citations or references that you would like. They will be included in the record.

Ms. BERRY. We will do that, Mr. Chairman.

Mr. CONYERS. On page 11 of your statement there is an excellent discussion of federally protected rights.

> The Supreme Court held that the statutory term "willfully" required a showing of specific intent to deprive the victim of federally protected rights. In addition the

right to be protected could be made definite by judicial interpretation or "other rule of law," thereby providing adequate notice as to what actions are proscribed by section 242. The Court also noted that proof of specific intent does not require a showing that the defendant knew that the right was in fact protected.

Would all of you elaborate on that section, please?

Ms. BERRY. Well, there have been a number of proposals that this problem of specific intent be dealt with and the statute cleared up.

One of them, I think, was a proposal that you made, Mr. Chairman. Because the argument is that according to Screws, trying to show willfulness, trying to show that the violent behavior took place in connection with some federally protected right is very difficult to prove and very hard for juries to understand.

Even though specific intent does not require that person who was taking the violent action knew that the right he was trying to interfere with was a right that was so protected. It had to be a right that was federally protected.

That is all very fuzzy, muddled, and hard for juries to understand.

There have been proposals that section 242 be changed. The Commission has recommended that the specific intent requirement be removed.

One proposal is to include language like this:

A person is guilty of an offense if acting under color of law he engages in any conduct constituting an offense under any section of the Federal criminal code, and that that would specify what the person had done and make it easier to explain.

The other proposal would require proof of recklessness.

The other one is to remedy the statute by saying specifically what the offenses are which, if committed under color of law, constitute a violation.

That is stating explicitly, assault, murder, burglary, unlawful restraint and the like.

Therefore, you would not need any other proof of intent. I would maintain those would be good changes if we could get them.

I would also maintain, Mr. Chairman, that since section 245, which is later in time and which is broader, does not have these kinds of constraints, there is no reason why a prosecutor couldn't proceed by using 245; and if there are any activities that somehow are without the ambit of 245, then somebody could add those.

But 245, as you know, has a long list of activities. It would seem to me that any prosecutor with imagination ought to be able to figure out how to go forward. There are these changes that have been suggested to remedy 242.

Anything else, counsel?

Mr. CONYERS. Any further comments on that question?

With reference to the very important comment that you made on page 15, that local police response frequently is that murder is not a Federal crime—I am sorry, the Federal response that murder is not a Federal crime, is that true?

Ms. BERRY. Well, murder is not a Federal crime. Murder standing alone is not a Federal crime, and crimes, as we know, generally are under the jurisdiction of State governments, State police, State prosecution.

The intent of that section is to indicate that unimaginative—which is probably the kindest word I guess I can use—prosecutors over the years in the Justice Department would not see the civil rights violation that was involved. For example, people being beaten and run away from a place where they were working so their employer wouldn't have to pay them, which is a violation of their contractual rights under section 1983 which is a Federal statute, or people being beaten in order to keep them from having due process by having a trial, to see whether they in fact are guilty of something, that prosecutors seem not to be able to see the civil rights violation.

They would simply characterize the action as just a murder, like any other murder, so why are you writing to us; we know murder is not a Federal crime.

Then they would cite cases like *Cruikshank* and *Hodges* against the United States.

It was a standard form letter they sent back to these people. I actually saw the complaints and letters. No matter what they said, whether they said the police killed us, somebody down the street killed us and we are trying to exercise a civil right, they would say it is murder, go see your local police. We have nothing to do with it.

That proceeds from a commendable notion that in this country we do not want a national police force or the National Government to take on all the responsibility for law enforcement; that that would be in violation of the Constitution.

I support that position, but I can also see where there are specific instances, where constitutional provisions, like the 14th amendment, the 13th amendment, the 15th amendment, are there and on the books and that the remedy for them when there are violations according to these statutes is to have the Federal Government intervene to punish the civil rights violation which is connected to the murder, that in fact a prosecution should go forward on that issue.

Yes, murder is not a Federal crime, but that is not the end of the issue.

Mr. CONYERS. All right. What happens then when a person, a citizen is, in fact, murdered in violation of their civil rights? Federal rights?

Ms. BERRY. If they are murdered, we would hope in the first instance there would be a State investigation and a State prosecution for the murder itself.

In the absence of—which is the best possible route, since the punishments are so much greater and since, in fact, the loss of life can be—one can be punished for it and it also does not require the Federal Government to intervene, but in cases where the State either refuses to prosecute, does not prosecute, or is in complicity with the murder itself, then indeed—and there is a civil rights involvement—then in fact one would expect the Federal Government to at last punish those who perpetrated the act for the civil rights violation.

So we are not saying punish a civil rights violation instead of punish for the murder. We are saying punish for it if it exists in the absence of other kinds of punishment.

Do you want to say something?

Ms. GEREBENICS. I would add the third category there, what happened in Houston with the *Jose Torres* case where the State did prosecute and the sentences were very, very light, suspended at the State level and the Federal Government reviewed the State case and went ahead with a prosecution based on the drowning death of Mr. Torres by Houston police.

Mr. CONYERS. Then a federally violated right can be federally prosecuted?

Ms. BERRY. Absolutely.

Mr. CONYERS. Including murder?

Ms. BERRY. Absolutely.

Mr. CONYERS. Under what provision would that occur?

Ms. BERRY. 241, 242; if it is a conspiracy, then it could be prosecuted under 241.

If it is individual action, it could be prosecuted under 242. If it involves a whole range of protected activities that are listed specifically in the statute, it could be prosecuted also under 245.

So there is a clear Federal statutory base to go forward with prosecution in these instances.

Mr. CONYERS. Do you or your office keep track of the actions brought under these civil rights statutes?

Ms. GEREBENICS. During the course of our police investigation and our police study, we did keep track for a period of time of cases brought in Houston and Philadelphia solely, but on a national level what we get from the Department of Justice are gross figures, 10,000 complaints a year; x number of prosecutions. We have just the total figures.

Mr. CONYERS. Do they have the figures?

Ms. BERRY. They have the figures on the number of complaints that they get 1 year and the number of prosecutions that they go forward with. They do have those.

The Justice Department has that.

Ms. GEREBENICS. That includes prosecutions brought by U.S. attorneys in the local jurisdictions.

Ms. BERRY. They can tell you how many complaints they have gotten each year, how many prosecutions their attorneys have gone forward with in a given year, and the number, as I recall, is a very, very small number of prosecutions for an incredible number of complaints. That has been true over the years.

Mr. CONYERS. That would seem like a subject matter that might warrant the attention of the Commission. You might want to know how many there are, and also to know what the disposition was. That could be very important in determining what the circumstances are in terms of enforcement of the law.

Hopefully we will be able to get it also.

Ms. BERRY. We will get it, Mr. Chairman. If you can't get it, we will give it to you. How is that?

Mr. CONYERS. Well, if you haven't got it and don't get it to us, then we will get it.

Ms. BERRY. All right, Mr. Chairman.

Mr. CONYERS. Let me recognize now my colleague from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman. I am glad to be with you.

I would like to inquire a little further about the criminal aspects of the prosecution in civil rights areas. I am familiar somewhat with the civil aspects of section 1983 from the private practice of law—1983 is purely civil, it is not criminal?

Ms. BERRY. Right.

Mr. MCCOLLUM. Is there anything covered by that that allows civil action?

I realize we are talking about the negligence field as opposed to criminal intent. Is there any activity which, if done in a criminal manner under normal thought processes, with the type of necessary intent up there in the mind, that exists under section 1983 that is not or would not be covered by the interpretations of courts or your interpretation under section 242?

Ms. BERRY. The question is, could a civil action go forward in some of these cases?

Mr. MCCOLLUM. No. What I am asking is, are there areas we can have a civil action in 1983 where you couldn't have a criminal prosecution that conceivably on the State level might be a crime, but up here under section 242 is not a crime and there is no other way of making it a Federal crime?

I don't know if I am making my point clear at all.

1983 is a civil statute. Under color of law a police officer can go out and do a lot of things to people, assault them, beat them up, shoot them.

I had a case myself where somebody was shot to death by a police officer in his home. It was a civil suit that came out under 1983. What I am really asking is, the willful language of 242 looks pretty broad. I am wondering if it covers all the possibilities of criminal conduct that might be encompassed civilly in the civil courts for tort action under section 1983 or are there loopholes in there?

Ms. BERRY. Now I understand, Congressman.

The standard of proof for 241, 242 is greater, of course, than the standard of proof in the civil action. There, in fact, have been cases where people have proceeded under 1983, the damage remedy against, for example, police officers, as you know, who perpetrate such acts where there was no proceeding under 241 or 242 because the prosecutor felt that he could not amass enough evidence to go forward to prove.

He couldn't meet the standard, so there is a possibility of action under a civil damage remedy in these cases.

Mr. MCCOLLUM. You feel the standard of proof and the coverage of 242 is sufficiently broad and tight enough to cover all of the criminal intent elements that you would personally like to see prosecuted that might arise out of situations that are covered in a civil way by section 1983?

Ms. BERRY. I think if you take 241, 242, and 245 together, all three, that one would have a sufficient basis for going forward in those kinds of cases.

Mr. MCCOLLUM. That was my main concern. I know in the case I was dealing with there was a question of whether or not the local

grand jury, in fact, had just been charged by the prosecutor the way they wanted; a lot of coverup questions.

There was no answer to it because you couldn't go into the grand jury. A lot of the people thought that had happened. You are saying if in fact the Federal agencies concerned had investigated, they could have satisfied themselves if there was a problem and gone under 242 if that had been the case.

Ms. BERRY. I think so. Under 241, 242, or 245.

Mr. MCCOLLUM. One of the three?

Ms. BERRY. Yes.

Mr. MCCOLLUM. The reason I asked about 242 was, it was an individual matter. I was curious.

I don't have any more questions. That particularly concerned me.

Mr. CONYERS. I am glad you raised the question.

Mr. MCCOLLUM. I yield back my time, Mr. Chairman.

Mr. CONYERS. Let's talk about the 13th amendment for a while. Just generally how—what were the circumstances out of which nationally that constitutional amendment was created?

Ms. BERRY. The 13th amendment was introduced, passed, and ratified in order to see to it that slavery and involuntary servitude were legally at an end and to give the Congress the power, in section 2 of it, to enforce the amendment by appropriate legislation, to see to it that slavery and involuntary servitude, however defined, no longer existed.

The issue then became, what is slavery and involuntary servitude? What is appurtenant to it? What kinds of things constitute this, and how far does the legislation of Congress go, and Congress then, of course, enacted statutes to enforce the 13th amendment.

Mr. CONYERS. What were the circumstances that caused the amendment to be created in the first place?

Ms. BERRY. The 13th amendment? The circumstances were the fact that slavery existed or war took place in which some slaves were emancipated by proclamation during the war. The war came to an end with the Union victory.

There was an issue about what was going to happen to black folks then legally and what about those who had been emancipated during the war, and it was intended to settle for all time that one result of the war was that slavery would no longer exist and to make it part of organic and fundamental law in the country.

Mr. CONYERS. Did it not come about as a result of the violence to which the emancipated slaves were subjected?

Ms. BERRY. The statutes that were passed based on the 13th amendment were passed because of the kinds of legal requirements as well as the violence that was made by those people in the Southern States once the war was over, interfering with the rights of the blacks who were there, and Congress was responding to this problem.

Mr. CONYERS. So there was intransigence on the part of State governments, and there was violence being visited upon the ex-slaves?

Ms. BERRY. Right.

Mr. CONYERS. And was not that violence brought about to preserve the inferior status that had originally been the lot of those who were slaves?

Ms. BERRY. That is right. I guess I would characterize it as trying to defeat the practical situation which was that the North won the war and the legal situation which was that blacks were freed and to perpetuate the status quo, despite that.

Mr. CONYERS. So the 13th amendment was aimed not only at legal and political discrimination, but also against violence; is that fair?

Ms. BERRY. Right. Yes. That is right.

Mr. CONYERS. Am I amplifying this?

Ms. BERRY. The kind of violence that was taking place in order to perpetuate the preexisting conditions. That is right.

Mr. CONYERS. That would include murder; wouldn't it?

Ms. BERRY. Yes, indeed. Absolutely.

Mr. CONYERS. So we have a constitutional amendment that protects citizens against discrimination that is either legally, politically or physically directed at them?

Ms. BERRY. That is right. In the 14th amendment and in the statutes, to protect the newly freed slaves from that kind of violence which would interfere with their ability to enjoy freedom as opposed to slavery.

Mr. CONYERS. So then could we or could we not view the sections of the Federal law that we have been talking about as enabling statutes to a constitutional amendment?

Ms. BERRY. That is precisely accurate, Mr. Chairman. The idea was to address the problem, to make sure that the 13th and 14th amendments were implemented and that the newly freed slaves had their rights and to sweep away the obstructions to the enjoyment of these rights that were exercised by groups like the Klan and individuals in a very violent way.

So they were enabling statutes.

Mr. CONYERS. If you can, please explain how the court fashioned the case law such that we now are in the situation of having to create some more Federal law to get the intended effect of the 13th amendment rolling after 100-and-some-odd years.

Ms. BERRY. When you ask how the court did it, Mr. Chairman, the court did it by simply reading the statute with the idea in mind that it should be read narrowly; for example, saying that federally protected rights cannot include any rights that people had before slavery was abolished in the States.

For example, people in the States had a right to make contracts—people generally, although not slaves—before the 13th and 14th amendments were adopted, so that you could have the court saying that even these statutes are supposed to protect federally protected rights, that must not be a federally protected right because it existed before, therefore the States must protect that, so we will read out every issue that comes before us and say that you really do need to go back to the States and to really fly in the face of—a favorite lawyer expression—the plain meaning of the words.

That is exactly what the court did, but the court did it for historically—we historians generally agree that the court did it in part because it could not believe that the Congress really did want to change things all that much, that Congress really must have meant only to change as much as was absolutely necessary; that is to abolish slavery, and beyond that they really did mean to leave

most things to the States and it must have been by indirection that these statutes were passed with all this language the lawyers were trying to read broadly.

So you had that happen. You had, by the way, a Congress which when the court did it, did not come out aggressively and say back to the court, "Look, we meant exactly what we said because of the climate of opinion that existed then."

It took time and effort until you finally had a court saying look, we meant—those Congressmen meant exactly what they said in those statutes. We are going to interpret them the way they said it should be interpreted, but that took time.

Mr. CONYERS. So where are we now with the 13th amendment and these three specific Federal laws?

Ms. BERRY. Where we are now is that the courts—the Supreme Court has interpreted them in such a way that the Federal Government can go forward with prosecutions when violent behavior interfering with civil rights has taken place, murder or assault.

It can do it, if it is a conspiracy, without any problem under 241; if it is individual action, it can do it under 242; if there is some specific intent problem that the Justice Department perceives and it is one of those activities listed in 245 which does not have that difficulty, they can use 245.

There is a whole arsenal of weapons that are available for use by the Federal Government and that have been sanctioned by the courts that could be used.

I suppose you would have to ask the Justice Department why they are not using them. I don't understand it.

Mr. CONYERS. It seems to me that the courts have somehow whittled back the original intention of the Constitution and the enabling statutes that were created subsequently.

Ms. BERRY. The courts did do that. They did it for years and years and years and years, and finally there was some relief in 1966 in the *Price* and *Guest* cases and then some relief when Congress passed 245.

What I am saying is that even though the whittling away took place, the current situation is that the law on these issues is viable there; what we need are cases brought under those laws again.

Mr. CONYERS. Do you and your commission have the authority or obligation to meet with the Department of Justice, with the Civil Rights Division, even the Community Relations Service, to determine the style and the rules and the terms under which they investigate and proceed in those matters?

Ms. BERRY. We have the authority to make recommendations to them. We have the authority to hold hearings at which we can subpena them.

We have the authority to—and we have made these recommendations to them and to encourage them to go forward. We did have a hearing in which we had the Assistant Attorney General for Civil Rights and the FBI and various others come before us last fall to tell us about their enforcement under these statutes.

Many of the answers that they gave are the ones that we have been discussing here about staffing problems, let the States do it.

It is hard to prove the cases, and like that.

But they do not deny or they did not in those hearings, that the legal basis for going forward since the 1966 cases I cited and since 245 is there.

They just—one argument they gave was if we bring cases and lose them, it will create more disrespect for the law so it is better not to bring any cases because we don't want to lose them.

Well, my answer to that is if someone's rights are being violated, it is better to go forward with a case, at least to attempt to vindicate their rights, than to simply say well, it is better if we don't because we might lose the case. You don't know whether you are going to lose or not, absolutely. I think you can win.

Mr. CONYERS. That sounds like some incredible testimony. I would like to read that.

Ms. GEREBENICS. We can provide you with a copy of that. We had Mr. Pampa from the Community Relations Service, Mr. Days, and the Deputy Director of the FBI, Mr. Webster's deputy.

Mr. CONYERS. So racially motivated violence has been a historical problem in this country. Maybe it was aggravated in some respects by the passage of the 13th amendment, and therefore some of those sections were created as early as that point in our history, in an attempt to remedy this violent environment that we were in.

Ms. BERRY. Well, there are many things that are reminiscent today of the events that took place in the 1970's which led—sixties and seventies—to the 13th amendment, the 14th amendment, and these statutes that are on the books.

Congress at the time held hearings and took testimony from numerous witnesses who talked about interference with their rights by the Klan and by individuals, and these statutes were passed to try to outlaw that activity and to see to it that if the States did not act, the Federal Government would step in; and that problem today exists again and what we need to do is when States don't act, or if they act not successfully, we need to use the statutes again.

They are there, they are available, and we ought to use them.

Mr. CONYERS. Mr. McCollum?

Mr. MCCOLLUM. Thank you. I have one followup question. I have read now as best I can, as quickly as I can, not having prepared it before, sections 241, 242, and 245. I know we are here today on a hearing discussing the question of violence against minorities, racial overtones to those problems of civil rights.

One thing that strikes me—and I would want to pursue the question of 1983 with you and these statutes and criminal sanctions a little bit more.

Under 1983, if a person is shot or otherwise injured by a person under color of law normally considered a police officer of the State, whether it is the State, the United States, or whatever, then that person is determined to be deprived of a civil right; namely, the ability to continue to pursue normal activities. He has been deprived of a constitutional right and a civil right. Regardless of race, alien, religion, or anything else.

It occurs to me that 241 looks broader for conspiracy but 242 and 245 are certainly very specific. Section 242 which is the broader of the remaining ones, where you talk about an individual taking an action and there is no conspiracy, 242 really only addresses the problems of violence and civil rights deprivations that could be

done by police officers against minorities or against an alien or somebody because of his race, color, or religion.

That is what I am reading into that. That does not actually encompass, if I am interpreting it correctly, the deprivation of a person who is not a minority or doesn't fall into one of the categories given there.

So let's say a Caucasian is shot out on the street somewhere by a police officer, willfully, intentionally, wrongfully, whatever, perhaps a civil tort action could be brought against the police officer under 1983. In fact, I know it could.

Perhaps a local State law has been violated and murder can be brought as a charge or, if not death, some other crime. There would not be a criminal civil rights violation since that person wouldn't be a minority or wouldn't fall into the category of what I think is all that is written into 242.

I am wondering if my interpretation is correct and whether or not even if you don't know it today if you would be willing to submit that back to us because I think even though the hearing is on racial violence and minorities, Mr. Chairman, would you object to our getting the answer to that?

I think that is an area. Civil rights is broader than race, and I think it is very important that we be able to pursue the adequate Federal protection of everyone's civil rights.

Ms. BERRY. We will provide you a more complete answer for the record, but I think that 242—that you are right about the scope of 242 and that when it was drafted, it probably was drafted with particular problems in mind which existed at the time, but I point out under 245, the first section of it, there is no provision—it says nothing about the race or color of any particular person. Of course, that is a later statute. We will subject it to a closer analysis, but it may be that under 245 you could go forward in cases like that.

Mr. MCCOLLUM. I grant you may. I would appreciate your doing it. I have not done it obviously. I just scanned it.

I felt I had not properly visited that with you because I had not adequately read that statutory language.

Now I am a little more concerned, although I am not about the questions of minorities rights. I think they are protected under this.

I am very pleased that you have been able to point that out to us this morning.

I would like to close that other loophole.

Thank you very much.

Thank you, Mr. Chairman.

Mr. CONYERS. Counsel Hutchison.

Mr. HUTCHISON. For Mr. McCollum's benefit, the courts have interpreted section 242 as setting forth two separate offenses. That is not clear, however, from the way section 242 is grammatically constructed. The first offense is, under color of law, subjecting someone "to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." It is not necessary that this offense be committed on account of the victim's race or color. The second offense is subjecting someone under color of law to different punishment on account of the victim's race or color.

For the first offense, deprivation of any rights, there need be no racial motivation, and the Justice Department has brought and routinely brings in these actions in situations where the victim is black and the defendant is black or the victim is white and the defendant is white. So, for the first offense there is no racial aspect necessary. It depends upon the right involved; it all turns on what that right is.

Mr. MCCOLLUM. You are saying my example of somebody being shot who is a member of the majority, the Caucasians or something other than race is involved could, in fact, be prosecuted under Federal law?

Mr. HUTCHISON. Yes. The theory is that the officer, the person acting under color of law, has subjected the victim, whatever the victim's race, to summary punishment, that is, punishment without a trial in a court of law with all the due process safeguards.

Mr. MCCOLLUM. Basically that is the same as the civil version in 1983?

Mr. HUTCHISON. Yes, I would think so.

Mr. MCCOLLUM. That was my question. I appreciate your interpreting that.

Mr. CONYERS. Finally, is it fair to say or is it your view that we are in a climate of increasing racially motivated violence?

Ms. BERRY. It is my view based on the numbers of incidents which have accelerated over the last 3, 4 years, that have been reported to us by the regional offices, not only what we read in the paper but what the offices report, what the State advisory committees report, there has been a clear upsurge in such activities and at first there were many people who thought if you didn't talk about it, the activities would go away, that the best posture was to pretend they hadn't occurred.

Well, even though no one talked very much about it, they still continued to occur and accelerated. I think there needs to be more talking about it and more action.

Mr. CONYERS. Is the Voter Rights Act part of your concerns?

Ms. BERRY. Yes, it is.

Mr. CONYERS. Have you held hearings on it or is there some body of examination, works, that you have performed?

Ms. BERRY. Right. We had a large monitoring project on how the Voting Rights Act was being implemented which resulted in a study, a voluminous study that the Commission considered at our last meeting last month and approved, and which will be submitted to the Congress and there will be testimony on it in the judiciary subcommittee that is considering the Voting Rights Act.

The Commission generally—yes, we are concerned with it. We are concerned that legal remedies be available as in the Voting Rights Act to protect the right to vote.

We are particularly concerned because we noted in the report that harassment and intimidation, physical harassment and intimidation of people who were trying to exercise the right to register or the right to vote still exists today.

There are many people who think that the only violations that exist now are some kind of subtle variation on at-large voting as opposed to single member districts and that kind of thing, which is a major problem.

But, in addition to that, actual physical harassment and intimidation was found in a number of instances which are detailed in the report.

Mr. CONYERS. That is a very timely document.

Let me ask you this: In your experience, have there been instances of Klan or hate group violence being directed at blacks because of their attempt to utilize the franchise or participate in the political process?

Ms. BERRY. That has been a historical problem we know. I was checking to see if there were any instances where the Klan was particularly identified.

Mr. CONYERS. Please make note of any other organizations that would be trying to eliminate or limit the rights of all people, particularly blacks and most normally in the South, but not exclusively any more, in the exercise of their very important right to participate in politics.

Anyway, follow that very carefully.

Do you intend or does someone from the Commission intend to testify before the appropriate subcommittee?

Ms. BERRY. Yes, indeed. For the subcommittee. The report will be made available.

Mr. CONYERS. Very good. I want to thank you. You have been very patient with me. Your testimony and comments have been excellent.

Ms. BERRY. Thank you, Mr. Chairman.

[The prepared statement of Ms. Berry follows:]

TESTIMONY OF MARY FRANCES BERRY, VICE CHAIR
UNITED STATES COMMISSION ON CIVIL RIGHTS

BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON
CRIMINAL JUSTICE
2137 Rayburn House Office Bldg.
Washington, D. C. 20515
June 3, 1981
9:30 A.M.

Accompanied by:
Carol A. Bonosaro, Assistant
Staff Director for Congressional
& Public Affairs

Gail Gerebenics, Assistant
General Counsel

CONTINUED

1 OF 5

TESTIMONY OF MARY FRANCES BERRY, VICE CHAIR
UNITED STATES COMMISSION ON CIVIL RIGHTS
BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON
CRIMINAL JUSTICE
June 3, 1981

Mr. Chairman, and members of the Committee, I welcome the opportunity to appear before you to discuss the increasing number and severity of racially motivated acts of violence. With me today are Carol A. Bonosaro, Assistant Staff Director for Congressional & Public Affairs and Gail Gerebenics, Assistant General Counsel.

The resurgence of the Ku Klux Klan and the increase of domestic terrorism by extremist groups, whether motivated by racial or religious prejudice, are matters of deep concern to the Civil Rights Commission. Equally disturbing are the number of racially motivated violent acts that reportedly are committed by individuals not affiliated with any hate group. Any individual or organization that promotes fear, hatred, and violence by one segment of American society against another is a serious threat to this Nation as a whole.

Today I will discuss the adequacy of Federal law and law enforcement to protect citizens from acts of racial and religious violence, whether by individuals or groups. Before I do, I would like to describe briefly the programs of the Civil Rights Commission in this area and the major issues that have been identified.

Since 1979, when the Commission's ten regional offices started providing monthly reports on this problem, every office has cited increases in hate group activity and racially motivated violence.

Members of the various branches of the Ku Klux Klan have been arrested, convicted and sentenced to prison for acts ranging from cross burnings to beatings to bombings to murder. In other cases, those who commit such acts have not been apprehended or successfully prosecuted.

Both regional offices and the State Advisory Committees to the Commission report intensified recruiting efforts by the Klan, even among high school and college students. There is evidence that the Ku Klux Klan of the 1980's is becoming adept at getting media coverage to suit its purposes, thus spreading its influence far beyond what its message or membership merit. Although some branches of the Klan have taken a position that they are opposed to violence, the existence of paramilitary training camps and activities run by the Klan in Alabama, California, North Carolina, and Texas is an ominous sign that more violence may be expected.

The Klan, Nazis, and similar groups have been somewhat successful in capitalizing on the socio-economic anxieties of whites caused by high inflation and unemployment and dissatisfaction with programs that help minorities secure equal access to opportunities in education, employment, and housing. Yet it is clear that troubled economic times take a more severe toll on minority groups that still feel excluded from the benefits of American society and that are still disproportionately represented among the Nation's poor.

The two most graphic eruptions of racial tensions in recent years have been the Miami riots following the acquittal of police officers in the death of a black businessman, and the violent confrontation in Greensboro, North Carolina where Klan and Nazi gunmen shot five Communist Workers Party members to death. The Civil Rights Commission held hearings in Miami to determine the causes of those riots, and the Commission's State Advisory Committee in North Carolina held an open meeting to consider the conditions that led up to the shootings in Greensboro. Witnesses at both meetings stressed the importance of open communication between the minority community and city officials and a willingness on the part of those local officials to involve minorities in the structure of government.

This Commission has repeatedly urged local officials to take positive action to ensure that minority communities are a functional part of the larger communities in which they exist. That point was made with regard to the composition of law enforcement agencies in our 1980 statement, Police Practices and the Preservation of Civil Rights. Currently, regional offices and State Advisory Committees are working on projects that will contribute to an understanding of the extent to which racial tensions are exacerbated if there are not good police-community relations and a reasonable sharing of power in local government.

With respect to the increasing number of violent acts motivated by racism or anti-semitism, I am pleased to report that the news is not all bad. The Commission's regional offices have reported significant actions

by States and local government, as well as by private citizens, to investigate and try to reduce the causes and incidence of racial tension and violence.

Indicative of the growing public awareness of this problem are the following:

The Governors of West Virginia and Maryland have established statewide task forces to consider this problem, and the Governor of Oregon has proposed legislation to make race-related vandalism a felony punishable by up to five years in prison.

The Maryland State Teachers Association has established a system to monitor the activities of the Klan and similar groups, and the National Education Association has held meetings as part of a National Anti-Klan Network. There are many other efforts by national, State and local groups to monitor the activities of hate groups and reduce the level of racial tension.

These efforts should be matched by a strong response from the Federal government.

This Commission will continue to monitor this problem, through its regional offices and State Advisory Committees. Further, a summary review of violence-prone hate groups is currently being considered by Commission staff before being presented to the Commissioners. Another Commission project will involve our regional offices and focus on the responses of leadership to organizations and conditions that promote bigotry and violence in selected communities.

On May 19, 1980, this Commission urged President Carter to issue an Executive Order or Presidential Memorandum designating a member of the Cabinet to lead a strong united Federal response to activities of hate groups. In January, 1981, the Commission's Report to the President and Congress, sent to President Carter and President-Elect Reagan, stressed the need for the President, the Congress, and the Department of Justice to strengthen the Federal government's ability to counter acts of racial violence. It is of critical importance that the national leadership speak out forcefully and that the Department of Justice be able to know the extent of the problem and react quickly to counter it.

Now I would like to comment on the adequacies of prosecution under 18 U.S.C. Sections 241, 242, and 245 of those persons who perpetrate acts of racially motivated violence. The Commission has made recommendations in the area of police misconduct for amendments to Sections 241 and 242 in the statement Police Practices and the Preservation of Civil Rights issued in July 1980. In July of this year, the Commission will release a new report on this subject titled Who Is Guarding The Guardians? These recommendations, which I will summarize at the end of my testimony are also valid in punishing incidences of racially motivated violence. While prosecutions for such offenses can and should be brought under existing law, the Commission believes that it is imperative for the Department of Justice to have a larger staff, as well as more effective statutory tools to prosecute perpetrators of racially motivated violence. The Criminal Section of the Civil Rights Division of the Department has an authorized strength of 21 attorneys. The Commission has noted this before and does

not feel that current staff levels are adequate. Nonetheless, I believe more vigorous prosecutorial activity should be the highest priority of the Department of Justice. Without the right to be free of racially-motivated murder, no other civil right has any value at all.

The Commission is well aware of the difficulties of prosecution under Sections 241 and 242. We have closely analyzed these statutes from the standpoint of redressing unlawful police conduct. The statutes, despite their limitations, have, however, provided a basis for a federal response to instances of police misconduct. Sections 241 and 242 were in fact enacted to stem the growing tide of racially motivated violence that arose in the Reconstruction Era. Because they were passed to deal with the very problem with which the nation is presently faced, we must make use of them. The statutory limitations the Commission has previously highlighted in the area of police misconduct are problems of a general nature and are applicable in prosecuting those who commit racially motivated crimes.

The use of Sections 241, 242, and 245 can be invaluable in permitting the Department of Justice to seek Federal criminal convictions against individuals who perpetrate acts of racially motivated violence. Sections 241 and 242, however, particularly suffer from substantive and procedural defects that could impede the prosecution efforts of the Department of Justice.

Section 241 makes it unlawful for two or more persons to conspire to deprive a citizen of any rights secured by the Constitution or by statute. Thus a violation of this statute requires proof of (1) the actual existence of a conspiracy, (2) the object of the conspiracy being the deprivation of guaranteed rights under the Constitution or Federal law, and (3) the American

citizensnip of tne person being deprived of such rights. Federal courts haveuniformly required a specific intent to deprive a citizen of such rights in order to sustain a violation under Section 241.1/

The scope of rights that can be the subject of a Federal prosecution have evolved through Federal case law. Although the legislative history of Section 241 makes it clear the statute was created to protect rights guaranteed under the Thirteenth, Fourteenth and Fifteenth Amendments,2/

1/ Proof of specific intent was first held to be necessary in actions under Sec. 242. Screws v. United States, 325 U.S. 91 (1945). This requirement was subsequently incorporated in actions under Sec. 241 in Guest v. United States, 383 U.S. 745 (1966) in which the Supreme Court held that the requirement of specific intent is met by proof of the conspiracy, which by definition requires knowledge of its criminal objections.

2/ Section 241 was originally enacted under the Enforcement Act of 1870 and was intended to reach purely private conspiracies, specifically Ku Klux Klan activities. In fact in the Revised Statutes of 1874-1878 language obviously aimed at the Ku Klux Klan was added that specifically prohibited anyone "from going in disguise on the highways" or on the property of another with the intent to deprive a person of guaranteed rights.

the Supreme Court in United States v. Cruikshank 3/ limited the scope of the statute in holding that a determination must be made as to whether the right serving as the source of prosecution is in fact a right flowing directly from the powers delegated to the Federal government. Additionally, the Court held that certain fundamental rights existed prior to the adoption of the Constitution and thus could not be the subject of prosecution under Section 241. This view persisted until United States v. Williams 4/ in which Justice Douglas in his dissent indicated that some of the Justices were inclined to review the scope of Section 241 to include protected rights outside the narrow restriction of rights flowing from Federal powers.

Cruikshank and Williams were finally overruled with the Supreme Court's decisions in United States v. Price 5/ and Guest v. United States 6/ in

3/ 92 U.S. 542 (1876).

4/ 341 U.S. 70 (1950).

5/ 383 U.S. 787 (1966). Prosecution was brought under Secs. 241 and 242 against fifteen private individuals and three police officers for allegedly conspiring to deprive three civil rights workers of their Federally protected rights.

6/ 383 U.S. 745 (1966). Prosecution was brought solely under Sec. 241 allegedly that private individuals conspired to interfere with blacks' access to public accommodations in violation of Title II of the 1964 Civil Rights Act.

which the Court held that Section 241 also included the guarantees of the Fourteenth Amendment. In Price, the Court held that Congress could not have intended that Section 241 be applicable only to a restricted category of rights. In fact Congress must have intended the statute to embrace all rights under the Constitution.

In Guest the Court held that in conspiring to deprive blacks of the right to enjoy public accommodations operated by the State of Georgia, the conspirators had violated rights protected under the Equal Protection Clause of the Fourteenth Amendment. Even absent proof of cooperation between state officials and the conspirators, an allegation that the conspirators caused blacks to be arrested through false reports was sufficient to be within the aegis of the Fourteenth Amendment.7/

The case law demonstrates that Section 241 has been viewed as protecting those rights flowing from the Federal powers. Guest and Price make it clear the statute encompasses those rights guaranteed under the Fourteenth Amendment. It should be noted, however, that both cases sufficiently alleged conspiracies between private individuals and state officials. Whether Section 241 reaches purely private conspiracies, absent State action, to deprive an individual of Fourteenth Amendment rights, has not yet been settled by the case law.

7/ In addition, the Court held that a conspiracy to interfere with the fundamental right to travel freely between states is a proper subject under Sec. 241. The Court did not consider the source of the Constitutional right to travel, but acknowledged simply that the right exists.

Section 241 has been held to protect not only rights guaranteed under the Constitution, but rights granted under the laws of the United States. In United States v. Johnson, 8/ the Supreme Court held that because the Civil Rights Act of 1964 granted a right to enjoyment of public accommodations, this right was secured under the laws of the United States and, therefore, protected by Section 241. Thus, provided the right that is the subject of prosecution is one granted by the laws of the United States, it may properly be brought under Section 241.

From a prosecutorial perspective there are several problems under Section 241. First, the statute applies only to conspiracies. By definition a conspiracy requires more than one person, thereby precluding prosecution under this statute of a private individual acting alone. Secondly, Section 241 protects only U.S. citizens. If the civil rights of an alien or foreign visitor are violated, prosecution would not be permitted under the statute. Although violence has throughout the last hundred years been perpetrated on the apparent basis of race, recent immigrants and newly-arrived refugees have also been subject to repeated acts of violence. Although we have recommended the strengthening of Section 241 in these areas, there is no reason why it cannot be used effectively in existing cases of violations against American citizens.

8/ 390 U.S. 563 (1968). Prosecution was brought against private individuals who in violation of Title II of the 1964 Civil Rights Act, conspired to deprive three blacks of their right to patronize a public restaurant.

Section 242 was originally enacted as part of the Civil Rights Act of 1866. Legislative history indicates that the statute was designed to effectuate the Thirteenth Amendment. Under Section 242 it is a criminal offense for a person acting under color of any law to wilfully subject any U.S. inhabitant to the deprivation of any rights guaranteed by the Constitution or Federal law or to different punishments, pains or penalties, by reason of alienage, color or race, from those prescribed for the punishment of citizens. In Screws v. United States 9/ the statute was challenged as being unconstitutionally vague with respect to the nature and extent of the actual rights to be protected and that there was no ascertainable standard of guilt under which the defendants could be judged. The Supreme Court held that the statutory term "wilfully" required a showing of specific intent to deprive the victim of Federally protected rights. In addition the right to be protected could be made definite by judicial interpretation or "other rule of law," thereby providing adequate notice as to what actions are proscribed by Section 242. The Court also noted that proof of specific intent does not require a showing that the defendant knew that the right was in fact protected.

9/ 325 U.S. 91 (1945).

Although the language in Section 242 speaks to state action, it is settled that the statute is sufficiently broad to embrace the action of private individuals. The Supreme Court in United States v. Price 10/ held that in reaching private parties the requirement of acting "under color of law" is met if it can be shown that such private individuals wilfully participated in a joint activity with State officials to deprive the victim of guaranteed rights.

Despite widespread use of Section 242, there are several problems in prosecuting these cases. Requiring a showing of specific intent has proved to be an impediment to prosecution. A prosecutor may be unable to prove beyond a reasonable doubt that the defendant specifically intended to violate the constitutional or civil rights of the victim. If this burden of proof is not met, a jury cannot return a guilty verdict. In addition, jury instructions regarding specific criminal intent may be confusing because specific intent involves a complex constitutional standard, one that is more readily understood by attorneys who are specifically trained to deal with constitutional issues.

Perhaps even more troubling than the prosecutorial problems, is the penalty provided under Section 242. The maximum punishment for a conviction under the statute is a $1,000 fine, and one year imprisonment, unless death results in which case the maximum punishment is any term of years or life. The combined effects of a low-level penalty, the difficulty of proof, and the generally limited resources and high caseloads of prosecutors may serve as a limiting factor in bringing Section 242 actions.

10/ 383 U.S. 787 (1966).

Section 245 contains many of the features strongly recommended to Congress by this Commission in its 1965 report, Law Enforcement: A Report On Equal Protection In The South. It was enacted during the period of history when civil rights workers were met with violence in the South. The legislation was designed to make Federal prosecutions more effective by including more specific language than that found in Sections 241 and 242. Section 245 specifies a list of activities afforded Federal protection. The statute also provides a second list of protected activities, but interference with these activities is proscribed only if the interference is motivated because of the victim's race, color, religion or national origin.

Section 245 affords broad protection of rights and does not suffer from the vague language that has created limitations on the scope of Sections 241 and 242. There is no requirement of proof of conspiracy, but the defendant must act wilfully which may require a showing of specific intent. The statute applies to individuals who interfere with the specified activities, whether or not they act under color of law. There is no requirement that the victim be a United States citizen. Thus prosecution could be instituted against a single individual, acting alone, who interferes with the protected rights of any person.

With respect to Sections 241, 242, and 245, the Commission offers the following recommendations:

Section 241 would have broader application if the element of conspiracy were removed. This would permit the prosecution of single individuals, acting alone. Some of the reports of racially motivated violence have indicated that the perpetrator has in fact acted alone. With this

impediment removed from Section 241 Federal prosecutions could be instituted against such individuals.

The Commission also recommends that the restriction that the victim must be a United States citizen be eliminated. The Commission does not believe that an offender should be shielded from prosecution solely because of the citizenship status of the victim.

With regard to Section 242 the Commission recommends that the judicially imposed requirement of a showing of specific intent be removed. Federal prosecutors would have a far simpler task in convincing juries that defendants deprived their victims of protected rights.

The present penalty under Section 242 may be a negative prosecutorial incentive and accordingly the Commission recommends that unlawful acts of law committed under color of law be treated as felonies under any circumstances. Raising the punishment of an offense under Section 242 to the level of a felony could serve as a deterrent and increase the likelihood of prosecutions being brought under the statute.

Section 245, although the broadest of these three statutes, also contains language that is specific enough to avoid the challenges of vagueness that Sections 241 and 242 have undergone. With regard to more effective prosecution of private individuals, it would seem that prosecutions under Section 245 could easily reach prohibited conduct not covered by Sections 241 and 242. The dearth of caselaw regarding Section 245 reflects the low number of prosecutions brought under the statute. The Department of Justice may be able to more fully respond to any questions you may have as to why more prosecutions are not brought pursuant to Section

245. Since the statute was enacted to provide broader Federal protection of civil rights, the Commission would urge that more widespread use be made of Section 245. It, too, can be a valuable statutory tool in stemming the increase of racially motivated violence in this country.

The steady increase of racially motivated crimes is cause for the gravest concern. The struggle for civil rights in this country has been an arduous one. We have come too far to let the struggle of many be undone by the lawlessness of a few. We as a nation must make a concerted effort to find effective means for deterring and punishing these acts of violence. We have presently at our disposal the necessary means to bring a halt to the growing number of acts of racially motivated violence. We have no choice but to make swift use of these means.

I became more aware of the negative effect on respect for law in the black community when I spent years researching the Justice Department files on the issue of the Federal response to violence against and by blacks for a book I published in 1971, Black Resistence/White Law: A History of Constitutional Racism in America. The complaints by blacks involving murder - often with police complicity - that were sent to the Justice Department between the era of reconstruction and the Price and Guest cases most often received the response that murder is not a Federal crime - "See your local police."

I wonder if similar complaints now receive the response that prosecutions in such cases are quite difficult and the Department of Justice is really quite understaffed. The statutory basis for enforcement is present and, again, let me stress that the Justice Department should have no higher priority than stopping the murder of and assault on people for no reason other than their race.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

AUG 3 1981

Honorable John Conyers, Jr.
Chairman
House Judiciary Committee
Subcommittee on Criminal Justice
Washington, D. C. 20515

Attn: Oliver Quinn

Dear Chairman Conyers:

On June 3, 1981 Vice Chair Mary Frances Berry testified before the Subcommittee on Criminal Justice on the effectiveness of Federal law and law enforcement in countering acts of racial violence. During the course of that testimony and the subsequent question and answer period, several issues were raised by you and your colleagues. Enclosed are materials compiled by Commission staff that address the concerns of members of the Subcommittee:

1. An Office of General Counsel memorandum providing a bibliography on the scope and adequacy of 18 U.S.C. Sec. 241;

2. An Office of General Counsel memorandum regarding the applicability of 18 U.S.C. Secs. 242 and 245 to non-minorities;

3. An Office of General Counsel memorandum regarding the extent to which Department of Justice actions on racial violence complaints are monitored by the Civil Rights Commission; and

4. The proceedings of a Commission hearing on the Federal role in the administration of justice including testimony from Drew Days, Assistant Attorney General for Civil Rights, Francis Mullen, Executive Assistant Director for Investigations, Federal Bureau of Investigation, and Gilbert Pompa, Director, Community Relations Service.

I trust you will find this material helpful. If the Commission can be of any further assistance, please do not hesitate to contact the Congressional Liaison Division at 254-6626.

Sincerely,

Carol A. Bonosaro

CAROL A. BONOSARO
Assistant Staff Director for
Congressional & Public Affairs

Enclosure

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

DATE: June 19, 1981

REPLY TO ATTN OF: OGC

SUBJECT: Request from House Judiciary Subcommittee for a Bibliography of Literature on the Scope and Adequacy of 18 U.S.C. §241

TO: Carol A. Bonosaro
Assistant Staff Director for
Congressional and Public Affairs

THRU: Paul Alexander
Acting General Counsel

This brief memorandum is in response to a request from Representative Conyers for a bibliography of literature pertaining to the scope and adequacy of 18 U.S.C. §241.

There does not appear to be much literature concerning the scope and adequacy of Section 241. The following is a list of what appears to be relevant:

Calhoun, The Thirteenth and Fourteenth Amendments: Constitutional Authority for Federal Legislation against Private Sex Discrimination, 61 Minn. L. Rev. 313 (1977)

Comment, 63 Geo. L. Rev. 203 (1974)

Comments, 43 Chi. L. Rev. 542 (1976)

DERRYL D. STEWART
Attorney-Advisor

81 JUN 23 A9:44

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

81 JUN 23 A9:44

DATE: June 19, 1981

REPLY TO ATTN OF: OGC

SUBJECT: Request from House Judiciary Subcommittee on Racially Motivated Violence

TO: Carol A. Bonosaro
Assistant Staff Director for
Congressional and Public Affairs

THRU: Paul Alexander
Acting General Counsel

In response to a request from Representative McCollum, this memorandum addresses the applicability of Sections 242 and 245 to non-minorities.

Prosecutions may be brought under 18 U.S.C. §245 regardless of the victim's race, color, or national origin. The statute specifies a list of activities afforded Federal protection. 1/ There is no requirement that the interference with these rights be motivated by the victim's race, color, or national origin. Section 245 also includes a second list of protected activites, but interference with these must be based on the victim's race, color, religion, or national origin. 2/ It is clear that at least with regard to certain acitivites, prosecutions may be brought pursuant to Section 245 whether or not the victim is a member of a minority group.

Although 18 U.S.C. §242 was primarily enacted to protect blacks from violence by whites during the Reconstruction Era, it is clear that the statute also affords protection to whites. Senator Trumbull, the author of the bill, in describing the bill said it would "protect all persons in the United States in their civil rights, and furnish the means of their vindication." 3/ In fact after some discussion of the bill, the Senator stated, "It is a bill

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1/ 18 U.S.C. §245(b)(1) (1976).

2/ 18 U.S.C. §245(b)(2) (1976).

3/ Cong. Globe, 39th Cong., 1st Sess. 211 (1866).

providing that all people shall have equal rights....[T]his bill applies to white men as well as black men." 4/

In United States v. Classic 5/ the Supreme Court validated use of Section 242 for prosecution of violations of rights other than those violated on account of race, color, or national origin. Classic involved a two count indictment charging that the Louisiana Commission of Elections altered and falsely counted and certified ballots in a primary election in violation of Sections 241 and 242. The Court found that the requirement that the action have been taken "under color" of law had been satisfied. The alleged violation, however, had not been on account of race, color, or national origin. In finding that the Commission of Elections had in fact violated a right subject to protection under Section 242, the Court reasoned that

> the qualification with respect to alienage, color and race, refers only to differences in punishment and not to any deprivations of any rights or privileges secured by the Constitution is evidenced by the structure of the section and the necessities of the practical application of its provisions. The qualification as to alienage, color and race, is a parenthetical phrase in the clause penalizing different punishments "than are prescribed for citizens," and in the common use of language could refer only to the subject-matter of the clause and not to that of the earlier one relating to the deprivation of rights to which it makes no reference in terms. 6/

Thus the Court found that Section 242 provided punishments for two types of offenses. "The one is willfully subjecting any inhabitant to the deprivation of rights secured by the Constitution; the other is willfully subjecting any inhabitant to different punishments on account of his alienage, color, or race, than are prescribed for the punishment of citizens." 7/

4/ Id. at 599.

5/ 313 U.S. 299 (1941).

6/ Id. at 326.

7/ Id. at 327.

Since Classic, few cases have considered this issue. In Miller v. United States, 8/ the defendants, two police officers, appealed convictions under Section 242 for abusing two non-minority arrestees. The defendants contended that prosecutions under Section 242 were appropriate only if the violation of rights were based on the victim's race, color, or national origin. The court rejected this contention citing the distinction made in Classic. Because the defendants, acting under color of law, deprived the victims of their constitutional right not to be punished without due process of law, Section 242 was violated. 9/

Section 242 has proved to be a most effective tool in prosecuting instances of police brutality. The statute apparently has been used in these prosecutions without regard to the race, color, or national origin of the victims. 10/

DERRYL D. STEWART
Attorney-Advisor

8/ 404 F.2d 611 (5th Cir. 1968), cert. denied, 394 U.S. 963 (1969).

9/ Id. at 612.

10/ See U.S. v. Mays, Crim. No. 4-78-77 (S.D. Tex. 1979) which involved prosecution of a police officer under Section 242 for the killing of a white youth. It should be noted that 42 U.S.C. §1983 which permits any person to bring civil suit against a person, who under color of law, deprives the victim of guaranteed rights, contains no limitations with respect to race, color, or national origin. Sections 241 and 242, however, have no application to civil suits under Section 1983. Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980); Myers v. Couchara, 313 F. Supp. 873 (E.D. Pa. 1970).

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

DATE : July 24, 1981

REPLY TO ATTN OF: Office of General Counsel

SUBJECT : Request from Representative Conyers

TO : Carol A. Bonosaro
Assistant Staff Director, OCPA

FROM : Paul Alexander
Acting General Counsel

The Office of the General Counsel is the lead office in the agency for monitoring developments in the area of the administration of justice. One aspect of our monitoring responsibility in the area involves keeping track of major cases investigated or filed by the Civil Rights Division of the U.S. Department of Justice under §§241 and 242 of the Federal criminal code and analyzing new policy developments affecting the responsibilities of the Civil Rights Division, the U.S. Attorneys and the Federal Bureau of Investigation.

We fulfill our monitoring duties with respect to cases arising under §§241 and 242 in three ways: (1) we receive a weekly activity report from the assistant attorney general for civil rights that describes the Division's recent investigations, indictments, and trials (2) we hear from representatives from the civil rights division at our consultations and hearings that address issues in the area of the administration of justice (3) we formally and informally inquire about the progress and disposition of selected cases that we have chosen to monitor.

At a consultation on police practices and the preservation of civil rights that the Commission held in December 1978 then Assistant Attorney General Drew S. Days said that the Civil Rights Division receives

> upward of 10,000 complaints each year from individuals who believe their civil rights have been violated and that the Federal Government should act in their behalf. While large numbers of these complaints are beyond the jurisdiction of Federal criminal law, the Federal Bureau of Investigation conducts over 3,000 active

> investigations into allegations of police misconduct annually. These investigations are referred simultaneously to the criminal section of the Civil Rights Division and to the appropriate United States attorney for prosecutive evaluation.
>
> Approximately 50 to 100 matters are presented to grand juries each year, and of those, 25 to 50 actually result in indictments. For the last fiscal year, 36 prosecutions were initiated, charging 66 defendants, and just over 70 percent of these cases prosecuted by the Civil Rights Division and United States Attorneys resulted in conviction.

At a recent Commission hearing held last September to assess the role of the Federal Government in the administration of justice, Assistant Attorney General Days presented the most recent figures for receipt, investigation and disposition of cases arising under §§241 and 242 but the figures did not differ dramatically from the figures presented in 1978. The number of complaints received was around 11,000, many of which were matters outside the jurisdiction of the Federal Government. The Department of Justice takes the prosecutorial initiative in 50 to 100 cases a year but has a conviction rate that fluctuates between 45 and 70 percent for cases involving the prosecution of police officers, compared to a 96 or 97 percent conviction rate for other prosecutions. Mr. Days attributed the disparity to a discrepancy in the way that juries respond to cases when police officers are defendants.

M. GAIL GEREBENICS
Assistant General Counsel

Mr. CONYERS. Our next witness is Prof. Denise Carty-Bennia. Professor Carty-Bennia has been on the faculty at Northeastern University Law School in Boston since 1977. She teaches Constitutional Law and Federal Jurisdiction, as well as Civil Rights and Civil Procedure.

She has been active in a number of legal activities and organizations. Welcome before our subcommittee. We are glad that your flight connections have worked out all right. We will incorporate your prepared testimony into the record. I want you to refer to as much of it as you want to in the discussion here today.

TESTIMONY OF DENISE S. CARTY-BENNIA, PROFESSOR, NORTHEASTERN UNIVERSITY SCHOOL OF LAW

Ms. CARTY-BENNIA. Thank you. I would prefer not to present my prepared testimony and simply let that be part of the record.

I would like to open though with what I believe to be the central issue involved in the hearings that your subcommittee is having here today. I do believe the 13th amendment to the U.S. Constitution provides a historic and without precedented foundation, if you will, for the notion that the acts of racial violence that we now are becoming aware of sweeping the country can, in fact, be investigated and prosecuted and remediated by the Federal Government.

In fact, I would suggest to you that the principal difficulty with the present way in which the Federal Government is approaching the law is that it fails to perceive that within the 13th amendment there are, in fact, two prongs addressed.

That is to say, the abolition of slavery and involuntary servitude must be dealt with on many multiple levels; that the Congress, at the time of the adoption and ratification of the 13th amendment, was concerned clearly with the rise of the institution of slavery as most of us understand it, but was also concerned about the badges and incidents of slavery which carried over to freed blacks that resided in areas outside of the Deep South and who were not in fact slaves, but who were bearing stigma as a result of the color of their skin and as a result of the color of their skin, being associated with the peculiar institution of slavery.

As a result, the 13th amendment not only abolishes slavery, but it also abolishes the badges and incidents of slavery. That is any acts public or private which go to the maintenance and the preservation of the degradation or the inferiority of black people in the United States of America.

It is upon that basis that I would suggest that sections 241, 242 and the civil statutes, 1981 through 1989, provide a basis for Federal intervention to investigate and prosecute the current acts of racial violence now sweeping the country, again almost as if in a cyclical pattern as we begin to move into another tight economic period where we tend to seemingly see a lashing out on those least able to protect themselves.

Mr. CONYERS. What are the badges?

But first, before we get to that, where did this notion derive from? Case law?

Ms. CARTY-BENNIA. What notion?

Mr. CONYERS. The notion that the badges and incidents of slavery must also be abolished along with the institution?

Ms. CARTY-BENNIA. That is part of the legislative history surrounding the enactment of the 13th amendment. It is one of the great travesties that most law students and lawyers have not taken a look at the legislative history, which is very clear on the issue.

Interestingly enough, the debate around the enactment of the 13th amendment was really not a debate about the abolition, if you will, of the badges and incidents of slavery as it was a debate about what branch of Government was going to be responsible, if you will, for the preservation of the abolition of slavery and the badges and incidents thereof.

That debate was clearly resolved with the enactment of the 13th amendment in favor of Federal authority to protect and defend the rights of the newly emancipated slaves as well as the rights obviously of all other black people in the United States.

Mr. CONYERS. Didn't it derive from case law as well?

Ms. CARTY-BENNIA. Badges and incidents?

Mr. CONYERS. Yes. Was the phrase used in a Supreme Court case and taken from legislative history?

Ms. CARTY-BENNIA. The phrase has been repeated in several Supreme Court cases, most notably the Civil Rights Act cases, and obviously the *Plessy* v. *Ferguson,* which are the two decisions most of us are familiar with.

The actual language about badges and incidents can be found in the legislative history surrounding the adoption of the 13th amendment.

That language actually draws from the framers and drafters of the 13th amendment.

Mr. CONYERS. You are not amazed that nobody reads it though? We don't read our own stuff much less force unsuspecting law students to read it, and, of course, lawyers would refuse point blank. We couldn't even direct them.

We don't read the Congressional Record from yesterday, much less 113 years ago.

Ms. CARTY-BENNIA. Well——

Mr. CONYERS. As a matter of fact, I am not even sure we could get the Record for 113 years ago.

I am going to ask staff to do that because I think you have pointed out a responsibility that should repose on more Members of Congress, starting with this one.

Ms. CARTY-BENNIA. If you notice, one of the footnotes contained in my prepared statement indicates that that record was in fact republished in the 1960's so that we have an updated version readily at hand.

It won't be that difficult. You won't have to go back 113 years.

I am surprised, I think, that people do not read it, because as a law professor, during this period of time, I am sort of immune, if you will, to reading fairly negative case decisions and fairly negative, sort of, law review articles.

What I found very interesting is, while there is clearly a decided opposition that was present during the course of the 13th amendment debates, there clearly is a very decided group of proponents of the 13th amendment who argue in terms and in language which

is extremely reminiscent of those of us who have been involved in the civil rights struggle and can lend a great deal of moral support, if not actual tangible support, as we are confronted with the present posture of the Justice Department on the question of 241 and 242.

Mr. CONYERS. Your statement breaks into several parts, and the one I would like you to spend a few minutes with us on is the meaning of slavery within the 13th amendment.

Ms. CARTY-BENNIA. Very well.

What I find most interesting about the meaning of slavery within the 13th amendment is clearly obvious it was designed to make sure that the institution of slavery, as most of us understand it, would never rear its ugly head again on the landscape of America.

But the congressional debates make it very clear that they are going beyond that; that they are going beyond to look at the burdens, badges and incidents of slavery which free blacks were experiencing prior to the Civil War in the North and the South; that is, violent persecution as well as economic and political deprivations based solely on the color of their skin and the fact that most other people with that color of skin were, in fact, slaves.

What I think is of further importance though is that that Congress also recognized that the badges and incidents of slavery extended, if you will, to whites in America; that this was not solely a phenomenon that extended to black people or people of color, but that many, many poor whites had also experienced economic, social and political deprivations as a result of the institution of slavery.

That is to say, the Congress understood that the institution of slavery had permitted these slave owners, if you will, the plantocracy, to control the political situation in the South at the expense of poor whites by feeding them essentially a line that said, well, you could be worse off; you could be black, and you could be a slave.

As a result, there had not been a great deal of organization around the civil rights of poor whites in the South and in many parts of the North as well.

Mr. CONYERS. You suggest that that phenomenon continues?

Ms. CARTY-BENNIA. Oh, no doubt about it.

I would suggest that that is again a fairly cyclical phenomenon; that to some extent one can attribute a large part of the recent recurrence of racial violence to the notion that our economy is in very dire straits and that we are seeing more and more people competing for scarcer and scarcer resources; and rather than sitting down and making a sizable or, if you will, a rational examination of the causes for those shrinking resources, people are turning to what—a very familiar and very easy kind of rationalization based on some of the civil rights activity that has occurred in the last 15 years, that the problems are all attributed to blacks getting too many jobs or getting too many affirmative action positions or getting ahead.

Mr. CONYERS. Could you—thank you.

Could you refer to the portion of your comments entitled "The Civil Rights Act of 1866" and give us a little amplification on that?

That is a very important part of the history, it seems to me.

Ms. CARTY-BENNIA. I think it is important to understand that the Civil Rights Act of 1866 did not occur in a vacuum. In fact, the 13th amendment was not ratified—actually it did not have a declaration of ratification until a full 2 weeks after the 39th Congress had convened to begin to address the problems concerning the newly emancipated freed men and the basic practical problems, if you will, of abolishing slavery.

Probably at the top on their list when they convened to address these problems was the question of racial violence. They convened a joint commission to investigate this problem which traveled throughout the South, took an incredible amount of testimony, secured an incredible number of reports and affidavits from Army officials as well as other governmental officials, which indicated that one of the single worst problems, if you will, in the South post-Civil War was the question of racial violence directed toward blacks.

But I think it is important to understand that problem not as a response necessarily to the Civil War and the Emancipation Proclamation, but rather as a continuation of the way in which the slave South had always dealt with its black population, so that when one talks about the badges and incidents of slavery, and then when one reaches the question of the 1866 Civil Rights Act, those acts are not specifically designed to address a new problem, a problem that has cropped up just post-Civil War, but a continuing problem and a problem which presumably should not have continued after the emancipation of blacks as well as obviously the enactment of the 13th amendment.

So I would suggest to this subcommittee that the Civil Rights Act of 1866 stands on its own, free of the stain that we find in some of the judicial analyses of suits brought under some of the provisions within that act that suggest that it is limited or restricted by subsequent judicial interpretations flowing from the 14th amendment and the 15th amendment.

That is to say that the 13th amendment provides an adequate and a total foundation for the acts, the Civil Rights Act of 1866 and, as a result, are not constricted by such standards as intent to discriminate, such standards as the question of—if you will—whether or not there is a federally protected right involved in the activity when a black person was assaulted because, in fact, the 13th amendment addresses, if you will, or provides the foundation for all federally protected rights to be available to blacks.

Maybe another way to put it is that the 13th amendment protects blacks as a matter of Federal policy, life, liberty and the pursuit of happiness.

Mr. CONYERS. Comment on this, if you will: The 13th amendment protects blacks from violence which is racially directed?

Ms. CARTY-BENNIA. That is correct.

Mr. CONYERS. And that is self-executing?

Ms. CARTY-BENNIA. That is correct.

Mr. CONYERS. And in one sense the history, the legal history that flows from it did not ever necessarily need many of these court restrictions that have been tied on it through the years?

Ms. CARTY-BENNIA. That is correct. I would suggest that the 13th amendment provides the appropriate Federal governmental agency with Federal authority to go in and investigate and prosecute acts

of racial violence directed toward black people much like the groundbreaking decision of the court in *Gibbins* v. *Six Unknown Agents.*

That is to say the 13th amendment itself provides the Federal authority and that the statutes enacted pursuant to the 13th amendment are perhaps icing on the cake; very nice to have and useful to have for purposes of answering questions which might arise during the course of prosecution, but not necessarily essential to establish that that power is there.

Mr. CONYERS. That has been suggested by some justices?

Ms. CARTY-BENNIA. Yes. None of whom are presently on the court.

Mr. CONYERS. But at least some——

Ms. CARTY-BENNIA. There may be some correlation between their leaving the court and their suggesting that. It has been suggested by a minority of justices during the intervening period since the enactment of the 13th amendment that that is the true interpretation of the 13th amendment.

Mr. CONYERS. This has been written in the legal literature more than once?

Ms. CARTY-BENNIA. Yes. It is, I think, a travesty that this is an area that has not been explored extensively. This subcommittee has been very privileged to hear from one of the principal scholars in the area, Prof. Arthur Kinoy, a distinguished colleague of mine; obviously Professor ten Broek has written extensively in this area.

There are only two or three other articles exploring this area in any great depth. You are talking about a whole body of literature that probably totals less than 10 law review articles in the process of 100 years.

Mr. CONYERS. I would have thought that there would be more in terms of the civil rights movement of the fifties and sixties. After all, the amendment itself is over 100 years old and its enforcement for protection of millions of people, citizens under this Government, has been at issue ever since the Civil War.

So, I do express some surprise that there hasn't been more than that.

Ms. CARTY-BENNIA. I am not surprised because I think when one really takes a close look at the 13th amendment, it is probably the most radical piece of congressional legislation that the Congress has ever adopted.

Because of its radicalness, and because of the full implications of the 13th amendment, it was absolutely essential that it be buried swiftly and quickly.

I would suggest to you that that is what the court did quite rapidly following the Reconstruction period with that burial almost totally complete by the time of the Civil Rights Act cases in 1983; and clearly the 13th amendment, representing sort of a passing—if you will, irritation by the time we reached the 1896 decision of *Plessy* v. *Ferguson* and that the first notion that it might be resurrected—might be resurrected—can be found in the language of the *Brown* v. *Board of Education* case.

Of course, it was not until 1968 that we arrived at the *Jones* v. *Alfred H. Meyer* case to find this present court recognizing that the 13th amendment does exist and does provide a basis independent of

the 14th and the 15th amendments for the prosecution, if you will, of civil rights violations.

Mr. CONYERS. Thank you.

Finally, in terms of the direction that we are to go here, we have a progressive amendment that has been, if not ignored, honored only to a minimal extent.

We now have a few restrictive court cases. We probably have a Federal legislature disinclined to deal swiftly with the remedies that we could suggest.

What paths do you see might be followed by good lawyers and Congressmen and citizens who might wish to remedy this situation?

Ms. CARTY-BENNIA. It seems to me we probably haven't been the best lawyers that we could be. While I am not unwilling to concede some hostility from the present Supreme Court, it is clear to me also that we have not really presented a case on a record which fully and adequately details the legislative history surrounding the enactment of the 13th amendment and proposes to trace on a historical basis, if you will, the relationship of a present racial discriminatory practice with some aspect of that racial discrimination rooted deep in slavery.

I think it is until that point in time when we have really done our lawyering homework on the question of laying out in almost Brandeisian fashion, if you will, point by point, the relationship and the correlation between the institution of slavery and the present racial discrimination experienced by blacks in this country that we cannot say that we have exhausted all judicial avenues.

It seems to me that it is clearly quite open and available to the Justice Department at this point in time to take a look at several of these cases of racial discrimination and proceeding under 241 or 242, bring the full measure of their expertise to bear on litigating just such a case.

I think that at that point in time the court will have to take a step back, or at least expose its disingeniousness about the kind of interpretation of statutes in relation to legislative history that they are really engaged in.

Mr. CONYERS. Well, that is a very refreshing suggestion. I thank you.

Mr. McCollum.

Counsel.

Mr. QUINN. One question, Professor.

Would it be your opinion that a factual situation in which a black person was subjected to some violence based exclusively on that person's race without that person being in the process of engaging in any other Federal activity, would that kind of fact scenario form the basis for the type of action that you are talking about?

Ms. CARTY-BENNIA. Absolutely.

Mr. QUINN. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much.

We appreciate your testimony.

Ms. CARTY-BENNIA. Thank you.

[The prepared statement of Ms. Carty-Bennia follows:]

STATEMENT OF PROF. DENISE S. CARTY-BENNIA BEFORE THE SUBCOMMITTEE ON CRIME OF THE HOUSE COMMITTEE ON THE JUDICIARY
June 3, 1981

My name is Denise S. Carty-Bennia. I am a Professor at Northeastern University School of Law where I teach Constitutional and Civil Rights law and the jurisdiction and civil procedure of the federal courts system. My practice has been concentrated in the fields of Constitutional and Civil Rights law and my organizational affiliations are broad and extensive, local and national, in these areas. I have been asked to testify before this Subcommittee on Crime of the House Committee on the Judiciary concerning the Thirteenth Amendment basis for federal governmental jurisdiction to address, preventively and punitively,and, thereby, hopefully to curtail, the increasing numbers of incidents of violence directed against Black and other minority people in the United States.

The Thirteenth Amendment to the United States Constitution

Section I. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section II. Congress shall have power to enforce this article by appropriate legislation.

It is ironic and tragic that one hundred and sixteen years after the adoption of the Thirteenth Amendment, little is known beyond the specific text of the amendment and even less is understood about it. Its historic insignificance has never lived up to its promise as a "grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this government"[1] and a "universal charter of freedom which had the effect not only of abolishing the institution of slavery but of rejecting all of its 'badges and incidents.'"[2] The failure of the Thirteenth Amendment to fulfill its promise, and as a consequence the failure of the Fourteenth and Fifteenth Amendments as well, lie at the heart of the racial maelstrom which has enveloped the United States since its beginning.

The numerous and well documented incidents of current racial violence which have been presented to this Subcommittee all suggest that prompt and effective measures must be taken to overt an imminent and irresolvable national racial crisis. The Thirteenth Amendment not only clearly condemns such racial violence but also provides the mandate and authority for the use of federal power nationally as a weapon against racial violence of all kinds.

The Historical Purposes of The Thirteenth Amendment [3]

The two Congressional debates[4] concerning the adoption of the Thirteenth Amendment reflect substantial unanimity on the purposes of the Thirteenth Amendment. Opponents of the Amendment argued that it was a constitutionally unjustifiable and inexcusable expansion of the federal governmental power to abolish slavery nationally at the expense of the rights of the states[5] as well as elevation of Blacks to a level of basic minimum equal rights.[6] Proponents were no less zealous in expressing their beliefs that the Amendment would restore the supremacy of the Constitution; reaffirm the privileges and immunities guaranteed to all citizens,Black and White,as their natural rights; and,at last,harmonize federal law with the Preamble to the Constitution and the Declaration of Independence. Godlove S. Orth of Indiana stated that " the effect of such Amendment... was to prohibit slavery in these United States, and be a practical application of that self-evident truth, 'that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.'" [7] Thus, opponents and proponents both understood that Congressional adoption of the Thirteenth Amendment would revolutionize the federal system by explicitly conferring new power on the federal government.

The Meaning of "Slavery" within the Thirteenth Amendment

On the heels of the Emancipation Proclamation and the voluntary abolition of slavery by border states, this new federal power would have been at best illusory if restricted to prohibiting slavery in only the literal sense of a

legally enforceable involuntary servitude. The Congressional debates make it abundantly clear that the slavery to be reached by the Amendment included all of the burdens, badges and indicia of slavery which free Blacks experienced in the North and South, as well as the incidents of the slave system which impaired the rights of whites.

> Stated affirmatively, and in the alternative phrases and concepts used repeatedly throughout the debates, the Thirteenth Amendment would: first, guarantee the equal protection of the laws to men in their natural and to citizens in their constitutional rights; and/or, second, safeguard citizens of the United States equally in their constitutional privileges and immunities; and/or, ... a ... nevertheless articulated third, enforce the constitutional guarantee to all persons against deprivation of life, liberty, or property without due process of law.[8]

Within the complexity of these debates, a curious and subtle phenomena emerged, Blacks gained the right to be free from the institution of slavery and all of its attendant badges and incidents. These badges and incidents were all too well known from the Supreme Court opinion in Dred Scott v. Sandford[9] in which Chief Justice Taney painstakingly explained that Blacks had no rights within the political community which a "white man was bound to respect," since as inferior and subordinate beings they were not part of the "people of the United States" within the meaning of the Constitution. The self-executing freedom acquired by Blacks through the Thirteenth Amendment was the freedom to enjoy all of the rights, privileges and immunities previously enjoyed by whites and to assume their position as equals within the political community. This freedom towers like a lighthouse beacon over the more general and supportive concepts of equal protection and due process which were more fully developed in the Fourteenth and Fifteenth Amendments. The Thirteenth Amendment therefore not only rejected the institution of slavery, but also the supremacy of whites based on their skin color. This rejection was neither ahistorical nor passive. An affirmative duty was imposed on the nation, in general, and the federal government, in particular, to abolish and remove all private or public activity which preserved the badges and incidents of slavery and racial inferiority.[10]

The Civil Rights Act of 1866 and Related Legislation

A full two weeks before the ink was dry on the declaration ratifying the Thirteenth Amendment,[11] the Thirty-Ninth Congress convened to address a myriad of problems concerning the newly emanicipated freedmen and the practical consequences of abolishing slavery. Uppermost on the agenda of the Congress was the racial violence clearly being directed then at Blacks throughout the South.[12] Countless numbers of Blacks of all ages and of both sexes were physically attacked, maimed and murdered in the years following the Civil War and the Emancipation Proclamation.[13] This violence escalated in direct relation to the return to power of the white plantation former slave owners who were assisted in their recovery of political power by President Johnson.

Every method known to force Blacks into submission was employed, including the open and flagrant reorganization and revitalization of the antebellum South so-called slave patrols. These patrols often operated in conjunction with a militia unit composed of ex-Confederate soldiers. Their sole purpose was to intimidate Blacks back into their former roles as slaves, de facto, if not de jure. The high visibility of these patrols was replaced by the enactment of "Black Codes" which proscribed the terms and conditions of Black social, political and economic life. The patrols were placed in charge of the enforcement of Code terms.[14]

The Congressional response to this deplorable situation in the South was swift and certain. Hearings were convened by a Joint Congressional Committee on Reconstruction. Hundreds of witnesses testified before the Committee and painted an awesome and grim picture of the racial violence sweeping the South. Congress responded with the prompt adoption of the Fourteenth and Fifteenth Amendments, as well as the enactment of 18 U.S.C. $241 and $242 and 42 U.S.C. $1981 through $1989, federal criminal and civil statutes designed to provide federal protection for Black people from the systematic and organized attempts to revoke their emancipation and Thirteenth Amendment rights. Enacted squarely against the backdrop of the Thirteenth Amendment, these statutes continue to provide full federal authority to investigate and prosecute where appropriate those instances of racial

violence, whether organized or unorganized, whether directed specifically at an identifiable federal right or not, presently sweeping the country.

Conclusion

The legislative history surrounding the enactment of the Thirteenth Amendment more than amply demonstrates the self executing character of the Amendment in the creation of a Constitutional right of Black emancipation. This right not only requires but mandates federal enforcement power to insure its continued vitality. This federal power may be exercised without statutory authority whenever the federal government feels this is necessary, but must be exercised where a Congressional legislative directive clearly is on point. 18 U.S.C. $241 and $242, as well as 42 U.S.C. $$1981 through 1989 clearly point to federal authority to investigate incidents of racial violence. The Thirteenth Amendment mandates such federal intervention.

In closing, I would like to take this opportunity to commend the previous testimony and by Prof. Arthur Kinoy and his subsequent submissions to this Subcommittee. I heartily endorse his rationales and conclusions concerning more than ample Constitutional and federal statutory authority for Justice Department intervention in the many obvious incidents of racial violence presentl sweeping the country and threatening to destroy it.

FOOTNOTES

1. Slaughter house Cases, 16 Wall, 36 (U.S. 1873)
2. Civil Rights Cases of 1883, 109 U.S. 3 (1883)
3. See generally, ten Broek, Thirteenth Amendment to the Constitution of the United States, 39 Calif. L. Rev. 171 (1951) (cited hereafter as ten Broek)
4. Congressman James Ashley of Ohio introduced before the House on December 14th 1863 the original proposal for a constitutional amendment abolishing slavery throughout the entire United States. Heated debate was conducted in the House and Senate in the spring of 1864. The Senate passed the amendment at that time but a second lengthy debate on reconsideration was required in the House in January, 1865 to obtain an override vote of the earlier negative action.
5. See e.g. Cong. Globe, 38th Cong., 1st Sess. 1364,1483, 2941 (1864)
6. See e.g. Cong. Globe, 38th Cong., 2nd Sess. 179-80,216 (1865)
7. Cong. Globe, 38th Cong., 2nd Sess., pt 1, 142-143 (1865)
8. ten Broek, Supra at 180-181
9. 60 U.S. (19 How.) 393 (1856)
10. See generally, Kinoy, "The Constitutional Right of Negro Freedom", 21 Rutgers L. Rev. 387 (1967)
11. The Thirteenth Amendment was declared ratified and in force on December 12, 1865
12. 39th Cong. 2nd Sess., Joint Committee on Reconstruction, "Report", in (Washington, D.C., 1966, reissued N.Y., 1970), Part III
13. See generally, Leon Litwack, "Been In the Storm So Long, The Aftermath of Slavery" (New York,1979); John Nope Franklin, "From Slavery to Freedom: A History of American Negroes (New York,2nd ed., 1956); John Anthony Scott, "The Origin and Development of the KKK as a Badge of Slavery " (unpublished mimeo); Kenneth Stampp, "The Era of Reconstruction 1865-1877" (New York 1965)
14. See generally, John Anthony Scott, supra.

Mr. CONYERS. Our next witness is attorney George E. Hairston, assistant general counsel, National Association for the Advancement of Colored People.

He has been active in a number of trial matters dealing with racial violence and has written extensively on the subject.

We appreciate your preparation in coming before the committee and we will incorporate your entire statement into the record. You may begin your testimony.

TESTIMONY OF GEORGE E. HAIRSTON, ASSISTANT GENERAL COUNSEL, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. HAIRSTON. Mr. Chairman, members of the committee, I am here pinch-hitting for the general counsel, Tom Atkins. Unfortunately he had to be in court in California on sort of a mandatory matter and could not be present. We have submitted a statement. We would like that statement to be included in the record.

Mr. CONYERS. Without objection, it will be.

Mr. HAIRSTON. The NAACP legal department, of course, considers racially motivated violence to be a central concern.

These hearings, of course, are extremely important for that reason in our view. Although the impetus, I suppose, was the recent spectacular series of shootings of blacks around the country, the NAACP being a civil rights organization, feels that the level of racially motivated violence has always been very high.

Since the sixties, since the great civil rights movement of the sixties, that there has not been that much of a decrease.

I would just like to summarize one or two points and then submit myself to any questions the committee might have.

The right of blacks to be safe and secure in their persons and to be free of racial violence is still not wholly recognized or realized. Although this committee is quite aware from prior testimony and its own investigations of the killings in Buffalo, New York City, Salt Lake City, and the lynching in Mobile, the NAACP legal department branches throughout the country receive daily reports of violence committed against blacks. Much of it official, perpetrated by law enforcement officials themselves and in many cases it is conspiratorial violence usually associated with the Ku Klux Klan or similar type groups.

The NAACP has sought to use its limited legal and volunteer resources to deal with the problem. In several States our branches have offered and supported anti-Klan and antiviolence legislation, in States such as California, New York, Alabama, North Carolina, and Georgia.

We have instructed our branches to cooperate in a Klan watch in order to monitor the growing activity of Klan and Fascist groups throughout the country.

We have brought suit, along with the Center for Constitutional Rights in Chattanooga, Tenn., against the local Klan group there, under the civil rights statutes.

For several years, we have been fighting the Klan activities in the armed forces, notably in Naval and Marine bases in California

and Puerto Rico. We routinely file civil actions in cases of police brutality and misconduct.

We recognize, however, that dealing with the problem of violence in our society is primarily the role of State and local law enforcement agencies. Unfortunately those agencies have many times been the problem, as it is sometimes said.

Illegal and abusive use of force against blacks and minorities by law enforcement agencies is endemic and State laws governing the use of force by officers of the law practically allow executions on the spot.

I think it has been pointed out several times to this committee that there has been a historical failure on the part of the States to deal with racial violence or deal with the violence growing out of the assertion of rights by blacks and other minorities.

That failure, of course, necessitated the civil rights laws that we have been discussing, which were enacted in 1866 and during the 1960's.

Of course, it is the position of the NAACP that some assertive Federal action is still required because, as I have said, it is our position that the level of violence remains high and it has not been adequately dealt with, certainly not on the State level nor by the Justice Department.

The Justice Department has historically and as a matter of policy been reluctant to act with regard to racially motivated violence.

Of course, that is the subject, somewhat peripherally, of these hearings.

In 1975, because of that reluctance, the NAACP sued the Attorney General of the United States because that office had, since 1959, followed a policy of not prosecuting individuals "where there has already been a State prosecution of that individual for substantially the same acts or act."

This policy was changed in 1977 in part in response to the lawsuit. Subsequently the NAACP agreed to dismiss the suit, but without prejudice, to reinstitute it in the event the Civil Rights Division of the Justice Department did not take affirmative action and begin to make independent investigations and independent prosecutions of racially motivated violence.

That suit, by the way, was addressed specifically to the acts of law enforcement agencies. It grew out of a situation in Arkansas where an interstate traveler was taken off the highway for speeding by a State policeman and local sheriff's deputy. He was taken into a small town to pay his fine; he paid the fine. He went back to ask for a receipt and was subsequently shot through the head.

The U.S. attorney at that time in that district recommended that there be Federal action but the Justice Department took no action. Instead, they allowed the State proceeding to go on and take a back seat to the State proceeding. The State indicted the policeman and there was an acquittal after 7 minutes of jury deliberation.

After that we sued the Justice Department, as I said, on the basis of the failure of that agency to act.

Under the new policy issued by former Attorney General Bell, I believe there have been a number of civil rights prosecutions, and criminal prosecutions during the past 2 years.

I believe former Assistant Attorney General Drew Days indicated to the committee the number, but it was clear that that had only begun since 1977.

Listening to the testimony and having familiarized myself with some of the issues that the committee is concerned with, it is quite apparent that the scope of the jurisdiction of the Civil Rights Division in bringing criminal actions under the Criminal Civil Rights Acts, 241, 242, and 245, is of primary concern and is questionable.

I suppose the question is, Does it have to be amended in some way or new legislation required?

We would join with Prof. Arthur Kinoy and many of the other speakers in putting forth the proposition that there is still ample authority under the present statutes to reach almost any act of racially motivated violence, regardless of whether the victim of that violence was engaged at the time it happened in what has been termed a "federally protected activity."

There is obviously a predicate in the 13th amendment in that the judicial law flowing from that amendment, although it has not been stated directly, would lead anyone to the practical conclusion that it does make life and liberty a right.

Racially motivated violence, alone, where the intent of that violence is to deprive one of life and thereby liberty certainly is covered by 241 and the 13th amendment.

We would say there is ample authority.

However, the Justice Department does not believe that to be the case and they have relied on an interpretation that has not been expressly made by any Federal court. Instead, I believe what they have done is to fashion a policy that they believe is in line with what would be the interpretation of the Federal court.

However, the present legislation does appear to be deficient in one respect and that is under 241 there must be more than one actor, there must be concerted activity by one or more persons.

That requires, of course, a conspiracy. It does not reach the individual, private, motivated act of racial violence which we have seen occur recently.

I believe legislative action specifically addressing that issue is required.

Lastly, though most importantly, the new administration must make clear to all that it does not condone nor will it tolerate the present level of violence committed against minorities.

The NAACP feels that it can begin to send this message by acting on the several investigations now under consideration in the Civil Rights Division of the Justice Department.

It would certainly be a clarion call to immediately appoint as Chief of the Civil Rights Division someone who is sensitive to the issue and is forthright in action.

The NAACP also endorses the call for a special task force to be created within the Civil Rights Division to deal solely with racial violence by means of criminal prosecutions as well as civil injunctions.

Nothing less than an unambiguous commitment to prosecute murderers, to stop the cross burnings, and bombings, and to close the paramilitary camps will curtail the present trend.

Mr. CONYERS. Thank you very much. Your organization still has its work cut out for it, I can tell.

First of all, we do not have an Assistant Attorney General named to the Civil Rights Division, so it would seem that that provides an excellent opportunity for the NAACP to meet with the President to deal with this policy because it would be important that we determine the legal view of that person going into that office right away.

In a way—for the first time—I can thank the administration for not moving so swiftly.

It is important that we know that they are going to be careful to select just the right person for this very sensitive position.

I mean, responding appropriately to bombings and violence is a very tall order. We are going to need all the Attorneys General and their assistants that we can find, but it would be critical that this view be interposed before that person is named.

Would you not agree?

Mr. HAIRSTON. Sir, as you probably know, the NAACP traditionally has scrutinized Supreme Court appointments, executive appointments, all such positions whenever we can in advance for the purpose of putting forth our views and our concerns about that person's qualifications and sensitivity to the issues that the NAACP is concerned with.

We have in conjunction with other organizations, requested a meeting with the present Attorney General to discuss these matters. We met with members of his staff.

We were not entertained by the Attorney General himself.

At that meeting, by the way, which was attended by the Chief of the Criminal Division of the Civil Rights Division, the interpretation of the policy which we have been talking about here—the restrictive jurisdiction of the Civil Rights Division in criminal matters was put forth again.

That is, they repeated once again what has been repeated here, and what has been stated here by former Attorney General Days.

Mr. CONYERS. What was that?

Mr. HAIRSTON. That policy is that they do not believe they can reach, under the present law, racially motivated violent acts where the victim was not engaged in a federally protected activity.

I would like to say that I am presently engaged in a matter in Chattanooga, Tenn., as I indicated before. The case is called *Crumsey, et al.* v. *the Justice Knights of the Ku Klux Klan and Three Individual Persons.* The incident out of which the case grew occurred in April 1980.

From the beginning, as indicated by former Assistant Attorney General Drew Days, his office investigated the matter and took under consideration.

They are still investigating, I suppose. They still have it under consideration, I believe, with perhaps eight other situations.

We have sued the same parties, and they are now determining whether or not they are going to bring criminal actions. This, of course, impacts on our case and affects it somewhat, but there is quite a possibility that the Justice Department will decline to take jurisdiction and they would do so on the very basis we have been talking here. That is, that the victims were not involved in a ra-

cially protected activity. There were four women who were shot while walking on the street after leaving a nightclub in Chattanooga, Tenn., by three acknowledged KKK members. It is our strong belief that the Justice Department will not take jurisdiction; and if they do not, there is the possibility that we will reopen the Bell case on the basis of that policy and bring the issue forthrightly to the court.

That is one strong possibility. There are a couple of other situations that will provide a similar test.

Mr. CONYERS. That was a very important case that the NAACP brought in 1975. I am glad that reconsideration is going on, but now since you have not met with the Attorney General, it would seem to me that this would be a very propitious moment to meet with the President of the United States. I believe in starting at the top rather than at the bottom, because there are a lot of people to go through at the bottom.

I notice that in Government bureaucracy, when the word comes down, it is enthusiastically enforced, as opposed to when the word goes up and it is silently rejected.

Getting back to the meeting in which you met with spokespersons at the Department of Justice, it would seem that under these circumstances, especially if you are reconsidering a lawsuit against the Department of Justice, that the President of the United States ought to have an opportunity to know what he is going to be getting into as a result of the actions of the persons you met with.

I assume they are all still there, but they were perhaps only in "acting" capacities since the titles haven't been firmed up over there yet.

Mr. HAIRSTON. Well, attending that meeting was Daniel Rinzel, who has been the chief of the criminal section for about 2 or 3 years.

As far as a meeting with the President, I am not quite sure what Dr. Hook's schedule or intent is. There has been one contact with the President, and that was very early on. I do not believe that these specific issues were discussed.

Mr. CONYERS. Well, that is the point.

Mr. HAIRSTON. I will certainly carry that message back.

Mr. CONYERS. Well, I don't want to tell you how to operate this, but there is a defense that could be raised by the administration if and when you go back into court saying, well, why didn't somebody tell us about this. You can say, well, we did. We were at a subcommittee hearing in June 1981 and we told the Criminal Justice Subcommittee what we were going to do. We thought you heard about it.

It seems to me that if you want to stop the racially motivated violence, the President of the United States is the person more able to direct how that is going to be handled in his administration than any other person. Especially, if the Attorney General wasn't there, goodness knows what he was told about the meeting. It is conceivable the President doesn't even know you met.

Mr. HAIRSTON. Oh, I agree. It wasn't very much of a meeting. It was clearly just an accommodation which is probably quite indicative of the attitude of the administration.

I think the amount of racially motivated violence is before the President—before the Attorney General, certainly. If nothing more, the Atlanta situation has insured that. There has been some action in that regard.

Mr. CONYERS. But there haven't been any results. Sending down a million bucks isn't any Federal solution to the problem. Wouldn't you agree?

Mr. HAIRSTON. I do, but when you say there haven't been any results, this is one of the attitudes we encountered during the course of litigating this case and recently. Unless the Justice Department feels that they are going to get a conviction, they won't even go forward. Unless they are going to get some results, they won't even go forward.

In the Atlanta case, they did make moves, but I think that is a very unique situation. It has been thrown into the kettle of racially motivated violence, but it is clear that no one knows what type of situation it is. It may or may not be. It is, however, violence committed on the persons of blacks in a very spectacular way.

I think that caught the administration's eye. The media scream and, of course, the grassroots agitation about it all contribute to some movement in that respect.

I think one of the fears latent in the judiciary and the Justice Department is that if you get into dealing with racially motivated violence per se and not dealing with it as a secondary matter to some other abridgement of civil rights, that you take over the function of, or impinge on, the function of the State and local law enforcement agencies. And that almost any killing of a black person by a white person may be termed or approached as a racial one.

That, I believe, provides certain built-in inhibitions, trying to maintain the proper relations between the Federal Government and the States. I encounter this as a trial attorney and an appellate attorney all the time.

I think that to overcome this, there should be some express legislation narrowly drawn or drawn in a fashion that will eliminate that fear and make the boundaries clear, but there should be certainly some type of legislation that will cure the defects, the gaps you have in 241, 242, and 245 because clearly there is a form of racial violence that has nothing to do with trying to keep anyone from exercising a specific right, and that is just as deadly, of course, and probably in the long run much more demeaning and much more debasing and much more of an indicator of slavery than any other type of violence.

Mr. CONYERS. Well, how do you handle that question when it is raised?

Mr. HAIRSTON. What we tried to do was sue the Justice Department and make them handle it.

Mr. Chairman, it is still a matter for the Federal Government, for the Justice Department. I think they should be given——

Mr. CONYERS. But they are the ones arguing to you that they can't do it because they can't tell every time a black person gets killed whether it is a civil rights case or not. So how do we handle that?

Mr. HAIRSTON. I think if legislation is clear enough, express enough, and mandatory that they must act, they must investigate, and take appropriate action.

I think the present legislation probably provides a great deal more discretion or judgment—judgmental discretion in terms of the elements, whether there is jurisdiction, than need be.

Mr. CONYERS. Well, my friend, don't the facts and circumstances of each case give you some indication of whether there is a possibility of it being a protection guaranteed under the Constitution that is being violated?

Mr. HAIRSTON. Oh, yes.

Mr. CONYERS. We can't begin with the assumption that since the man didn't have on a hood that said KKK on it that it is not racially motivated. Remember the first press releases in the Vernon Jordan case?

The first thing they said was that there was no civil rights violation or racial motivation involved. They didn't even know who it was. Since they are not even prosecuting cases where there is a State action unless there is an investigation conducted, there's no way of ever separating anything out.

They are not—in many instances—not prosecuting for any reason whatever, which was the basis of part of your complaint; is that not correct?

Mr. HAIRSTON. That is correct. I believe under the present law there is that obligation on the part of the Justice Department to conduct an FBI investigation or have its investigatory arm make the investigation.

Mr. CONYERS. Of course.

Mr. HAIRSTON. To determine whether there is jurisdiction. That, of course, is a matter of policy, a matter of will, of someone saying here is the situation, go in and look at it.

The problem is that the agency, the Justice Department, lacks the will, has policies or at least did have policies that reinforce this inaction or justified it in some way; and the resort to the present interpretation of the statute is again a similar type of answer.

What I am saying is that the—perhaps the present statutes allow too much discretion although if I were a prosecutor I would certainly attempt to use 245 to reach any private act of racially motivated violence.

Mr. CONYERS. Well, if section 245 covers it, why do we need more law?

Think along with me now. We are arguing that Kinoy is right, but the Congress—and you know the Congress as well as anybody in this room—we couldn't pass another civil rights law if you were the chairman of this committee.

So how in God's name can we come here recommending some more civil rights law? We are not adequately interpreting that which is already on the books.

What I am saying to you is that we are going to have to decide or redecide, and you are not Thomas Atkins, but we are going to have to decide whether section 245 is adequate or it isn't adequate.

Now, if it is a matter of will, we can write all the laws we want and you still come up against inadequate will, even with good laws on the books——

Mr. HAIRSTON. The prosecutorial function is fairly mandatory in many respects, but there is that large area called discretion.

Mr. CONYERS. I know you don't mean that, counsel. Prosecutorial function is mandatory? Do you know how many—let me ask you this and I am sure your organization can get the details on this, if you don't have them with you:

Do you know how many suits have been brought under sections 241, 242, and 245 in the history of the United States of America?

Mr. HAIRSTON. Not a great many.

Mr. CONYERS. Not a great many, no. I would suggest that once you begin that inquiry, it will become very clear that there is nothing mandatory about prosecutorial function, not only of civil rights law, but of any law.

My view of the criminal law system in America is that we selectively enforce laws. We pinch somebody every now and then in antitrust, in civil rights enforcement, and in the bulk of everyday State criminal prosecutions as well.

I mean the majority of America would be behind bars if we enforced every law and prosecuted every person.

I don't even think we lawyers would want that kind of a climate to obtain in the United States.

Mr. HAIRSTON. No, Mr. Chairman, I don't think that.

Obviously my statement allows that inference, but what I intended to say was that when—the prosecutor has very little discretion where there is a crime committed. Whether the person has the jurisdiction or there are other elements of discretion that can be exercised, that is another question.

We have here a jurisdictional problem. If that is clear, the prosecutor has to go in and bring the case if there is a crime committed. That is all I am saying.

Not that every crime is prosecuted.

That is a concern. Obviously we are talking about the gaps; we are talking about the inadequacies of laws that were written—that evolved, with judicial interpretation over a hundred years or so.

Mr. CONYERS. Well, I don't know. I wasn't going to ask you any more questions, but we have just had a witness, maybe two, that have suggested that the laws were in some state of perfection.

We have a question—and I would like you to reflect on it with your general counsel—about whether or not the 13th amendment is self-executing.

Mr. HAIRSTON. I listened to that. There is no problem, the courts have said, with the 13th amendment rights being protected or included in 241.

The question is whether or not one of the rights granted under the 13th amendment, was the right to life.

Is that a right that the Constitution protects?

Mr. CONYERS. Yes. That is an interesting question.

Mr. HAIRSTON. That is it in a nutshell.

Mr. CONYERS. Now, what is the answer?

Mr. HAIRSTON. The answer has to be, I suppose, provided by the judiciary.

Mr. CONYERS. You mean you have to suspend judgment until the Supreme Court speaks out on it?

Mr. HAIRSTON. No. I won't suspend judgment, but the judgment that matters is not mine so much. I intend to put forth my position, as I said, in the suit that is contemplated; but what I am saying is that until the Supreme Court is faced squarely with that issue, then we are going to debate the question, as we are doing now, ad infinitum.

Mr. CONYERS. Well, my friend, the Supreme Court's judgment is going to derive from what the NAACP and its millions of members happen to think the answer ought to be.

Mr. HAIRSTON. Well, we are going to try to get them there, sir.

Mr. CONYERS. I am glad to hear that. I happen to be a member of—one of the people in your organization and I happen to have a fairly decided view on this position, on this question.

I would like you to follow these proceedings for the organization so that they may fully act upon the recommendations and ideas that will come forward here. We are very grateful that you and Mr. Atkins could join us here in this testimony today. We think that it is quite important and we appreciate the positions that you have expressed.

Mr. HAIRSTON. Thank you.

Mr. CONYERS. You are welcome.

[The prepared statement of Mr. Hairston follows:]

STATEMENT OF THE
NATIONAL ASSOCIATION FOR THE ADVACEMENT
OF COLORED PEOPLE (NAACP)
PRESENTED TO THE SUBCOMMITTEE ON CRIMINAL JUSTICE
HOUSE JUDICIARY COMMITTEE

Submitted June 3, 1981

THOMAS I. ATKINS
General Counsel
GEORGE E. HAIRSTON
Asst. General Counsel
NAACP Legal Department
1790 Broadway - Tenth Fl.
New York, New York 10019

My name is Thomas I. Atkins. I am the General Counsel of the National Association for the Advancement of Colored People.

I appreciate your invitation to testify before this Committee on racially motivated violence. The problem is a central concern of the NAACP. These hearings are timely and highly relevant to blacks and other minorities in this country. An inquiry into the apparent increase in racially motivated violence against blacks and other minorities is an appropriate congressional response. The increase in the number and size of Klan, Nazi and other extremist organizations throughout the country, along with a proliferation of nakedly brutal murders and shootings of blacks clearly call for affirmative action by the federal government, as well as state and local governments.

These hearings are extremely important. They should be extended to the various regions around the country. As indicated before, the increase in racially motivated violence is apparent only. The actual level of racially motivated violence and intimidation has always been high. Only in the past two years have spectacular shootings, and incidents of brutality focused attention on the problem. Regional hearings would certainly document this fact.

Although under our federal constitutional system, the states are primarily responsible for maintaining public order and protecting the citizenry, historically, an exception has had

to be made in the case of racial violence. Violence directed at the ex-salves and their progeny has been a specific concern of the federal government since 1866.

The struggle of blacks towards full citizenship and equality of opportunity has been permeated with blood and violence. Blacks gained nominal citizenship in this country only after the bloodiest domestic conflict it has ever known -- the civil war. Thereafter, the forces of racism, racial prejudice and white supermacy resorted to violence as a means to gut and eviscerate the franchise granted the ex-slaves. Indeed, one of the prime reasons for the formation of the NAACP 70 years ago was to combat an epidemic of lynching, race riots, and open physical intimidation of black people.

The wave of calculated violence against blacks in the aftermath of the civil war and emancipation is a well-know but sordid chapter in this nation's history. The reconstruction Congress, faced with a crisis of protecting the new citizens, fashioned the 13th, 14th and 15th Amendments to the Constitution and enacted civil rights statutes, 42 USC 1981 thru 1989, and backed them with federal troops in the old slave states of the confederacy. In a few years, however, as seems to be the pattern, the federal concern about racial violence abated. The troops were withdrawn and the civil rights statutes were put away, not to be revivied until almost a century later.

Violence against blacks continued unabated, however. With the federal government no longer enforcing the law, the erection

of legal systems of segregation in southern and border states, and the enforcement of racial customs originating in slavery, an atmosphere condoning racial violence was fostered. Indeed, violence against blacks was used to deny them, by intimidation and threat, the vote, jobs and the ordinary human dignity enjoyed by the majority in this country. It was during this period -- between the world wars -- that the NAACP devoted most of its efforts to obtaining anti-lynching legislation.

The 1960's, with the great civil rights movement, saw an increased federal role in establishing and protecting the civil rights of blacks and minorities. Part of that effort was the revitalization and extension of civil rights statutes -- civil and criminal -- in order to cope with the violence related to the assertion and exercise of civil rights by blacks. But the federal thrust was limited in both duration and scope, being concerned primarily with upholding the integrity of federal court orders and legislation.

The right of blacks to be safe and secure in their persons and to be free of racially motivated violence is still not wholly recognized or realized. Although this committee is quite aware from prior testimony and its own investigations of the killings in Buffalo, New York, New York City, Salt Lake City, the lynching in Mobile, and the attempted assassination of Vernon Jordan, the NAACP Legal department and branches throughout the country receive daily reports of violence committed against blacks. Much of it is official -- perpetrated by law enforcement officials themselves.

In many cases it is conspiratorial violence, usually associated with the Ku Klux Klan or "night riders". In one sense, these are almost traditional, routine forms of violence committed against blacks and minorities. But recently, it seems that random, pathological violence has become a pattern as well.

The NAACP has sought to use its limited legal and volunteer resources to deal with the problem. Our branches in several States have offered and supported anti-Klan and anti-violence Legislation -- in California, New York, Alabama, North Carolina, and Georgia. We have instructed our branches to cooperate in a "Klan Watch" in order to monitor the growing activity of Klan and fascist groups. We have brought suit, along with the Center for Constitutional Rights, in Chattanooga, Tenn., against the local Klan group there. The NAACP for several years has been fighting Klan activities in the armed forces -- notably Naval and Marine bases in California and Puerto Rico. And routinely we file civil actions in cases of police brutality and misconduct.

We recognize, however, that dealing with the problem of violence in our society is primarily the role of state and local law enforcement agencies. Unfortunately, those agencies have many times been the problem. The illegal and abusive use of force against blacks and minorities by law enforcement agents is endemic. State laws governing the use of force by officers of the law practically allow executions on the spot. And time and again, we see grand juries and trial juries allowing accused officials to escape the sanctions of the Law.

This historical failure on the part of the states necessitated the civil rights laws enacted in 1866 and the 1960's. Because of the continued high level of racial violence, federal action is still required. However, the federal agency responsible for enforcing laws against racial violence -- the Justice Department -- has historically, and as a matter of policy, been reluctant to act.

In 1975, the NAACP sued the Attorney General of the United States because that office had, since 1959, followed a policy of not prosecuting individuals "where there has already been a state prosecution of that individual for substantially the same act or acts." In 1977, former Attorney General Griffin Bell, explicitly changed that policy to one whereby the Justice Department would pursue separate federal prosecutions where there is a violation of the civil rights law. Subsequently the NAACP agreed to a dismissal of its suit, but without prejudice to reinstitute it in the event the government failed to follow the new policy.*

Under that policy, the former administration did become more active in investigating and prosecuting persons for engaging in racial violence during the last two years.

Yet, it has been apparent from testimony before this committee that even under the new policy, the Civil Rights Division of the Justice Department follows a restrictive policy with

*See: NAACP v. Bell 76 F.R.D. 134 (D.D.C. 1977)

regard to such prosecutions. Former Assistant Attorney General Drew Days stated during the last session that the federal government under the civil rights criminal statutes -- 18 USC, sections 241, 242, and 245 -- lacked jurisdiction to prosecute cases of racial violence, unless the victim was engaged in a federally protected activity. Merely being physically attacked or harmed because of one's race or minority status is not enough. This view was recently reiterated by Daniel Rinzel, head of the Criminal section of the Civil Rights Division in a meeting in May, 1981.

It should be pointed out that such an interpretation has not been issued by any federal court and therefore the view is more nearly "policy" than a judicial or legislative restriction.

The NAACP of course does not accept such an interpretation of the Justice Department's Jurisdiction in matters of racial violence. Professor Arthur Kinoy has argued persuasively to this committee the opposing view. And the NAACP agrees with Professor Kinoy that under the present civil rights legislation, the federal government has ample authority to reach any act of violence that racially motivated. If there are questions, the boundaries of Justice Department jurisdiction in such matters should not be self-imposed, but judicially determined.

The present legislation, however, does appear deficient in one respect. Under § 241, there must be more than one actor -- concerted activity by one or more persons -- in order to satisfy federal criminal jurisdiction prerequisites. That is

an express requirement. The statute does not reach the individual act of racially motivated violence which seems to be in vogue today. While one may argue that section 245 does not suffer from this defect and reaches individual acts of violence, an amendment of Section 241 to include individual acts would clarify the point.

Legislative action specifically addressing the issue of racially motivated violence is desirable since it signals to all the serious intent of the federal government to prosecute the perpetrators of such violence. Inaction and silence creates an atmosphere of tolerance and spurs on those who would vent their racial hatred through murder, cross burnings, and other forms of intimidation and violence.

Most importantly, however, the new administration must make clear to all that it does not condone, nor will it tolerate the present level of violence committed against minorities. It can begin to send this message by acting on the several investigations now under consideration in the Civil Rights Division of the Justice Department. A clarion call would be the immediate appointment, as chief of the Civil Rights Division, of someone who is sensitive to the issue and is forthright in action. A special task force should be created within the Civil Rights Division to deal solely with racial violence by means of criminal prosecutions and civil injunctions. Nothing less than an unambiguous commitment to prosecute the murderers, to stop the cross burnings and bombings, and to close the paramilitary camps will curtail the present trend.

Violence in this country is now perhaps, so mundane, so empty of impact that racially motivated violence cannot stir the country any longer. Perhaps, the fact that one can still be killed, or abused, or put in fear of one's life simply because of one's color is not enough to require action. Certainly it seems that only the spectacular focuses our attention. But racially motivated violence is still a badge of slavery, for there can certainly be no liberty or freedom, without life.

TESTIMONY OF VICTOR GOODE, ESQ., EXECUTIVE DIRECTOR, NATIONAL CONFERENCE OF BLACK LAWYERS

Mr. CONYERS. Our next witness is Victor M. Goode, Esq., executive director of the National Conference of Black Lawyers.

Mr. GOODE. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Goode has been active in a number of activities. I believe he has testified before me, if not the subcommittee, before.

We have your prepared statement. We welcome you for any further discussions.

Mr. GOODE. Thank you, Mr. Chairman.

Over the last few years in this country we have witnessed an alarming rise in racially motivated violence. It is difficult at this time for any of us to determine the number of such incidents since very little research has been done and that which is underway is not yet complete.

Nevertheless, I think the scattered reports indicate two very clear, and in our judgment related trends.

The first is the rise of organized racially motivated violence perpetrated by such groups as the Ku Klux Klan and the various Nazi parties.

The second is the rise of random acts of racially motivated violence.

By racially motivated violence, we mean acts where racism or racial prejudice appear to be the primary motivating factor behind the perpetrator's actions.

Obviously in the absence of compelling evidence or outright confessions, one is forced to ask how can racial motivation be distinguished from any other reason for committing a crime?

From the incidents that we have examined, certain characteristics stand out that lead, in our judgment, to the conclusion that there is a rapidly growing number of violent acts perpetrated by whites against blacks that are racially motivated.

With the organized racist groups such as the Klan and Nazis, there is a long history of racial violence.

I will not attempt to recount that history before the committee today.

I am sure that others who have testified have outlined in detail the racist ideology and actions of both of these groups.

The second trend, however, of individual acts of racially motivated violence is often overlooked, receives little publicity and no national attention.

These acts in many, if not most, incidents involve persons who neither know one another, nor have had any prior contact.

In none of the reported incidents does it appear that theft, robbery or any property expropriation was a motive.

In incidents where the victim survived or where there were witnesses, racial epithets accompanied many of the assaults, batteries, or arsons.

Several reported incidents involved black victims who had recently moved into predominantly white neighborhoods.

Last, several reported incidents involved interracial social contact.

The inescapable conclusion from even these incomplete reports is that racism is the motivating factor behind an increasing number of random attacks against black people.

Several examples may help illustrate this pattern. I will not go through the entire list of examples that I have here.

I think I want to point out some of the characteristics of these examples.

First, they occur both North and South. They are not endemic to any one region in the country. They have occurred in rural areas of the deep South and urban areas of the North; areas we might think of as being liberal and certainly areas that have had the more increased participation of blacks in the social, economic, and political life of that region.

Second, they seem to be perpetrated very randomly not against any particular type of individual in a community. In some cases they have been directed against youth; in others, young black males; and in others, black females, so there is no clear pattern of any single element within the black community that is being singled out.

One particular incident we have listed here I think underscores one of the problems that we are faced with.

That incident occurred in Mobile, Ala., in March 1981. Michael Donald, a 19-year-old, a black man, was beaten and lynched in Mobile and currently three white males have been charged with that murder.

When this incident first occurred, the national press simply reported it as a death by strangulation. In this case, the local police and the local coroner drew a rather fine and in our judgment a very disingenious distinction between death by strangulation and lynching.

Lynching, of course, has a certain historical significance to black people in this country and is a certain particular act of terrorism that has been visited against our community since the days of slavery.

However, local authorities refused to accept the fact that young Michael Donald had been lynched and instead argued that since the death had occurred by strangulation with a rope prior to Mr. Donald being hoisted to the limb of a tree, that he had, in fact, died by strangulation and not by lynching.

These kinds of fine and false distinctions obscure the racial motivation behind such acts and such crimes and by obscuring it, prevent us, both on a local or national level, from seeing the scope and depth of this problem and fashioning adequate remedies to resolve it.

Last, one of the list of incidents that we received from the Suffolk County Human Rights Commission involved a rather lengthy series of house burnings and attacks against blacks who were moving into a previously all-white neighborhood. Records going back to 1977 and coming up right through 1979 show a clear pattern of attacks against blacks merely for the act of moving into a predominantly white neighborhood.

Despite this growing trend and alarming pattern, there is no coordinated effort on the local level to prevent these acts from continuing.

Local police departments and local prosecutors tend to look at these acts as crimes, not racially motivated crimes.

They tend to become routine prosecutions with no special effort devoted to the issue of their racial motivation. In failing to recognize this pattern a properly directed deterrent aspect of criminal prosecution is lost.

Indeed, the need for the deterrence of racially motivated violence is as great, if not greater, than the actual punishment meted out.

We know that the concept of deterrence can often appear to be a very high level abstraction.

In order for it to have any functional value we must begin by understanding that it is not a concept that describes a simple entity. "Deterrence involves a complex of notions. It is sometimes described as having two aspects: After the fact inhibition of the person being punished or special deterrence and inhibiting in advance by threat or example, a general deterrence."

The history of Federal civil rights intervention over the last 15 years gives us ample evidence of the value of the Federal sanction in deterring the widespread violation of the civil rights of blacks. This system of general deterrence which is by no means perfect, nevertheless is properly credited with speeding the dismantling of the apartheid-like system of "Jim Crow" in the Deep South.

It is clear that without the threat of Federal action and the implementation of Federal relief or sanction that many State and local authorities would not have observed or protected the constitutional and statutory rights of black citizens.

Some may doubt the value of deterrence and point to recidivism in the criminal sphere as evidence to support their doubt. It is true that criminal recidivism may cause us to reexamine special deterrence, however, this should not be confused with the effects and value of general deterrence.

It is not our view that invoking Federal jurisdiction to cover acts of racially motivated violence is an attempt to usurp or duplicate the criminal sanctions responsibility of the States.

We are not talking about assaults, batteries or other crimes in the abstract.

We are instead concentrating on a special category of offenses whose mens rea is racism, prejudice or race hatred.

In concentrating on the mental state or motivation of the perpetrator, we are not moving into the realm of human rights commissions or psychologists.

Racially motivated acts of violence do not invoke a sense of specialized treatment for the perpetrator. Instead, this growing, alarming pattern challenges us to come up with an analytical framework that enables us to analyze in an orderly way whether, according to a given set of legal definitions a crime of racial violence has been committed.

This ability to distinguish racial violence from other modes of violence would not be as difficult as some critics might suspect.

The positive approach to determining mens rea has already been employed by a number of States that have revised their penal codes from the recommendations of the American Law Institutes model penal code.

They identified four grades of mental elements, purpose, knowledge, recklessness, and negligence.

They link these to four material elements, actual conduct, surrounding circumstances, and the results of conduct.

With this model members of the Justice Department could easily develop standards that distinguish any altercation that might involve members of a different race from those incidents in which the purpose, knowledge, and so forth, was racially motivated and linked to one of the material elements of the crime.

We are living at a historical moment in which the value of racially motivated violence must be challenged as antisocial behavior by the application of the Federal criminal sanction.

It is not simply the threat of punishment or its actual imposition that is at issue here. Local courts in most instances lack the resources to speak clearly and forcefully to the increasing acts of racial violence. Even where local efforts are commendable, they lack the capacity to reflect these acts as a national problem or offer a national remedy.

I might add here in practically all local jurisdictions, prosecutors are elected and, of course, despite their oath to uphold the law fairly and impartially, they are subjected to the political pressures of a given locale.

We know this to be true, of course, in criminal prosecutions where a change of venue is often sought, sometimes by prosecutors, most often by defense.

So the conditions of a local locale, the political conditions, that is, may very well have a determinative bearing on whether or not prosecutions take place, and certainly a bearing on the quality and vigor of those prosecutions.

The entire Federal criminal process stands as a paradigm of national values and their reinforcement is often far more subtle than the mere number of cases prosecuted in a given area.

What is at stake here is not simply the constitutional rights of black people, but the fragile identification of the majority with a value system that has for only a single generation recognized equal citizen status for those other than white Americans.

That recognition has not yet gained full acceptance into the institutional life of this country and is seriously being challenged by the spread of racial violence.

There is a heavy symbolic significance to the operation of the criminal sanction. The authority and responsibility for the Justice Department to begin prosecutions for acts of racial violence is grounded in current constitutional doctrine.

In that regard we fully endorse the comments made earlier by Prof. Denise Carty-Bennia. We feel the Constitution provides a foundation for the prosecution of acts of racial violence.

It is unnecessary for me to recount or to quote at this point sections of cases that may illustrate that point. We think that they were made forcefully and effectively by early testimony.

Since the 13th amendment abolishes slavery and the objective conditions that constituted its badges and incidents, then evoking Federal jurisdiction under the 13th amendment requires only proof that factual conditions exist analogous to those conditions that were produced by the law and custom of slavery.

If blacks were to have personal freedom without distinction could this mean any less than the right to be free from racial violence? We think not.

Furthermore, the increasing number of random acts of racial violence recalls those days following the Civil War when, despite the Emancipation Proclamation, *Dred Scott* was still the law of the land. We are today at a faithful crossroad of history.

We can ignore the rising tide of racism in this country or we can resolve that this negative side of our history will not repeat itself.

Today we have a firm constitutional basis for evoking Federal criminal sanctions for acts of racial violence. We have 15 years of Federal civil rights enforcement experience behind us.

We know that private civil remedies are unwieldy and unworkable. The private bar does not have the resource incentive to bring such cases since there is no evidence that judgments could be executed.

Mr. CONYERS. What do you mean by that?

Mr. GOODE. We do not think the private bar has the economic motivation to bring such cases. We know in many cases, cases of this type are only brought where there is a real chance of receiving monetary compensation.

An individual who was indigent and committed an act of racial violence against a black person may have a theoretical case brought against him under civil statutes, but there would be no possibility for the victim and certainly the victim's attorney recovering in that case.

It is our considered opinion that the Justice Department and the Nation is facing a crisis of unknown proportions.

A recent report by the Ford Foundation determined that in Miami disturbances blacks were already resorting to retaliatory violence as a result of the failure of local and State officials to stem the tide of individual and institutional racial violence against the black community.

We hope the appointment for the civil rights slot within the Justice Department will, in fact yield an individual that has that type of sensitivity and a special understanding of the breadth and significance of this problem. We can think of few other positions that remain to be filled in this administration where the quality of the individual will in such a large measure determine both the policy and the type of actions taken by that Department.

Mr. CONYERS. Thank you very much, counsel.

What I have heard you articulate is a new and separate dimension to this problem; namely, that there is a program of creating the environment to discourage racially motivated acts of violence. I understand you to say that that could be as important, or maybe even more important than prosecutorial discretion, do I not?

Mr. GOODE. That is correct, Mr. Chairman.

We believe today in this country there is no single national voice of concern on this issue and that there is no effort being taken by Federal authority to speak to the Nation about the dimensions of this problem and to inform the Nation, both black and white citizens alike, that racially motivated violence will not be tolerated as a condition in this country.

We think that local conditions will yield varied results, and certainly in most cases inadequate results, because of the kind of local pressures against prosecutors and local politicians, but we think what we have before us is clearly a national problem and in that regard it is certainly necessary that we have some sort of national response.

Mr. CONYERS. Well, it is important that we are here then in the Nation's Capital with the national director of the National Conference of Black Lawyers dealing with a national problem.

I would like to make this suggestion: Perhaps the beginnings of such a program could be outlined by the Conference, and perhaps the Congressional Black Caucus and other organizations would want to join in fleshing it out.

I think it has merit. It also seems important that this message be carried far beyond these Halls to the President. I am not one of those who talks about how little power the Chief Executive has in this country. I am still awed by how much he still retains, and I think that a program that could evolve that would have a very important impact on these questions that bring us here today, if not to solve them, then to move a lot of people toward a higher degree of consciousness than they already have.

So I commend you for your work and your presentation here today.

Were there, Mr. Goode, any other comments made by our three previous witnesses that you feel it important to underscore or that you would want to take a modest exception to?

Mr. GOODE. I think really I only want to underscore once again the importance of utilizing the 13th amendment as the fundamental basis for these actions. We have heard time and time again from Justice Department officials of their inability to move forward in acts of racially motivated violence where crimes have clearly been committed because of an absence of Federal jurisdiction.

We think that this excessively narrow and unwarrantedly narrow approach to existing law and statute has unnecessarily tied the hands of one of the most important enforcement bodies that the Nation has at its disposal, so again we would only urge that groups all around the country, as you suggested, urge the President of the United States to appoint someone to the Justice Department who has the kind of sensitivity and understanding of these issues to sort of unshackle the Department so that they might move forward on this question.

We will certainly take your suggestion and work diligently with our chapters and the organizations that we associate with to bring this message home. I agree with you, it is difficult sometimes for the word to move upward as fast as it might move downward, but we also view it as necessary that it move upward and that it stir among the masses of our people, so that political leaders in all departments, State and Federal, begin to hear a message from the black community about just how important this issue is.

Mr. CONYERS. Well, you require that I make a caveat. When I said move upward, I meant in the bureaucratic morass. The consciousness raising that has to go on is a never-ending job among our citizens.

Are there any questions, gentlemen?
Thank you very much.
[The prepared statement of Mr. Goode follows:]

STATEMENT OF VICTOR M. GOODE, NATIONAL DIRECTOR OF THE NATIONAL CONFERENCE OF BLACK LAWYERS. BEFORE THE SUB COMMITTEE ON CRIMINAL JUSTICE OF THE HOUSE COMMITTEE ON THE JUDICIARY SUBMITTED JUNE 1, 1981

Mr. Chairman, Committee members, my name is Victor Goode and I am here today representing the National Conference of Black Lawyers. NCBL is an organization of activist Black attorneys. We are a membership organization with Chapters and members in most states and cities where there are concentrations of Black lawyers. When our organization was founded in 1968, we dedicated ourselves to using the law and the legal process to combat racism and discrimination against all oppressed people. Over the last thirteen years we have compiled a distinguished record of litigation, legislative advocacy and public education around human rights issues that were of special significance to the Black community.

Over the last few years in this country we have witnessed an alarming rise in racially motivated violence. It is difficult at this time to determine the number of such incidents since little research has been done and that which is underway is

not yet complete.[1] Nevertheless, scattered reports indicate two clear and probably related trends.

The first is the rise of organized racially motivated violence perpetrated by such groups as the Ku Klux Klan and the various Nazi parties. The second is the rise of random acts of racially motivated violence. By racially motivated violence we mean acts where racism or racial prejudice appear to be the primary motivating factor behind the perpetrators actions. Obviously, in the absence of compelling evidence or outright confessions one is forced to ask how can racial motivation be distinguished from any other reason for committing a crime?

From the incidents that we have examined certain characteristics stand out that lead, in our judgement, to the conclusion that there is a rapidly growing number of violent acts perpetrated by whites against Blacks that are racially motivated. With the organized racist groups such as the Klan and Nazis there is a long history of racial violence. I will not attempt to recount that history before the committee today. I am sure that others who have testified have outlined in detail the racist ideology and actions of both of these groups. The second trend, however, of individual acts of racially motivated violence is often overlooked, receives little

1. Dr. Elsie Scott of the Urban Institute and Jan Douglas, Community Affairs Director, City of Atlanta both have studies in progress.

publicity and no national attention.

These acts in many, if not most, incidents involve persons who neither know one another, nor have had any prior contact. In none of the reported incidents does it appear that theft, robbery or any property expropriation was a motive. In incidents where the victim survived or where there were witnesses, racial epithets accompanied the assaults, batteries or arsons. Several reported incidents involved Black victims who had recently moved into predominately white neighborhoods. Lastly, several reported incidents involved inter-racial social contact. The inescapable conclusion from even these incomplete reports is that racism is the motivating factor behind an increasing number of random attacks against Black people.

Several examples may help illustrate this pattern. The following is taken from NEWSCAN - RMRV Around the Nation, April, 1981.

"The Assistant engineer in a Buffalo plant was grabbing lunch at a Burger King when a man walked up to him and shot him in the head. The two teen-aged boys in Cincinnati were heading to a store to buy sodas when they were gunned down. The two Black youths in Salt Lake City were jogging with two white girls through Liberty Park when the Boys (sic) were slain in

a sniper's ambush.

"They were among 24 Black Americans and two white women with Black men who have been slain in a string of murders in seven cities across the nation over the last 15 months."

-Hubert H. Denton, Washington Ppst
Repr. Atlanta Journal, Oct. 30, 1980

Charles Metheny, 18, of Webster Springs, West Virginia, was charged with first degree arson in the October 2, 1980 fire bombing of the home of a Black family in Manchester, Conn. No one was seriously hurt in the bombing.

-Jet, November 13, 1980

"An 8 year old Black girl was shot in the back of the head when two shots were fired into a Dallas city bus. Two other people were injured by broken glass."

-Jet, November 13, 1980

On Saturday night, November 29, 1980, 16 year old Jerome Deframaletta was walking home, accompanied by a girl-friend, when three white men in a car followed them down the street shouting racial slurs. At the driveway to his house, the men jumped out of their car and pummeled him to the ground. Jerome's mother, notified by the terrified girl-friend, came to her son's rescue with the help of a male friend. The whites ran to their car (a fourth man had remained at the wheel)

and attempted to run over the friend, who had slipped on the ground. Failing this, the men came back after the family and their friends had gone inside and smashed all the front windows. The police were called. When they left, the four whites returned and smashed all the rear windows. The Deframaletta's had recently moved into a formerly all-white neighborhood.

-William R. Wood, Cleveland
Call and Post, December 6, 1980

An off-duty white Cleveland policeman, Napolean Dismuke, shot and killed Cornelius Anthony Brown in an argument over a pool game. Dismuke fired four shots at Brown. After police investigation, the case was bound over to the grand jury.

-Cleveland Call and POst
December 6, 1980

Black students at Wesleyan University received an anonymous letter containing obscene racial slurs, placed in the mail-box at the Afro-American Studies Center this past fall.

-Lorenzo Middleton, Chronicle of
Higher Education, January 12, 1980

In September a brick was thrown through the dormitory window of Black students at Cornell University. In October, ten

white students jostled and harassed a Black student on campus.

-Lorenzo Middleton, Chronicle of Higher Education, January 12, 1980

Five white youths in a car attempted to run over three young Black women at Rockaway Beach, New York. The car mounted the sidewalk and chased the young women, its occupants hurling racial slurs. The women managed to escape and flag down a passing police car. The men, all aged 19, were arrested on charges of attempted murder.

-New York Amsterdam News
March 21, 1981

In early December, 1980, a white man, Patrick Terry, 27, shot and killed Lola Pennix, a 17 year old Black woman, in front of a social club in Queens. Terry had fired several shots into a group standing outside the Blue Water Club, wounding three.

-New York Amsterdam News
March 21, 1981

In October, 1980 a cross was burned in front of the Black Student Center at Williams College.

-Reported directly to NCBL

The Afro-American Center at Harvard University has had KKK slogans painted across its door during the fall term of 1980.

-Reported directly to NCBL

March, 1981, 19 year old Michael A. Donald, a Black man was beaten and lynched in Mobile, Alabama. Three white males have been charged with his murder.

-Racially Motivated Random Violence
April, 1981

The dream of Thomas Mosely turned to ashes. Mr. Mosley, a Black subway motorman from Brooklyn, had purchased a $64,000 home in Babylon on Long Island. Soon after the sale, a cross was burned on the lawn. And then, before the Mosleys could move in, the house was destroyed by fire. The Suffolk County Human Rights Commission lists a number of similar incidents in recent months:

-September 1977 - the home of a Black couple burned in Brookhaven Township;

-December 1977 - a cross burned at the home oa a Black family in Babylon;

-February 1978 - the home of a Black family burned in Hauppauge village, and the residence of still another Black family firebombed in Smithtown;

-March 1978 - the home of a Hispanic family in Islip vandalized, garbage thrown on lawn and attempt made to start a fire;

-July 1978 - swastikas painted on the home of a Jewish family and the house firebombed;

-September 1978 - the home of a young Black couple burned in Brookhaven;

-January 1979 - the home of a Black family burned in Lindenhurst.

-Suffolk County Human Rights Commission

Despite this growing trend and alarming pattern there is no co-ordinated effort on the local level to prevent these acts from continuing. Local police departments and local prosecutors tend to look at these acts as crimes, not racially motivated crimes. They tend to become routine prosecutions with no special effort devoted to the issue of their racial motivation. In failing to recognize this pattern a properly directed deterent aspect of criminal prosecution is lost.

Indeed, the need for the deterence of racially motivated violence is as great if not greater than the actual punishment metered out. We know that the concept of deterence can often appear to be a very high level abstraction. In order for it to have any functional value we must begin by understanding that it is not a concept that describes a simple entity. "Deterence involves a complex of notions. It is sometimes described as having two aspects: after the fact inhibition of the person being punished or special deterence, and inhibition in advance by threat or example, a general deterence." (2)

The history of federal civil rights intervention over the last

2. Packer, Herbert L. 1968. Limits of the Criminal Section p. 39.

fifteen years gives us ample evidence of the value of the federal sanction in deterring the widespeard violation of the civil rights of Blacks. This system of general deterence which is by no means perfect, nevertheless is properly credited with speeding the dismantling of the apartheid like system of "Jim Crow" in the deep south. It is clear that without the threat of federal action and the implimentation of federal relief or sanction that many state and local authorities would not have observed or protected the Constitutional and statutory rights of Black citizens.

Some may doubt the value of deterence and point to recidivism in the criminal sphere as evidence to support their doubt. It is true that criminal recidivism may cause us to re-examine special deterence, however, this should not be confused with the effects and value of general deterence.

It is not our view that invoking federal jurisdiction to cover acts of racially motivated violence is an attempt to usurp or duplicate the criminal sanctions responsibility of the states. We are not talking about assaults, batteries or other crimes in the abstract. We are instead, concentrating on a special catagory of offenses whose mens rea is racism, prejudice or race hatred.

In concentrating on the mental state or motivation of the

perpetrator we are not moving into the realm of human rights commissions or psychologists. Racially motivated acts of violence do not invoke a sense of specialized treatment for the perpetrator. Instead, this growing, alarming pattern challenges us to come up with an analytical framework that enables us to analyze in an orderly way whether, according to a given set of legal definitions a crime of racial violence has been committed.

This ability to distinguish racial violence from other modes of violence would not be as difficult as some critics might suspect. The positive approach to determining mens rea has already been employed by a number of states that have revised their penal codes from the recommendations of the American Law Institutes Model Penal Code. They identified four grades of mental elements - purpose, knowledge, recklessness and negligence. They link these to four material elements, actual conduct, surrounding circumstances and result of conduct. With this model members of the Justice Department could easily develop standards that distinguish any altercation that might involve members of a different race from those incidents in which the purpose, knowledge, etc. was racially motivated and linked to one of the material elements of the crime.

We are living at a historical moment in which the value of racially motivated violence must be challenged as anti social behavior by the application of the federal criminal sanction. It is not simply the threat of punishment or its actual imposition that is at issue here. Local courts in most instances lack the resources to speak clearly and forcefully to the increasing acts of racial violence. Even where local efforts are commendable, they lack the capacity to reflect these acts as a national problem or offer a national remedy. The entire federal criminal process stands as a paradigm of national values and their reinforcement is often far more subtle than the mere number of cases prosecuted in a given area. What is at stake here is not simply the Constitutional rights of Black people, but the fragile identification of the majority with a value system that has for only a single generation recognized equal citizen status for those other than white Americans. That recognition has not yet gained full acceptance into the institutional life of this country and is seriously being challenged by the spread of racial violence.

There is a heavy symbolic significance to the operation of the Criminal Sanction. The authority and responsibility for the Justice Department to begin prosecutions for acts of racial violence is grounded in current consitutional doctrine.

The framers of the Thirteenth Amendment clearly intended the Amendment to do more than simply abolish slavery as a legal condition. In the Civil Rights cases, the majority of the Court clearly interpreted the Amendment to be used "for the obliteration and prevention of slavery with all its badges and incidents", Civil Rights Cases, 108 U.S. 3, (1883) 20.

James Harlan of Iowa, one of the key archetects of the Thirteenth Amendment unumerated many of the types of freedoms previously denied Blacks by both the law and custom of slavery. They included property rights, access to the courts, speaking and writing freely. However, these enumerated freedoms did not; and do not, describe the full scope of the Amendment. Thus, the Thirteenth Amendment bestows upon Blacks the right of "personal freedom without distinction" or limitation by race.(3)

We see the broad scope of this intent from analysis of the Congressional debate.

> The Congressional debates repeated what the history of abolitionism had already... made abundantly clear. The free colored person (in the) South and North... was only less degraded, spurned and restricted than his enslaved fellow. His slavery as well as that of the 'hopeless landsman' was to be abolished by the Thirteenth Amendment.(4)

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3. Belz, A New Birth of Freedom: The Republican Party and Freedmans Rights 1861-1866. Greenwood Press 1976 at 118-19.

4. Ten Broeck, The Thirteenth Amendment to the United States Constitution, 39 California Law Review 171, 180 (1951)

Since the Thirteenth Amendment abolishes slavery and the objective conditions that constituted its badges and incidents, then evoking federal jurisdiction under the Thirteenth Amendment requires only proof that factual conditions exist analoguous to those conditions that were produced by the law and custom of slavery. If Blacks were to have personal freedom without distinction could this mean any less than the right to be free from racial violence? We think not.

Furthermore, the increasing number of random acts of racial violence recalls those days following the Civil War when despite the Emancipation Proclamation; Dredd Scott was still the law of the land. We are today at a faithfull crossroad of history. We can ignore the rising tide of racism in this country or we can resolve that this negative side of our history will not repeat itself. Today we have a firm Constitutional basis for evoking federal criminal sanctions for acts of racial violence. We have fifteen years of federal civil rights enforcement experience behind us.

We know that private civil remedies are unwieldly and unworkable. The private bar does not have the resource incentive to bring such cases since there is no evidence that judgments could be executed. Furthermore, the victim of racial violence or their family has already had to deal with the pain and cost for personal injury or property damage. It is foolish to assume

that they might still have the resources to retain private counsel to pursue any remedy. Lastly, to assume that a truly effective private remedy exists for a national problem of the seriousness and scope of racial violence is to ignore the history and legacy of the Civil Rights movement.

It is our considered opinion that the Justice Department and the nation is facing a crisis of unknown proportions. A recent report by the Ford Foundation determined that in Miami distrubances, Blacks were already resorting to retaliatory violence as a result of the failure of local and state officials to stem the tide of individual and institutional racial violence against the Black community.

This crisis requires immediate federal action; and leadership in the Justice Department with the special experience and unique sensitivity that this problem requires. We urge you to act now and by acting send a message to this country that racial violence cannot and will not be tolerated.

Mr. CONYERS. Our next witness is Steve Winter, Esq., assistant counsel of the NAACP Legal Defense and Educational Fund, a former clerk for a Federal appeals judge, and a person very experienced in civil rights matters. We are very pleased to have you here.

TESTIMONY OF STEVE WINTER, ASSISTANT COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Mr. WINTER. Thank you, Mr. Chairman. I would like our written statement which has previously been submitted to be included as part of the record of this hearing.

Mr. CONYERS. Without objection so ordered.

Mr. WINTER. Mr. Chairman, members of the committee, I will not attempt to amplify on the eloquence with which the previous speakers have addressed the need for an affirmative and concerted Federal response to the problem of violence directed against minorities in this country. Rather I would like to focus my comments on the specific statutory changes which we believe are necessary to enable the Executive, the Justice Department, to move effectively in this area.

In our view, sections 241 and 242 are far from perfect statutes and do need numerous changes to make them more easily enforceable. Those two statutes remain the most general, the statutes of widest potential applicability, and of greatest flexibility, and so will continue to be major tools for any attempt to deal with the problem of violence against minorities in this country.

I would first like to address the issue of official violence against minorities. As you, Mr. Chairman, pointed out one of the issues we must deal with is the question of creating an environment that discourages violence against minorities; and the failure to adequately prosecute and deter official violence creates an environment that encourages violence by private actors.

There is little doubt that the primary impediment to successful prosecution under section 242, and, indeed, under 241 as well, is the specific intent requirement that has been read into that statute. Generally, discussion of the specific intent requirement has focused on the problem of the vagueness of that statute, its failure to give adequate notice to the would-be violator of what conduct specifically is prohibited. But there was another and perhaps a more important problem with the statute and a problem that the Supreme Court faced in the *Screws* case which led it to the specific intent requirement. If any statute is going to be written or any modification made, that will eliminate this requirement, this second problem dealt with by the Supreme Court in *Screws* must be addressed. *Screws* involved the beating death by a Georgia sheriff of a black arrestee. The Supreme Court had some problem in determining what the specific constitutional deprivation was in that instance. A minority of the Court found direct relevance in the due process clause protection of life; but the majority of the Court did not so ascribe to this concept of summary punishment which was referred to earlier by counsel for the subcommittee as the gravamen a civil rights beating offense. The problem of the summary punishment theory is that in order to prove summary punishment, it is necessary to prove more than just that a beating or killing

took place, but that there was an intent to punish. Therein lies the true genesis of the specific intent requirement.

Fortunately, the evolution of the case law has provided an answer to this problem. The recent cases in the last decade have established that the due process clause's protection of liberty includes the protection from physical violence by officers of the State, separate and apart from whatever the motive for such violence may be. The key to writing an effective civil rights statute to deal with this problem is to incorporate the teachings of that case law. I refer specifically to *United States* v. *Stokes* and *Johnson* v. *Glick,* which are two cases cited in our written statement. If one reviews the various drafts of parts of the proposed Federal Criminal Code which have been before the Congress in recent years, one finds that this has not been adequately done in these sections. Sections 1502 of the Senate draft of the proposed Criminal Code and section 2102 as reported out of the House Committee on the Judiciary last year do not successfully incorporate the teachings of these cases which I have mentioned.

On the other hand, section 2102 as reported out of this subcommittee during the last session does adequately deal with this problem. In our written statement we have included versions of these various statutes and a lengthy discussion of how this has been effectively done in the subcommittee's version which was later changed by the committee.

Also——

Mr. CONYERS. Which gives you a clue of what would happen to that legislation.

Mr. WINTER. Well, we are very much aware of that, Mr. Chairman.

Also, one of the major problems with the version as reported out of the committee, the Judiciary Committee of the House, is the designation of certain issues to be determined by the jury; that is, the deprivation of constitutional rights, which is not a normal—normally part of the province of the jury. The end result of that change in the statute would make 2102, the proposed successor to 242, even less enforceable than current law.

Mr. CONYERS. In other words, that was worse law than that on the books now?

Mr. WINTER. I think that is correct, Mr. Chairman.

Other changes which we believe are of crucial importance have been referred to by previous speakers. Particularly with regard to section 241, the proposed changes would delete the conspiracy requirement. We think this is an appropriate change.

I think, very importantly, both 2101 and 2102 would significantly increase the penalties for civil rights violators. One of the significant problems with section 242 currently is that unless death results, the penalty assessed under that statute is a relatively mild one. Section 2102, as it was reported out of this subcommittee last session, would gear the severity of the punishment to the severity of the nature of the deprivation, so that a murder would be punished as a murder normally would under the Federal Code. The same is true of 2101 which in a different fashion, gears the punishment to the severity of the result. Finally, and most importantly—and that is something that really is at the heart of these hearings—improving the statutes alone is not a sufficient response to the problems of violence against minorities. The Justice Department must be given reimpetus concurrent with improved Federal statutes, to deal with this problem on a sustained and vigorous level.

Mr. CONYERS. You are very generous in giving us our marching orders here. I appreciate that. We need it, but what are you guys going to do?

Mr. WINTER. Well, specifically in the area of police violence against minorities, we have focused a lot of our attention and our time on dealing with a problem which we believe is very fundamental to the issue of the environment that is created, and that is the use of deadly force by police officers against minorities. We currently have cases going in several jurisdictions which are known for their use of deadly force against—particularly against minorities, including Memphis, Tenn., Pensacola, and other areas in Florida. We intend to pursue those as vigorously as we can.

Mr. CONYERS. How do you distinguish between the lawyers with the NAACP and the legal defense and educational fund?

Mr. WINTER. We have always, worked in very useful cooperation with the lawyers at the NAACP in very many areas of civil rights law and hope to be able to continue to do so.

Mr. CONYERS. Well, I am glad to hear that, but what's the difference?

Mr. WINTER. There are two very separate organizations. The legal defense fund, although originally founded by the NAACP, has been a separate civil rights legal organization, and strictly legal organization, and been separate for some 20-odd years now.

Mr. CONYERS. Can you describe a class of cases that would be caught by sections 241 or 242 but would not be caught by section 245?

Mr. WINTER. The first distinction, a feature of 245 is that it deals only with certain types of threats and deals with use of force to discourage exercise of certain Federal rights; 241 is a far more general statute and deals with any conspiracy to injure, oppress, threaten, or intimidate in the free exercise of Federal rights.

Section 241 is an extremely broad statute, is extremely flexible and potentially a very important statute because of the breadth of its coverage. Some of the case law, though somewhat limited, some of the case law under 241 indicates that it covers all species of Federal rights; not just constitutional rights, but other federally guaranteed rights.

Mr. CONYERS. Could you research for my benefit this question: Suppose someone suggested to you that there is not a case brought on either section 241 or section 242 that couldn't be brought under section 245? How strenuously would you object to that proposition?

Mr. WINTER. I would object to that. One of the purposes of 245 was by being more specific, to make the statute more enforceable, but the tradeoff was that by being more specific, it covers less ground. Section 241 is a more general statute; potentially it can cover a great deal more. This whole 13th amendment theory that has been placed before the subcommittee today would only be reachable under 241 and not under 245. Section 241 is the statute

that deals with general deprivations of the free exercise of rights protected by the Constitution and laws of the United States.

Mr. CONYERS. Well, let me get Counsel Hutchison to further comment on this question.

Mr. HUTCHISON. I think, Mr. Chairman, that section 245 cannot be considered an exhaustive listing of constitutional rights. It was a selection in 1968 of rights of particular concern at that time, so that there are constitutional and statutory rights, violations of which could be prosecuted under section 241 and could not be reached under section 245. For example, I think there were a couple of cases at the Justice Department regarding "sewer service," where the process servers, instead of actually serving the party to the case, would file the process in the sewer. There were cases brought where a public defender was extorting money from indigent clients. There is a whole range of rights covered by sections 241 and 242 which are not covered by section 245.

Mr. CONYERS. Well, what about the area of racially motivated violence?

Mr. HUTCHISON. In some regards, sections 241 and 242—if you accept the 13th amendment argument that's been offered this morning—are far broader than section 245 because section 245 requires proof of a motive or an intent, even for the rights which are guaranteed against any interference regardless of race; you have to show willfulness and you have to show that the interference is because of the exercise of those rights, whether or not those rights are being denied discriminatorily. In that regard section 245 would be less broad than section 241 or section 242.

Mr. CONYERS. Then we are down to the interesting legal discussion of which of these acts have the greater burdens of proof?

Mr. WINTER. I think there is no question, Mr. Chairman, that 241 and 242 posit a higher burden of proof because of the specific intent requirement. But it is precisely because of that and because we feel that 241 and 242 are the statutes of wider potential applicability that this burden of proof needs to be lowered and that the specific intent requirement, through careful drafting, needs to be eliminated, as in 242, or modified, as in 241. We have provided specific suggestions in our written statement about exactly how this might be done.

Mr. CONYERS. What is the burden in 245 that is so heavy?

Mr. WINTER. The problem with 245 is its specificity. The way 245 avoided specific intent problems was to become very specific about the nature of the activities that were prohibited. But as Mr. Hutchison pointed out, this is in response to particular, specific problems that were occurring during the civil rights movement of the sixties and it adequately deals with those, but not with all the possible situations that continue to come up.

Mr. CONYERS. Let me recognize counsel, Mr. Quinn.

Mr. QUINN. Mr. Winter, for purposes of 245, is it not true that racially motivated violence would only be prosecutable if it could be tied into one of the rights specifically mentioned in the statute?

Mr. WINTER. That is correct. As I mentioned earlier, if the Justice Department is to take advantage of the 13th amendment theory, it would have to do so under 241, because that is the only

statute that is broad enough and general enough to encompass such a theory.

Mr. QUINN. The alternative would be to continue to seek to modify 245, adding rights to it?

Mr. WINTER. Well, that would be a possibility. I would submit that the list might get too long. It is very difficult in drafting to anticipate every situation that might arise, that one might want to cover.

Mr. QUINN. Thank you, Mr. Chairman.

Mr. CONYERS. Well, let's review where we are. We said that the 13th amendment in abolishing slavery carries with it the right to prevent and the obligation to preclude violence committed on a person because of race; but now we find the implementing statutes, as it were, 241 dealing with conspiracy and the other 242, both requiring specific intent; and 245 carrying a maximum of life imprisonment, a sentence appropriate for murder, only applying in limited instances under 2 (A) through (F); is that correct?

Mr. WINTER. That is correct. I would also add there is one additional section, 42 U.S.C. 4631, which although it does not appear in the criminal titles of the United States Code is a criminal statute involving interference with housing rights. It would be a—it is a well crafted vehicle for dealing with the problems—some of the problems of fire bombings that were described by the previous witness.

Mr. CONYERS. So if a person were, in fact, murdered because of his race, under what provision would he be subjected to prosecution?

Mr. WINTER. Currently if it was by a police officer or an official of the State——

Mr. CONYERS. No. Not one of those. Omit that.

Mr. WINTER. If it was by a private individual, that private individual could be prosecuted under 241, but only if that was part of a conspiracy, because 241 deals specifically with conspiracy.

Mr. CONYERS. Omit the conspiracy hypothetical.

Mr. WINTER. If the statute were modified, it would be 241 as modified.

Mr. CONYERS. Omit modification.

Mr. WINTER. Then there was no conspiracy unless he was engaged in one of the specified Federal activities in 245.

Mr. CONYERS. Then what you are telling me is that a single random act of racially motivated violence could not be prosecuted under 242?

Mr. WINTER. Unless it was under color of State law. If it was by an official or someone acting in concert with a State official, then it could be.

Mr. CONYERS. What about the decisions that have suggested that color of law goes far beyond whether you are working for the Government or not?

Mr. WINTER. Well, I expressly put in that caveat. It would have to be someone who was a State official or acting in concert with a State official. In other words, private actors who work with those cloaked by the authority of the State would also be under color of law.

Mr. CONYERS. What about the decisions that I thought I read that dealt with those who might not be working under color of law but might be connected with someone that is?

Mr. WINTER. That is what I was referring to, Mr. Chairman. It is normally those cases that involve someone working in concert with——

Mr. CONYERS. So a random act of racially motivated violence absent those considerations would not be prosecutable under 242?

Mr. WINTER. I believe that is correct.

Mr. CONYERS. Is that the impression that counsel have, too, in this matter?

Mr. QUINN. Yes.

Mr. HUTCHISON. Yes.

Mr. CONYERS. Both counsel, the record will show, nodded in the affirmative.

Mr. WINTER. I was going to say it is for this reason we think these statutes do need modification. The conspiracy element of 241 has a very strong historical basis and it grew out of the activities of the Klan in the Reconstruction Era, but it is not a constitutionally mandated requirement. The statute would be just as constitutional without the conspiracy element. We think that is one of the necessary changes in the statute.

Mr. CONYERS. Well, in that absence of a swift legislative remedy, what do we do then?

Mr. WINTER. Well, absent the changes which we think need to be made in these statutes, it does not follow that the statutes are not workable and that vigorous enforcement of these statutes will not yield results; they will. I think that everything ought to be done to encourage the Justice Department to pursue a program of vigorous enforcement under these statutes, to devote resources to them, to take cases sometimes that they are not sure they are going to win, which I believe is one of the problems with the prosecutorial program. They are looking for cases which have a very good chance of success. I think that is normally a valid consideration in the exercise of prosecutorial discretion, but given the importance of the problem, I think, it is perhaps more important to take on cases and to try and extend the limits of the law to perhaps bring cases under the 13th amendment theory and see if these laws cannot have an impact at least on the environment that has been referred to that promotes or at least condones violence against racial minorities.

Mr. CONYERS. How would you describe the characteristics of the enforcement of civil rights laws by the Department of Justice?

Mr. WINTER. To be perfectly honest I have not done a careful study or review of the enforcement. I think it is fair to say, though, in some instances it has been notably lacking. There have been individual judgments which the Justice Department has made that I am aware of that I am in disagreement with.

Mr. CONYERS. Would your organization be willing to undertake such a study?

Mr. WINTER. It is very possible, Mr. Chairman, something we can look into. We have in the past, I might add communicated with the Justice Department about individual cases which have come to our

attention which we thought merited investigations and action by the Justice Department.

Mr. CONYERS. What is the characteristic of the kind of cases in litigation that you do have?

Mr. WINTER. Well, our program as I mentioned earlier has, in large part because of limited resources, focused on what we feel is one of the most sensitive and important problems in this—in the area of official violence against minorities. That is the use of deadly force, particularly as used against nonviolent, fleeing felony suspects. We have been engaged in litigation in this area of the law for at least a decade, actually longer, and are currently putting resources into several cases in this area which we hope will be test cases and hopefully will make new law in this area.

Mr. CONYERS. So you primarily rely on 241 and 242?

Mr. WINTER. That is correct, or on the civil counterparts, 1983, particularly, for our civil actions.

Mr. CONYERS. Are most of your actions civil matters?

Mr. WINTER. That is right. I might add, Mr. Chairman, we also have engaged in a program for the last 10 or 12 years in prison litigation. Amongst the issue we deal with in that connection is violence by prison officials against their charges which raise the same issues we have been dealing with today.

Mr. CONYERS. I think it would be important for you and the organization and the bar to know what the Department of Justice's track record is in the 241, 242 area. It might be better than you suspect. It could also be twice as bad as you thought it was.

Mr. WINTER. I agree, Mr. Chairman. I think that is an area that certainly requires further study.

Mr. CONYERS. Mr. Quinn.

Mr. QUINN. Mr. Winter, with regard to your suggestion that 242 be changed so as to cover individual acts, when the constitutionality of 241 was challenged, is it true that the intent element was ruled to be satisfied by the existence of the conspiracy, that in fact the existence of the conspiracy defined the criminal objective?

Mr. WINTER. That is exactly correct. In the *United States* v. *Guest* the Supreme Court did not discuss specific intent because it stated specifically that by proving the conspiracy, you satisfied the specific intent requirement.

Mr. QUINN. So in modifying 241 more would have to be done than merely striking the reference to conspiracy and changing the language to make reference to an individual or group?

Mr. WINTER. I think that is correct. As I suggested earlier, 241 is, I believe, a statute where, to keep it as broad and as flexibile as it can be, we could not completely eliminate specific intent. But I think that the specific intent requirement, concurrent with the deletion of the conspiracy requirement, that the specific intent requirement can be modified within the structures of the *Screws* decision.

There's a lot of language in the *Screws* opinion that suggest different forms of proving specific intent; and one way is a concept of recklessness with regard to the rights that are deprived. I think any remodeling of 241 should include that recklessness concept. I would point out that 2101 in both versions of the proposed Federal Criminal Code, both coming out of the Judiciary Commitee and the

subcommittee, encompasses that suggestion. It picks up the recklessness threat of the *Screws* opinion.

Mr. QUINN. So it is your opinion that Congress would not have to go as far as it did in 245 in terms of specifying?

Mr. WINTER. That is correct.

Mr. QUINN. Thank you.

Mr. CONYERS. Thank you very much, Mr. Winter.

[The prepared statement of Mr. Winters follows:]

Statement of the NAACP Legal Defense and
Educational Fund, Inc., Before the
Subcommittee on Criminal Justice of the
U.S. House of Representatives Committee
on the Judiciary

Mr. Chairman, Members of the Subcommittee:

I want to thank the Subcommittee for giving me the opportunity to present the views of the NAACP Legal Defense & Educational Fund, Inc., on the problems related to violence against minorities. The Legal Defense Fund has, since 1940, been the primary organization involved in litigation in the area of civil rights. Its program has included cases spanning the gamut of civil rights, including numerous cases involving violence perpetrated by police and other officials against minorities.

While the Subcommittee has focussed on the general problem of violence against minorities, especially the acts of private groups and individuals such as the Klan and those responsibile for the murders in Buffalo, New York, and Salt Lake City, Utah, it is our belief that the threshold issue is the one of police and other official violence against minorities. If those cloaked with the authority of the state are allowed to perpetrate violence against members of the minority community with impunity, then the lesson to private malefactors is all too clear. Accordingly, any approach to the reduction and control of private racially motivated violence must start with effective tools for the eradication of such violence when perpetrated by governmental agents.

The problem of police brutality against black and other minorities is one that has repeatedly presented itself with some urgency, as in Miami last year. State prosecution is often not forthcoming or, as in Miami, not effective. Unfortunately, federal prosecution, which is one of the more useful and appropriate responses to this problem, has been underutilized. This is, in part, a result of problems with the current criminal civil rights provisions that result in obstacles to successful prosecutions. This morning, I will first outline the problems with the current statutes and the various provisions of the proposed Federal Criminal Code. I will then proceed with suggestions regarding what should be done to improve these provisions.

Second, I will address the closely related question of official failure to protect minorities from private actors. A striking characteristic of the current statutory scheme is that it provides civil penalties for such inaction, 42 U.S.C. § 1986, but no criminal penalties. By underrating the significance of such misconduct, we cannot fail to add to the climate of unlawfullness that promotes violence against minorities.

Third, I will discuss the provisions of the current law that do reach private conduct and the provisions of the proposed Federal Criminal Code that would modify them.

I. Official Misconduct

1. Current Law: The current criminal civil rights provisions are §§ 241, 242 and 245 of Title 18 of the U.S. Code. Section 242 is the statute that reaches most instances of police misconduct. The Supreme Court was called upon to interpret § 242 in Screws v. United States, 325 U.S. 91 (1945). There, a Georgia sheriff

unlawfully beat and killed a black arrestee. The Court read the "wilfulness" language of the statute to require proof that the actor intended to violate the victim's constitutional rights.[1/] In addition, the Court held that the constitutional violation was the infliction of summary punishment, a "trial by ordeal," depriving the victim of his due process right to a trial with fair procedures.

The Screws ruling has caused significant problems in the prosecution of police misconduct cases. It requires the prosecution to prove a higher level of intent than is normally necessary in criminal cases -- i.e., a specific intent to violate the law (here the constitutional rights of the victim). Based on Screws, some courts have held that even the specific intent to injure the victim is not enough; there must be proof of an intention to punish the victim. These requirements put an intolerable burden on the prosecution, which already faces the significant reluctance of juries to convict police officers.

To fully appreciate how the Supreme Court came to these unusual intent requirements, it is necessary to delve into the problems that the Court thought it faced. They were two; both problems dovetailed in a way that pointed to the same solution. First, a majority of the Court had trouble with the underlying premise of the case: that the unlawful beating of an arrestee by state officers which resulted in his death was a constitutional violation. Only two members of the Court, Justices Murphy and Rutledge, found direct relevance in the Due Process Clause's protection of life and liberty. The plurality opinion, that of Justice Douglas, Reed, Black and Chief Justice Stone, found it necessary

1/ Subsequently, the federal courts have held that the same requirement of a specific intent to deprive another of a federally protected right is applicable under § 241. See, e.g., United States v. O'Dell, 462 F.2d 224 (6th Cir. 1972). In United States v. Guest, 383 U.S. 745, 753-54 (1966), however, the Supreme Court indicated that the scienter element of §241 was automatically satisfied by proof of a conspiracy, since comspiracy by its very nature requires knowledge of the criminal objectives.

to indulge in the fiction that the actors sought to deprive the victim of his due process rights to a trial with fair procedures by inflicting summary punishment, a "trial by ordeal." 325 U.S. at 106.

> Those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him.

Id. Thus, to establish that the beating was a constitutional violation, it was necessary to find more than a mere bad motive to harm the prisoner. Rather, the gravamen of the offense was the specific intent of the accused to deprive their prisoner of a fair trial as "inferred from all the circumstances attendant on the act." Id.

The second problem was the ambiguity of a statute that makes it a criminal offense to violate constitutional rights. It was felt that such a statute would run afoul of the principle that criminal statutes should give reasonable warning of what is prohibited conduct. Neither an actor nor a judge could know "with sufficient definiteness," id. at 104, the range of rights that are constitutional or that would be so included in an after-the-fact decision. The plurality felt that the statute could be saved from this infirmity if the "willfulness" requirement was read to mean that the actor acted with the intent to violate an established constitutional right of the victim.[2/] In that case, he could not be heard to complain that he did not know that the statute prohibited the type of conduct he had indulged in. Id.

2/ Justices Murphy and Rutledge, on the other hand, would not have read the "willfulness" language to require a specific intent. [continue on next page]

2. The Proposed Federal Criminal Code: In order to craft a more enforceable sucessor to § 242, both geneses of the Screws specific intent requirement must be accounted for. However, it does not follow that the only solution is that chosen by the Court in Screws; Screws itself does not purport to establish the only constitutional answer to these problems. As noted in the plurality opinion: "If Congress desires to give the Act wider scope, it may find ways of doing so." Id. at 105.

The method chosen by § 1502 of the Senate's draft of the proposed Federal Criminal Code (attached as Appendix A) for solving these problems is to specify the prohibited conduct, thus obviating the vagueness issue. This is a superior way in which to solve this aspect of the Screws problem. However, although subsection (b) attempts to ameliorate the proof of intent requirement, it does not remedy the first problem faced by the Screws court. This is made clear by reference to two of the relatively recent cases brought under the current criminal civil rights provisions.

In United States v. Ehrlichman, 546 F.2d 910 (D.C.Cir. 1976), the court upheld Ehrlichman's conviction under § 241 for his approval of the "black bag job" on the office of Dr. Louis Feilding, Daniel Ellsberg's psychiatrist. Ehrlichman claimed that he did not act with the requisite specific intent since he had a good faith belief in the legality of the operation. In its discussion of the specific intent requirement of Screws, the court said that:

2/ (continue) To them, it was enough that the defendants had deprived the victim of his life and that the Due Process Clause prohibited just such a deprivation. Screws, supra, 325 U.S. at 123 (Rutledge, J.), and at 136 (Murphy,J.).

> ...its holding essentially sets forth two requirements for a finding of "specific intent" under section 242. The first is a purely legal determination. Is the constitutional right at issue clearly delineated and plainly applicable under the circumstances of the case? If the trial judge concludes that it is, then the jury must make the second, factual, determination. Did the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that federal right. If both requirements are met, even if the defendant did not in fact recognize the unconstitutionality of his act, he will be adjudged as a matter of law to have acted "willfully" -- i.e., "in reckless disregard fo constitutional prohibitions or guarantees."

Id. at 921. This "interest" analysis applied in this way mitigates the "specific intent" requirement of Screws in a way not unlike § 1502 (b). Having determined as a matter of law that Dr. Fielding's Fourth Amendment rights were violated, it was not difficult--indeed, it follows almost inexorably from the very nature of the conduct--that the actors' conduct was intentional with regard to the interests of privacy of the victim.

When the victim is subject to an unlawful assault, however, even this liberalizing interpretation of Screws is not necessarily helpful. Consider the case of United States v. Shafer, 384 F.Supp. 496 (N.D.Ohio 1974), concerning the prosecution of the guardsmen who fired on the students at Kent State. If the Ehrlichman analysis were applied to a Screws analysis of the nature of the violation -- a deprivation of the right to trial by jury -- a very different

result obtains. By killing the four students, the guardsmen did deprive them of their right to due process procedures. But it is not clear, under this analysis, that a constitutional right was violated even if excessive force was used and death resulted.

> It is one thing to be guilty of excessive force, and thus chargeable with violating the law of the state or territory; it is quite another for a policeman to administer a physical beating as punishment for allegedly breaking the law.

United States v. Delerme, 457 F.2d 156, 161 (3rd Cir. 1972), quoted in Shafer, supra, 384 F.Supp. at 501. Thus, specific intent would be required in order to prove the underlying constitutional violation. A specific intent with regard to the interests affected, the harm to the person, would not be enough. Rather, as the court found:

> Even the specific intent to injure, or the reckless use of excessive force, without more, does not satisfy the requirements of § 242 as construed in Screws. There must exist an intention to "punish or to prevent the exercise of constitutionally guaranteed rights...."

Shafer, supra, 384 F.Supp. at 503.

A different view of the underlying constitutional violation in a Screws type case involving a police assault removes this aspect of the specific intent problem. Screws talked of deprivations.

> ...of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them.

Id. at 104. As Justice Rutledge noted: "Others will enter that category." Id. at 131. Now:

> There are numerous cases...which support the proposition that one's right to be free from unlawful assault by state law enforcement officers...has been made a definite and specific part of the body of due process rights protected by the Fourteenth Amendment to the Constitution....In all of these cases it was the unreasonable, unnecessary or unprovoked use of force alone which was the alleged deprivation of a constitutional right.

United States v. Stokes, 506 F.2d 771, 775-76 (5th Cir. 1975) (citations omitted). As noted in Stokes, many of these cases were decided under 42 U.S.C. § 1983, the civil counterpart to § 242, which premises civil liability on the violation of a constitutional (or other federal) right. In Johnson v. Glick, 481 F.2d 1028 (2d Cir.), cert. denied, 414 U.S. 1033 (1973), Judge Friendly articulated the rationale:

> [Q]uite apart from any "specific" of the Bill of Rights, application of undue force by law enforcement officers deprives a suspect of liberty without due process of law.

Id. at 1032. The"liberty" protected by the Due Process Clause includes the right of "personal security." Jenkins v. Averett, 424 F.2d 1228, 1232 (4th Cir. 1970) (§ 1983); Lynch v. United States, 189 F.2d 476, 479 (5th Cir.), cert. denied, 342 U.S. 831 (1951) (§ 242).3/

3/ Virtually every circuit has, in the § 1983 context, held that the use of excessive force by officers of the state violates the victim's constitutional rights, although some of the pre-Johnson cases have relied upon the Fourth or Eighth Amendments. These cases indicate that this is a generalized right, not limited to police misconduct. See, e.g., Gregory v. Thompson, 500 F.2d 59 (9th Cir. 1974) (litigant assaulted by judge). See generally, Howell v. Cataldi, 464 F.2d 272 (3rd Cir. 1972) (police officers; Jenkins v. Averret, 424 F.2d 1228 (4th Cir. 1970) (police officer); Hamilton v. Chaffin, 506 F.2d 904 (5th Cir. 1975); Tolbert v. Bragan, 451 F.2d 1020

Analyzing the Shafer case from this perspective, a very different result obtains. If the constitutional right is the right not to be assaulted and

> ...the evidence presented by the government would support a finding that the amount of force used by defendants was excessive and unjustified; that they intended to harm or frighten at least some of the demonstrators; and that they fired without being ordered to do so...,

Shafer, supra, 384 F.Supp. at 502, then the underlying constitutional violation is adequately proved. The specific intent problem is, then, not an overwhelming obstacle to a civil rights prosecution (under either current §242 or proposed §1502), since it would only be necessary to prove intent to cause bodily harm.

It is clear, then, that the key to writing an effective criminal civil rights provision to cover the unconstitutional use of force by police officers is to incorporate the Stokes/Johnson v. Glick line of cases into the statute. The Senate version, §1502, does not do so. This is the result of the "and thereby deprives" language of subsection (a) which would require the court to make two determinations. First, it would have to ascertain whether the defendant had committed one of the enumerated offenses. Second, it would have to determine whether, in doing so, he or she "thereby deprived" the victim of a constitutional

3/ (continued) (5th Cir. 1971) (prison guards); Byrd v. Brishke, 466 F.2d 6 (7th Cir. 1972) (police officer); Morgan v. Labiak, 368 F.2d 338, (10th Cir. 1966); Carter v. Carlson, 447 F.2d 358 (D.C.Cir. 1971) rev'd on other grounds sub nom. Carter v. District of Columbia, 409 U.S. 418 (1973); Fitzke v. Shappel, 468 F.2d 1072 (6th Cir. 1972), (denial of medical care); Jackson v. Allen, 376 F.Supp. 1393 (E.D.Ark. 1974).

right. The statute leaves open the nature of the constitutional violation, allowing courts to continue to ascribe to the outdated Screws notion of summary punishment as the gravamen of a civil rights/assault offense. See, e.g., United States v. Delerme, 457 F.2d 156, 161 (3rd Cir. 1972); United States v. Shafer, 384 F.Supp. 496, 503 (N.D.Ohio 1974). This language also suggests a case by case determination of which assault, for example, constitutes a constitutional violation. This allows for subjective determinations based on the severity of the conduct, i.e., whether it "shocks the conscience." Cf. Jones v. Marshall, 528 F.2d 132, 139 (2d Cir. 1975); Brudney v. Ematrado, 414 F.Supp. 1187, 1190 (D.Conn. 1976); Townes v. Swenson, 349 F.Supp. 1246, 1248 (W.D.Mo. 1972) (dicta under §1983).

The House's version shares this failing. Section 2102 as reported out of the Judiciary Committee (attached as Appendix B) retains the "and thereby deprives" formulation leaving open the nature of the constitutional offense and the possible reimportation of Screws-type specific intent. Moreover, the Committee version compounds this problem by leaving to the jury the question of whether a particular police murder or assault is a constitutional violation. The committee draft denominates the question of "whether a right, privilege, or immunity is secured by the Constitution or laws of the United States" a question of law, i.e. to be decided by the judge. But, unlike current law, the draft would allocate to the jury, not the court, the determination whether there was a deprivation of a constitutional right. This stems from the language of subsection (c) (2) which, in stating

that no state of mind need be proved, labels the deprivation of the constitutional right -- and not the assault or murder, for example -- the result element of the offense. Since the jury must find each element of the offense in order to convict, it allocates to the jury the difficult conceptual determination (see discussion above) whether the actor's conduct was a constitutional violation.

This misallocation of the decision making province of judge and jury, see Ehrlichman, supra, 546 F.2d at 921, is made more unacceptible when one considers that one of the major problems with prosecutions under § 242 has been that of jury nullification -- the reluctance of juries to convict law enforcement personnel regardless of the severity of the misconduct. To some extent this is related to the race of the officers and the victims. But it also involves deep-seated pro-police bias. In a 1970 Harris poll, 77% of those polled believed that when a police officer killed while on duty, that killing was automatically justified. Some Justice Department lawyers have unofficially observed that, because of the jury problem, the conviction rate in criminal civil rights prosecutions of police misconduct cases rarely exceeds 50%. A good example is a Legal Defense Fund case regarding excessive use of force by three prison guards. These same defendants were acquitted by the jury in a criminal civil rights prosecution. Legal Defense Fund then brought a civil § 1983 suit which was tried to the court before a different federal judge who awarded the plaintiff 45,000

dollars in actual and punitive damages.

While no one would suggest disturbing the constitutionally guaranteed right to trial by jury, the Congress must take cognizance of the jury nullification problem. It makes no sense to compound the problem, as the Committee draft does, by assigning to the jury additional, complex legal determinations which are normally the province of the judge. The net result is that § 2102 will likely be a less enforceable statute than its predecessor, § 242.

Another problem with the current draft of § 2102 is its limited scope. As reported out of the Subcommittee, § 2102 also covered police misconduct involving privacy rights, property crimes involving use of force and such obvious due process violation as tampering with evidence. The current draft of § 2102 has deleted this coverage. But these are clearly important civil rights which have often been violated by local and even federal officials. See, e.g., United States v. Ehrlichman, supra; United States v. Liddy, 542 F.2d 76 (D.C.Cir. 1976); United States v. McClean, 528 F.2d 1250 (2d Cir. 1976) (successful prosecution under § 242 for police extortion plan); Schuler v. Wainwright, 341 F.Supp. 1061 (M.D.Fla. 1972), vacated, 491 F.2d 1213 (5th Cir. 1974) and Irvin v. State of Florida, 66 So.2d 288 (1953) (same sheriff implicated in manufacturing footprint evidence). Inclusion of the obstruction of justice offenses is particularly important. They are often perpetrated against the politically powerless, especially blacks.

They go directly to the fairness of the victim's trial; they are clear due process violations. State criminal proceedings rarely deal with these actions satisfactorily, see Shuler and Irvin, supra, let alone serve as adequate deterrents. Federal prosecution of these hardcore due process violations is the only realistic deterrent.

The draft should include and incorporate the offenses in these three areas: the obstruction of justice offenses, §§ 1721-27; the offenses that implicate fourth amendment privacy rights, burglary and criminal trespass, §§ 2511 and 2512; and the property crimes involving use of force or threat of force, robbery and extortion, §§ 2521 and 2522.[4/]

3. The Previous Draft: The version of § 2102 that was reported out of this Subcommittee (attached in modified form as Appendix C) is a far superior and more easily enforceable statute than either current law or the current drafts. It deals with the Screws problem in a straightforward way that would greatly aid the prosecution of civil rights violations, especially police misconduct. It simply lists various crimes (including murder, assault, burglary, and tampering with evidence) which, if committed by police in their official capacity -- i.e., "under color of law," could be prosecuted

4/ The Supreme Court's recent opinion in Parratt v. Taylor, 49 U.S.L.W. 4509 (1981), would not affect the inclusion of these offenses since they involve more than mere property rights, centering on the threat of violence which implicates the right to personal security discussed above. They should be handled in the same fashion as § 2316, Communicating a Threat. As with the inclusion of that provision, Congress should invoke its enforcement power under § 5 of the Fourteenth Amendment and determine that, when done under color of law, placing someone in fear of imminent bodily injury without valid reason or purpose violates that person's right to personal security and bodily integrity. Or, in the alternative, it can determine that the constitutional interests in personal security and bodily integrity are so integrally involved in such a situation that it is necessary to protect them in this fashion.

as civil rights violations. Relying on the modern cases, it simply states that when such activities are committed by police or other officials in their official capacities, they are inherently unconstitutional because they involve excessive and illegal use of state power.

The previous draft, then, is eminently more enforceable than either current law or the recent drafts before the House or Senate. It would eliminate both the requirement to prove a specific intent to violate the Constitution and the antiquated case law requiring proof of specific intent to punish. Rather, the prosecution need only prove that the police officer or other official, acting under color of law, misused his authority by committing a murder, assault, or burglary, or by tampering with evidence, an approach more easily understood by juries. Moreover, this has the additional advantage of making a clear statement that police and other officials are not above the law -- that murder, assault, and burglary are just as criminal when perpetrated by police.

Let me hasten to add that this statute would not add to federal jurisdiction nor usurp enforcement of criminal laws properly the province of the states. This is inherent in the statutory scheme; the provision would only be coextensive with constitutional prohibitions of official misconduct. Moreover, the provision takes cognizance of the fact that many of the included offenses concern conduct, such as the use of force or entry onto private property, which is normally part of proper police or other official conduct.

There are several safeguards built into the statutory scheme which limit the application of this provision to unconstitutional behavior. The first of these is the "under color of law" requirement. Thus, the ordinary situation in which excessive force is used under color of law would constitute a violation of the section. Acts involving excessive force by a law enforcement officer in the course of a private altercation, however, would not normally be a violation. Second, the general defenses outlines in Chapter 7 of the proposed Federal Criminal code are applicable. Section 725(2) is of particular note since it provides a defense for conduct engaged in reasonable reliance upon a statement of law contained in a decision, opinion, order, or judgment in a court of the United States. As a result, conduct which might technically fall within the prohibitions of one of these enumerated sections, but which has previously been adjudged to be within constitutional limitations, would not be punishable. Also, with regard to those enumerated offenses involving use of physical force, the defenses of § 727, with regard to protection of persons, and § 728, with regard to protection of property, are specifically available. Third, many of the enumerated offenses include definitional language which would exclude bona fide official conduct from its prohibition. For example, §§ 2511 and 2512, relating to criminal entry and criminal trespass respectively, both apply only to entry or trespass "without privilege". Similarly, definitions contained in the general provisions for each subchapter would be applicable. As a

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result, the enumerated offenses relating to criminal restraint would only apply as provided in § 2324(a)(2), if the restraint is committed "unlawfully." Finally, certain of the enumerated offenses such as those relating to sexual misconduct and relating to robbery and extortion, would inherently involve misconduct.

In summary, let me emphasize that, if the criminal civil rights provisions are to be enforceable tools in the effort to contain police misconduct and insure the civil rights of minorities, it is important that the original draft of § 2102 as reported out of the Subcommittee be reinstated and passed by the House. Indeed, § 242 should be modified along these lines regardless of the progress of the proposed criminal code.

II. Failure of Protection

A specific problem not covered by the proposed Federal Criminal Code's extensive protection of the exercise of federal rights, §§ 2101-2112, is that of the failure to act by those who have the duty and the power to prevent interference with the exercise of federal rights. This was raised in our testimony before the Senate Subcommittee on Criminal Laws and Procedure as early as 1973. There have been numerous incidents when federal or state law enforcement officers have stood by and allowed other persons to assault those engaged in the peaceful exercise of federal rights. All of the provisions that prohibit interference with the exercise of federal rights deal only with one who interferes directly, not with those who have a duty to prevent such interference. If we are concerned about protecting minorities from violence, we must be sure that local and federal law enforcement personnel take these responsibilities seriously.

It is both possible and desirable to have a statute that prohibits such deliberate indifference without creating a general duty of police protection. A draft of such a statute is contained in Appendix D.

III. Reaching Private Conduct - Section 2101

Section 2101 (attached as Appendix E)[5/] is an amalgam of § 241 and part of § 242. Subsection (a)(1) is the catchall successor to § 242, picking up civil rights offenses not specifically enumerated in § 2102. Subsection (a)(2) is the redraft of § 241. In its current form, it is an improvement on § 241, reaching a broad range of private conduct within the structures of constitutional limitations. This draft should be adopted by the Congress in its effort to curb violence directed at minorities.

Two of the improvements of this section are the dropping of the conspiracy requirement and the change in the victim designation. While conspiracies would still be punishable under § 1102 (Conspiracy) of the draft, it is important that individuals too be prosecuted when they act to injure or intimidate another engaged in the free exercise of a federally protected right. The change in the victim designation, from "citizen" to "person," provides the protection of this statute -- like its sister provision § 242 and its successor, § 2102 -- to all those subject to our laws.

5/ The House draft is superior to the Senate draft, § 1501, in respect to clarity and coverage. A copy of the Senate draft is attached as Appendix F.

Section 2101 is also a useful tool because of the way in which it deals with the problem of intent. While the injury or intimidation must be motivated by the victim's exercise of a federally protected right, subsection (c) indicates that the offender need not be conscious of the federally protected nature of the victim's conduct. As noted in Screws:

> The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution. When they so act they at least act in reckless disregard of constitutional prohibition or guarantees.

325 U.S. at 106. Subsection (c) thus codifies the criteria delineated in United States v. Ehrlichman, supra: If the court finds that the victim was engaged in the exercise of a federally protected right and the jury finds that the actor intended to infringe on the interests protected by that right, then, "[e]ven if the defendant did not in fact recognize the unconstitutionality of his act, he will be adjudged as a matter of law to have acted . . in reckless disregard of constitutional prohibitions or guarantees." Screws, supra, 325 U.S. at 105.

Section 2101 is crucial in reaching private conduct directed against minorities because of the breadth of the protected rights encompassed in § 2101. This broad scope is illustrated by cases decided under § 241. It has been held that § 241 protects such important interest as the right to be free from slavery or involuntary servitude except as punishment for crime, Smith v. United States, 157 Fed. 721 (8th Cir. 1907), the right to be free

from an unlawful search and seizure, Ehrlichman, supra, the right to remain in the official custody of the United States Marshal, Logan v. United States, 144 U.S. 263 (1892), the right to report violations of federal law, Moates v. United States, 178 U.S. 458, 462-63 (1900), the right to testify at proceedings held under authority of federal law, Fess v. United States, 266 Fed. 881 (9th Cir. 1920), the right to travel interstate, United States v. Guest, 383 U.S. 745 (1966), the right to vote in federal and state elections, United States v. Classic, 313 U.S. 229 (1941); United States v. Anderson, 481 F.2d 685, 698-701 (4th Cir. 1973), aff'd on other grounds, 417 U.S. 211 (1974), and the right to assemble and petition the government for redress of grievances. United States v. Cruikshank, 92 U.S. 542 (1975).

In addition to the protection of constitutionally secured rights, the Supreme Court has indicated that these statutes include the protection of rights secured by civil statutes in the United States Code. In United States v. Johnson, 390 U.S. 563 (1968) the Court sustained the prosecution under § 241 of a person who had interferred with blacks in their access to public accommodations covered by the Civil Rights Act of 1964. The Court reaffirmed the language in United States v. Price, 383 U.S. 787, 801 (1966), that § 241 must be accorded "a sweep as broad as its language." Thus in continuing this coverage of § 241, §2101 potentially reaches a broad spectrum of private conduct directed against minorities as they use public accommodations, apply for

employment, travel interstate, peaceably march and petition, testify in federal proceedings or vote.

IV. Enforcement by the Justice Department

I have focussed my remarks on the tools which the Congress should provide the executive in order for it to be able to deal with these problems of violence against minorities. However, a tool is only as effective as the one who wields it. Federal enforcement of these statutes must be vigorous. Too often, the Justice Department has cited the difficulties of prosecution as reason not to proceed. Concurrent with more enforceable statutes, the Department must be given additional impetus to vigorously investigate, pursue, and successfully prosecute violations of the civil rights of minorities and all others. These are federally created rights; they must be protected by determined federal vigilence.

APPENDIX A

"§ 1502. Interfering with Civil Rights under Color of Law

"(a) OFFENSE.-A person is guilty of an offense if, acting under color of law, he engages in any conduct constituting an offense described in a section in chapter 16 or 17, and thereby deprives another person of a right, privilege, or immunity secured to such other person by the Constitution or laws of the United States.

"(b) PROOF.-In a prosecution under this section, whether the deprivation concerns a right, privilege, or immunity secured by the Constitution or laws of the United States is a question of law.

"(c) GRADING.-An offense described in this section is a Class A misdemeanor.

APPENDIX B

§ 2102. Interfering with Civil Rights Under Color of Law

(a) Whoever, under color of law, engages in conduct which would violate a section listed in subsection (b) of this section except for the fact that Federal jurisdiction under that section does not otherwise exist, and thereby deprives another of a right, privilege, or immunity secured by the Constitution or laws of the United States, shall be punished as provided for an offense under such section so listed.

(b) The sections referred to in subsection (a) of this section are sections 2301 (relating to murder), 2302 (relating to manslaughter), 2311 (relating to maiming), 2312 (relating to aggravated battery), 2313 (relating to battery), 2314 (relating to aggravated assault), 2315 (relating to terrorizing), 2316 (relating to communicating a threat), 2321 (relating to kidnaping), 2322 (relating to aggravated criminal restraint), 2323 (relating to criminal restraint), 2331 (relating to aggravated criminal sexual conduct), 2332 (relating to criminal sexual conduct), 2333 (relating to sexual abuse of a minor), and 2334 (relating to sexual abuse of a ward).

(c)(1) In a prosecution under this section, it is a question of law (as to which no state of mind need be proved) whether a right, privilege, or immunity is secured by the Constitution or laws of the United States.

(2) In a prosecution under this section, no state of mind need be proved as to the result that there was a deprivation of a right, privilege, or immunity secured by the Constitution or laws of the United States.

APPENDIX C

§ 2102. Interfering with Civil Rights Under Color or Law

Whoever, acting under color of law, engages in conduct which would violate section 1721 (relating to witness bribery and graft), 1722 (relating to informant bribery and graft), 1723 (relating to tampering with a witness or an informant), 1724 (relating to retaliating against a witness or an informant), 1725 (relating to tampering with physical evidence), 1726 (relating to communicating with a juror), 1727 (relating to monitoring jury deliberations), 2301 (relating to murder), 2302 (relating to manslaughter), 2311 (relating to maiming), 2312 (relating to aggravated battery), 2313 (relating to battery), 2314 (relating to aggravated assault), 2315 (relating to terrorizing), 2316 (relating to communicating a threat), 2321 (relating to kidnaping), 2322 (relating to aggravated criminal restraint), 2323 (relating to criminal restraint), 2331 (relating to aggravated criminal sexual conduct), 2332 (relating to criminal sexual conduct), 2333 (relating to sexual abuse of a minor), 2334 (relating to sexual abuse of a ward), 2511 (relating to criminal entry), 2512 (relating to criminal trespass), 2521 (relating to robbery), 2522 (relating to extortion), of this title except for the fact that federal jurisdiction does not otherwise exist, shall be punished as provided for an offense under that section.

APPENDIX D

A statute such as that described in the memorandum could read as follows:

§ 2108. FAILURE TO PROTECT FEDERALLY PROTECTED RIGHTS

(a) Whoever, having such authority under state or federal law, knowingly fails to exercise his authority to protect persons in the free exercise or enjoyment of a right, benefit or activity protected by sections §§ 2101-2112 of this title from unlawful interference by third parties, when he has the ability to provide such protection.

(b) In a prosecution under this section, whether the interference concerns a right, benefit, or activity protected by §§ 2101-2112 is a question of law (as to which no state of mind need be proved);

(1) Provided that, to be guilty of an offense under this section the person who fails to act must be reckless with regard to whether the interference concerns such a right, benefit or activity.

(c) An offense described in this section is a Class A misdemeanor.

The salient points of this provision are that the officer who fails to act must do so knowingly. That is, he must know that the danger exists and still fail to respond. He need not in fact know that the activity interfered with is a protected one; it is enough if he is aware of a risk that this is so, i.e., that he is in reckless disregard of the protected nature of the activity. This should not create substantial problems since most of the rights, etc., protected by these sections are common knowledge, particularly amongst law enforcement officers. Also, liability under the statute would only exist if the person who fails to act has state or federal authority to do so--e.g., a police officer or FBI agent--and has the ability to provide such protection.

APPENDIX E

§ 2101. Interfering with Civil Rights

(a) Whoever-

(1) under color of law, intentionally engages in conduct and thereby recklessly deprives another person of a right, privilege, or immunity secured by the Constitution or laws of the United States; or

(2) intentionally injures, oppresses, threatens or intimidates another person in the free exercise or enjoyment of, or because of such other person's having exercised, a right, privilege, or immunity secured by the Constitution or laws of the United States:

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) An offense under this section is-

(1) a class A felony if the actor engages in conduct with intent to produce bodily injury and recklessly causes the death of any person;

(2) a class C felony if the actor intentionally causes bodily injury to another person; and

(3) a class A misdemeanor in any other case.

(c) In a prosecution under this section, it is a question of law (as to which no state of mind need be proved) whether a right, privilege, or immunity is secured by the Constitution or laws of the United States.

APPENDIX F

"§ 1501. Interfering with Civil Rights

"(a) OFFENSE.-A person is guilty of an offense if he intentionally:

"(1) deprives another person of; or

"(2) injures, oppresses, threatens, or imtimidates another person:

"(A) in the free exercise or enjoyment of; or

"(B) because of his having exercised; a right, privilege, or immunity secured to such other person by the Constitution or laws of the United States.

"(b) PROOF.-In a prosecution under this section, whether the deprivation, injury, oppression, threat, or intimidation concerns a right, privilege, or immunity secured by the Constitution or laws of the United States is a question of law.

"(c) GRADING.-An offense described in this section is a Class A misdemeanor.

Mr. CONYERS. Our final witness is Dr. Arthur L. Green, the Atlantic region representative and Federal liaison for the International Association of Official Human Rights Agencies. He has been the director of the Connecticut Commission on Human Rights and Opportunities and has been before the committee on a frequent basis. Welcome before us.

TESTIMONY OF DR. ARTHUR L. GREEN, DIRECTOR, CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Mr. GREEN. Thank you, Mr. Chairman.

Mr. Chairman, I would like to request that the prepared statement together with a report by the Connecticut Commission be submitted for the official record.

Mr. CONYERS. Without objection, it will be included in the record.

Mr. GREEN. I would like to at this time, Mr. Chairman, simply highlight our statement and add additional comments. First, we are very pleased that this committee is looking into this very important matter. We, meaning the over 500 State and local human rights agencies in this country with our unique brand of organizations. We represent our State and local governments. We have the responsibility to enforce the entire body of antidiscrimination laws at the local and State level. Those laws include housing, employment, and public accommodations and in various instances discrimination against the person with a criminal record. Our jurisdictions are broad and legion. We have responsibilities in the area of race, color, sex, national origin, religious creed, religion, physical disability, and it goes on and on varying only with the State and local jurisdiction.

I represent this organization and over 500 State and local agencies. We have in common a need to improve our own professionalism and to share our knowledge and information. In that regard, the association, the board of directors, over 7 to 8 years ago, appointed me to represent its views, their views, before the Federal civil rights enforcement agencies. So it is in that particular capacity that I wish to address the subcommittee.

Mr. CONYERS. Who appointed you to what?

Mr. GREEN. The board of directors of the International Association of Official Human Rights Agencies appointed me over 7 to 8 years ago to act as its spokesman at the Federal level. That is a very critical role for our organization. It is really the heart of your inquiry here.

Mr. CONYERS. So you not only represent the 500 local human rights organizations in the United States, you operate on an international basis?

Mr. GREEN. Yes. The references to international takes into the organization four Provinces of Canada and we have had association with the Race Relations Board of Great Britain, and tried on various occasions to induce into membership some of the governments in the Caribbean area. Our thoughts are that the struggle for human rights ought to be internationally coordinated and our effort is a coordinating one, primarily. For our board, while consisting of volunteers, we have had, from time to time, some staff assistance. We have a headquarters here in Washington. We are largely,

though, volunteers, like myself, who represent State and local agencies. I am head of a State commission.

The role of the Federal liaison, of which I am primarily the person, is to see to it that the Federal agencies in our country with civil rights responsibilities—and that is all of them, we feel, in varying ways—coordinate with us. I have appeared before other congressional committees speaking to this very point, urging that the Federal Government, the President on down, require a closer coordination and communication at the State and local levels so that we not duplicate our efforts and we not squander resources—that we share resources. I must say, Mr. Chairman, that has not worked very well. Even today, I am concerned that our efforts to know what happens, say, in HUD or EEOC or OFCP, have not proven to be very successful. I am concerned further that we duplicate perhaps the effort because of lack of coordination and information.

We at the State and local levels have been trying to monitor closely the increasing incidents of cross burnings and racial violence against minorities in this country. Our monitoring effort is meager because we do not have the adequate resources to do that well; but I have—as the Federal liaison—developed a comprehensive picture, if you will, of what the country looks like from our perspective and our perspective, again, sir, is the State and local officials charged with the administration of the antidiscrimination laws.

We, for example, will be meeting in Dayton, Ohio, on July 13. I have invited as part of my responsibility about six Federal senior civil rights officials to come before the organization and to address what they are doing in the area of civil rights law enforcement. We are trying to get a handle on what it is that is going to be heading up the Justice Department's Civil Rights Division, for example.

I sat through your hearings this morning and listened to some of your inquiry in this area, that we, the organizations, need to also reach out and try to advocate their involvement and their coordination.

That is part of what we are doing: trying to get the Federal official, at least once a year, to talk to a large audience of officials at the local level, tell us what they are doing, the direction they are going, and we react to that.

We have seen, as you have heard already, a rising increase in violence against blacks and other minority people. We have seen a rising increase in the number of attacks on persons because of religious affiliations. The associations I represent tried to address this problem in our way. Our way has been largely to encourage our Governors and mayors to develop citizens' groups, if you will, or task forces or convene meetings to look at the problem in its broadest terms, and the broadest terms of the problem are more than mere law enforcement. I say more than mere law enforcement, because the lawyers would suggest that perhaps that's the way to go. We somewhat nonlawyers and lawyers working for human rights agencies feel that the other dimension to the problem, sir, is that the country has a climate. The climate of the country seems to encourage these acts of violence whether by organized effort or random acts more dangerous to us, sir, than the organized effort. I

am more concerned about the individual young white person that decides to fire bomb, as we have seen in Connecticut; and I am more concerned about the acts of spontaneous attacks by young whites against blacks than I am about the Klan organizing across State lines, although they are doing that, there is evidence for it. I am more concerned that a climate exists where people feel that the climate, by the way, is both political and economic. That climate suggests that it is OK, that nothing is going to be done because they have gone too far. If I sound subjective about this, it is because the nature of the problem has to be looked at not just in an "objective legal way" but also one has to understand the mentality of what we are dealing with. We are dealing with people in a climate that is encouraging people.

That encouragement is frightening, because it comes from all levels of our economy, political, and community levels. The International Association has begun to pull together reports of efforts we are making to have our mayors and our Governors work with our agencies to address that kind of climate I am speaking of. The climate is to change, to the best of our abilities with our mayors and Governors—I want to keep emphasizing with the mayor and with the Governor, because unless the leadership of the country is involved, nothing will happen—to work to alter attitudes.

In Connecticut, for example, young schoolchildren are explosed to Klan literature, recruiting. Our penal institutions, the inmates are exposed to recruiting efforts by Klan people and other right-wing organizations.

Mr. CONYERS. At what prisons?

Mr. GREEN. Our prison, meaning our State institution at Somers.

Mr. CONYERS. Are there others in the country in which Klan activity and recruitment has been reported?

Mr. GREEN. My colleagues tell me that around the country there are incidents of recruiting going on in our major Federal prisons as well as our State institutions. Some of the outbreaks of violence—if one could get a handle, do a thorough investigation—we suspect we could trace the violence we are now hearing about and have previously heard to incidents of racial agitation within the prison confines.

Mr. CONYERS. Do you have access to or can you get any information with regard to the recent prison disturbances that hit Michigan and other places in the country?

Mr. GREEN. I have asked my colleague in Michigan, Ruth Rassmussen, head of that agency to try to get such information. We need to, I think, provide the country with that kind of information. Our organization is perhaps unique in that we are so spread out, we can gather the data. We will have a little more difficulty getting that information with respect to the prison incidents as opposed to the more general population.

Some of us sat on our State criminal planning agencies that allocated and dispensed the Federal LEAA funds up until recently. That gave some of us an opportunity to take a close look at where the Federal dollar was going in the criminal justice system. I sit on the Connecticut one. It is a difficult role to play, because you are also outvoted for hardware as opposed to other kinds of use of the

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Federal dollar. The Chair is very familiar with this effort at the Federal level.

Let me point to the very serious nature of what the Klan and other rightwing groups are doing to young people. I guess I am concerned in a very particular way about what our young people, black and white, will feel and do. The attacks on an affirmative action is clearly a part of the kind of climate I am referring to that encourages this activity.

Those young people, white people that feel insecure and inadequate about their own ability to achieve, those are ripe targets, sir, for recruiting efforts. When you point out to people that blacks or Hispanics or Chicanos or women are getting the jobs or promotions merely because they are black, women, Chicanos—as opposed to qualifications—that kind of statement encourages violent acts, encourages recruitment. Therefore, it follows to me that we must work hard at the level where young minds are developing in schools. We must encourage the clergy in our country to counter those statements in their Sunday and/or Saturday opportunities. We must encourage our business community, the leadership of the corporate structure, to counteract what happens in Connecticut. We get, in our office, for example, occasionally leaflets printed on mimeograph perhaps from a factory where there's anti-Semitism, antiracist remarks made. I can't believe, sir, that the factory managers or the corporate structure are not aware of what is going on.

We need to—we meaning the Government, Federal, State and local government, ledership must counteract that by affirmative positions. We are working with the Governor of Connecticut presently to bring about a statewide effort in this regard involving the clergy, the corporate structure, the legal profession, and others that will work in an affirmative way to counteract that.

We made some progress, perhaps, in our State. We at the State Commission on Human Rights might be seen as not having enough authority in the criminal area. Well, rightly so. We are not a criminal justice type agency. We are civil in nature. Our authority is to look at the complaints of discrimination. But we, sir—and I think this is part of the answer to several of your questions this morning—you can pass laws, but then if you don't have the right people in the job, things don't get done. So we have advocated through our hearings and the hearing I referred to earlier on cross burnings and other related violence in Connecticut, we advocated that the legislature in Connecticut pass laws dealing with the problem. We have been successful, at least in a couple of instances. In one we were successful in getting a law passed and signed into law a law that makes cross burning on private or public property, with certain exceptions, a class A misdemeanor. We were successful recently in having moved through the legislature a bill that would outlaw paramilitary camps. It is my information that as of yesterday that Governor O'Neill, has signed that bill into law.

Those two bills are attached to my statement. The paramilitary camp bill and the bill making cross burning a class A misdemeanor, a crime.

Mr. CONYERS. This is very interesting to me.

Mr. GREEN. That is an effort a State and local agency can take through its advocacy role. My point is don't look to exclusively the

criminal system to bring this about. We need to be encouraged to do this, however. We need to be encouraged by the Federal system. We need to since there is support for what we are doing. My statement to you is that across the board, with respect to the Federal agencies, that support is not there.

Finally, I would like to conclude with the human rights agencies in this country are very eager, very anxious to work with this committee, because we applaud what you are doing. We are very anxious to work with our Federal counterparts to coordinate, reduce the duplication, and to husband somewhat the scarce resources available to us. The evil that will visit us if we don't do something like that is horrendous. Our society, I think, is rapidly being torn apart, not because blacks and others are getting the lion's share of the resources; quite to the contrary. It is not because the minority people are getting advantages over whites as it is promoted and it does form a basis of some of the violence. You can trace the mentality, the motivating factors. You find that this is not unlike what happened in mankind's history over the years where a group was singled out as being responsible for the economic conditions.

I don't want us to take that too lightly. Many people, including Congress people and legislators, take too lightly that analysis that some of us are being blamed for the economy having difficulty. Some of us are being blamed for all kinds of conditions. It is very easy to do that with people that are insecure and inadequate. A black psychiatrist in New Haven, Conn., at Yale, Dr. Cormer, testified before our hearings and his testimony, sir, is included in our report to you. I urge you to read his testimony which constitutes an analysis of the personality that is prone to commit acts of racial and religious violence.

He submits to us that the country is replete with such persons.

I want to thank you for the opportunity.

Mr. CONYERS. We appreciate your testimony. You say support isn't there. When you say that, what do you mean?

Mr. GREEN. I am sorry?

Mr. CONYERS. What did you mean when you said the support for our programs isn't there?

Mr. GREEN. The fact that I have had the single experience of 7 years now of visiting or trying to visit with Federal officials to, one, share our experiences and get their experiences so we can work together, the reception has also been either indifference, cold, or not at all. We are not asking for money. We are asking would you meet with us, talk about our respective efforts.

Mr. CONYERS. Have you met with the new President?

Mr. GREEN. I have not, sir. We have written to the President asking for an opportunity to elicit his support and his interest in our local and State effort. We are looking forward, though, to in July, some of the senior officials of the Federal Government visiting with us in Dayton. Yet we haven't had a full response from all of them. We are encouraged so far.

Mr. CONYERS. You have to be very careful and write them very solicitous letters so that it doesn't seem like they are going to be baited or attacked or otherwise harassed. You have to take a conciliatory carrot versus a stick approach to get them.

Mr. GREEN. Yes. That's what we have done. Once there I can never promise that one is not going to be questioned carefully by my colleagues that feel strongly about these issues.

Mr. CONYERS. Let's talk about some of the agencies.

Mr. GREEN. One, I am not so convinced that the emphasis ought to be placed upon new law, new regulation, but rather emphasis is on enforcing what is there in a very creative and affirmative way. I say this to my colleagues also at the State and local level, too. That, to me, calls for the right kind of person. I guess I am, as a student of public policy, one has to look closely at who gets appointed; what one brings to the job. Obviously, you can decide you are not going to have laws enforced by putting in positions people of certain personalities and certain characteristics. So it behooves, I think, the appointing authorities certainly and the people that recommend people to see to it that those of us that are appointed care, care in a very creative, constructive manner. We don't always see that happening in the Federal level. We see ranging from the appointments of persons having virtually no qualifications at all in the area to those persons that have outright declared their hostility to the program.

Mr. CONYERS. What kind of positions are you talking about in the Government? Appointed to what?

Mr. GREEN. Well, I mean to head up the various civil rights functions in the Federal agencies primarily. We have, for example, attempted to work with the Office of Management and Budget. To most civil rights people, that office doesn't seem to have too much to do with all of this. But if you look closely at what OMB does, it has a very critical function and role to play with respect to the Federal budget. It has within its structure an office to deal with the civil rights activities of all the other Federal agencies in a coordinating way.

As you know, the review function of a budget is a very vital one in terms of getting an agency to do something or not do something. That office to me is a very difficult office to move in terms of looking at the civil rights responsibilities of the Federal agencies.

The U.S. Commission on Civil Rights has said that repeatedly in its various reports over the years. That OMB could play a more vital role in the coordinating and enforcement of the Federal law.

Mr. CONYERS. Have you had occasion to rate the cities and the States in terms of their human rights structure? Is there some way we could find out who is doing a fair job?

Mr. GREEN. The association itself attempts to avoid rating each other, but certainly we could provide you with a statement on what the various State and local commissions' powers are, our range of responsibilities, and our accomplishments, our—the evolution of us, I guess, is up to someone else in a way. Our constituencies, for example, back home are the people that are usually discriminated against. They, indeed, rate us.

I guess in a way we are rated by the fact that EEOC and HUD, for example, defer cases, housing complaints or employment cases, to certain State and local agencies and that deferral process is based on a standard of whether or not we have laws and administrative policies and procedures comparable to the Federal level. That is a kind of evaluation. So when EEOC decides that it will

defer a case to a State agency, and pay for its processing, that's a kind of evaluation. The standard there being the Federal one. I am not so sure, though, that that is an altogether valid standard. We have probably developed far beyond the Federal capacity in some States in this country, both in terms of our technical ability as well as our commitment.

Mr. CONYERS. Frequently in Detroit I hear the complaint that the Civil Rights Commissions are a joke because, first of all, they are backlogged. Most people have forgotten about the case, gotten another job, and don't even have time to be bothered by the time their case gets attention. Then there's a lot of bad counseling going on. I am speaking from a limited perspective. But if you were to be rated by my constituents or the Human Rights Commission were to be rated by my constituents, that rating would be very poor.

Mr. GREEN. I am sure that's the case across the country. I am sure if you asked the constituents of all the commissions in the country—even those I might think are the best ones—I am sure you will get criticisms of our efforts. I am somewhat familiar with the Detroit commission, as I am the State commission. I know the personalities there. I am speaking of the increasing criticism growing against the various State agencies, the big ones, particularly those, sir, that are functioning in industrial States and industrial communities with high employement. That is indeed Michigan. So the Michigian State Commission, Ruth, down in Grand Rapids, Bobby Butler, our director there, the Detroit head, they are all experiencing hostilities from the very people they should be trying to work with, of course. But it has to do with—and we don't want to take it out of context—it has to do with the fact there is no support for what we are doing. There is no support at the political level from the Governors' offices on down. No support from our legislative bodies. And very little understanding and knowledge of what we are trying to do by the local citizens themselves. We can do so much in terms of informing people, but there have to be decisions made in terms of allocations of resources. It is a problem of priorities, where we are willing to put our scarce dollars.

We don't seem to be willing to put them in civil rights activities. Also at the Federal level that's the case, too. The Federal budget, we looked at it with respect to where the recommendations are for cuts and increases. Those recommendations or increases are not in the civil rights area at all and that is going to impact us at the local level, by the way, because we are somewhat dependent on some Federal agencies for some fiscal support.

Mr. CONYERS. To what extent do your organizations become involved in racially motivated violence?

Mr. GREEN. More and more so. Involved to the extent that we—some of us varying with the law of the local ordinance, we are beginning to collect data and information, for example. That is a very valuable thing to do, because there has been no central source at least among civil rights agencies where you can go for information. We have also begun to exercise our authority and power to conduct hearings on the subject such as Connecticut did, such as New York City has done, such as Pennsylvania and Kentucky, a number of

State and local agencies are exercising the factfinding hearing power which is valuable, because once you conduct a good hearing, you have information which can be used for additional legislation or criminal action.

We have turned over our reports, our results of hearings to the criminal justice side and that has resulted in various kinds of activities. We also get involved by working closer, or trying to, with the criminal side of the system, the criminal prosecutors, States attorney's office.

In our State, for example, we have developed a strong working relationship, but we are lucky also that that is a man that cares. I have to keep saying that, because without a man that cares, a woman that cares on the job, no amount of effort probably pays off. We don't have the authority, as you probably know, though, to take actions directly, so our working with involves primarily attempting to monitor and to work with community organizations to bring about a better climate. So our role is largely an educational one when it comes to this subject matter.

Mr. CONYERS. Finally, are there divisions of philosophy about how the human rights commissions are to operate within your organization? Are there some on the left and others on the right, conservatives, progressives. How does that break down?

Mr. GREEN. Our division is not so much left and right as it is more vertical. It is more a problem, a division with respect to should we be more tough-minded, law enforcement, seeking the hard decision with the full remedy to make the victim whole? That's one discussion that goes on. I guess you might call that the left, if you will. Then there's the other argument that attempts to observe that our climate, politically, is so offensive, so oppressive, that to be tough minded would bring about great recriminations and probably put us out of business; and that group advocates then—you primarily adopt a more conciliatory educational role than the law enforcement one.

I would say, sir, the bulk of the State commissions of the country are clearly in favor of a clear, strong law enforcement approach; that is processing those complaints as rapidly as possible, seeking full redress, and/or involving ourselves in systemic class action cases. That's the tough law enforcement approach. We say the retribution or retaliation be damned; we will still pursue that course of action because we read the law to mean that, we read the Constitution to mean that.

The other side would argue if you do that you are going to put yourselves out of business because the political climate is too offensive. The trust is somewhere in the middle. We find ourselves within a given agency doing some of both. I know we do, but the left and right is not in terms of conservatism versus liberalism. The conservative people in our field by and large find themselves so outnumbered, so out argued they don't come to meetings, they don't show up, or they don't participate, they don't exist in our business.

What you probably experience in Detroit, sir, is not a conservative staff and commissions but more lack of help, lack of resources. The same problem exists at our level as I spoke of earlier

at the Federal level. Some people are appointed to our field, to our jobs and they really shouldn't be there by virture of personality.

Mr. CONYERS. You have been very helpful. Thank you very much.

[The prepared statement of Mr. Green follows:]

STATEMENT OF ARTHUR L. GREEN, DIRECTOR OF THE
CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

MY NAME IS ARTHUR L. GREEN. I AM PRESENTLY ON THE BOARD OF DIRECTORS OF THE INTERNATIONAL ASSOCIATION OF OFFICIAL HUMAN RIGHTS AGENCIES, INC. I AM ALSO THAT ASSOCIATION'S LIAISON WITH THE FEDERAL GOVERNMENT'S AGENCIES, INCLUDING THE JUSTICE DEPARTMENT, WHICH HAVE CIVIL RIGHTS LAW ENFORCEMENT RESPONSIBILITIES. I HAVE BEEN THE DIRECTOR OF THE CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES SINCE 1966 AND HAVE WORKED ACTIVELY IN CIVIL RIGHTS LAW ENFORCEMENT FOR MANY YEARS. I AM PLEASED TO TESTIFY BEFORE THIS SUBCOMMITTEE ON CRIMINAL JUSTICE OF THE HOUSE COMMITTEE ON THE JUDICIARY AS IT CONTINUES ITS HEARINGS ON RACIAL VIOLENCE. SPECIFICALLY, I HAVE BEEN ASKED TO COMMENT ON THE NEED FOR MORE FEDERAL ACTION TO COMBAT VIOLENCE AGAINST RACIAL AND ETHNIC MINORITIES AND ON THE ATTITUDE OF STATE AND LOCAL CIVIL RIGHTS ENFORCEMENT AGENCIES TOWARD INCREASED FEDERAL INVOLVEMENT IN THIS KIND OF CIVIL RIGHTS ENFORCEMENT ACTIVITY. IN MY CAPACITY AS FEDERAL LIAISON FOR THE INTERNATIONAL ASSOCIATION OF OFFICIAL HUMAN RIGHTS AGENCIES, I HAVE HAD NUMEROUS DISCUSSIONS WITH THE DIRECTORS OF STATE AND LOCAL COMMISSIONS ACROSS THE COUNTRY. THE GREAT MAJORITY OF STATE AND LOCAL LEADERS WITH WHOM I HAVE DISCUSSED THE MATTER, BELIEVE THAT INCREASED FEDERAL ENFORCEMENT ACTIVITY IS IMPERATIVE.

IN RECENT YEARS THERE HAS BEEN A SIGNIFICANT INCREASE IN VIOLENCE AGAINST BLACKS AND OTHER MINORITY GROUPS. BLACKS AND MEMBERS OF OTHER RACIAL, ETHNIC AND RELIGIOUS MINORITY GROUPS ACROSS THIS NATION ARE FACED WITH REPORTS OF RACIALLY AND ETHNICALLY MOTIVATED VIOLENCE AND

EVEN MURDER ON AN ALMOST DAILY BASIS. FURTHER, ORGANIZATIONS OPENLY COMMITTED TO RACISM, TO ANTI-SEMITISM, AND TO ACTS OF RACIAL AND ETHNIC VIOLENCE, HAVE INCREASED THEIR RECRUITMENT EFFORTS AND THEIR ORGANIZATIONAL ACTIVITIES. THE LEADERS OF THESE GROUPS TRAVEL FROM STATE TO STATE RECRUITING MEMBERS AND SPREADING THEIR MESSAGE OF HATRED AND VIOLENCE.

IN CONNECTICUT INCREASED REPORTS OF RACIAL AND ETHNIC VIOLENCE LED THE STATE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES TO CONDUCT A STUDY WHICH INCLUDED LENGTHY PUBLIC HEARINGS ON VIOLENCE AGAINST MINORITIES IN THE STATE. THE HEARINGS WERE HELD IN NOVEMBER AND DECEMBER 1979 AND A REPORT TO THE GOVERNOR WAS ISSUED IN APRIL 1980. A COPY OF THIS REPORT IS BEING SUBMITTED TO CHAIRMAN CONYERS AND COPIES OF THE REPORT'S TITLE PAGES ARE ATTACHED TO THIS STATEMENT. THE REPORT CONCLUDED THAT, IN RECENT YEARS, AND IN PARTICULAR SINCE 1978, CONNECTICUT HAS EXPERIENCED A SIGNIFICANT INCREASE IN THE NUMBER OF INCIDENTS MOTIVATED BY PREJUDICE, SPECIFICALLY CROSS BURNINGS, TERRORISM, VANDALISM TO PROPERTY AND HARASSMENT. THE REPORT FURTHER FOUND THAT HATE LITERATURE ORIGINATING OUT OF STATE HAS BEEN INCREASINGLY USED FOR RECRUITMENT PRUPOSES AT CONNECTICUT SCHOOLS, FACTORIES AND SHOPPING AREAS. LOUISIANA-BASED KLAN GROUPS HAVE MAILED HATE LITERATURE AND MEMBERSHIP MATERIALS, INCLUDING KU KLUX KLAN MEMBERSHIP CARDS AND COSTUMES, TO CONNECTICUT RESIDENTS.

THE CONNECTICUT LEGISLATURE RESPONDED TO ESCALATING RACIST ACTIVITY BY PASSING TWO BILLS. ONE, PASSED INTO LAW IN 1980, MAKES IT A CLASS A MISDEMEANOR FOR ANY PERSON TO BURN A CROSS ON PUBLIC PROPERTY OR ON PRIVATE PROPERTY NOT OWNED BY THAT PERSON, WITHOUT THE WRITTEN CONSENT OF THE PROPERTY OWNER. THE LAW FURTHER PROHIBITS DESECRATION OF PUBLIC AND PRIVATE PROPERTY, INCLUDING HOUSES OF WORSHIP AND CEMETARIES. THE

SECOND BILL, AN ACT CONCERNING PARAMILITARY CAMPS, WAS PASSED DURING THIS LEGISLATIVE SESSION AND IS NOW AWAITING THE GOVERNOR'S SIGNATURE. COPIES OF THESE BILLS ARE ATTACHED TO THIS STATEMENT.

BUT EVEN WITH SUCH LAWS, THE STATES CANNOT COMBAT THIS RISING TIDE OF RACISM ALONE. NATIONALLY KNOWN KLAN LEADERS SUCH AS DAVID DUKE AND BILL WILKINSON HAVE TRAVELED TO CONNECTICUT AND TO OTHER STATES TO ORGANIZE RALLIES AND TO RECRUIT SUPPORTERS. HEAVILY ARMED KLAN CONTINGENTS HAVE ARISEN IN SEVERAL STATES AND HAVE USED THEIR WEAPONS TO INJURE AND TO KILL UNARMED ANTI-KLAN PROTESTORS AND MINORITIES. WILKINSON HAS OPENLY ACKNOWLEDGED THE EXISTENCE OF PARAMILITARY TRAINING CAMPS WHERE KLAN MEMBERS ARE BEING TRAINED FOR ARMED ATTACK ON THE MINORITY POPULATIONS OF THE UNITED STATES. THESE CAMPS ARE REPORTED TO BE PRESENTLY OPERATING IN FIVE STATES.

LAST SEPTEMBER, MR. WILKINSON APPEARED AT A WEEKEND RALLY HELD IN A SMALL CONNECTICUT TOWN AND ORGANIZED BY HIS GROUP. HE THEN LEFT THE STATE. BUT OCTOBER AND NOVEMBER BROUGHT AN INCREASE IN RACIALLY MOTIVATED HARRASSMENT AND VIOLENCE. SEVERAL CROSSES WERE BURNED ON THE LAWNS OF BLACK OWNED HOMES IN NEARBY TOWNS, AND AT LEAST ONE BLACK CONNECTICUT FAMILY SUFFERED THE TRAUMA OF BEING AT HOME WHEN THEIR HOUSE WAS FIREBOMBED IN A RACIALLY MOTIVATED ATTACK. WHETHER THE PERPETRATORS OF THESE ACTS ARE MEMBERS OF THE KLAN OR OF OTHER ORGANIZED HATE GROUPS, THEY ARE, WITHOUT A DOUBT, INFLUENCED BY THE ATMOSPHERE OF RACIAL VIOLENCE AND HATRED FOSTERED BY THE KLAN AND BY SIMILAR ORGANIZATIONS.

IN THESE TIMES OF INFLATION AND OF ECONOMIC UNCERTAINTY, PEOPLE'S MINDS BECOME MORE VULNERABLE TO THE KIND OF RACISM AND SCAPE-GOATING THAT RESULT IN RACIAL, ETHNIC AND ANTI-SEMETIC VIOLENCE. THEREFORE, THE ACTIVITIES OF RACIST GROUPS AND INDIVIDUALS MUST BE TAKEN MORE SERIOUSLY.

WE DO NOT SUBSCRIBE TO THE NOTION THAT THE PROPER WAY TO REDUCE RACIAL TENSION IS TO RETREAT FROM THE NATION'S COMMITMENT TO RACIAL AND ETHNIC EQUALITY AND JUSTICE. WE CANNOT STOP OUR EFFORTS TO AFFIRMATIVELY REDRESS THE INJUSTICES WHICH STILL SURVIVE AMERICA'S LONG AND NOT YET SUCCESSFUL BATTLE AGAINST DISCRIMINATION AND PREJUDICE. RATHER, WE MUS FORCEFULLY PURSUE FULL EQUALITY FOR AMERICA'S MINORITIES AND WE MUST ALSO VIGOROUSLY PROSCRIBE ACTS OF VIOLENCE AND DESTRUCTION MOTIVATED BY HATRED AND PREJUDICE.

THE FULL FORCE OF BOTH FEDERAL AND STATE LAW AND RESOURCES MUST BE UTILIZED TO PROTECT THE SAFETY AND THE CIVIL RIGHTS OF OUR MINORITY POPULATION. EVERY AMERICAN, WHETHER BLACK OR WHITE, MUST UNDERSTAND THAT BOTH HIS STATE AND HIS FEDERAL GOVERNMENT WILL NOT TOLERATE RACIAL BASED VIOLENCE, HARASSMENT AND MURDER. THE FEDERAL GOVERNMENT MUST ENGAGE IN FULL AND SWEEPING ENFORCEMENT OF THE FEDERAL CIVIL RIGHTS STATUTES, BOTH CRIMINAL AND CIVIL. PARAMILITARY CAMPS TRAINING RECRUIT FOR A RACE-WAR MUST BE ELIMINATED.

IT IS DIFFICULT TO IMAGINE THAT ANY LEGITIMATE STATE OR LOCAL CIVI. RIGHTS AGENCY WOULD DO OTHER THAN APPLAUD A RENEWED FEDERAL COMMITMENT TO ENFORCEMENT OF THE LAWS PROTECTING THE RIGHTS AND SAFETY OF OUR MINORITY POPULATION. STATE AND LOCAL HUMAN RIGHTS AGENCIES WILL DO ALL THAT THEY CAN TO COMBAT RACISM. IN CONNECTICUT, THE STATE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES IS WORKING WITH GOVERNOR O'NEILL TO ESTABLISH A COMMITTEE TO COUNTER EXTREMIST HATE GROUP ACTIVITY AND PROPAGANDA. SIMILAR STATE AND LOCAL COMMITTEES ARE WORKING IN COMMUNITIES ACROSS THE COUNTRY TO COMBAT RACISM AND ANTI-SEMITISM. BUT THE STATES ACTING ALONE CANNOT SUCCESSFULLY COMBAT THIS NATIONWIDE THREAT TO OUR SOCIETY. FEDERAL HELP IS NEEDED.

WHEN RACIAL VIOLENCE IS STRONGLY AND FIRMLY OPPOSED, RACIAL INCIDENTS DECREASE IN NUMBER AND SEVERITY. WHEN GOVERNMENTAL AUTHORITIES ARE INDIFFERENT, VIOLENT RACISTS STEP UP THEIR ACTIVITIES AND PEOPLE UNCERTAIN AS TO WHETHER THEY SHOULD PARTICIPATE IN DISCRIMINATION AND VIOLENCE TAKE GOVERNMENTAL INACTION AND INDIFFERENCE TO BE APPROVAL. THIS ESCALATING VIOLENCE CANNOT BE IGNORED BY THE FEDERAL GOVERNMENT, FOR UNLESS THE GOVERNMENT TAKES FORCEFUL AND COMMITTED ACTION, RACIAL AND ETHNIC VIOLENCE AND HATRED WILL DESTROY OUR SOCIETY.

VIGOROUS FEDERAL ENFORCEMENT OF THE BASIC CIVIL RIGHTS AND SAFETY OF AMERICA'S MINORITIES WILL SEND A STRONG MESSAGE TO THE PEOPLE OF THIS NATION. IT WILL SERVE TO ASSURE VICTIMS OF RACISM THAT AMERICA WILL NOT TOLERATE RACIAL TERRORISM. IT WILL SERVE TO ASSURE THOSE COMTEMPLATING RACIAL VIOLENCE THAT AMERICA WILL NOT CONDONE AND WILL, IN FACT, PUNISH SUCH ACTIONS. STATE AND LOCAL CIVIL RIGHTS ENFORCEMENT AGENCIES CAN WORK IN COOPERATION WITH THE FEDERAL GOVERNMENT. BUT THE RISE IN VIOLENCE IS ALARMING AND THE CRISIS IS A NATIONAL, RATHER THAN A LOCAL ONE. THE RESOURCES AND THE SOCIETAL FORCE OF ALL LEVELS OF GOVERNMENT MUST BE USED TO COMBAT THIS EVIL.

Substitute House Bill No. 5060

PUBLIC ACT NO. 80-54

AN ACT CONCERNING THE DESECRATION OF PROPERTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 53-34 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any person who subjects, or causes to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the constitution or laws of this state or of the United States, on account of RELIGION, NATIONAL ORIGIN, alienage, color, race, sex or blindness or physical disability, as defined in section 1-1f, shall be guilty of a class A misdemeanor.

(b) ANY PERSON WHO INTENTIONALLY DESECRATES ANY PUBLIC PROPERTY, MONUMENT OR STRUCTURE, OR ANY RELIGIOUS OBJECT, SYMBOL OR HOUSE OF RELIGIOUS WORSHIP, OR ANY CEMETERY, OR ANY PRIVATE STRUCTURE NOT OWNED BY SUCH PERSON, SHALL BE IN VIOLATION OF SUBSECTION (a). FOR PURPOSES OF THIS SUBSECTION, "DESECRATE" MEANS TO MAR, DEFACE OR DAMAGE AS A DEMONSTRATION OF IRREVERENCE OR CONTEMPT.

(c) ANY PERSON WHO PLACES A BURNING CROSS OR A SIMULATION THEREOF ON ANY PUBLIC PROPERTY, OR ON ANY PRIVATE PROPERTY WITHOUT THE WRITTEN CONSENT OF THE OWNER, SHALL BE IN VIOLATION OF SUBSECTION (a).

Certified as correct by

_____
Legislative Commissioner.

_____
Clerk of the Senate.

_____
Clerk of the House.

Approved April 18, 1980

_____
Governor.

Substitute Senate Bill No. 304

PUBLIC ACT NO. 81-243

AN ACT CONCERNING PARAMILITARY CAMPS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) As used in this section:

(1) "Civil disorder" means a public disturbance involving acts of violence by a group of three or more persons which causes an immediate danger of or results in damage to the property of or injury to any other person.

(2) "Explosive or incendiary device" means (A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile or similar device, and (C) any incendiary bomb or grenade, fire bomb or similar device, including any device which (i) consists of or includes a breakable container which contains a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by an individual.

(3) "Firearm" means a firearm as defined in section 53a-3 of the general statutes.

(b) No person shall (1) teach or demonstrate to any person the use, application or making of any firearm, explosive or incendiary device, or technique capable of causing injury or death to a person, knowing or intending that such firearm, explosive, incendiary device or technique will be unlawfully employed for use in, or in furtherance of, a civil disorder; or (2) assemble with one or more persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device, or technique capable of causing injury or death to a person, intending to employ unlawfully such firearm, explosive, incendiary device or technique for use in, or in furtherance of, a civil disorder.

(c) Any person who violates any provision of this section shall be guilty of a class C felony.

(d) Nothing in this section shall make unlawful any act of any peace officer, as defined

in section 53a-3 of the general statutes, performed in the lawful discharge of his official duties.

Certified as correct by

_____
Legislative Commissioner.

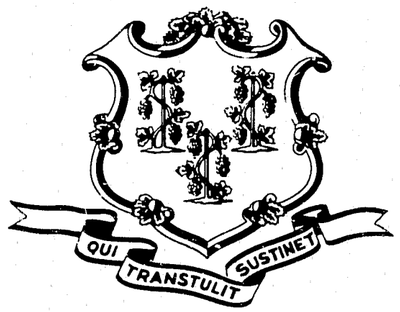
_____
Clerk of the Senate.

_____
Clerk of the House.

Approved _____, 1981

_____
Governor.

Report of Incidents of Cross Burnings and Vandalism Motivated by Racial and Religious Prejudice in Connecticut



Findings and Recommendations of the Connecticut Commission on Human Rights and Opportunities

April 1980

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COMMISSIONERS
OF THE
CONNECTICUT COMMISSION ON HUMAN RIGHTS
AND OPPORTUNITIES

Attorney Clarance J. Jones, Chairperson, New Haven

Yolanda Barrett, Deputy Chairperson, Winsted

Otylia Malinowski, Secretary, Madison

William J. Brown, Hartford

Pedro F. Delgado, Bridgeport

Delores P. Graham, West Haven

Karl Honsberger, Guilford

Attorney M. Philip Lorber, Westport

Reverend Christopher L. Rose, New London

Leonor Toro, Bridgeport

Reverend A. Roger Williams, Bloomfield

Arthur L. Green, Director

Angelo T. Serluco, Assistant Director

Philip A. Murphy, Jr., Commission Counsel

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SELECT PANEL

Attorney M. Philip Lorber, Westport, Chairperson

Karl Honsberger, Guilford

Reverend Christopher L. Rose, New London

Attorney Clarance J. Jones, New Haven, Chairperson of the
Connecticut Commission on Human Rights and Opportunities, ex officio

Philip A. Murphy, Jr., Commission Counsel

"All that is necessary for the triumph of evil is that good men do nothing." Edmund Burke.

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FOREWARD

"The people of Connecticut are outraged and deeply concerned by the rash of racially provocative incidents which have occurred recently in our state and region.

Art Green and the Commission on Human Rights and Opportunities are to be commended for providing this statewide forum on this urgent matter.

The actions by a few who burn crosses or seek to organize on behalf of groups which profess hatred are deplorable. It is clear that these actions have no place in our society. They are totally unacceptable.

Cross burnings and other acts of racial violence are condemned by all responsible persons who believe that our society must be based upon racial justice and harmony. An attack against the dignity of any one person is an affront to us all. We in New England and in the entire country must react quickly and strongly against any insidious attempts to pit one racial or ethnic group against another...

As we approach a new decade, it is appropriate to reflect upon the life and actions of the Reverend Dr. Martin Luther King, Jr. Though confronted with violent attacks, arrests and threats to his life as he sought to bring an end to social injustice, Dr. King steadfastly adhered to a philosophy of non-violence. The words he spoke nearly 18 years ago at the Lincoln Memorial remain an inspiration to us this day. He said then, 'Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksand of racial injustice to the solid rock of brotherhood'.

Our work here in Connecticut toward Dr. King's goals is not yet accomplished. We have come far from that day at the Lincoln Memorial, but we must recognize that there is much left to be done. What we say at this Commission hearing will assist us as we prepare to face the challenges of our future."

Testimony of Ella Grasso, Governor, by Lee Hawkins, Special Assistant, Hartford hearing, page 6.

PREFACE

The Connecticut Commission on Human Rights and Opportunities, at its regular monthly meeting held October 18, 1979, voted to empanel a committee of Commissioners to conduct fact-finding hearings during November and December in Danbury, Norwalk, Bridgeport and Hartford. The hearings were convened November 13, 1979 at the Danbury Regional Center, November 20, 1979 at the Norwalk Community College Continuing Education Center, November 26, 1979 at the Bridgeport Gas Company and December 14, 1979 at the State Capitol. The purpose of the hearings was to compile facts relating to alleged incidents of cross burnings and vandalism motivated by racial and religious prejudice and to thereafter report to the Governor, the General Assembly, and other public and private officials and organizations.

The following is the report on those hearings by the select panel of commissioners. The report begins with a general discussion that culminates in five specific recommendations supported by several findings of fact. Following the general discussion is a separate discussion of each of the several findings of fact and then a separate discussion of the recommendations. The report concludes with samples of testimony received, a list of the reported incidents, a list of the witnesses who testified, and a list of the exhibits submitted.

The Commission thanks all persons who have come forward to testify and who have submitted written materials. The Commission also thanks the Danbury Regional Center, the Norwalk Community College Continuing Education Center, and the Bridgeport Gas Company. Special thanks and acknowledgement go to the Commission staff members who conducted the field work, physical arrangements and logistics, secretarial and clerical assistance, public relations work, a variety of coordinating activity, and the review of many pages of verbatim transcription and preparation of the draft report.

I. INTRODUCTION AND GENERAL DISCUSSION

Connecticut has long been a pioneer in the field of civil and human rights. The Connecticut G al Assembly initiated some of the first legislation concerning equality of opportunity under law when, in 1943, the bill giving the Connecticut Commission on Human Rights and Opportunities its birth as the "Inter-Racial Commission" was signed into law by then Governor Raymond E. Baldwin. Originally, the agency's powers were limited to compiling facts and reporting to the Governor on violations of civil liberties and other related matters. Today, while its duties include the processing of often complex claims filed under various Connecticut statutes, the agency retains its historic fact-finding responsibility. The 1979 hearings were convened in the spirit of that early mandate to seek out and report facts on issues of current public concern.

Newspaper reports and reports to the Commission from members of the public on cross burnings and other related incidents encouraged the Commission, at its regular October 1979 meeting, to establish a public forum for victims and other members of the public to report on these incidents and to suggest how to go about changing the social climate to prevent their recurrence. Special impetus for the hearings came in an October telegram from then State Representative and now Mayor of Danbury, James Dyer, and also in a request by the Connecticut State Conference of the NAACP. Hearings were scheduled in Danbury, Norwalk, Bridgeport and Hartford to provide ample opportunity for people to come forward. Scheduling of further hearings in other locales was contemplated, but the Commission subsequently determined that the four scheduled hearings met the needs of the public.

Serving on the select panel of commissioners designated to conduct the hearings were Commissioner M. Philip Lorber of Westport, Commissioner Karl Honsberger of Guilford, and Commissioner Christopher L. Rose of New London. Commissioner Lorber was chosen by the Commission as the chairperson of the select panel. Also serving as a member of the panel at the Danbury and Hartford hearings was Commissioner Clarance J. Jones of New Haven, Chairperson of the Commission on Human Rights and Opportunities. Commissioner A. Roger Williams of Bloomfield joined the select panel for the Hartford hearing and Counsel for the Commission on Human Rights and Opportunities, Philip A. Murphy, Jr., joined the panel at all the hearings.

Before commencing the hearings, the select panel met to define the purpose and scope of the hearings. The panel determined that the purpose of the hearings was to elicit from the public facts relating to cross burnings and other related incidents, and in particular, to determine whether there was any indication of organized activity in support of the perpetrators of the incidents. The panel further determined and announced through Chairperson Lorber at the beginning of each meeting "...a very broad range of opinion [would] be entertained in keeping with the fundamental principle of free speech guaranteed by the Connecticut and United States Constitutions." No group was singled out by the panel as subject of particular inquiry; rather, certain areas of inquiry were to be explored with each witness, and those areas of inquiry were the following:

> Whether there has been a significant increase in incidents of racial and religious prejudice; and if so,
>
> What may be the cause of these incidents;
>
> Whether any incident was part of a pattern or whether each incident was a random act;
>
> Whether there was any evidence of organizational activities in support of incidents of racial and religious prejudice;

Whether Connecticut criminal statutes adequately serve as a vehicle for prosecution of perpetrators of these incidents;

Whether state or municipal facilities have been used in furtherance of any of these incidents;

How persons have been harmed by these incidents;

What official and community response has been to these incidents.

Questions posed by members of the select panel during the hearings were designed to develop each of the several areas of inquiry.

The press and public were informed by way of a press release dated October 31, 1979, of the various hearings. Letters of invitation were specifically addressed to the Governor, chief executive officers and chief law enforcement officers of the municipalities where the hearings were to take place, and various other officials and community leaders.

The first hearing was convened in Danbury, November 13, 1979, at the Danbury Regional Center. Chairperson Lorber commenced the hearing as he commenced the other hearings, first with a statement of the purpose of the hearing, second with a statement of rules for the conduct of the hearing, and third with an explanation of the statutory authority for the hearings. Appearing at the hearing and providing sworn testimony were, among other persons, then State Representative and now Danbury Mayor James F. Dyer; Pasquale F. Nappi, Superintendent of Danbury Public Schools; Goldie Palmer, Licensed Practical Nurse; Charles R. Gordon, Clergyman, Counselor, Educator and President of the Waterbury Branch, NAACP; Gladys Cooper, President of the Danbury Branch, NAACP; Joseph A. Moniz, President, George W. Crawford Law Association; and Joshua M. Liburd, Community Relations Service Conciliator, U. S. Department of Justice.

The second hearing was convened in Norwalk, November 20, 1979, at the

Norwalk Community College Continuing Education Center. Chairperson Lorber again called the hearing to order. Appearing at the Norwalk hearing with sworn testimony were, among other persons, Edward Brown, Executive Recruiter, self-employed; Samuel L. Briggs, Executive Director of the Norwalk Human Relations Commission; Joseph W. Beres, Jr., Chief of Police, City of Norwalk; Woodrow C. Glover, Executive Director of the Stamford Commission on Human Rights; Linda Davenport, nurse's aide; Bernard Fisher, President of the Greenwich Branch, NAACP; and Wiley Bowling, Instructor, Fairfield Board of Education.

The Bridgeport Gas Company provided the meeting room for the third hearing. That hearing was convened on November 26, 1979. Once again, Chairperson Lorber presided over the select panel. The following were among those persons who testified: Austin McQuigan, Chief Connecticut State's Attorney; Malcolm Webber, Connecticut Regional Director, Anti-Defamation League of B'nai B'rith; and Ben F. Andrews, Jr., State President, Connecticut Conference of the NAACP.

The Hartford hearing held at the State Capitol, November 14, 1979, received as its first testimony a statement by Governor Ella Grasso through her Special Assistant, Lee Hawkins. Richard Blumenthal, United States Attorney for the District of Connecticut, testified as did Donald J. Long, Commissioner of the Connecticut Department of Public Safety; Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center and Associate Dean of Yale University School of Medicine; George A. Athanson, Mayor of the City of Hartford; Richard Tulisano, State Representative, and a host of other witnesses.

The testimony of all the witnesses, both victims of incidents and other concerned persons, has been extremely enlightening to the members of the select panel. Some witnesses have come forward to testify to incidents that

have been directed against them personally and have thereby risked further attack to themselves and their property. Their testimony shows remarkable personal courage. The select panel extends its appreciation to all the witnesses for contributing by their testimony - segments of which are summarized in the Appendix - toward identifying and addressing the problem before the select panel.

And what is that problem? The cross burnings and the other deplorable incidents are the manifestation of the problem, but the clear consensus of the witnesses was that racism is the problem. Witness James P. Comer suggested that "The racial violence is at its deepest root a problem of poor management of aggressive energy, and the poor management of aggressive energy in very many cases is taken out and expressed against the most vulnerable groups in our society." Witness Edward Brown explained, "Basically it comes down to ignorance. It's ignorance and a lack of knowledge of other people." And Witness Edward White, Jr., believes that "...the current resurgence of racist activity has occurred within a framework of historical racism practiced by our civilization and a psychological framework of latent racism which most, if not all, of us harbors individually."

If racism is the problem, then what's the solution? Recommendations received by the select panel from the witnesses included human relations education to students and to teachers, more specific statutory prohibition of cross burnings and related incidents, strong official condemnation of such incidents, desegregation of housing and schools, more severe penalties for engaging in such incidents, better enforcement of the present statutes, victim assistance, restitution to victims, more responsible media coverage of incidents, and improved collection and analysis of data on incidents. The select panel, upon its review of all the testimony and exhibits received, recommends the following:

to local elected officials, to local law enforcement officials, to local community leaders and to local and state school officials, that they respond to the above referenced incidents swiftly and with a strong public statement of disapproval, and that they offer assistance tc victims where appropriate;

to local boards of education and to the state board of education, that all local boards implement human relations curricula designed to foster good will among the racial and religious groups and elements of the population of the State, in accordance with C.G.S. Section 10-226g;

to prosecutorial officials, that criminal statutes that address the above referenced incidents be rigorously invoked, so that persons who would perpetrate such incidents will be on notice that engaging in such incidents will, upon conviction, lead to incarceration or fine;

to local and state law enforcement officials, that a clearing house be designated and maintained for the collection, analysis and dissemination of information regarding incidents of cross burnings and vandalism motivated by racial and religious prejudice;

to the General Assembly, that it consider adopting legislation addressing specifically incidents of cross burnings and swastika markings.

These recommendations will be further discussed below.

These recommendations are based upon the several findings of fact made by the select panel, which are the following:

One, that in recent years and in particular since 1978, Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice, specifically cross burnings, terrorism, vandalism to property, and harassment;

Two, that the victims of these incidents have been and continue to be seriously affected by them;

Three, that these incidents are not the result of any organized activity within the state but were the random acts of individuals;

Four, that although in the majority of these incidents the perpetrators remain unknown, where perpetrators have been observed or apprehended they were said to be juveniles and young adults;

Five, that hate literature bearing out of state return addresses has been widely distributed in Connecticut;

Six, that state and municpal facilities were the sites of literature distribution and recruitment, but that no direct official involvement has been shown;

Seven, that official and community response to these incidents has been uneven;

Eight, that media coverage of these incidents is helpful but often lacking in depth;

Nine, that among the underlying causes of these incidents are economic insecurity, psychological disorder, and ignorance;

Ten, that there is a lack of human relations education to young students, and to educators;

Eleven, that current Connecticut statutes available for the prosecution of these incidents are too broad to address the sensitivities offended;

Twelve, that Connecticut lacks an adequate central data collection, analysis and distribution capacity to facilitate investigation of these incidents and prosecution of the perpetrators.

These findings were adduced as follows: All testimony was transcribed. The written transcript was reviewed page by page and a note card was completed identifying each issue raised by the testimony. The note cards were then organized by related issues. The related testimony, identified by the note cards, was then brought together and read again for consistency, persuasiveness, and relevancy to the purpose of the hearings. Exhibits were then included for review. Finally, where a collection of testimony and exhibits was persuasive and consistent, as well as relevant, a finding was made. There was no rigorous cross examination of witnesses, no verification of testimony other than by other witnesses at the hearing, and no authentication of exhibits other than by other witnesses at the hearing. However, all the testimony and exhibits were very carefully analyzed before our findings were made.

To demonstrate how the findings were conceived and to also give the reader a taste of the testimony received, each finding is discussed in detail below with reference to supporting portions of the transcript. And following that discussion is an explanation for each of the five recommendations of the select panel how it is supported by one or more of the several findings. Finding #1 goes to the incidents themselves. That finding and the related discussion follow.

II. DISCUSSION OF THE FINDINGS

The Select Panel finds:

#1 That in recent years, and in particular since 1978, Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice, specifically cross burnings, terrorism, vandalism to property, and harassment.

Perhaps the most poignant testimony received by the select panel during its four days before the public was the testimony from the victims of the cross burnings and other related incidents. The victims lay before the panel sobering accounts of terror and trauma, accounts that one would hope could only be found today in history books or tales of a bygone era. Edward Brown of Ridgefield told of Christmas Eve in 1978 when he and his family, during holiday festivities in the kitchen of their home, looked outside and discovered a burning cross before their home. Linda Davenport of Stamford reported that she and her family witnessed two cross burnings at their home during 1979, one in June and one on the night of Halloween. Ms. Davenport recognized one of the boys who placed the first burning cross at her home. Sheila C. Spigner of Norwalk testified that at 11:30 p.m. on September 29, 1979, she looked out the front window of her home and saw a fire truck arriving to extinguish a burning eight foot cross that lay against the white column in front of her home. Ms. Spigner stated: "We received damage to the house to say nothing about the fear and the nervous tension that I've been under since the incident."

Other people, not victims, came before the select panel and testified about recent cross burnings in Connecticut. Commissioner of the Department of Public Safety, Donald J. Long, stated that his department, through local law enforcement officials, had determined that there had been seventeen cross burnings in Connecticut in 1979. Sergeant William Schmidt of the Stamford Police Department informed the panel of two cross burnings in Stamford other than the two incidents reported by Ms. Davenport. Edward White, Jr., of New Haven reported that a cross had been burned in New Haven on Edgewood Avenue

during August, 1979, and Louise Etkind of New Haven testified that, also in August, 1979, a cross burning occurred at the Henry Parker for Mayor headquarters in New Haven. Both Mr. White and Ms. Etkind also referred to cross burnings in Milford, two in the early Fall of 1979.

Norwalk's Chief of Police, Joseph W. Beres, Jr., came before the select panel and reported the cross burning at the Spigner residence, as well as one other cross burning in Norwalk. Charles R. Gordon of Waterbury stated that a cross was burned in Waterbury near the Holy Cross School when a Black family moved into the area. Thomas Connally testified to a cross burning in New Britain, also referred to by Allenstine D. Willis of New Britain. Superintendent of the Bridgeport Department of Police, Joseph A. Walsh, reported by mail to the select panel that one cross burning took place in Bridgeport at 36 Beacon Street on September 30, 1979, and another occurred on September 11, 1979, at the end of a runway at the Bridgeport Municipal Airport.

Cross burnings were not the only incidents of terrorism reported to the select panel. Several Black families in the East Shore area of New Haven have had to abandon any effort to settle in that community because of acts of violence inflicted upon them, according to witness Edward White, Jr. Mr. White also stated that the same area has been the scene of unprovoked attacks on Blacks by whites, including a busload made up primarily of children attending a church picnic at Lighthouse Point Park. Also, according to Mr. White, one Black man was severely beaten when attacked by white youths when they came upon him changing a flat tire on a public street in that neighborhood. These incidents show that some Connecticut residents harbor a predisposition for racial violence that even the most apathetic observer must find alarming.

Malcolm Webber testified at the Bridgeport hearing that within the last year in the Town of East Haven a fire bomb was thrown through the window of a

house where a Black family was living. The house was located in an almost all-white neighborhood. Mr. Webber stated that there were small children living in the house, that the house was almost completely destroyed, but that no one was injured. Edward White further testified that other acts of violence against Black families in the East Shore area included throwing rocks through windows, slashing tires on the family's car and crowds of youths gathering outside the residence and shouting, "Get out, nigger!"

Five students dressed up in Ku Klux Klan robes cornered a young girl at a Rocky Hill school during Halloween and chanted harassments at her. Although some people would call the incident a prank, the girl was in deadly fear. So testified Ben F. Andrews, Jr., at the Danbury hearing. And in response to a question to witness James Edler whether he had knowledge of any incidents of racial violence in the Danbury schools, Mr. Edler explained that only the other day in a training program, a teacher shared an incident involving one Black child in her class. Stated the witness, "When everybody paired up to go somewhere, to the art room, very few white children, but a significant number, refused to touch the one Black child when it was time to hold hands. I call that violence in terms of the psychological effect." These examples demonstrate that racial terrorism other than cross burnings plague the people of our state today, even during an era of supposed heightened consciousness, some fifteen to twenty-five years after the beginning of the modern civil rights movement.

Vandalism to property, particularly to that of Black persons living in predominantly white areas and Jewish religious leaders, was reported to the select panel at all four hearings. The Martin Luther King statue in New Britain suffered defacement, as did the Holocaust Memorial in New Haven. Goldie Palmer told the panel that vandals marked KKK in some kind of acid material on the steps leading to the front of her home and also marked a racial

slur on her driveway. Even after having the driveway redone, the slurs still resurfaced. Several witnesses reported KKK markings on public buildings and on local retail buildings. Louise Etkind and Edward White, Jr., spoke of KKK markings on automobiles in Hamden and New Haven.

Although cross burnings, terrorism and vandalism to property are the more frightening incidents of racism reported to the select panel, harassment and slur motivated by racial and religious prejudice were also reported and further demonstrate man's cruelty to those unlike himself. Wiley Bowling told of one of his Black neighbors in Milford who on more than one occasion woke up, went to the door, and discovered a skinned animal in the doorway or on the car. Mr. Bowling also spoke of a young Black girl, a 6th or 7th grader, who was assaulted by whites while waiting for the bus, and was then harassed by the same two thugs while riding the bus for about a mile. The bus driver did nothing to protect her. Several witnesses reported harassing phone calls to Black clergy and other Black persons, and Ben Andrews told of the Conte School where markings on the walls read "KKK are here" and "Colored people, we will kill you". Remarked Mr. Andrews, "And that is at the elementary school." Other testimony reporting incidents of harassment and slurs may be found at the Appendix to the Report, Testimony in Support of Findings of Fact.

Cross burnings, terrorism, vandalism, harassment--all of these incidents were reported to the select panel in persuasive and consistent testimony by numerous witnesses, and that testimony has led the select panel to find that in recent years, and in particular since 1978, Connecticut has experienced a significant increase in the number of such incidents.

That these incidents occurred is one finding. But more importantly, what has been the effect of this on the victims? That is the subject of finding #2 which follows.

The Select Panel finds:

#2 That the victims of these incidents have been and continue to be seriously affected by them.

The select panel came very easily to this finding from the testimony received. Imagine sitting in your living room or kitchen after dark or imagine going to bed at night knowing that one or more people may, because of the color of your skin, be about to place a burning cross up against your home or throw a fire bomb through your front window. Imagine being a young child and wondering as you leave for school in the morning whether this will be the day when a group of thugs because of your race descend upon you with slurs and even physical attacks or corners you in school all dressed in white robes and chanting harassments. Even without testimony at the hearings on the effect of these incidents on the victims the select panel could take notice that victims would necessarily be so affected.

Edward Brown, himself a victim of a cross burning, testified that the meaning of the burning cross is clear to the victim and "...your imagination has a tendency to run away with you. You're apt to think, well, what's going to happen at night when you go to sleep and this and that and the other." Samuel L. Briggs, Executive Director of the Norwalk Human Relations Commission, received calls from the victims of the Norwalk cross-burnings and testified that the wife and mother of the first family was "...at her wit's end, not knowing what to do, ever so upset, very emotional, sometimes almost in tears and very shaken." Another witness testified that his son had a series of bad dreams about the Klan once the cross burnings occurred in his community. And Dr. Comer, Professor of Skilled Psychiatry at Yale Medical School, explained that children are particularly affected by acts of racial violence because in the early years of our lives we are really trying to establish that we are people of value and "...when you receive the feedback, whether it is from parents, neighbors, school teachers or others

in the society, that you are not a valuable person, you can diminish the self. concept of that individual."

Were the cross burnings "pranks"? Some newspapers were said to have so reported the cross burnings and other incidents. The weight of the testimony before the select panel on the question was best summarized by Richard Blumenthal who noted that "...Even a single such incident, whether a cross-burning or leafletting or a veiled threat, is one incident too many, and must be taken seriously and none can be dismissed simply as playful doings of pranksters or juveniles."

Communities can provide assistance to victims of racial violence, through community officials, in the same way that communities conduct disaster relief. So suggested witness James A. Fletcher at the Danbury hearing. Donald J. Long, Commissioner of the Connecticut Department of Public Safety, endorsed for juvenile first offenders probation with a requirement that the offender do some chores for the victim. And Samuel L. Briggs recommended that in addition to strict penal sanctions offenders convicted of cross burnings on private property be required to attend a series of classes designed to provide them a more positive view of minority people, just as some motor vehicle offenders are required to take a certain kind of course.

On the basis of all this testimony, and also merely by taking note of the violence of cross burnings and related incidents and the words of the very victims of these incidents who came before it, the select panel has found that the victims of these incidents have been and continue to be seriously affected by them.

The harm to the victims is a serious enough matter. However, consider the further impact of these incidents should they be found to be part of an organized scheme. Discussion of that issue follows.

The Select Panel finds:

#3 That these incidents are not the result of any organized activity within the state but were the random acts of individuals.

Connecticut law enforcement officials came before the select panel and reported on the results of investigations of the cross burnings and related incidents. Donald J. Long, Commissioner of the Connecticut Department of Public Safety, informed the select panel that as of December 14, 1979, there had been seventeen cross-burning incidents in Connecticut during the past year, but that none of the incidents revealed any organized racist movement, at least as far as could be determined and documented. Austin McQuigan, Chief State's Attorney for Connecticut, stated that as of November 26, 1979, his office had not found any hard evidence which would support a theory that a particular organization is sponsoring the cross burnings. And Richard Blumenthal, United States Attorney for the District of Connecticut, reported to the select panel at the Hartford hearing that his office had encountered no hard or otherwise persuasive evidence that any of the cross burnings or related incidents is linked to organized activity by any group, whether the Ku Klux Klan or any type of racial group. Mr. Blumenthal went on to explain as follows, "That is not to say that the general acceptance in our population, sentiments expressed by those groups or the possibility of activity by such groups may not have played some part in inspiring those kinds of incidents, but so far as the individuals involved as potential defendants in prosecutions are concerned, we have found no evidence to link their actions to the Ku Klux Klan."

Edward White, Jr., President of the New Haven Branch of the NAACP, Malcolm Webber, Connecticut Regional Director of the Anti-Defamation League of B'nai B'rith, and Ben F. Andrews, Jr., President of the State Conference of Connecticut NAACP Branches all supported that conclusion. Mr. White explained to the select panel that although there is evidence that organized activity of racial hate groups is on the rise in Connecticut, so far the specific acts witnessed probably have been committed on a random basis. Mr. Webber observed that if there is no organization generating these racist, anti-semitic acts and they are instead random acts, the acts show an undercurrent of latent racism and anti-semitism that is "terribly alarming". And Mr. Andrews cautioned that although there may not be an "organization" in the very strict sense of the word, there may nevertheless be a network of contacts and relationships that although difficult to identify does indeed support the cross burnings and related terrorist acts.

The weight of the testimony before the select panel, then, supports a finding that the incidents are not the result of organized activity. However, the select panel received plenty of testimony on hate organizations in Connecticut generally, and the panel has found that testimony to be very enlightening. J. Michael Smith informed the select panel that the Ku Klux Klan, organized in 1865 with the original intent "...to protect white people against black folks" has at one time in different parts of the country been anti-Jewish, anti-Catholic, and anti-Irish. Explained Mr. Smith, "You see, in the beginning, they have their roots in being against or anti different ethnic groups."

Dr. Charles R. Gordon bemoaned the return to "...those shameful periods of unprecedented brutality precipitated by terror groups such as the Ku Klux Klan and the white citizens council, the 'Red Shirts', and the Knights of Camelia [who] were allowed to rape black women without question and any punishment imposed, and black men were lynched, castrated, set afire, dragged over the highways and the byways, until the skin was worn away from their bodies and they begged for the mercy of death to end their agony..."

Exhibit B-2, entitled "Facts" and published November, 1979, by the Anti-Defamation League of B'nai B'rith, set forth that the strength of the Ku Klux Klan in America is now greater than it has been in more than a decade, registering

gains of 20 to 25 percent in overall membership since March of 1978, and doubling its non-member sympathizers during the same period. The exhibit also noted that the Klan has become more violent and confrontational. Bernard Fisher, President of the Greenwich Chapter of the NAACP, testified at the Norwalk hearing that in Connecticut currently there are about two to three hundred members of the Klan and one can join by submitting forty-five dollars with a photo. The Klan has a centrally located computer that records membership and the applicant is a member once he or she receives in return a membership card.

J. Michael Smith and Wiley Bowling both testified that they believed the cross burnings may be an initiation ceremony for new members of the Klan. James Dyer, then State Representative and now Mayor of Danbury, suggested to the select panel that the Klan may have been involved in political pranks, most notably the recent city election in Danbury. Mr. Dyer stated that there is an active Klan group in Danbury and that members of the group have been active in leafletting the area, specifically at Western Connecticut State College, in local schools, and in the retail area, particularly on Main Street.

The Connecticut NAACP Update of Cross Burnings and Ku Klux Klan Activities in Connecticut, exhibit H-12, brought much information before the select panel. The Update states that the Knights of the Ku Klux Klan, a new group, has experienced growth in Connecticut and is essentially a mail order leaderless group that targets 15 to 22 year olds, using high schools, colleges and bars as locales for recruitment. The Update compared the Knights with the United Klan, formerly the leading Klan group in Connecticut which has just about disappeared except for a few loyal followers and "...a small contingent but significant group who meet in the Bridgeport area." Among other points the Update noted that there is a chance that many acts committed by sick people may be attributed to the KKK and that "...the infectious nature of hate and violence the Klan symbolizes could even be more dangerous than the KKK to our society."

Thomas Wright and Ted Meekins both remarked at the long history of the Ku Klux Klan in our country and compared the Klan's longevity with the short life of the Black Panther Party. Mr. Wright noted that "...in five short years, the judicial system and its extensions, the penal system, brought out all its vast resources to bear on eliminating the Black Panthers as a power in the movement for equality. Yet today, 113 years after its inception, the Ku Klux Klan is alive and well and its activities continue to be tolerated, dismissed as 'youthful pranks'..."

The select panel has found the ample testimony on hate organizations in Connecticut very informative. However, all the testimony received persuasively and consistently leads the select panel to find that the cross burnings and other related incidents are not the result of any organized activity within the state but were the random acts of individuals.

Although the finding is that the incidents are not the result of any organized activity, the select panel does reserve various impressions of the individual perpetrators of the acts. Those impressions are the subject of finding #4, which follows.

The Select Panel finds:

#4 That although in the majority of these incidents the perpetrators remain unknown, where perpetrators have been observed or apprehended they were said to be juveniles and young adults.

Quite simply, victims, witnesses, and law enforcement officers all testified persuasively and consistently that perpetrators of cross burnings and related incidents tend to be juveniles and young adults. Goldie Palmer testified at the Danbury hearing that she observed six men between the ages of 18 and 20 vandalize her property. Linda Davenport, victim of two cross burnings at her home, testified that she witnessed during the first incident..."one of the boys with a white tee shirt and jeans on." Ms. Davenport suggested, "It's mostly the sons and kids...You've got some kids that want to make trouble and you've got some that don't." Kathie Garay reported to the select panel in Bridgeport that she knew one of the perpetrators of the cross burnings and that "he's just a menacing little boy. He's fourteen now." "There have been to date in the past year 16 arrests...of those 16 arrests approximately half involved juveniles," reported Donald J. Long, Commissioner of the Connecticut Department of Public Safety. And Chief of Norwalk Police, Joseph W. Beres, Jr., informed the select panel as follows: "In the first incident we arrested a 17 year old youth and a juvenile. In the second incident...we arrested an adult male...in his early 20's."

A profile of the sort of person who is likely to be involved in cross burnings and related behavior was offered to the select panel by Charles Sardeson, Executive Director of the National Conference of Christians and Jews. His organization has observed this kind of behavior in various parts of the country over decades of years and has determined that very frequently the perpetrator is a white male between the ages of 15 and 18 years. Explained Mr. Sardeson, "In many instances this person will not be officially affiliated with an organization such as the Ku Klux Klan or the Neo-Nazi group...He will, in all probability, be a loner, he

will be the kind of young person who has not participated in organized school and community activities." Mr. Sardeson further noted that the perpetrator in many instances has serious doubts about his own self worth, wants to win the approval of his parents and others, and to do so engages in racist violence that the conversations of his parents over the years have led him to believe they would endorse.

Dr. James P. Comer, Professor of Skilled Psychiatry at Yale Medical School, discussed why youths tend to be over-involved in these incidents. Dr. Comer suggested that because youths are being tested intellectually, socially, and emotionally, they are under a great deal of stress, they are concerned about their adequacy, and "...because of that many are vulnerable to ideologies that are transmitted in the society, they are vulnerable to charismatic leaders, they are vulnerable to simplistic solutions...[and] racist...ideas..."

This collection of testimony and other similar testimony has led the select panel to find that where perpetrators have been observed or apprehended they were said to be juveniles and young adults.

Although finding #3 reads that the incidents are not the result of any organized activity, testimony was reviewed on the distribution of hate literature in Connecticut. A summation of that testimony is the subject of finding #5, which follows.

The Select Panel finds:

#5 That literature bearing out of state return addresses has been widely distributed in Connecticut.

Many of the exhibits presented to the select panel can be characterized as hate literature, and most of the literature bears out of state return addresses. The Crusader newspaper, submitted as exhibit D-2 by Danbury Mayor James F. Dyer, is subtitled "The Voice of the White Majority", and bears a Metairie, Louisiana address, as well as a card with a Danbury mailing address. The newspaper is published by the Knights of the Ku Klux Klan. In that newspaper, Grand Wizard of the Knights of the Ku Klux Klan, David Duke, writes that "Soon our people will enter a struggle for freedom far greater than the struggle of our race thousands of years ago against the Huns...The victor shall be the White race and the nationalist idea." In the opinion of the select panel, these words advocate race supremacy. The select panel considers the advocacy of race supremacy utterly revolting and completely un-American. The concept must therefore be attacked and eliminated whenever it appears and the words of Mr. Duke challenged at their very utterance. Another article states, "Every time the enemies of our blood have gravely threatened our people from within or without...our people have always emerged victorious..." The select panel finds the phrase "enemies of our blood" rancid with racism; the only possible purpose of the phrase is to create mistrust and racial conflict. And a lengthy essay on current relations between Black Americans and Jewish Americans suggests that the two groups are likely to close ranks as follows: "Most helpful of all in making the pro-black Gong Show play in Peoria once again would be another Michael (a/k/a Martin) Luther King. No one was better than 'the Kink' at striking the guilt and self-hate of the sanctimonious churchianity types and Eleanor Roosevelt fans..." The select panel finds that the callous reference to Martin Luther King, Jr., demonstrates vicious disrespect for a man nearly universally viewed by Black Americans as a singular champion of the race.

The persons who use these words and distribute this newspaper poison relations between the various racial and religious groups in Connecticut; surely they do nothing to enhance community good will.

Exhibit D-5, submitted to the select panel by Ben F. Andrews, Jr., is a pamphlet entitled "Nightmare", published by the Knights of the Ku Klux Klan with a Metairie, Louisiana mailing address. The pamphlet describes a war between the races in the United States, initiated by Black Americans, all described as unruly savages, pitted against Caucasian Knights of the Ku Klux Klan, all painted as champions of virtue and principle. This literature is an insult to the vast majority of Americans of all races who work hard to support themselves and their families, obey the laws, pay the taxes, and abhor warfare of any kind, particularly between the races. The select panel advises all people of conscience to swiftly and angrily reject this disgusting literature.

Among the collection of exhibits identified as Exhibit D-7 submitted by James Edler of Danbury is an application for membership in the Ku Klux Klan Youth Corps, entitled "White Students Fight for White Power" with a Metairie, Louisiana return address. The membership form states in part as follows, "Racial separation, preferably through Black repatriation to Africa, is the final and only desirable solution to America's racial problems in the opinion of the Klan Youth Corps and the Knights of the Ku Klux Klan." The select panel hastens to note that most Black Americans and their ancestors have lived on these shores longer than most other Americans and their ancestors, but that aside, Black repatriation to Africa is an outrageous suggestion that shows gross disrespect for the grand American tradition of ethnic and cultural pluralism.

Several other newspapers were offered as Exhibits B-7 by Malcolm Webber. The Thunderbolt, with a Marietta, Georgia return address, is apparently published by the National States Rights Party. One article describes an

"expose" on kosher foods, claiming a conspiracy by Jewish Americans against Christian Americans in the advertisment and sale of kosher food products. The article would be absurd were it not so venomous and ripe with religious prejudice. Another article on then-presidential candidate, Jimmy Carter, states, "He is the enemy of the White race. You can tell where a man really stands by the people he associates with. They are the Jews, race-mixers, Red revolutionaries and Black revolutionaries." And another article, replete with race hatred, is entitled, "Negro Blood in White Family Produced a Black 'Throw-back' Baby" and suggests that a study of family photographs can determine "whether...a family tree has been polluted with non-white genes." What purpose can such literature serve other than to foster race hatred?

Submitted with Exhibit B-7 was the National Vanguard newspaper, dated March, 1979, bearing a Washington, D. C. return address, and apparently distributed by the "National Alliance". This publication is replete with Godless and insidious articles bearing titles including the following: "Worst Problem for Whites in Britain - Non-Whites"; "U.S. Race Pollution Up"; "Alien Grip on U.S. Public Opinion Must Be Broken"; and "Leon Degrelle and the Crusades for Europe, Story of the Man Hitler Wanted As A Son." A copy of Attack, the predecessor of National Vanguard and dated February, 1976 was also submitted and bears articles with similar titles. The reader of these publications will remark at how much hate can be concentrated on a printed page.

Joseph A. Moniz, President of the George W. Crawford Law Association, introduced as Exhibit H-7 a newspaper entitled White Student which Mr. Moniz stated was distributed on some campuses. One article suggests that "America is a White man's country. We built it..." The select panel submits that this country was built with the sweat of Black Americans, Native Americans, Asian Americans, Hispanic Americans and others, as well as the efforts of Americans of European ancestry, and that this country is therefore not a "white man's

country" but a country of all the people who have built it, people of all races, creeds and ancestries. Exhibit H-14, submitted by Tobias Schwartz, is a flier entitled "Build White Unity" and is said to have been distributed on the University of Connecticut campus at Storrs. Bearing an Arlington, Virginia mailing address, the flier reads as follows: "White Victory! Wanted: White Fighters Willing to Fight and Smash Race-Mixing. The National Socialist White People's Party is looking for whites who want to work for a national socialist society based upon the eternal truths of our great leader--Adolf Hitler! So if you're fed up with nigger crime (N.Y.C. blackout), nigger quotas (U.Conn), Commies, and fags, write to us..." The select panel deplores the distribution of this flier and encourages campus residents to challenge this racist poison wherever and whenever it appears.

Witnesses testified that the Danbury High School and Junior High School were leafletted in the Fall of 1979 with hate literature and Ku Klux Klan recruitment cards. Joseph W. Beres, Jr., Norwalk Chief of Police, reported similar distribution at the Norwalk railroad station, and others testified to distribution at Western Connecticut State College, the University of Hartford, Conard High School in West Hartford, the Brigedport Mall, the Temple Street parking garage in downtown New Haven, and in Ridgefield, Fairfield and Trumbull. Edward White, Jr., noted that at restaurant stops along trucking routes, Ku Klux Klan promotional activities are taking place. Samples of testimony reporting this distribution may be found at the Appendix to this Report, Testimony in Support of Findings of Fact.

The exhibits themselves, then, as well as testimony received have led the select panel to find that hate literature bearing out of state return addresses has been widely distributed in Connecticut. But has any of this activity taken place at state or municipal facilities? That inquiry is the subject of finding #6, which follows.

The Select Panel finds:

#6 That state and municipal facilities were the sites of literature distribution and recruitment, but that no direct official involvement has been shown.

As noted above, one of the areas of general inquiry developed by questions of the select panel to the witnesses was whether state or municipal facilities have been used in furtherance of any of these incidents. Witnesses testified that literature of the Ku Klux Klan has been distributed on the Western Connecticut State College campus, the University of Connecticut campus at Storrs, in the Danbury High School and Danbury Junior High School, and in other high schools. The same witnesses reported to the select panel that there was no evidence whatsoever of official involvement in the distribution of literature or recruitment. Stated Joseph A. Moniz, "...A large portion of the [incidents] happened on college campuses or schools, high schools...[there has been] nothing that would indicate any involvement by school officials."

Based on all of this testimony, samples of which may be found at the Appendix, the panel so finds.

Official and community response to these incidents is the subject of finding #7, which follows.

The Select Panel finds:

#7 That official and community response to these incidents has been uneven.

Testimony received by the select panel indicated that some elected and law enforcement officials have taken visible public positions condemning the incidents. Joshua M. Liburd reported that the reaction of public officials in Milford was very positive and that the Chief of Police expressed "a great deal of concern, hurt... because according to him, Milford has been a town where there had been racial harmony." According to Mr. Liburd, the Chief demonstrated his commitment to "do everything in [his] power to apprehend the people that were responsible for the cross burnings in Milford." Samuel L. Briggs reported that the Norwalk Chief of Police made a very strong statement about enforcing the law and doing everything in his power to try and apprehend the perpetrators. Mr. Liburd confirmed that Norwalk officials indicated very serious concern about the incidents. Then mayor-elect and now Mayor of Danbury, James F. Dyer, affirmed before the select panel that "Certainly while I'm the Mayor of the City of Danbury, the local law enforcement agency will be so instructed that it will not be taken lightly and will not be regarded as a prank in the City of Danbury." Connecticut Department of Public Safety Commissioner Donald J. Long reported on the monitoring by his department of all local law enforcement responses to the cross burning incidents and testified that "...each case reported has been investigated, with most resulting in arrests." Mr. Long further assured the select panel as follows, "I would like to assure the Committee and the citizens of our state that all acts of this nature occurring in State Police jurisdiction will certainly be fully investigated, and that we will work with the prosecuting authorities towards succcessful prosecutions of these cases. I personally view this type of behavior as a cowardly act, and I feel that these incidents certainly call for the condemnation of our entire society and positive actions by officials." And Victor I. Cizanskas, Stamford Police Chief,

informed the select panel that "In my view, such acts are not vandalism - they are vicious attacks on the rights of Americans guaranteed by our constitution."

Other witnesses demonstrated dissatisfaction with the response of elected and law enforcement officials. Louise Etkind observed that the Mayor of East Haven refused even to acknowledge receipt of a letter to him requesting further investigation of acts of racial terrorism in that community. Gladys Pernel Cooper testified that the former Mayor of Danbury was very uncooperative with the group that arranged the Danbury march for racial harmony, but that Police Chief Nelson Mesido was very helpful. Bernard Fisher noted that the mayor of Stamford "...has not come out strongly..." on the cross burnings in Stamford, and Woodrow C. Glover confirmed that he "...had not seen any statements", although Mr. Glover also noted that the Chief of Police in Stamford later did make a strong statement condemning the incidents. About the cross burning in New Britain, "There has not been one cry of outrage from a single official other than my statement...", stated Allenstine D. Willis of New Britain. Dr. Charles R. Gordon reported that he had delivered some of the hate literature distributed in Waterbury to the Superintendent of Police who indicated he would take care of it, but that the matter was not subsequently addressed by any official. Dr. Gordon compared the response of the police department to the Purolator robbery with the response of the department to grievances of the Waterbury minority community. "If there's a serious problem they have the resources and the talent and the ability to solve that in a matter of hours...it's a matter of motivation and priorities...I think that the real basic problem lies not with the patrolmen and those who are in the rank and file. I think it lies at the top."

Community response to the cross burnings and related incidents was also said to be uneven. For example, James A. Fletcher testified that the Danbury march in support of racial harmony, which took place during the Fall of 1979 in response to the cross burning incidents, demonstrated strong public approbation of the

incidents and created a strong positive feeling in the community. Mr. Fletcher reported that after the march his son no longer had dreams of being attacked because of his race. Another witness spoke of an incident several years ago in West Haven, a fire bombing of the house where the only Black family in the area lived. The witness stated that there was a demonstration in support of the family, neighbors volunteered aid, and the police arrested the alleged perpetrator. Stated the witness, "It was a young man who thought he had community approval for such kinds of acts...[the] reaction of the community was very, very clear. The man was caught; we have not had a repetition." This incident demonstrates the power of a positive community response.

There was also testimony that many members of the public did not respond to the incidents or responded insensitively. One witness testified that after several incidents of racial harassment at the University of Connecticut there were many students who did demonstrate concern and shock that the incidents could occur. However, the same witness testified that there were other students who didn't seem to understand the impact of the incidents or that human beings were injured. Rather, "all they could see...was the good name of the dormitory being taken in question." Thomas Wright testified to comments received from a Black student at Conard High School who expressed distress at her reception by white students at the school. The student explained that the Black students were blamed for writing on the walls, smoking in the bathrooms, and intimidating the white students, but that when a petition of the KKK was distributed and the word "nigger" was written on the walls, the incident was kept quiet. Explained the student, "I am not speaking for myself. I am also speaking for my fellow Black classmates throughout the school. We are all tired of the blame, the sarcastic talk, and the ugly looks as we pass by. We've only come out here to get a decent education and also to educate you to give you a push in the right direction--not for prejudice."

Edward Brown, himself the victim of a cross burning, testified that in the supermarket some people have stopped him to say "The town isn't really like that". However, others have said to him "Maybe you should just get out of here." All of this testimony demonstrates that response by members of the public has not been as positive as it could have been.

The select panel also received testimony on the response of local and state school officials. Pasquale F. Nappi, Superintendent of Schools in Danbury, testified that the principal of the high school took a strong stand in response to the distribution of hate literature at the school and that both he and the principal indicated publicly that any student caught distributing racially inflammatory literature in the school would be suspended. The discipline code of the Danbury schools, distributed to all students, provides for suspension for the use of obscene gestures and racial slurs directed at students or staff. Witnesses testified that the response by Wilby High School in Waterbury and Conard High School in West Hartford to the distribution of hate literature at those schools was weak. Wiley Bowling testified that Milford school officials were responsive but had not yet come up with a plan to educate students on the import of incidents of racial harassment. Edward Brown reported that the Ridgefield school must have taken a positive position in response to the cross burning incident because "...the teachers were certainly now more aware of it and looking out for her [the speaker's daughter] interest."

One witness testified that during Halloween at a Rocky Hill School a young female student was cornered by five white students dressed in Ku Klux Klan robes and chanting harassments. The family turned to the school principal and, according to the witness, the principal simply smiled and wrote the incident off as a prank. Several witnesses testified to the response of University of Connecticut officials to incidents at the university; witnesses testified that the university officials failed to respond to the incidents. However, Dr. Frederick G. Adams, Vice President of Student Affairs and Services at the university, testified that university

officials had investigated the incidents, had not identified the perpetrators, but had developed a broad plan of action at the university to improve human relations among members of the university community.

Richard Blumenthal, United States Attorney for the District of Connecticut, testified on the response by United States law enforcement officials to the incidents. Mr. Blumenthal stated that federal investigations of incidents such as cross burnings had at the time of his testimony, December 14, 1979, resulted in one prosecution at the federal level. He explained that proving criminal intent is difficult and that even where the offender can be identified it may be difficult to prove that his or her purpose in performing a malicious act is to intimidate the victims--to drive them from a neighborhood, for example. Mr. Blumenthal further commented that whatever the outcome of an individual criminal case "...it rarely enhances racial harmony. Because it is an adversary process, because it pits the government against one or more private citizens, and because it may result in a harshly punitive sentence, its emotional impact may be to divide rather than unite a community."

Dr. James P. Comer of Yale University stressed that it is extremely important for the leaders of communities to come forward and speak out in opposition to the incidents of racial and religious prejudice and in support of the victims. Dr. Comer explained that it is important for people in leadership positions to "...give the kind of guidance and support to the principles of American democracy that marginal people in the society need to prevent acting out and displacing their anxiety onto more vulnerable groups in the society..." Representative Richard D. Tulisano, Chairperson of the House Judiciary Committee, endorsed the same approach, that "...those who hold posisitons of responsibility have the duty to condemn not only the acts, but those groups which perpetrate the hate and distrust among our people, whether it be the KKK, the American Nazi Party, or any Black supremacist group."

All of this testimony and other related testimony, carefully read and measured, has led the select panel to conclude that official and community response to these incidents has been uneven; some officials and community members have responded in support of the victims and with strong condemnation of the incidents, whereas others have not.

The select panel's observations on the role of newspaper and television reporting of cross burnings and related incidents will be discussed under finding #8, next.

The Select Panel finds:

#8 That media coverage of these incidents is helpful but often lacking in depth.

The select panel reviewed much discussion on newspaper and television coverage of the reported cross burnings, and the testimony was both in favor and against. Some witnesses suggested that the very reporting of cross burnings in the press and on television encouraged more incidents, whereas other witnesses advocated open publication of the incidents to keep the public informed and to stimulate thought on how to prevent further incidents. Woodrow C. Glover of Stamford offered his opinion that the notoriety given to other incidents in Westchester County and in Norwalk sparked other incidents in Stamford, and that the Stamford Commission on Human Rights therefore decided to give as little notoriety as possible to the first two incidents in Stamford to prevent further inciting incidents. Lucy Johnson, Chairperson of the Permanent Commission on the Status of Women, offered a contrary opinion at the Bridgeport hearing, explaining that "...reporting this sort of thing...is extremely important. It is a complicated issue, and I recognize that, but I come down very strongly on the side of publication...not sensationalism, but very definitely that people must know about it. You cannot really ask people not to do things if nobody knows that they are going on." Austin McQuigan observed before the select panel that "...in this area, as in many areas, sunlight sometimes is the best disinfectant."

Apart from the question of whether or not to report is the question of how to report. Best capturing the balance of the testimony on this issue was Malcolm Webber who observed as follows, "I think the only thing we can ask - ...the press certainly has a duty to report what they consider news and that becomes a very difficult proposition. I don't think we can ask the press not to publish anything. I think we can ask the press to report it in a responsible manner and not sensationalize it. I have seen some sensationalized reports. I think we

have to ask the press to do it in a very responsible manner...I would endorse the editorializing."

The select panel is sensitive to the difficulties inherent in reporting incidents so emotionally charged as cross burnings and swastika marking. The select panel does not presume to instruct Connecticut journalists how to conduct their craft. The panel has, however, received persuasive and relevant testimony which when duly weighed and considered necessarily leads the panel to find that media coverage of these incidents is helpful but often lacking in depth. Although there was contrary testimony on whether media coverage is helpful, the more persuasive testimony brought the panel to conclude that coverage is helpful.

What are the causes of these incidents? Finding #9 follows and addresses this question.

The Select Panel finds:

#9 That among the underlying causes of these incidents are economic insecurity, psychological disorder, and ignorance.

Edward White, Jr., of New Haven reported to the select panel the observation that "most of us have strong latent feelings of racism as a part of our makeup", and that although he feels "certain that there are some individuals in our society who have learned to be color blind and truly oblivious to race...", they are the exceptions. As examples, Mr. White observed that in New Haven where there are large groups of both Blacks and Jews, "black people express racism towards Jews by inaccurately and unfairly attributing the problems of slum housing in black ghettoes to Jews simply because there are some Jewish property owners." Mr. White noted that Blacks forget that there are white Protestant property owners, Italian property owners, and Black property owners as well. "The willingness of many Blacks to place at the doorsteps of Jews the responsibility for slum housing...is an example of latent racism." Mr. White also observed that economic and political achievement by Jews in New Haven and their fear of losing those gains has caused a Jewish racist reaction towards Blacks. "Whatever the cause, many Jews do express racist feelings against Blacks. Many Jews are simply afraid of Blacks and seem to believe most Blacks will ultimately forcibly take their belongings from them and/or physically harm them." Mr. White further observed that other non-whites all suffer race discrimination in America, but, in turn, each of those groups practices racism against whites and frequently against other minorities as well.

Deeply rooted historical racism as well as complex individual insecurities were offered by Mr. White as the sources of this ill will. Mr. White also suggested that less government civil rights activism and less activism by civil rights groups have "let a vacuum develop in which racist activity resurfaced."

Economic conditions were regularly cited to the select panel as a cause of the cross burnings and related incidents. Edward Brown noted that he is a prime target because he is Black and has attained a certain degree of economic success. "You can go into a local tavern and people are agitated and get themselves worked up and start pointing fingers as to why they're not making it economically and why the other guy is." Hartford Mayor George Athanson also endorsed this diagnosis of the problem.

Kenneth Slapin, President of the Norwalk Common Council, remarked to the select panel at the Norwalk hearing that the United States has undergone profound and desirable social change during the last fifteen years and "Social change occasions stress and stress in the society often brings out incidents such as this." Charles Sardeson of the National Conference of Christians and Jews offered the insight that "...we are institutionalizing many of the responses we make to human situations" and that that development is unfortunate "...because it releases individuals of their responsibility to be a part of the building of social fabric in which people are treated with respect and equally. We cannot turn over to institutions all of those things for which we are personally responsible, one to another." And Dr. Thurman Evans, in a similar vein, noted that human relations skills are not valued in our society and should be. "...I submit tnat the basis of all major problems in this world today are not revolved around quadraphysics, they are not revolved around calculus, nor are they revolved around pharmacology or any of those so-called high powered sciences. They are revolved around human relations..."

Goldie Palmer suggested that racially motivated acts of violence are nurtured at the dinner table. Gladys Pernel Cooper, President of the Danbury NAACP, reported that as she was shopping in a store for some draperies, she passed a young child in a carriage. The child was no older than two and the

baby looked up and said, "Oh, Mommy, that black lady is going to steal those." The mother, embarrassed, put her hand over the child's mouth. Ms. Cooper concluded that the mother had implanted in the child that when you see Black people in the store they are there to steal. "You sit and talk to children... You have to be taught at an early age, because...that child starts talking and that mother and father start talking back to that child, that child is taking in everything that they say."

As referenced in the general discussion at the beginning of this Report, Dr. James P. Comer of Yale Medical School opines that racial violence is at its root a problem of poor management of aggressive energy, expressed against the most vulnerable groups in our society. He observes that our competitive society creates winners and non-winners, and that non-winners,in search of ways to feel adequate about themselves, put other people down and participate in and even head hate groups. Herbert Goldstone testified that the advocacy of violence by hate organizations sparks race hatred that otherwise may only remain latent. And Edward Brown summarized much testimony in saying "Basically it comes down to ignorance. It's ignorance and a lack of knowledge of other people."

Ample testimony offered before the select panel at the several hearings decried continuing segregation in schools and housing as well as employment discrimination. William Olds called for public housing in the predominantly white suburbs, real affirmative action efforts, and metropolitan school districts which mesh urban and rural schools, all to put an end to race segregation, an underlying source of racial conflict. In support of his observations on housing and school segregation, Mr. Olds noted, "In this area of the state... minorities represent 10 percent of the twenty-nine towns in the Capitol Region, but 90 percent of the minorities reside within the City of Hartford...In the elementary schools of Hartford the percentage of white students ranges from only

1 percent at the Mark Twain School to 78 percent at the Kennelly School. At the Barbour School, which is the so-called North End, it has 3½ percent white, while 10 or 15 minutes away the Naylor School has 83 percent white. If that is not racial segregation I don't know what is." And Alexander Hinton of Bridgeport reported that the Bridgeport Police Department "...has no Blacks with any rank other than patrolman, not even a sergeant or detective. On our Fire Department two Blacks, no Puerto Ricans." Mr. Hinton further lamented the lack of any comprehensive plan for improved low income housing in Bridgeport.

These various witnesses suggested that until the State of Connecticut and others deal with the root causes of the incidents of race violence - school segregation and exclusionary zoning - the problem of cross burnings and other related incidents are not going to be resolved by public action or statute. As remarked Austin McQuigan "...The criminal law is not going to solve the problems of social and economic disadvantage."

Although the testimony received by the select panel on the underlying causes of the incidents at times painted a rather distressing picture, exhibit H-9 entitled "News from the National Conference of Christians and Jews, 50th Anniversary Survey," February 20, 1979, revealed major shifts in the thinking of White Americans about the quest of Blacks for equality. The survey, conducted by Louis Harris and Associates, polled about 2400 people, including 1673 Whites, an oversample of 281 Jewish people, with subsamples of 86 Spanish Americans, 450 Catholics, and 843 White Protestants. A separate national cross section of 732 Blacks was also surveyed. The survey showed that although in 1966 71% of all whites felt that Blacks were trying to "move too fast", today no more than 37% feel that way, a dramatic decline of 34 points. "...On the key, front-line issue of integrated housing, the number of whites who say they would be upset 'a little, some, or a lot' by Blacks moving into their own neighborhoods has dropped dramatically since 1963, from 62% to 39% today." On affirmative action, "By 70 to 21% a majority of whites feel that 'as long as there are no rigid quotas, it makes sense to give special training and advice to women and minorities so that they may perform better on the job'." By 67 to 17%, a majority of whites favor affirmative action for Blacks in industry, and a comparable 68 to 15% majority favor affirmative action for Blacks in higher education.

Economic insecurity, psychological disorder, ignorance, over-institutionalization of responses to human situations, housing and school segregation - these are among the causes of the cross burnings and related incidents, according to persuasive testimony before the select panel, and the select panel so finds. Finding #10 follows up on one of these elements, human relations skills, and the related discussion follows, next.

The Select Panel finds:

#10 That there is a lack of human relations education to young students and to educators.

Several witnesses suggested that communities must improve efforts at human relations education to students at an early age and to educators. Summarizing much testimony, one witness stated that "[We] should look to see that teachers have had some formal training in teaching those students what acts of this kind really amount to, what stereotyping amounts to, what racism and anti-semitism is and what it can breed..." United States Attorney for the District of Connecticut, Richard Blumenthal, noted that more productive than prosecution in many instances is the general effort at education and fact finding of the sort that the Commission has undertaken. Dr. Comer of the Yale Medical School observed that "...by and large our public schools and our schools in general do not adequately address the issue of preparing young people to live and participate in a responsible way in a democracy, that we have...focused on passing along academic skills but we have not concentrated...on passing along the attitudes, the ideas, the social skills that have to do with handling one's self in a society...They must learn to do so in school and at a very young age...The school offers the best opportunity to address this issue...There is the opportunity to transmit what America is all about."

The Connecticut General Assembly has spoken previously to this very issue. Connecticut General Statutes Section 10-226g authorizes each regional and local board of education to develop a program in intergroup relations training for all teachers employed in the public schools of the district. The authority to implement a program of teacher training exists; the question, then, is whether the regional and local boards of education have developed the programs.

Dr. Barbara Riley of Danbury testified on the anti-racism project in the Danbury school system. Although related to the Danbury school system, the anti-racism project was described as an effort of the Association of Religious Com-

munities, a group of churches and synagogues in the Danbury area that joined together to address social issues that were not being addressed by other local social agencies. Dr. Riley explained that the anti-racism project is three-fold. Part one is anti-racism training for the entire faculty and staff of the Danbury school system. Part two is curriculum development on multi-cultural issues. Part three is the encouragement of minority parent involvement in the Danbury school system. Dr. Riley further explained that in curriculum development the project looks at everything involved in the student educational process, which would mean everything the student sees and reads, how a teacher approaches a student, what topics are "racially loaded", what can be taken away that would help the process - everything in the system.

The Westport School System human relations project was described by testimony as "extremely valuable". Materials provided described the "values clarification" course at Staples High School and in particular that element of the course study entitled the "valuing process". The course description outlined three steps in the "valuing process": (1) the student examines values for him or herself and explores alternatives (choosing); (2) the student decides upon choices from among the examined alternatives (prizing); and (3) the student determines whether he or she acts consistently with the value choices (acting). The course description further explains, "The very nature of our open democratic society poses a severe test for all people, but particularly for young people. The free market of ideas presents a barrage of often conflicting alternatives which are often confusing as one attempts to make crucial life decisions...The values clarification course has two primary goals. One is to help students learn a general process of valuing, applicable to any value-related issue. The second goal is to provide opportunities to apply the valuing process...and thus to gain a keener awareness of one's own, and an appreciation of others' thoughts and feelings." There is in Westport, then, and perhaps also in other cities and

towns, a model from which other boards of education can develop human relations curricula.

Many persons testified that where perpetrators have been observed or apprehended they were juveniles and young adults. Donald J. Long, Commissioner of the Department of Public Safety, testified that of the arrests made to date half involved juveniles. Victims of incidents testified that perpetrators were juveniles and young adults. Human relations education at a young age therefore becomes all the more compelling.

There is, then, ample support for the proposition that boards of education should implement human relations curricula designed to foster good will among the racial and religious groups and elements of the population of the state.

Although education was shown by testimony to be an important way of meeting the problem of the cross burnings and related incidents, there was also plenty of discussion on whether the current criminal statutes need to be altered. That difficult question is the subject of finding and discussion #11, which follows.

The Select Panel finds:

#11 That current Connecticut statutes available for the prosecution of these incidents are too broad to address the sensitivities offended.

Austin McQuigan, Chief State's Attorney for Connecticut, Richard Tulisano, Chairperson of the House Judiciary Committee, and Donald J. Long, Commissioner of the Connecticut State Department of Public Safety all endorsed strengthening Connecticut law in this area. Mr. McQuigan suggested increasing the criminal penalty for cross burning and observed that "...perhaps if this society would deal with that specifically and increase the penalty for it we are, in effect, showing our distaste..." Mr. McQuigan further observed that the current statutes being applied don't "...focus on the act as it really is, symbolic burning, which, in effect, may intimidate the people who are subjected to the viewing of it, and we don't have a statute dealing with that particular type of activity." And Mr. Long reported to the select panel that Connecticut law enforcement officials are "...using a broad law, such as a breach of peace, to enforce these violations." Also, "I would think that specific legislation that would address specific acts such as cross burning and posting swastikas and other racial incidents would be advisable."

The select panel also received contrary testimony. Michael R. Sheldon, Professor at the University of Connecticut School of Law and Director of the Criminal Law Program, shared his opinion that the laws are sufficient and that the problem is that the law has not been enforced. "The problem is not that the people don't have the tools but the people are unwilling or unable to use them..." On a particular proposed bill that would more specifically proscribe cross burning, Mr. Sheldon observed that it "...doesn't add anything to the statute on criminal mischief right now, whereby desecration, whether or not racially intended, would be punishable and...would be much easier to prove and a prosecutor would more likely be able to practice under that..."

Considering all the testimony on the question, the select panel concludes

that the cross burnings, terrorism and related incidents are so traumatic to the victims and offensive to the public that the people of Connecticut should state in one voice through the criminal law that these specific acts are unacceptable and that perpetrators will suffer the full legal consequences of their conduct. Accordingly, statutes that more specifically address the sensitivities offended would be advisable.

With Mr. Sheldon's comments in mind, the select panel considers data collection, analysis and distribution to assist law enforcement officials in 'using the tools available'. That is the subject of the final finding #12 and discussion which follow.

The Select Panel finds:

#12 That Connecticut lacks an adequate central data collection, analysis and distribution capacity to facilitate investigation of these incidents and prosecution of the perpetrators.

Ted Meekins, Bridgeport Police Officer, suggested to the select panel at the Brideport hearing that "...an effective means of recording such instances [sic] will be established, so it can be determined if this is just happening in one locale or is it something that's happening in all communities." Mr. Meekins observed that a great percentage of incidents do not go reported to the law enforcement authorities. Malcolm Skeeter, a sergeant with the Norwalk Police, offered a specific suggestion, that "...there should be an investigative task force made up of state police investigators and investigators from local police departments throughout the various counties in the state for the purpose of collecting data...so that information is at least available to investigators once there is an occurrence of such an incident which may not be sporadic or individually motivated." Lee Hawkins, speaking for Governor Grasso, touched on this very theme by informing the select panel that her office in December was coordinating through the Connecticut Justice Commission "...a state effort to establish the investigative capacity in an appropriate state agency to pursue and bring to justice those who perpetrate such acts of racial violence."

The need for a central data collection body was vividly illustrated by the testimony of Joshua M. Liburd, U.S. Department of Justice Community Relations Service Conciliator, who informed the select panel that his organization does not have data on the number of incidents such as cross burnings. "We don't have any more information than we can get from the Associated Press or local newspapers. For example, there were incidents I heard about today from the woman who testified earlier, I never heard of these things before."

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Connecticut Department of Public Safety Commissioner Donald S. Long reported to the select panel at the Hartford hearing that his department had checked with the local police departments that had been involved in each of the reported incidents, and had even monitored for each reported incident whether there had been an arrest and where there had been an arrest what was the charge. The select panel notes the testimony of Commissioner Long and commends the Department of Public Safety for its close monitoring of the reported incidents. The select panel also notes the above-referenced testimony and other testimony received that easy access to data analysis on these incidents is critical in addressing them intelligently, which testimony persuasively and consistently leads the select panel to find that Connecticut lacks an adequate central data collection, analysis and distribution capacity to facilitate investigation and prosecution of these incidents.

With this discussion of finding #12, then, the select panel concludes its discussion of each of the several findings. The select panel reminds the reader that samples of testimony received in support of the findings of fact may be found at the Appendix and will provide the reader with an even more detailed look at how each finding was reached.

The select panel now turns to a discussion of its recommendations and their support in the findings of fact.

III. DISCUSSION OF THE RECOMMENDATIONS

Having discussed in detail each of its several findings of fact, the select panel now turns to its recommendations.

How has the select panel moved from its findings of fact to its recommendations? The select panel reviewed all of its findings of fact and all supporting testimony and exhibits received, including the many specific recommendations of the witnesses. The panel then compiled five recommendations that in the opinion of the panel specifically and practically address the problems presented by the findings. The panel has considered other recommendations but has chosen to avoid broad, undirected recommendations that defy any practical response and has instead suggested specific directed action that in the opinion of the panel can bring about tangible results.

The recommendations have been set out above in the introduction and are discussed here in greater detail, with reference to the findings that gave rise to each.

Recommendation #1:

> to local elected officials, to local law enforcement officials, to local community leaders and to local and state school officials, that they respond to the above referenced incidents swiftly and with a strong public statement of disapproval, and that they offer assistance to victims where appropriate.

This is based on the findings:

> #1 That in recent years...Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice...
>
> #2 That the victims of these incidents have been and continue to be seriously affected by them.

#7 That official and community response to these incidents has been uneven.

Having found an increase in cross burnings and related incidents that have seriously affected the victims, and having found an uneven response to the incidents by officials and the community, the select panel directs to all local and community officials a plea that in the future they respond with a strong, clear voice condemning the incidents and supporting the victims.

Recommendation #2:

to local boards of education and to the state board of education, that all local boards implement human relations curricula designed to foster good will among the racial and religious groups and elements of the population of the state, in accordance with C.G.S. Section 10-226g.

This is based on the findings:

#1 That in recent years...Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice...

#3 That these incidents are not the result of any organized activity within the state but were the random acts of individuals.

#4 That although in the majority of these incidents the perpetrators remain unknown, where perpetrators have been observed or apprehended they were said to be juveniles and young adults.

#5 That hate literature bearing out of state return addresses has been widely distributed in Connecticut.

#6 That state and municipal facilities were the sites of literature distribution and recruitment, but that no direct official involvement has been shown.

#9 That among the underlying causes of these incidents are economic insecurity, psychological disorder, and ignorance.

#10 That there is a lack of human relations education to young students, and to educators.

Having found an increase in cross burnings and related incidents that are random acts by juveniles and young adults, and having found that hate literature has been widely distributed, predominantly at junior and senior high schools and

college campuses, and having further found that ignorance is a principal cause of the incidents and that there is a lack of human relations education to young students and educators, the select panel appeals to local boards of education and to the state board of education: act now! Implement human relations curricula designed to foster understanding and good will among the racial and religious groups of the state. You are in a singular position to insure that our population develops a consciousness that will not tolerate acts of racial terrorism.

Recommendation #3

to prosecutorial officials, that criminal statutes that address the above-referenced incidents be rigorously invoked, so that persons who would perpetrate such incidents will be on notice that engaging in such incidents will, upon conviction, lead to incarceration or fine.

This is based on the findings:

#1 That in recent years...Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice...

#2 That victims of these incidents have been and continue to be seriously affected by them.

#7 That official and community response to these incidents has been uneven.

Having found an increase in cross burnings and related incidents that have seriously affected the victims, and having also found an uneven response to the incidents by officials and the community, the select panel recommends swift and consistent administration of the applicable criminal statutes. Swift and consistent administration of those statutes will show the victims that justice will be done and that they will be made secure and also will show the perpetrators and would-be perpetrators that there is a stiff price to pay for engaging in acts of racial terrorism in Connecticut.

Recommendation #4:

to local and state law enforcement officials, that a clearing house be designated and maintained for the collection, analysis and dissemination of information regarding incidents of cross burnings and vandalism motivated by racial and religious prejudice.

This is based on the findings:

#1 That in recent years...Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice...

#3 That these incidents are not the result of any organized activity within the state but were the random acts of individuals.

#4 That although in the majority of these incidents the perpetrators remain unknown, where perpetrators have been observed or apprehended, they were said to be juveniles and young adults.

#5 That hate literature bearing out-of-state return addresses has been widely distributed in Connecticut.

#8 That media coverage of these incidents is helpful but often lacking in depth.

#12 That Connecticut lacks an adequate central data collection, analysis and distribution capacity to facilitate investigation of these incidents.

The select panel has found an increase in cross burnings and related incidents, and has found that the incidents are random acts by juveniles and young adults, but is hungry for further information on the incidents. The select panel has also found that hate literature bearing out-of-state return addresses has been widely distributed but has relied on informal sources of information for that finding. The select panel has further found that media coverage, often the sole source of public information on these incidents, is helpful but often lacking in depth, and also that there exists no central data collection, analysis and distribution body to facilitate investigation of these incidents. Having so found, the select panel recommends that such a central data collection, analysis and distribution capacity be developed centrally by cooperation of all necessary state and local officials and personnel.

Recommendation #5:

to the General Assembly, that it consider adopting legislation addressing specifically incidents of cross burnings and swastika markings.

This is based on the findings:

#1 That in recent years...Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice...

#2 That the victims of these incidents have been and continue to be seriously affected by them.

#11 That current Connecticut statutes available for the prosecution of these incidents are too broad to address the sensitivities offended.

Having found an increase in cross burnings and related incidents that have seriously affected the victims, and having found that current Connecticut statutes are inadequate, the select panel recommends to the General Assembly adoption of legislation that very specifically proscribes cross burnings and swastika markings. The select panel notes that a very specific proscription will put would-be perpetrators on notice of public abhorrence of those acts and will also obviate challenges to the statutes on grounds of vagueness. The select panel sees no infraction of constitutional guarantees of free speech and assembly in the very specific proscription of acts that are universally understood by men and women of common intelligence to incite racial and religious hatred and violence, and that by their nature and history can serve no other purpose.

CONCLUSION

This Report has summarized the 1979 hearings on racial and religious violence. After a general discussion of the hearings and the problem before the select panel, each of the twelve findings of the select panel has been discussed and each of the five recommendations of the select panel has been supported by findings and discussed. The select panel directs the reader to the Appendix of this Report for

samples of testimony, a list of the reported incidents, a list of the witnesses who testified and a list of exhibits submitted. Also, anyone who would like to read the entire transcript of the hearings and the exhibits may do so by contacting the Office of the Director, Commission on Human Rights and Opportunities, 90 Washington Street, Hartford, 06115, telephone 566-3350.

The select panel has been enlightened by the hearings, at times alarmed and discouraged, and at times encouraged and impressed by the commitment of diverse members of the Connecticut public to the development of racial harmony. It was said by several witnesses that the very provision of a public forum on the incidents by the Commission has improved the social climate and reassured the victims. Now having conducted and concluded the hearings, the select panel urges quick action on its five recommendations, and closes with the following words of Dr. Comer of Yale Medical School, calling for a unified public and private effort on all fronts to do away with the causes of racism and racial violence:

> Fortunately most youths and most persons are not diehard racists. Most are responsible citizens, even if [some] hold racist attitudes of one kind or another. Most of the polls and observations of behavior indicate that racial attitudes are changing in our society, that they are, in fact, improving, and yet the future depends a great deal upon the economic and social conditions of the society because our sense of adequacy is so much predicated upon our ability to take care of ourselves, and that means that we have to be able to earn a living. The future also depends on how responsive authority figures in the society in politics, in government, in the economic system, in the religious areas, in the judicial system, in the educational system and in families address this particular problem.

Let us hope that with the appropriate action the people of Connecticut will no longer suffer the trauma of cross burnings and other incidents of racial and religious terrorism and that we may experience an era of prolonged good will among the racial and religious groups in the population of the state.

TESTIMONY IN SUPPORT OF FINDINGS OF FACT

The Select Panel finds:

#1 That in the past year, Connecticut has experienced a significant increase in the number of incidents motivated by racial and religious prejudice, specifically, cross burnings, terrorism, vandalism to property, and harassment, insult and slur.

> "There have been seventeen cross burning incidents in Connecticut in the past year."
> Donald J. Long, Commissioner, State of Connecticut Department of Public Safety, Hartford hearing, p.65.

> [In response to the question of approximately how many incidents of cross burnings and vandalism motivated by racial and religious prejudice that the office of the United States Attorney for the District of Connecticut has looked into in Connecticut, the following was stated:] "I would say that the number is between five and ten such incidents. The way that we ordinarily carry case files of this type may result in a larger number of individual defendants or individual victims, since some of these incidents involve more than one of each, but I would say that the total number of incidents is about that number, five to ten."
> Richard Blumenthal, United States Attorney for the District of Connecticut, Hartford hearing, p. 16.

> "There have been 15 cross burnings reported this year in the following cities and towns in Connecticut: Bridgeport, Norwalk, Milford, Stamford, Ridgefield, New Haven, New Britain, Groton, Vernon, Enfield and Waterbury. The majority of these incidents have occurred since September."
> Connecticut NAACP Update, Document H-12.

Testimony was received that a cross was burned in front of the home of a Ridgefield family in December, 1978.

> "Well, December of last year I had a cross burned in front of my home. I considered that a racial incident...[It] was the 24th, approximately 12:15 A.M. December, 1978. My family and I were in the kitchen baking cookies and we were in a festive mood at the time, which is Christmas Eve. Well, I noticed something burning outside my house and I went outside to investigate and discovered it was a burning cross."
> [The speaker affirmed that he was a black man living in a predominantly white neighborhood.]
> Edward Brown, Norwalk hearing, p. 100.

Testimony and exhibits were received that there have been three or four cross burnings in Stamford.

"Well, we had two cross burnings at our house. One was in June and one was the night before Halloween. The first cross that was burnt, I recognized one of the boys with a white tee shirt and jeans on. I was laying in my bed that night when the cross was burned. He stuck it on the inside fence..,Then Halloween came around and another cross was burned, but I didn't see anybody the second time."
[Thereafter the speaker confirmed that she lived in Springdale, part of Stamford, p. 131.]
Linda Davenport, Norwalk hearing, p. 129.

"Yes, there were two cross burning incidents at Carol Street residence, there was one in Shippan and Fairview Avenue intersection, and also at an intersection at Lockwood Avenue and Woodrow Street in Stamford... The cross burning incident at Lockwood Avenue and Woodrow Street was approximately 10:50 P.M. on the 31st of October. The cross burning, the second incident, is at 1940 hours on October 30, '79. And the one at Shippan and Ocean Drive East, it is November 3, '79 at 2040 hours...[The] October 30 [incident was] at 21 Carol St...The fourth incident occurred at Carol Street. I believe it was two or three months ago, but I don't have the exact date and time."
William Schmidt, Sargeant, Stamford Police Department, Norwalk hearing, p. 68.

Testimony was received that there have been two cross burnings in New Haven.

"There was one cross burning in New Haven that we are aware of...The one that was reported directly to us--actually there were two that I am aware of: One was reported directly to us; the other was not. We monitored primarily through the press. The one that occurred that was reported direct to us occurred during the month of August, 1979. It occurred on Edgewood Avenue in New Haven."
Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, p. 23.

"In August [1979] there was a cross burning at the Henry Parker for Mayor headquarters. Mr. Parker, who is Treasurer of the State of Connecticut, was running for Mayor. He is a black man, and he received a phone call a couple of hours prior to the cross burning suggesting that if he didn't pull out of the race there would be serious consequences."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 79.

Testimony was received that two cross burnings took place in Norwalk.

"Well, the only statement that I would like to say is concerning the cross burning on my property on September 29th at 11:30 at night...There's really little I can tell other than just a little before eleven o'clock I noticed or I heard a car going around the street. But, I didn't pay attention. I just got up and walked over to the window. A little while later I don't know what made me go back to the window to look again, but I saw a parked car down the street. Again I wasn't concerned, because it wasn't in front of my house. So, I continued to watch TV. A few minutes later I looked and I saw the fire truck. I then got up to investigate and I found an eight foot cross had been placed on the white column in front of my home. We received damage to the house to say nothing about the fear and the nervous tension that I've been under since the incident."
Sheila C. Spigner, Norwalk hearing, p. 171.

"The first incident in the City of Norwalk, there was an altercation verbal between two youths, one white, one black. And later on after that altercation, the youths were gathered watching television and they saw the cross burning on television, and that stimulated them to go to the home of this black youth who they had an altercation with previously and burn a cross on the lawn,,.The second incident was a personal incident. There was a victim of the cross burning. And I should say the second cross burning was more serious, the cross was much bigger in nature. It was placed against the home, and the ramifications of that could have been very, very serious. Fortunately, it only resulted in the scorching of an outside pillar. But again, the person who committed this act had a personal vendetta against the victim who was black..."
Joseph W. Beres, Jr., Chief of Police, City of Norwalk, Norwalk hearing, pp. 7, 8.

Testimony was received that two cross burnings took place in Milford.

"Yes. There was a cross burning in Milford approximately three weeks ago. It has received wide spread publicity in the media in New Haven and I believe elsewhere in the State."
Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, p. 27.

"Then in the early fall there were two cross burnings in Milford in front of the homes of two black families."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 100.

Testimony was received that a cross was burned near Holy Cross School in Waterbury.

> "In fact, several months ago before this came to a head I think there was a cross burnt, I think it was near Holy Cross School. There was a black family intimidated as a result of their moving into that area."
> Dr. Charles R. Gordon, President, Greater Waterbury Branch, NAACP, Danbury hearing, p. 206.

Testimony was received that there were cross burnings in New Britain.

> "The Coalition for Basic Human Rights has been in existence for more than seven years as a non-profit advocacy organization in New Britain. We deplore the recent cross burnings in New Britain and the series of attacks on the Martin Luther King Statue."
> Thomas Connally, Director, Coalition for Basic Human Rights, Hartford hearing, p. 94.

Testimony and exhibits were received indicating that at least one cross burning occurred in Bridgeport.

> "Concerning the cross burnings in this area, please be advised that in the city limits of Bridgeport, we did have one incident which took place on Sept. 30, 1979 at 36 Beacon Street. The investigation by this department revealed that the incident was the result of resentment of four youths against a 16 year old white girl that attended school with them. Four teenage youths were arrested and charged with breach of peace in this matter. The court treated these youths as youthful offenders, they each received six months suspended and six months probation. Two of the youths involved were white, one was hispanic and one was black. The cross was constructed by the black youth in the presence of the other youths a few days prior to the incident and on the night of the incident, the black youth stuck the cross in the ground and lit it and all four fled the scene. The only other incident in the Bridgeport area took place on Sept. 11, 1979 at the end of a runway at the Bridgeport Municipal Airport...[Due] to the poor construction of the cross, the location and the past history of vandalism at the airport, it appears that there was no racial overtones."
> December 7, 1979 letter of Joseph A. Walsh, Superintendent, City of Bridgeport Department of Police to Ben F. Andrews, Jr., Connecticut State NAACP, Exhibit B-6a.

Testimony was received on incidents of terrorism motivated by racial and religious prejudice.

> "We are particularly concerned about the continuing difficulty which Black families face in the East Shore area of New Haven. In the past several years several black families have had to physically abandon their efforts of settling in that particular community because of serious harassment, threats and actual violence against them. The same area has been the scene of unprovoked attacks on Blacks by Whites including a bus load made up primarily of children attending a church picnic at Lighthouse Point Park. Another Black man was severly beaten when attacked by white youths when they came upon him changing a flat tire on a public street in that neighborhood."
> Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, p. 19.

> "Within the last year in the Town of East Haven there was a fire bomb thrown through the window of another house, a black family living in an almost all white neighborhood. There was also small children living there...the house was pretty well destroyed but there was no one injured."
> Malcolm Webber, Connecticut Regional Director, Anti-Defamation League, B'nai B'rith, Bridgeport hearing, p. 77.

> "One family has attempted to stick it out and to the best of my knowledge still remains there. Most of the families, at least three of them that I am aware of, actually moved out of the East Shore area after continued aggravated harassment, including one attempted fire bombing. Generally the form of violence was throwing rocks through the windows, cutting the tires on the car of the family and crowds of youths gathering outside of the residence and actually shouting 'Get out nigger', that kind of thing."
> Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, p. 19.

> "People want to call it a prank when during Halloween at a Rocky Hill School a young girl was cornered literally with five white students dressed up in Ku Klux Klan robes. Obviously during Halloween people assume it was a prank. They were chanting harassments. She was in deadly fear."
> Ben F. Andrews, Jr., State President, Connecticut NAACP, Danbury hearing, p. 167.

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[In response to a question whether families other than that of the speaker had suffered indignities, racial slurs, and vandalism as had the speaker, the following response was received as to an incident occurring Halloween night, 1979:] "Yes, I think there were racial slurs. They were trying to rock over Rodney Turner's compact car. They were rocking the car, rocking the car. When he ran out they were chanting 'Burn nigger, burn'"
Goldie Palmer, Danbury hearing, p. 31.

[In response to a question whether the speaker had knowledge of any incidents of violence, in particular from students and teachers in Danbury, the following response was received:] "Well, I don't know where to start. Just the other day in a training program the teacher shared an incident that there was one black child in her class. When everybody paired up to go somewhere, to the art room, very few white children, but a significant number, refused to touch the one black child when it was time to hold hands. I call that violence in terms of the psychological effect."
James Edler, Co-Director, Anti-Racism Project, Association of Religious Communities, Danbury hearing, p. 143.

"Before the first cross was burned, my little girl was threatened. She's eight now. She was seven. She came home from school and she was frightened, two white boys drew a knife on her. She recognized the boys. The boys said they didn't do it, but nothing was done about it."
Linda Davenport, Norwalk hearing, p. 130.

Testimony was received on incidents of vandalism to property, motivated by racial and religious prejudice.

"There have been incidents of vandalism on my property...In fact, they broke up two rose trellises... I had nine rose bushes planted around my sundeck. Every one was destroyed."
Goldie Palmer, Danbury hearing, p. 24.

"Well, I have experienced some [incidents] myself inasmuch as I guess I had had about nine mailboxes destroyed. When I would go up and down the street, my mailbox would be the only one destroyed...I also had two windows broken on occasion...I had the police department station people on the street."
Woodrow C. Glover, Executive Director, Stamford Commission on Human Rights, Norwalk hearing, p. 53.

"We deplore the recent cross burnings in New Britain and the series of attacks on the Martin Luther King Statue."
Thomas Connally, Hartford hearing, pp. 94 95.

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"On July 28th, 1977, two days before the New Haven Holocaust Memorial was to be dedicated, the trees for the memorial were stolen and swastikas were marked on the holocaust memorial...Within the next year there were two or three other incidents at the memorial where trees were removed or attempted to be removed. These times there were no markings... On July 4th, 1978, during the night there was an event where three or four trees were doused with kerosene and then lit. The police came upon it after the trees had been almost totally destroyed. Again, there were heavy markings around the site of swastikas."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 96.

"I also got a call from a Rabbi who happens to live in Hamden who reported that his house was marked in chalk with swastikas and signs of anti-Semitism two nights before Halloween, which I guess is traditionally chalk night. He decided to just go out and quietly erase the signs. He did not want to bring it to the attention of the press."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 100.

"I would say to my knowledge there had been a large increase [in incidents of vandalism against synagogues] in Suffolk County, there has been some increase down in Fairfield, but generally over the state the increase has not been alarming."
Malcolm Webber, Connecticut Regional Director, Anti-Defamation League, B'nai B'rith, Bridgeport hearing, pp. 80, 81.

"On October 31st, Halloween night, an incident occurred at my home in which my steps leading to the front were marked KKK in something like an acid material because it wouldn't come off. Also, my driveway had a racial slur. If you want me to repeat it, I will. It said, in fact, 'You're a fucking nigger, KKK.' I was in my home with lights out. I observed a car, which was a black topped Triumph. It looked black, but it was at night. But, the next day I thought I saw the car. So, it's between a deep blue and a black, but it has a black top. There were six men. I would classify them as men, because they appeared to be between the ages of 18 and 20. They were on top of the car. This occurred approximately a quarter to eleven... And it won't come out of my driveway, I want to tell you that. They had to come out and Jenite the driveway and it is still resurfacing. It was done in some sort of acid base or something."
Goldie Palmer, Danbury hearing, pp. 18, 37.

"I do know that when you go around town you see their signs all over the place, KKK on the side of Bradlee's--KKK, in elevators--KKK, on Columbia Boulevard--KKK, all over the place--KKK."
Goldie Palmer, Danbury hearing, p. 31.

"I think that one of the fellows that isn't here... he had a few incidents when this KKK thing was going on in Danbury. He's a student at West. Conn. They came up to his apartment. I mean, the people claimed they were part of the KKK. They have cards and things. They wrote things on his apartment door and the bathroom where he was living."
David Payton, Jr., Danbury hearing, p. 102.

"There is an individual that I have worked with in connection with the rally activity that we did for the march...She informed me that there had been a couple of incidents in Wilton in which there were KKK symbols and swastikas that were burned on lawns."
James A. Fletcher, Danbury hearing, p. 46.

[In response to a question whether there had been any racial or religious incidents or violence in the Greater Waterbury area, the following response was received:] "Yes. There have been several... Ku Klux Klan letters have been painted on the school walls. We find our supermarkets are being defaced with large letters, KKK...We've also found that on the property of some of the schools of higher education, Matatuck Community College and the University of Connecticut at Waterbury-Waterbury branch."
Dr. Charles R. Gordon, President, Waterbury Branch, NAACP, Danbury hearing, p. 205.

"In one particular town, in Enfield, we had symbols of KKK spelled out. At the University of Connecticut it appeared on mailboxes and that kind of thing."
Ben F. Andrews, Jr., State President, Connecticut NAACP, Danbury hearing, p. 177.

"There was an incident about two weeks ago in Conte School in New Haven in which there were KKK signs up on the third floor of the school A few days after that, last weekend, there was a car in Hamden that was sprayed with spray paint with KKK written all over the car."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 100.

"In New Haven the NAACP in less than six months of activity since our branch was reactivated following years of inactivity had had two instances of privately owned cars defaced with KKK markings...The incidents involving the cars occurred: One in Hamden, Connecticut on Pine Street approximately one week ago where a privately owned car

went to a house party in a primarily white neighborhood. The car was driven and owned by a black person. He parked the car on the street, went into the party and when he returned the car had been spray painted with the letters KKK. The other incident occurred approximately two months ago: I believe it was either in late August or early September, in West Haven, Connecticut at the Meadowbrook Apartments where a lady, a black woman, who lived there had had an altercation of types with some white youths who had been sitting on her car. She asked them to move; they exchanged some words and the next day her car had been marked up with KKK. In this particular instance it was done with soap so that it could be removed, at least."
Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, pp. 18, 24.

Testimony was received on incidents of harassment, insult and slur, motivated by racial and religious prejudice.

"During the summer of '78 there was the fire bombing in East Haven that Mr. Webber referred to. There was also continuous harassment of a black family that moved into the Morris Cove area of New Haven. While the police in East Haven refused to act on the act of racism in that Town, the New Haven Police pursued the harassment around the family in Morris Cove, put a twenty-four hour detail around the family's house and managed to pick up the people who were involved when they started to throw bottles one night at the windows of the home."
Louise E. Etkind, Director, Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 98.

"One of our black neighbors [in Milford] would wake up, would come to the door and find a series of skinned animals in the front door or on the car or what have you. There was a youngster who was harassed when riding the bus by two men and the bus driver did nothing to provide her safety while in transportation,..during this Fall when the crosses were burned. [In response to further inquiry on the harassment of the rider on the bus, the following was stated:] Well, this was a young girl, 6th or 7th grader, whose mother moved from one end of town to the other. She provided her bus transportation. While she was waiting at the bus stop two white males punched her several times. Then they moved to another bus stop. After she was on the bus they got on at the following, at the next bus stop and they harassed her for about, I'd say, for about a mile, a mile and a half."
Wiley Bowling, Bridgeport hearing, pp. 180, 191.

"A number of the black clergy during this period that Mr. Parker was running in the primary said that they had received numerous phone calls threatening their churches

where voter registration booths had been set up."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 99.

[In response to a question whether the speaker had direct knowledge of any incidents occurring in the City of Bridgeport, the following was stated:]
"There have been incidents of phone calls which had told blacks to get off the block, told blacks they're going to burn their house down, have told blacks they're going to beat their kids up."
Ted Meekins, Information Officer, Bridgeport Guardians, Bridgeport hearing, p. 173.

[In response to a question whether there had been any incidents against the speaker from Ridgefield and his family after December 24th, the following was stated:]
"Excuse me, there have been phone calls, hate mail and stuff like that...Okay, those phone calls there harassment, racially overtoned, the typical type of thing that a black family would be subjected to by someone who is a bigot."
Edward Brown, Norwalk hearing, p. 103.

"I was egged at and squashed" [referring to her home in Wolcott].
Goldie Palmer, Danbury hearing, p. 19.

"This was a letter written by a student [at Conard High School in West Hartford] to the Editor [of the school newspaper] 'It is not easy being a black student in a white school. The harassment, the hurt and the feeling of hate all come down at one time...We (the blacks) are being blamed for writing on the walls (with lipstick), smoking in the bathrooms, and intimidating the whites; but still, when a petition of the KKK was going around and the word 'nigger' was written on the walls the incident was kept quiet. I am not speaking for myself. I am also speaking for my fellow black classmates throughout the school. We are all tired of the blame, the sarcastic talk, and the ugly looks as we pass by. We've only come out here to get a decent education and also to educate you, to give you a push in the right direction, not for prejudice.'"
Thomas Wright, President, Greater Hartford NAACP, Hartford hearing, p. 100.

"The only possible violence that might have taken place [in Hartford] is some members of the cloth saying the Jews killed Christ, and there was some arrests, I believe, that were made the last, oh, six, seven, eight months...I got various complaints from the Jewish Community into my office about some of these incidents, like parading down Main Street with signs that created some-almost fights..."
George A. Athanson, Mayor, City of Hartford, Hartford hearing, p. 59.

[In response to a question whether the speaker's children had any difficulty in terms of schooling in the Ridgefield community, the following response was received:] "My daughter is junior high age. She hasn't experienced anything out of the ordinary, out of the ordinary as far as a black family in a predominantly white nighborhood. Well, you're subjected to name calling. I consider that a norm. Beyond that she hasn't experienced anything as an extreme."
Edward Brown, Norwalk hearing, p. 105.

"This past spring I was on my sundeck and I was saying 'You know, spring is here' and taking a good breath of air. Two young men approached me, and said to each other 'Look at the black B, let's go over there and F her.' Right away I just looked at them. I wish they would have come, I'll tell you, but they didn't."
Goldie Palmer, Danbury hering, p. 23.

"Referring to the Conte School, I think, as you have probably seen in the press or what have you, the elementary school, well, there were signs present 'KKK are here', 'Colored people, we will kill you', and that is at the elementary school"
Ben Andrews, State President, NAACP, Bridgeport hearing, p. 113.

CONTINUED

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The Select Panel finds:

#2 That the victims of these incidents have been and continue to be seriously affected by them.

"My children are a little bit...I guess being black you kind of expect certain things but, see now, this is my second marriage. My wife is Italian. These aren't her children. They're from my first marriage. This [the cross burning] is unusual. This requires conditioning for her. She's taken back. She feels the impact a lot greater than we do. When I say we, I mean my children and I. This is another experience we can recover from. In her case it's a little more deeply felt. It's a direct attack. You know what it [the cross burning] means and your imagination has a tendency to run away with you. You're apt to think, well, what's going to happen at night when you go to sleep and this and that and the other."
Edward Brown, Norwalk hearing, p. 108.

[In response to a question as to the emotional effect on the victims of one of the Norwalk cross-burnings, the following response was received:] "I think quite possibly that is even difficult for me to weigh. Being black and not having been a victim to a cross burning on a lawn, it is difficult for me to weigh. I could see the emotional state of the family. I know the emotional state of the children. They were extremely upset, this was visibly so. Yet, someone who is not a police officer may have observed more emotion that even I saw. And I would hope that you understand that."
Malcolm Skeeter, Sargeant, Norwalk Police Department, Norwalk hearing, p. 32.

[In response to a question as to the emotional effect on the victims of the Norwalk cross-burnings, the following response was received:] "The first family called me the morning after the cross burning. This was the wife and mother at her wit's end, not knowing what to do, ever so upset, very emotional, sometimes almost in tears and very shaken. Upon getting the call, I went out to visit her and I talked at length, maybe a couple of hours with her, and she was very disturbed. And although the children were not there, she described the children also as being, as she said, very upset because of this incident. I did not have an opportunity to talk with the second family."
Samuel L. Briggs, Executive Director, Human Relations Commission, City of Norwalk, Norwalk hearing, p. 36

"I would hope that in the work that this Commission will do appropriate attention will be given to the sensitivities of the black residents and also the Jewish and

Catholic residents of Danbury and the other various residents, because of the effect that these kinds of incidents have on people. For example, I am the parent of three children. One son of mine is eight. A daughter is six. We have another who is a year and a half. When these incidents began to happen in and around Danbury my son began to have a series of bad dreams about the Klan. Now, I can say 'Don't worry, son, nothing has happened to us.' But, then that really doesn't explain it, because by the time something happens to you it's too late."
James A. Fletcher, Danbury hearing, p. 40.

[The] "...act itself [cross burning] historically meant a life or death situation, and currently it has the same special, symbolic significance to Americans who are black."
Dr. Thurman Evans, Director, Greater Hartford Chapter of Operation PUSH, Hartford hearing. p. 87.

"They [the victims of cross burnings] would say, as I thought about it I was reluctant to dismiss it, because some symbols or some things I remember my grandfather talking about, the night riders and the things that happened. Just the images that rise in your mind give rise to precaution,..As a result they put on extra security for their home. In the latter case, he stayed up later as kind of a guard. He was very nervous for his family. He was reluctant to let the children play actively in the yard. It might have only been one person doing that, but I think there's reluctance for anyone to place themselves and children in jeopardy by taking something for granted and finding it was more serious. That's been the general case. Some are more horrified...You think about a cross being burnt too close to your house in your sleep."
Ben F. Andrews, Jr., State President, NAACP, Danbury hearing, p. 179.

"I spoke to a group of Afro-American students [at the Danbury high school and junior high school] ...A few students that saw me came up to me, maybe ten students spoke to me about it...They told me they didn't like it. White people are coming after us again. That kind of thing."
Barbara Riley, Co-Director, Anti-Racism Project, Danbury School System, Danbury hearing, p. 122.

"I try to get the people that the cross was burned on their lawn to come here today. They were afraid to come."
Goldie Palmer, Danbury heraing, p. 32.

[Does racism result in harm to persons who are held not to be as good as an individual?]: "Indeed it does. There is a great deal of stress on people in a society trying to operate,..when you are constantly receiving a feedback that

you are not good, that you are not a desirable person, and it is a particular problem with children because at a point in the early years of our lives we are really trying to establish that we are people of value, that we are people that are valued by others, and when you receive the feedback, whether it is from parents, neighbors, school teachers or others in the society, that you are not a valuable person, you can diminish the self-concept of that individual. [Is an individual harming him or herself by being a racist?]:...that individual...is hurting himself or herself because they are denying themselves the opportunity of relating to a full spectrum of people. Also, they have fixed on ways of seeing and viewing the world which are limiting and restricting and troublesome to their own development."
Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center; Associate Dean of Yale University School of Medicine; Hartford hearing, pp. 43, 30, 44, 45.

[A cross burning is] ..."a symbol of hate. It's a symbol of repression. It's a symbol of fear...I think black people feel the symbol more keenly than others."
Ms. Allenstine D. Willis, President of the New Britain NAACP; School Teacher, Hartford hearing, p. 199.

Testimony received indicated that these incidents are serious incidents:

"It has been suggested prior to today's meeting by some in the news media that the cross burnings simply represent pranks by kids, and I would submit that kids do not establish the use of a burning cross as the obnoxious symbol of the Ku Klux Klan. That started with hate, and that hate comes from adults, and these kids, as has already been expressed by Dr. Comer and others that have preceded me, are acting out racial values learned in their homes, learned in their schools and learned in their communities."
William Olds, Executive Director, Connecticut Civil Liberties Union, Hartford hearing, p. 114.

"In some of the families we talked to about the cross burnings, we found a kind of infectious situation that even if they are pranks they are serious pranks."
Ben F. Andrews, Jr., State President, NAACP, Danbury hearing, p. 167.

"Whether these incidents reflect a rise in trend of racial animosity is a question that you and other witnesses are far better qualified to answer than I am, but that question, in my opinion, is almost beside the point. Even a single such incident, whether a cross-burning or leafletting or a veiled threat, is one incident too many,

Each must be taken seriously and none can be dismissed simply as playful doings of pranksters or juveniles."
Richard Blumenthal, United States Attorney for the District of Connecticut, Hartford hearing, p. 10.

"I also believe we have proven these events are not just pranks, that they are serious and that they will be regarded as being serious in the future and they'll be regarded as being Klan supported activities...Certainly while I'm the mayor of the City of Danbury the local law enforcement agency will be so instructed that it [a cross burning] will not be taken lightly and will not be regarded as a prank in the City of Danbury."
James Dyer, Mayor-Elect, City of Danbury, Danbury hearing, pp. 8, 13.

"The Community Relations Service contrary to reports from certain local officials do not view these incidents as pranks or child's play, but as serious acts that are racially motivated and directed."
Joshua M. Liburd, U. S. Department of Justice, Community Relations Service, Danbury hearing, p. 81.

"The media and statements of the public officials claiming these are acts of youthful pranks would have us believe that there is no racial significance to this behavior. To me it is incomprehensible how an individual, even with a modicum of intelligence could conclude that a cross burning on the lawn of a black family does not have negative, racist overtones. In other words, the persons who have us believe that if we don't acknowledge the problem it will go away; if we refuse to recognize its existence maybe it will go away."
Dr. Thurman Evans, Director, Greater Hartford Chapter, Operations PUSH, Hartford hearing, p. 86.

"I would hope, however, that the communities and the Commission would look on these incidents and label them appropriately. A cross burning such as I described with the young people, true, I am sure it was stimulated historically, but was it really racially motivated? I don't know. I would have to say in this instance yes, it was."
Joseph W. Beres, Jr., Chief of Police, Norwalk. Norwalk hearing, p. 13.

[In response to a question whether the Connecticut State Department of Public Safety had reached any conclusion as to whether various incidents were racially motivated, the following response was received:]
"Again, sir, from the information I have it is very difficult to say. Motivations--and I would be repeating hearsay information--would range from revenge to vanda-

lism...Certainly I would think that the burning of a cross or the posting of a swastika certainly has its racial overtones."
Donald J. Long, Commissioner, State of Connecticut Department of Public Safety, Hartford hearing, p. 69.

"Now, as far as investigations have been going, the police in Ridgefield, Norwalk, Stamford have been treating these as pranks. The NAACP does not consider cross burning pranks,"
Bernard Fisher, President, Greenwich Branch, NAACP, Norwalk hearing, p. 83.

"The kid in question with the cross burning, I just can't believe he's a hardened klansman. This is the same kid that pranks every year as long as I've known him. He was the kid on the 4th of July that lit the firecrackers. He was the kid that soaped the windows... [What] if this one individual really was just pranking... What if this one kid, 14 years old--I mean, how hard core can he be? Yet, I'm telling you now, I know this kid since he was little. He's just a menacing little boy...What if this kid ends up in jail for it...My children work and play with these same kids. Last year they had a party together in my home. Blacks, Puerto Ricans and whites they all joined each other, the kid who burned the cross and the kid whose house the cross was burned on. They all partied together one year ago to the day. For some reason I just can't get it through my head that this kid was that bad or that hard core."
Kathie Garay, Bridgeport hearing, p. 203.

Witnesses suggested victim assistance.

"...I would suggest one of the things we all have to do is try to come over this fear...[I suggest]...support for the victims of racial violence...It's not only a thing that can be done with legislation, but particularly it can be done through community and through the examples of officials working with the community in the same way we approach disaster relief."
James A. Fletcher, Danbury hearing, pp. 44, 45, 58, 59.

"Inform people of their rights. Many people do not know their rights. There are pamphlets out there but there is not an effective educational system."
Thomas Connally, Director, Coalition for Basic Human Rights, Hartford hearing, p. 97.

"When these incidents occur we say that there should be Federal and State protection of the victims and the Local, State and Federal authority should be held accountable for the safety of the victims."
Louise Simmons, Member, National Alliance Against Racist and Political Repression, Hartford hearing, p. 212.

Others recommended restitution to the victims by the perpetrators.

[If an individual was just pranking and not part of any organization] "My opinion is maybe the punishment should fit the crime. Maybe he should do... some kind of restitution for what he's done, making him work for a social service organization to do better for the people he's caused this kind of grief to."
Kathie Garay, Bridgeport hearing, p. 204.

[Question: Would you recommend that states attorneys and judges seek a remedy in the nature of probation on the condition that any youth convicted do some chores for the victim?] "I think certainly that all alternatives as to law enforcement should be pursued, and I think that it is certainly a viable way, a viable approach, again, depending on the circumstances. Are we dealing with a youth? Is this his first act, or are we dealing with a professional agitator that is committing this particular crime? Certainly if we are dealing with a youth, a first offender, I think this is a viable approach. ...That would have my recommendation in those particular cases."
Donald J. Long, Commissioner, Dept. of Public Safety, Hartford hearing, p. 73.

[We recommend] "...that people who are convicted of cross burnings on private property in addition to their strict sentence be required to attend a definite series of classes which will be designed to change their behavior and help them to have a more positive view of minority people. The thinking is that just as a driver convicted of operating a motor vehicle while under the influence of alcohol is required to take a certain kind of course, people convicted of cross burnings, in fact, should be required to take a similar course."
Samuel L. Briggs, Executive Director, Human Relations Commission of Norwalk, Norwalk hearing, p. 35.

The Select Panel finds:

#3 That these incidents are not the result of any organized activity within the state but were the random acts of individuals and groups.

"There have been seventeen cross-burning incidents in Connecticut in the past year...None of these cases, as far as can be determined and documented, revealed any organized anti-racist movement or organization."
Donald J. Long, Commissioner, Connecticut Department of Public Safety, Hartford hearing, pp. 65, 66.

"I would like to say that there have been questions raised concerning incidents of cross burnings throughout the state, and we have had, in general, cooperation from state and local departments in investigating those matters, but to date we have not uncovered any hard evidence which would support a theory that a particular organization is sponsoring such acts."
Austin McQuigan, Chief State's Attorney for the State of Connecticut, Bridgeport hearing, p. 35.

"[We] have encountered no hard or otherwise persuasive evidence that any of these actions is linked to organized activity by any group, whether the Ku Klux Klan or any type of racial group. That is not to say that the general acceptance in our population, sentiments expressed by those groups or the possibility of activity by such groups may not have played some part in inspiring those kinds of incidents, but so far as the individuals involved as potential defendants in prosecutions are concerned, we have found no evidence to link their actions to the Ku Klux Klan."
Richard Blumenthal, United States Attorney for the District of Connecticut, Hartford hearing, p. 24.

"I believe they [the Stamford cross burning incidents] are isolated incidents and there are no organizations involved."
William Schmidt, Sargeant, Stamford Police Department, Norwalk hearing, p. 76.

[Both] incidents in the City of Norwalk had personal stimulation...I would have to say that most of these incidents are spontaneous in nature...[And you attribute the two recent incidents as grievances on a one to one basis?] Yes."
Joseph W. Beres, Jr., Chief of Police, Norwalk, Norwalk hearing, pp. 7,13, 15.

"There is no hard and fast data to show that most of the symbolic acts of racism, including those currently discussed in my own remarks, have been perpetrated by organized groups such as the KKK. These tend to be, as far as we can see, random acts by people who are

caught up in the mood of racism sweeping our Country, but they appear to be acting individually and at random. I don't, by any stretch of the imagination, mean to infer that because they are random they are any less intimidating or serious insofar as the effect on the victims are concerned. I simply mean to distinguish between a random act that might occur because a black woman asked some white youths to get off of her car and perhaps at night they write a KKK inscription on her car with soap, as opposed to the organized activity that we all have to watch with the tragic outcome in Greensboro, North Carolina the first weekend of this month...I think that there is every evidence that organized activity of racial hate groups, such as the KKK, is on the increase in Connecticut, but so far most of these specific acts which we have witnessed, probably have been committed on a random basis."
Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, p. 32.

"The evidence that it is a conspiracy and that there are groups of people meeting to plan these acts and perform them I do not know of. I don't say it doesn't exist, but I have no knowledge of any such conspiracy. To me that is even worse, that is even more difficult for our society because if there is no organization which is involved which is generating these racist, anti-Semitic acts that have been going on in the State of Connecticut, it represents a level of racism and anti-Semitism in our society that is terribly alarming..."
Malcolm Webber, Connecticut Regional Director, Anti-Defamation League, B'nai B'rith, Bridgeport hearing, p. 72.

[Regarding the term 'organization', a warning to be] ...careful of how we apply the word and concept... if the standard being made reference to...were applied to even some of the traditional organizations in the state...you would say there is almost a non-existence of a civil rights movement..."
Ben Andrews, Jr., President, State of Conference of Connecticut NAACP Branches, Bridgeport hearing, p. 107.

Many persons testified on the history and nature of the Ku Klux Klan and its current status in Connecticut.

"Well, I think if we can go back historically when the Klan was just organized in 1865, the original intent, as they put it, was to protect white people against black folks. Now and all through the years they've been involved in this kind of thing. This is not just a problem for black people. It's a problem for all America. Because, at one time in different parts of the country the Klan were anti-Jewish, anti-Catholic, anti-Irish. You see, in the beginning, they

have their roots in being against or anti different ethnic groups."
J. Michael Smith, Bridgeport hearing, p. 148.

"I am disturbed that in this 203rd year of the formal life and existence of our beloved nation, that the United States of America is now caught up in civil disorder to the extent that we have taken giant steps backward where we are reliving the hell and horror of those shameful periods of unprecedented brutality precipitated by terror groups such as the Ku Klux Klan and the white citizens council, the 'Red Shirts', and the Knights of Camelia were allowed to rape black women without question and any punishment imposed, and black men were lynched, castrated, set afire, dragged over the highways and the byways, until the skin was worn away from their bodies and they begged for the mercy of death to end their agony...

We who are black had hoped that the sorrow songs would have been sounded for the last time and the words 'My Country Tis of Thee, Sweet Land of Liberty' would come from the lips of all persons who comprise this powerful nation...However, the recent trend of events makes us aware that we have taken giant steps backwards. There are those who would turn back the clock of history to those infamous days when the Ku Klux Klan and other hate inspiring groups were to transform our democracy into a hateful and terroristic oligarchy which would ultimately bring about our total demise...It is for this reason that the NAACP is still in business. Founded in 1909, it was assumed by this interracial group that in a matter of a few brief decades, democracy would prevail from the Atlantic to the Pacific in every way and all would have equality of opportunity. However, as we all know, this has not taken place as of this point in time and there are thousands of blacks who are being denied daily the benefits of our democratic society and who are denied the full rights of citizenship, and beyond this, are being harassed by fringe groups such as the Ku Klux Klan with fear tactics."
Dr. Charles R. Gordon, President, Greater Waterbury Branch, NAACP, Danbury hearing, p. 199.

"Homeowners who are black have experienced the wrath of a resurgence of Klan activities in Ansonia, Bridgeport, Fairfield, Westport, Norwalk, Greenwich, Danbury, Waterbury, Enfield, UConn at Storrs, Rocky Hill, Glastonbury, Ridgefield and most recently in Vernon, Connecticut and Conard High School in West Hartford...The Ku Klux Klan has been in existence for over one hundred and thirteen

years with the blessing and consent of that segment of our society which either covertly or overtly shares its doctrine...This invisible government of hate mongers are now making a bold attempt to take us back to the reconstruction era when the laws of that time were leaning toward black civil rights. It was necessary for those whites who did not want to see this happen to resort to terrorism in the form of lynching, cross burning and other methods of intimidation to establish fear in the hearts of all black people who wanted to exercise their rights under that new found freedom."
Thomas Wright, President, Greater Hartford NAACP, Hartford hearing, p. 99.

"The strength of the Ku Klux Klan in America is now greater than it has been in more than a decade. The Klan organizations have registered moderate gains of 20 percent to 25 percent in overall membership since ADL's major report on the hooded orders issued March, 1978, but even more significantly the periphery of its non-member sympathizers has approximately doubled in this period of less than two years. At the same time there has been a perceptible change in the Kluxers' stance and tactics: they have become more violent and confrontational. The Ku Klux Klan still speaks for only a narrowly circumscribed, minute segment of the American people, but that segment is growing proportionately larger and more vocal...

The limited success the Klan is now experiencing cannot be attributed to its more aggressive stance alone. ADL field research indicates that the Klan's exploitation of such controversial racial issues as busing and affirmation action has evoked a responsive chord among some blue collar and lower middle class sectors of the public. Further contributing to a climate that enables the Klan to grow are anxieties over crime, inflation, the energy crisis and the new permissiveness surrounding sex, drugs, films and the like. In addition, there are still a good number of Americans for whom the relatively rapid pace of change in race relations over the past 15 years has been extremely unsettling. All of these factors have contributed to the growth of the Klan, not only in dues-paying membership, but also in non-member support."
Bridgeport hearing exhibit B-2, "Facts", November, 1979, Published by the Anti-Defamation League of B'nai B'rith.

"We do not have the resources or authority, for example, to investigate, generally, the activities of any group, whether the Ku Klux Klan or Iranian students or the

Socialist Workers' party, or any other collection of individuals that may be the object of popular suspicion when they gather in the exercise of First Amendment Rights. Perhaps this is unfortunate, perhaps it is to the general good, perhaps it is the inevitable consequence of living in a democracy, but we have no conclusive or comprehensive data as to the activities of any group or organization domestic in nature, including the Ku Klux Klan...[We] have encountered no hard or otherwise persuasive evidence that any of these actions is linked to organized activity by any group, whether the Ku Klux Klan or any type of racial group. That is not to say that the general acceptance in our population, sentiments expressed by those groups or the possibility of activity by such groups may not have played some part in inspiring those kinds of incidents, but so far as the individuals involved as potential defendants in prosecutions are concerned, we have found no evidence to link their actions to the Ku Klux Klan."
Richard Blumenthal, United States Attorney, District of Connecticut, Hartford hearing, pp. 14, 24.

"Well, in the State of Connecticut right now there are approximately two to three hundred members of the Klan, and it is very easy to join the Klan. It only costs you $45, and you can join it through the mail with a picture and they have their own computer set up and etc. You are a member once you receive the card. Now, there is no particular leadership in the State of Connecticut in the Ku Klux Klan. So, therefore, you have two to three hundred members running around the State leaderless. And if one of the fellows or a couple of them together, had a couple of drinks and maybe they had a couple of drinks too many. and decided they wanted to burn a cross, there is nothing to stop them from doing it."
Bernard Fisher, President, Greenwich Chapter, NAACP, Norwalk hearing, p. 89.

"The young men involved in this [cross burning] are not doing this on their own. It is a strategy used by the Klan to try to keep themselves clear. In some parts of the country you have to burn a cross on a black home as an initiation process."
J. Michael Smith, Bridgeport hearing, p. 151.

"Well, my main concern, and as I've listened to the persons tonight before me is the persons that were involved in the situation [cross burning] in Milford were youngsters. Somehow, although we can't put our fingers on it, we feel that it is a situation where this perhaps is an initiation ceremony for youngsters to prove their capabilities of becoming members of such an organization, if I may use the word, the Klan as it's been previously stated."
Wiley Bowling, Bridgeport hearing, p. 187.

"I believe that the fact is there in an active klan group in the City of Danbury and they have been active in leafletting the area; specifically at Western Connecticut State College and in local schools and also the retail area, which is Main Street. I also believe that there is the possibility that they have been involved in political pranks as well, most notably the recent City election."
James Dyer, Connecticut House of Representatives; Mayor-elect, City of Danbury, Danbury hearing, p. 6.

"The Connecticut NAACP believes that the new growth in the Knights of the Ku Klux Klan is a serious situation and brings with it inherent and potential dangers. The United Klan was the leading Klan group in Connecticut. It has just about disappeared except for a few loyal followers and a small contingent but significant group who meet in the Bridgeport area. This group's primary identification is associated with the Minute Men organization. The primary difference between the two Klans is the age of members method of development. The new Klan group is essentially a mail order leaderless group who targets 15 to 22 year old individuals. They use captive audiences for recruitment (high schools, colleges, bars).

The recent visit of their national leader David Duke was used to speed up recruitment and appoint local leadership. During this next step in their developing plan we anticipate they will become more aggressive. There is a danger that if the group in Connecticut isn't aggressive enough for the more militant members they could spin off and form a splinter group. These splinter groups are responsible for the more violent incidents that have occurred in the south and midwest United States.

The KKK use of schools for recruitment is causing conflict by stimulating hatred between black and white students. The Klan is disguising their true violent image and true racist positions. If the school systems aren't providing a true historical picture of the Klan through the curriculum, we will experience a greater acceptance of the Klan view among students. David Duke's youth corp is very similar to Hitler's youth corp. This development can't be ignored unless we forget the lessons history has taught us over and over again.

Our estimates on Klan strength in Connecticut is approx. 200 of which 30 percent are active participants. The rapid growth they experienced during the last 18 months will probably decrease. However, one-to-one

recruitment will more than likely become more prominent as the local Wizards and Dragons appointed by Duke solidify their leadership roles.

There is a chance that many acts committed by sick people or criminals may be attributed to the KKK. The infectious nature of hate and violence the Klan symbolize could even be more dangerous than the KKK to our society." Hartford hearing, exhibit H-12, Connecticut NAACP Update of Cross Burnings and Ku Klux Klan Activities in Connecticut.

"Although direct and punitive action has not been taken in regard to the Ku Klux Klan activities, we are aware that this capability exists. For example, in 1965, the Black Panther Party was formed in rebellion against the harassment of such organizations as the KKK. Because society tolerated the unlawful activities of the Klan and other white extremists, the Panthers formed as the extra legal Black organization to retaliate against the racial persecution that law enforcement agencies seem unable to handle. In five short years, the judicial system and its extensions, the penal system, brought out all its vast resources to bear on eliminating the Black Panthers as a power in the movement for equality. Yet today, 113 years after its inception, the Ku Klux Klan is alive and well and its activities continue to be tolerated, dismissed as 'youthful pranks', or as in the case at Conard High, not even reported in the public media."
Thomas Wright, President, Greater Hartford NAACP, Hartford hearing, p. 102.

"I don't have to go into the racial riots back in the sixties, when crosses were burning, when you heard the cry of black power, when you saw Black Supremacy groups emerging. We know what the law enforcement feeling is. They effectively have exterminated people. They investigated these groups. They infiltrated these groups. They made arrests and when necessary they shot and killed people. The Klan has been around long before Black Panther Power was in existence. The Klan has exterminated many black people. They have practiced in this country. Yes, they've been investigated, I know that. Yes, a few people have been brought to trial, most of them have been found innocent of any crimes. But, it's very strange, I have yet to hear of any law enforcement group raiding...a Klan headquarters and shooting people down while they were sleeping in bed. I have not heard of any law enforcement group raiding any Klan rallies and shooting people running around in white sheets. But, I have heard stories, you've heard them, every American has heard it, of how law enforcement agencies have effectively neutralized any Black

Supremacy groups."
Ted Meekins, Bridgeport hearing, p. 168.

"This is what we call our best and most intelligent guess. There's no more than 10 to 20 members in Danbury belonging to the so-called new Knights of the Ku Klux Klan. David Duke in Louisiana running for State Senate as well, indicates very clearly that they want to reach more prominent people, want to gain respect so that they can have people eventually run for public office. I think it's also proper to indicate, as we begin to try to educate ourselves regarding the extent of the cancer to make no mistake about what's been identified as approximately 18 different Klans, two of which are the most prominently known. Two of which we have identified in Connecticut, although there may be something else we don't know. The United Klan headed by Mr. Shelton and, of course, the Knights of the Ku Klux Klan headed by Mr. David Duke. These are the two most prominent. The one pushing the youth corp and pushing into the schools are the Knights headed by Mr. David Duke. The United Klan said they rejected Mr. Duke into their klan because of various reasons. I don't think it's on the basis of morality, however.

We find that there is active recruiting beyond that of the schools in the State of Connecticut that we should be concerned about. We estimate the strength between two to three hundred members in the State state-wide. There's no one area more prominent in our estimation, except there are active meetings taking place in some areas, not a concernable amount. We have determined the Klan in Connecticut is essentially a leaderless Klan. There are those that step forward and say 'Yes, I am the leader. I pass out material. I'm a card carrying member'.

It's dangerous, because we see the leadership is up to individual Klan members and what they would do to be a good member of it, rather than a bona fide member. When I say bona fide, to them it's such as with the United Klan where they deny, both Klan leaderships have denied any connection with cross burnings. As a matter of fact, they said they don't advocate it, and they denounce it. I take that tongue in cheek, because both leaderships of the Klan say they're not anti-black and anti-Jewish, they're pro-white. It's a play of words. Yet, the literature is racist. Obviously in word and picture it's relating to anti-black in every sense of the word. Anti-Jewish in most senses of the word in the paper we read."
Ben F. Andrews, Jr., State President, NAACP, Danbury hearing, p. 173.

The Select Panel finds:

#4 That although in the majority of these incidents the perpetrators remain unknown, where perpetrators have been observed or apprehended they were said to be juveniles and young adults.

"One of the things that we have observed is that looking across the country over decades we find that periodically there is the unleashing of these kinds of behavior patterns. We develop a kind of profile, I suppose, of the sort of person who is likely to be involved in this behavior. Very frequently it will be a white male between 15 or 18 years of age. In many instances this person will not be officially affiliated with an organization such as the Ku Klux Klan or the Neo-Nazi group, or what have you. He will, in all probability, be a loner, he will be the kind of young person who has not participated in organized school and community activities. He will very likely be the very kind of young person who has learning disabilities. He will in many instances be the sort of person who has serious internal doubts about his own self esteem and worth. He will be the kind of person who has been listening through the years in many instances to expressions and watching activities of his parents. He will be the kind of person who wants to win the approval of his parents and his adults and does so by drawing attention to himself through acting out those things which he feels will bring parental approval."
Charles Sardeson, Executive Director, National Conference of Christians and Jews, Hartford hearing, p. 148.

"Now, the question rises: Why are youths over-involved in these incidents? And the primary reason is that youths are in the process of becoming involved and they have not established attitudes, values and ways and commitments that many adults have. They are being tested in very many ways; they are being tested intellectually, they are being tested for their social competence, they are being tested in terms of their ability to control their emotions, and they are being tested in terms of their psychological competence. There are many challenges to their ability to perform adequately and, therefore, they are under a great deal of stress. There is a great deal of concern on the part of youths about their adequacy, and because of that many are vulnerable to ideologies that are transmitted in the society, they are vulnerable to charismatic leaders, they are vulnerable to simplistic solutions. Thus, youth are much more vulnerable to racist attitudes, ideas, than other more

mature persons in the society..."
Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center; Associate Dean of Yale University School of Medicine, Hartford hearing, p. 35.

"There have been to date in the past year sixteen arrests...of those sixteen arrests approximately half involved juveniles."
Donald J. Long, Commissioner, Department of Public Safety, Hartford hearing. p. 66

[In relating her knowledge of a perpetrator regarding a cross burning, the witness provided]: "I knew this kid since he was little. He's just a menacing little boy. He's fourteen now."
Kathie Garay, Bridgeport hearing, p. 204.

[A victim's reference to perpetrators]: "They might be prejudiced about blacks out there. It's mostly the sons and kids. The generation now has changed... You've got some kids that want to make trouble and you've got some that don't."
Linda Davenport, Norwalk hearing, p. 150.

[In testimony of a cross burning incident]" "There were five persons involved, two youths and three adults I would guess you would say 18 or over."
Bernard Fisher, President, Greenwich Chapter, NAACP, Norwalk hearing, p. 87.

"...In the first incident we arrested a 17 year old youth and a juvenile. In the second incident...we arrested an adult male...in his early 20's."
Joseph W. Beres, Jr., Chief of Police, City of Norwalk, Norwalk hearing, p. 9.

[A victim describing the perpetrators]: "There were six men. I would classify them as men because they appeared to be between the ages of 18 and 20."
Goldie Palmer, Danbury hearing, p. 18.

"Well, it would be difficult to give a profile in detail [of the type of individual who is in the position of leadership of a hate organization seeking to attract followers], but I can say that generally it is someone who has a deep sense of inadequacy in one area or another, in spite of the fact that they may appear to be quite adequate and maybe quite articulate and quite intelligent, but there is some problem of adequacy, whether it is in the area of sexual adequacy, whether it is in the area of personal adequacy. There is some area and some basis for a deep sense of insecurity in that individual. [That could exist in the leadership?] "Yes, and very often that person is involved in attempting to mobilize

others in his or her cause to establish himself or herself as an adequate person."
Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center; Associate Dean of Yale University School of Medicine, Hartford hearing, p. 35.

"Well, my main concern, and as I've listened to the persons tonight before me is the persons that were involved in the situation [cross burning] in Milford were youngsters."
Wiley Bowling, Bridgeport hearing, p. 187.

The Select Panel finds:

#5 That hate literature bearing out of State return addresses has been widely distributed in Connecticut.

"The exhibit which I wanted to have entered is a copy of a Ku Klux Klan newspaper formerly titled Attack. It's pointed out that it's formerly entitled Attack and ultimately entitled The Guardian. This was a copy of the literature that was distributed at West Conn. very recently. It was one of the incidents leading to the Danbury Citizens Committee for Racial Harmony, which I was a participant of. The literature, I believe, is very important. It is, indeed, the reason for our march and the reason for our writing the letters requesting an investigation. The paper is a very interesting one. It carries two articles in particular that strike me. One is an article about a white woman in Indiana who killed her daughter. She kills her daughter for alledgedly sleeping with a black man. The article goes on to cite why it is that what she did was something good, something to be admired, and castigates the State for being too lenient on her. It also carries another article relative to the border with Mexico and the sharp spikes there and how these were cutting the toes of the immigrants... The point of this is that when this literature was distributed, I would say from the point of view of a black parent and citizen, it definitely had a polluting effect on the racial atmosphere in Danbury. It was something that can incite and I believe has incited people to undertake activities of racial violence or slurs."
James A. Fletcher, Danbury hearing, p. 39.

"Early in October I happened to be at the [Danbury] high school when the principal, Mr. William Ryan, shared with me an incident in which a black female student reported to him that a white male student had in his possession some literature which was being distributed by another white male student... The prinicpal confiscated that ... piece of literature. It was a folded 8½ x 7 piece of literature which had Ku Klux Klan material information printed on it. In addition to that there was a card the size of a calling card with some literature on it..."
Pasquale F. Nappi, Superintendent of Schools, Danbury Public School System, Danbury hearing, p.150.

"This year coming back in September -- last year the junior high school was also leafletted. On top of the junior high school being leafletted, much in the same manner and the people were not picked up or

caught, two members of the KKK, who presented themselves to the principal of the junior high school as members of the KKK, walked into his office, sat down, proceeded to tell him that they would take care of all of his racial problems by getting rid of all of the niggers and whoever else they had to get rid of in order to straighten out the school. They offered him any kind of advice or help he would need in order to carry out that particular order. Again, one of the junior high schools was leafletted two or three weeks ago again. We were brought in again to discuss with them what they might do to reduce the tension between the students that was going on. They were feeling bad about it. There was tension between blacks and whites...I spoke with the principal and teachers at the school. All are extremely concerned about what is going on there and what might occur in the future, about the meaning of the literature and the inducement of the racial tension between white and black students."
Barbara Riley, Co-Director, Anti-Racism Project, Danbury School System, Danbury hearing, p. 104.

"In your first question [can you attribute the leafletting and political pranks to the Klan] it's very easy to attribute it to the Klan, because Mr. Bickel who proclaims himself a member of the Klan and is noted in that newspaper I gave you in an interview with the local newspaper, the News Time, did in fact take credit for the leafletting."
James Dyer, Connecticut House of Representatives, Mayor-elect, City of Danbury, Danbury hearing, p. 14.

"It nas been called to my attention that at the local railroad station there was literature posted recruiting members of the community to join the Klan that had a response to somewhere in the State of Louisiana."
Joesph W. Beres, Jr., Chief of Police, Norwalk, Norwalk hearing, p. 11.

"On September 20, 1979, between eight o'clock, eight p.m. and 8:30 p.m., the National Vanguard Magazine and KKK calling cards were placed on cars parked in a student lot on Western Connecticut State College campus. To the best of our knowledge approximately 35 to 50 magazines were distributed. According to a local newspaper report someone who claimed responsibility for this action said he did it once every year before Rosh Hashana."
John Jakabouski, Affirmative Action Officer, Western Connecticut State College, Bridgeport hearing, p. 50.

"One document is a newspaper which has been distributed on some of the campuses called 'The White Student', and

this particular newspaper is a voice for the views that we are concerned about as the real problem, such as the question of whether or not there ought to be an affirmative action plan, whether or not there ought to be any black studies on campus, questioning the intelligence of black students, and things such as that. This is the type of literature that is being handed out on campus, and I would like to submit this to the secretary as a document... The other is submitted by the University of Hartford Black Peoples's Union, and it is a little more offensive, but in my opinion at least not as offensive as something like that. It was mailed to one of the students. It was found in the student's mail box with no indication of where it came from. It is called 'Nigger Application for Employment'...That application itself I don't think will be acceptable to most of the students."
Joseph A. Moniz, President, George W. Crawford Law Association, Hartford hearing, pp. 134, 136.

"We had other citizens concerned with whether there is active recruitment of the Ku Klux Klan in the form of circulating and gaining signatures in schools. This is in West Hartford. It was brought to our attention. We're still looking into that. We understand it to be Conard High School...There was literature at the mall in Bridgeport in 1978."
Ben F. Andrews, Jr., State President, NAACP, Danbury hearing, p. 168, 178.

"...I have seen documents...in terms of flyers, maybe little calling cards, maybe newsletter type of things circulating among residents in Ridgefield."
Edward Brown, Norwalk hearing, p. 109.

"Last spring, the Spring of '79, KKK literature was found in a parking garage in downtown New Haven...I think it was the Temple Street parking garage in downtown New Haven."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, pp. 99, 102.

"There is a number of restaurant stops, especially along trucking routes, for example, where it is generally well known that KKK promotional activities are taking place. I understand that you can write in and send a $50 application fee - I'm sorry, $35 application fee and become a member of the Ku Klux Klan right here in Connecticut."
Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, p. 32.

"Thirdly, I'd like to mention that what you have there is an open active recruitment for what is called the Young Corp. It is not secret. It is very open. They go into the colleges and high schools to develop what they call, what is described in the newspaper, develop the young corp. Their targeting is on the 15 to 22 age range..."
Ben F. Andrews, Jr., State President, NAACP, Danbury hearing, p. 173.

"Nazi [material], some was distributed in Bridgeport within the last two weeks. Up in the Fairfield area, there has been some distributed over in Trumbull. KKK material, that was distributed in Danbury and in New Haven. There was some distributed in one of the suburbs of Hartford, some Nazi material distributed...Here it was put out under the windshields...just stuck under the windshield wipers of cars in the neighborhood, thrown on porches in a neighborhood over in the Hartford area."
Malcolm Webber, Connecticut Regional Director, Anti-Defamation League, B'nai B'rith, Bridgeport hearing, p. 85.

"The statement that I believe Albert Spear once made was, 'It's amazing what a little bit of prejudice put into a Nazi fury will do.' We have here in Danbury literature by a Klansman who was a Nazi, distributing Nazi literature. I think there's a connection between the two."
James A. Fletcher, Danbury hearing, p. 51.

The Select Panel finds:

#6 That state and municipal facilities were the sites of literature distribution and recruitment, but that no direct official involvement has been shown.

"I believe that...there is an active klan group... and they have been active in leafletting...specifically at Western Connecticut State College and in local schools...[The witness elaborated on leaflet distribution on the Western Connecticut Campus]: I have no knowledge that would lead me to believe that there's an active student group on the campus. [The leafletting]...occurred both on city streets that go through the campus and the campus itself on cars in the parking lot."
James Dyer, Connecticut House of Representatives, Mayor-Elect, City of Danbury, Danbury hearing, pp. 7, 15, 16.

"The Klan has been on campus. The Ku Klux Klan was... recruiting students. They came, they turned up for a few hours and apparently vanished. Last semester there was an incident in one of the dormitories..."
Tobias Schwarts, National Co-chairperson, Committee Against Racism; Faculty, University of Connecticut, Hartford hearing, p. 246.

"...There was actual recruitment taking place and forms that have occurred in no less than seven schools that we know about, high schools..."
Ben Andrews, Jr., President, State Conference of the NAACP Branches in Connecticut, Bridgeport hearing, p. 114.

[In relating incidents of literature distribution at Danbury High School]: "We've seen no overt actions on the part of any students by way of distribution of any kinds of literature. [Have any faculty been involved with any incidents of this type?]: No, when you say involved. I'm assuming you mean in terms of participation in the distribution and that type of thing? [Answer]: Yes. [Are there any identifiable, whether it be junior high or high school, identifiable groups of students who can be connected with this type of activity?]: I would say not, no identifiable groups."
Pasquale F. Nappi, Superintendent of Schools, Danbury Public Schools, Danbury hearing, pp. 151, 156, 157.

[In your investigation of the two cross burning incidents, could you relate any of it to identifiable groups or youths at the local high schools or junior high schools?]: "No, I could not."
Joseph W. Beres, Jr., Chief of Police, City of Norwalk, Norwalk hearing, p. 18.

"...A large portion of the [incidents manifesting racial and religious prejudice] happened on college campuses or schools, high schools. [Has any of the information which has come to the attention of the George W. Crawford Law Association indicated any involvement by school officials or administrators, not active involvement but at least passive?]: Nothing that would indicate any involvement by school officials."
Joseph A. Moniz, President, George W. Crawford Law Association, Danbury hearing, pp. 69, 70.

[After having testified to leaflet distribution in the schools, question: Is there a particular group in the high school or in Danbury or kids who are identifiable with radical groups of any type that could cause this type of tension?]: "No, none that I know of at present. [Any evidence of this in the faculty?]: If there was evidence of it in the faculty, I don't think it would surface to anyone..."
Barbara Riley, Co-Director, Anti-Racism Project, Danbury School System, Danbury hearing, pp. 121, 122, 119.

[Have you heard of any evidence of any school principal or vice principal or counselor or faculty which have participated in the distribution of such literature?]: "I have not heard about it."
Charles R. Gordon, President, Greater Waterbury Branch, NAACP, Danbury hearings, p. 222.

The Select Panel finds:

#7 That official and community response to these incidents has been uneven.

Testimony was received on the response of local elected officials.

"In Milford the reaction of [of public officials to the cross burning incidents] was very positive in that the Chief expressed a great deal of concern, hurt, almost, because according to him Milford had been a town where there had been racial harmony. They had not had these kinds of incidents in the past. He indicated to me that they would do everything in their power to apprehend the people that were responsible for the cross burnings in Milford. The same thing was true in Norwalk. As a matter of fact, the Chief of Police in Norwalk and the Mayor participated in a rally which was convened by the black community at City Hall back in, I guess it was October, mid-October, to express their concern and to show their feelings about the cross burnings. They indicated that they would do everything in their power to try to apprehend the perpetrators. So, I think it was a very positive response from those officials."
Joshua M. Liburd, Conciliator, Community Relations Service, U.S.Department of Justice, Danbury hearing, p.82.

[In response to a question on what Norwalk public officials the speaker had talked to about the cross burning that occurred at the speaker's home, the following response was received:] "Well, if you would consider firemen and policemen public officials, that's the only persons I had a chance to talk to. [Has anybody else from the Town contacted you?] No."
Sheila Spigner, Norwalk hearing, p. 176.

"Oh, definitely [there has been effective action by Norwalk public officials]. The Mayor, for instance, was at the public rally and made a very strong statement. And I think it is safe to say that the administration of this community certainly will not tolerate this sort of behavior, and it says so very loudly and very clearly."
Samuel L. Briggs, Executive Director, Norwalk Human Relations Commission, Norwalk hearing, p. 40.

"I would say that when the Mayor, former Mayor, of the City of Danbury when approached by citizens petitioning for redress of grievance can make the statement to the effect that we as individuals bear the responsibilities for anything which may come about and that Constitutional rights of the Klan must be protec-

ted to the exclusion of Constitutional rights of the victims of the Klan, I would suggest something is wrong. I would also say that when these events have occurred, did occur, and no official statement was made by persons in power and persons with ability to do so, there was a chilling effect on the minds of many people who are black and who do not want to come forward because of fear that there may be some official complicity with the acts of terrorism that have taken place."
James A. Fletcher, Danbury hearing, p. 41.

"I went down to City Hall where I was to receive the permit [for the 10/21/79 march to promote racial harmony] where I was to go somewhere else. It was raining like hell that day and I got wet as a dog trying to get the right information. I was sent everywhere but the right place. In a discussion with the outgoing Mayor, his feeling was 'All you're trying to do is start trouble. There's only one person and nobody's going to listen to that one person.' My statement to him was 'There's more than one person. You don't know how many other persons that one person has reached.' He said, 'Well, if you get a permit and it has to come through my desk, my signature will not go on it.' ... with the help of God I went to the right person, our Police Chief. Police Chief Nelson Mesido, who worked very diligently and hard with us and the entire staff. He informed me that the streets that we were using were State streets. The Mayor did not have to sign the permit once it came back from the State Department of Transportation. The Mayor stated that all power was vested in him, so therefore I couldn't do anything. He suggested that he would be in favor of us having the march, but have it at the Danbury High School where all the buildings could be close."
Gladys Pernel Cooper, President, Danbury NAACP,
Danbury hearing, p. 193.

"Letters during that summer were sent to the Mayors of East Haven and New Haven asking for further investigation of the acts [of racial terrorism]. The East Haven Mayor refused to acknowledge even the fact that he had gotten the letter. The letters came from various community organizations, I think from the Urban League of New Haven and the Jewish Federation of New Haven."
Louise Etkind, Director of Community Relations, New Haven Jewish Federation, Bridgeport hearing, p. 98.

"The Mayor of Stamford has not come out strongly with this [on cross burnings in Stamford]..."
Bernard Fisher, President, Greenwich Branch, NAACP
Norwalk hearing, p. 83.

[So, there haven't been any rallies or marches as there have been in both Danbury and Norwalk in Stamford?] "No." [Has there been reaction of the elected officials in the community to these incidents?] "Not to my knowledge. I have not seen any statements."
Woodrow C. Glover, Executive Director, Stamford Commission on Human Rights, Norwalk hearing, p. 52.

"Gentlemen, I'd like to submit this testimony, that there was a cross burnt in the City of New Britain about a week ago. Our black community is very upset about the situation. There has not been one cry of outrage from a single official other than my statement to the press at the particular time as President of the NAACP."
Allenstine D. Willis, President, New Britain Branch, NAACP, Hartford hearing, p. 198.

[Question: Would it be important for the leaders of communities to come forward and speak out, and would that have an effect?] "Yes, I think it is extremely important. I think that it not only will have an effect, but that it is in their own best interest...It is extremely important for the leadership group in our society to interpret where we are, where we must go, what we must protect and what we must maintain, the standards that we must protect and maintain as we address the problems of the 1980's...I think it is important for this commission to exist, for the Governor to make a statement and for other people in leadership positions in the society to treat this whole issue as a serious matter and give the kind of guidance and support to the principles of American democracy that marginal people in the society need to prevent acting out and displacing their anxiety...onto more vulnerable groups in the society...It is terribly important for the leaders of government, in particular, but also other institutions to take the opportunity to express and reestablish at this important period what America is all about..."
Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center; Associate Dean of Yale University School of Medicine; Hartford hearing, pp. 46, 40, 32.

"Those who hold positions of responsibility have the duty to condemn not only the acts, but those groups which perpetrate the hate and distrust among our people, whether it be the KKK, the American Nazi Party or any Black Supremacist gourp."
Richard D. Tulisano, Chairperson, Judiciary Committee, Connecticut General Assembly House, Hartford hearings, pp. 81, 82

"...Get local officials like me and the State officials and other people to take positions and stands and not be afraid; that there is a comradeship of people who are concerned..."
George A. Athanson, Mayor, City of Hartford, Hartford hearing, p. 62.

[A recommendation] "...for the selectmen and mayors of towns if that they stop treating these incidents as pranks, and in most cases they are the Commissioners of their police departments, that they insist upon a thorough investigation by the police."
Bernard Fisher, President, Greenwich Branch NAACP , Norwalk hearing, pp. 91, 92.

Testimony was received on the response of local law enforcement officials.

"In towns and cities that have local police departments they take primary jurisdiction. Should they request any assistance, of course the State Public Safety Department is ready to provide that. We have not, at this point in time, been asked for any assistance from local authorities. [Then in each instance the local authorities, through the State Police, inform you of an incident?] Yes. This information, sir, we gain by contacting the local departments and asking them whether or not they have had any activity involving racial incidents..."
Donald J. Long, Commissioner, Connecticut Department of Public Safety, Hartford hearing, p. 67.

"There have been seventeen cross-burning incidents in Connecticut in the past year. Since each of the reputed incidents have taken place in a city or a town, covered by a local police department, the State Police have not been directly involved in any of the investigations. There has been no report of racial incidents in those towns that are under the primary law enforcement jurisdiction of the Connecticut State Police Department. In checking with the local police departments that have been involved, I found that each case reported has been investigated, with most resulting in arrests..I would like to assure the Committee and the citizens of our State that all acts of this nature occurring in State Police jurisdiction will certainly be fully investigated, and that we will work with the prosecuting authorities towards successful prosecutions of these cases. I personally view this type of behavior as a cowardly act, and I feel that these incidents certainly call for the condemnation of our entire society and positive actions by officials."
Donald J. Long, Commissioner, Connecticut Department of Public Safety, Hartford hearing, p. 65.

"There have been to date in the past year sixteen arrests; one of those arrests included a Federal charge being placed against a perpetrator. Of those sixteen arrests approximately half involved juveniles. That, ladies and gentlemen, is the information that I have... I am not aware at this point in time, sir, that there have been any convictions."
Donald J. Long, Commissioner, Connecticut Department of Public Safety, Hartford hearing, pp. 66, 68.

[In response to a question on the response by the Town of Ridgefield or the law enforcement officials to the speaker's earlier question to them why no charges had been pressed for the cross burning at the speaker's home, the following response was received:] "Let's start with the law enforcement officials. Well, they felt that since - I think the Town or the Chief of Police identified this as a State problem - so, therefore, the charges and whatever else must occur, must fall down from the State. This is his way of, of course, getting out of the issue. I had some very harsh words with him about that. But, there was no change, nothing had changed his position insofar as the Town...You look at it and say 'What do you expect.' So, you turn your back and hope that something on the higher level works. That's what I hoped for. It did work. I did not lose faith in the judicial system nor in the process of law, because I knew somewhere along the line I was going to get some satisfaction. I'm very happy with the outcome. Although they couldn't get everyone, all of the parties involved in the same indictment, as far as I'm concerned, this will give second thoughts about acts against me or acts against anyone else."
Edward Brown, Norwalk hearing, p. 120.

"There is no law according to him that is strong enough for him [the State prosecutor in Danbury] to prosecute a case. I personally believe that if he really wanted to prosecute the case, he could have prosecuted it with a little bit more determination. I don't believe this has been done."
Bernard Fisher, President, Greenwich Chapter, NAACP, Norwalk hearing, p. 85.

"I find it very interesting that when you call the police on any other matter they come quickly. I had called them several times before they showed up. I related that to them and they claimed they put in 67 hours of patrol, which they did not. I personally saw the car which came and stayed at the stop sign of James Place and Bayview Circle for two hours. They thought I was asleep and then they left. That's all the protection I had."
Goldie Palmer, Danbury hearing, p. 19.

"Well, there was different kinds of investigations. First it seemed they was really trying to hide it (incidents of racial harassment) under the rug. Maybe if we closed our eyes it wouldn't happy any more. Then after everything was calm we got the threatening letters telling us to move out of the dorm unless we'd regret it. After that they started bringing the police in and the big investigation which nothing came of that yet."
Bridget Moore, Hartford hearing, p. 234.

"We took some of the materials [hate literature distributed in Waterbury] that we discovered and made an appointment with the Superintendent of Police. We turned our materials over to them. They indicated they would take care of it. Of course, since then it has not been discussed. So, those words 'We'll take care of it', have a particular ring in some of our ears. We understand what it means. It still continues."
Dr. Charles R. Gordon, President, Greater Waterbury Branch, NAACP, Danbury heaing, p. 207.

"Well, I find the police department in Waterbury to be extremely ambivalent and lackadaisical when it comes to protecting the rights of blacks and other Hispanic groups. Maybe it's just because of that view that I have having spent time in court with young people and with others that have run afoul of the law. If there's a serious problem they have the resources and the talent and the ability to solve that in a matter of hours. I think you recall the story of, was it Brinks, which ever it was, one of the armored car companies. They were working very effectively, very consistently on that. I think it's still continuing in court. I guess what I'm saying is it's a matter of motivation and priorities...I think that the real basic problem lies not with the patrolmen and those who are in the rank and file. I think it lies at the top. I drop it right at the front door of City Hall. I think that's where it belongs."
Dr. Charles R. Gordon, President, Greater Waterbury Branch, NAACP, Danbury hearing, p. 216.

[In response to a question on the reaction of the Stamford Police Department to several incidents of cross burnings, the following response was received:]
"With the third incident, the Chief of Police made a very strong statement about enforcing the law and that this kind of behavior would not be tolerated, and that the police would vigorously enforce the law."
Woodrow C, Glover, Executive Director, Stamford Commission on Human Rights, Norwalk hearing, p. 49.

"[We] do have an organization in Milford of blacks we were concerned about the cross burnings, et cetera. However, we do have exonerations for the Police Department who did work very diligently to capture the youngsters who were involved...The Police Chief was very cooperative in this endeavor."
Wiley Bowling, Bridgeport hearing, pp. 186, 188.

"In my view, such acts are not vandalism--they are vicious attacks on the rights of Americans quaranteed by our constitution..."
December 29, 1979 letter of Victor I. Cizanskas, Chief, City of Stamford Police Department, to Jurate L. Vaitkus, Special Assistant, Commission on Human Rights and Opportunities, Exhibit N-3.

"We found most of the leaders or Chiefs of Police, different people, very disinterested in terms of continuing extensive investigations."
Ben Andrews, President, State Conference of the NAACP Branches in Connecticut, Hartford hearing, p. 180.

Testimony was received on the community response.

"Some four, five years ago, maybe it is six or seven years ago, there was a fire bomb thrown through the front window of a house in West Haven, the only black family who moved into the area. There were two small children playing on the floor and it was only by the grace of God that those children weren't burnt up. The Town of West Haven at that stage really became aroused, petitions were passed asking that family to stay there. There was a demonstration in their favor, the neighbors volunteered for all kinds of aid that came through the churches, the police themselves went out and they found the person. It was a young man who thought he had community approval for such kinds of acts...[the] reaction of the community was very, very clear. The man was caught; we have not had a repetition."
Malcolm Webber, Connecticut Regional Director, Anti-Defamation League, B'nai B'rith, Bridgeport hearing, p. 76.

"People joined hands at the end of the event and sang together 'We shall overcome'. I believe that really was a strong positive feeling in the community that has washed over in many ways. I believe it [the Danbury march in support of racial harmony] has been an important, a very important, example of the kind of thing we must have and need. Howard [the speaker's son] didn't have any bad dreams after that march was over. He sort of felt that that was something he didn't have to worry about and we had some other examples of people that didn't support the Klan...I believe that there was a total of about 400 people in the march."
James A. Fletcher, Danbury hearing, p. 55.

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[In response to a question whether there was a change in attitude by members of the Ridgefield community since the cross burning at the speaker's home, the following response was received:] "Now that I'm exposed more, I get a great deal of exposure in the supermarket, people know who I am. Sometimes I get the individuals saying 'The town isn't really like that'. You get the individuals saying 'Maybe you should just get out of here'. That sort of stuff. These are the things I have experienced."
Edward Brown, Norwalk hearing, p. 108.

"First of all, there were a lot of students that really cared [about the incidents of racial harassment at the University of Connecticut] and were very concerned and shocked and felt this should not happen. There were also students that really didn't understand the incident. All they could see was the good name of the dormitory was involved. The fact that human beings were injured, human beings were hurt, their attitude was they couldn't understand that at all. As a matter of fact, as another example, an incident occurred that you'll hear about later this evening. It was an incident in another dormitory. One of the students in the dorm where the incident occurred wrote a letter to the Daily Campus and all she was concerned about was the good name of the dormitory being taken in question. The fact that two girls were really harassed and how they felt about it seemed completely beyond her. This is an example of the kind of thing that happens..."
Herbert Goldstone, Committee Against Racism; Faculty, University of Connecticut, Hartford hearing, p. 219.

[The following is the resolution of the Capitol Region Conference of Churches, passed at a State Board meeting held November 30, 1979. The Conference was said by the speaker to represent the Christian Community in twenty-nine towns in the Greater Hartford area:] "WHEREAS, The resurgence of the Ku Klux Klan in recent months has been widely reported by the media; and
WHEREAS, The Klan cannot exist without the consent and blessings of that segment of our citizenry which either secretly or openly shares its doctrine or condones its activity by apathy; and
WHEREAS, Cross burning is an elaborate and premeditated act which desecrates the Christian symbol of and violates the meaning of the Cross and cannot be dismissed simply as a spontaneous expression of juvenile restlessness;
THEREFORE, BE IT RESOLVED that the Board of Directors of the Capitol Region Conference of Churches---
(1) expresses its concern for the victims of Ku Klux Klan violence;
(2) calls upon the member churches of the Conference and all persons of conscience to--
(a) express their repugnance and alarm over the resurgence of the Ku Klux Klan as a terrorist organization in American

society;
(b) condemn the KKK's appropriation of the Christian cross as a symbol of hatred, racism, anti-semitism, and terrorism;
(c) declare their complete opposition to the philosophy and tactics of the Ku Klux Klan;
(d) be alert to the dangers posed by the Klan and work unceasingly for a society in which love and justice are extended to all persons as children of God;
(e) seek ways to oppose the efforts of the Klan to promote racism among young people; and
(f) challenge Christians to find imaginative ways to counter the influence of KKK demonstrations and affirm our good will toward Blacks, Jews, and others who are hurt by the activities of the Klan; and
(3) calls upon federal, state, and local governments to--
(a) use their resources to initiate and empower educational efforts against the evils of terrorism; and
(b) mobilize their law enforcement agencies effectively to investigate and bring to trial the perpetrators of KKK violations of the law. "
Reverend Edward Geyer, Hartford hearing, p. 77.

Testimony was received on the response of local and state school officials.

"The principal of the [high] school took a strong stand and I supported him. We both indicated publicly that any student that was caught distributing such [racially inflammatory] literature in the school would be suspended in accordance with the discipline code, which we have distributed to all students."
Pasquale F. Mappi, Superintendent of Schools, Danbury Public School System, Danbury hearing, p. 151.

[In response to a question on what the Conard High School administration has done in response to racial tensions at the school, the speaker answered as follows:] "They have not responded to that as yet."
Dr. Robert Milliken, School Psychologist, West Hartford Schools, Hartford hearing, p. 176.

"Well, the matter [distribution of hate literature at Wilby High School in Waterbury] has obviously been brought to their [school superintendent and school board] attention and they're taking it under advisement. They indicated if they discovered who's responsible, who is behind it, that student would be punished or dismissed. Of course, they haven't found anyone yet, though...I think that the school administrators definitely need to revise their posture. You know, they keep saying my role is that of being administrator of the school. I feel it's their responsibility to oversee all of the activities that are taking place in that school and to bring about

corrective measures."
Dr. Charles R. Gordon, President, Waterbury Branch, NAACP, Danbury hearing, pp. 207, 210.

"I just would like to say that the distribution of KKK literature at our [Danbury] schools has been handled very lightly...As I said, there were no actions taken against those white students. You have a policy why don't you enforce them."
Gladys Pernel Cooper, President, Danbury Chapter, NAACP, Danbury hearing, pp. 189, 191.

"Corrective steps, as you know, have been taken with respect to the literature that was being distributed at Danbury High School."
James A. Fletcher, Danbury hearing, p. 47.

"Well, it was recommended that the Board of Education [Milford] through the Superintendent - Assistant Superintendent of Instruction that he try to improvise programs perhaps through social studies, et cetera, to sort of educate the younsters as to the distastefulness of these kinds of activities, [incidents of racial harassment.]...Yes, they [the superintendent] were responsive. [Has he come up with a plan that you have seen?] "No, not yet."
Wiley Bowling, Bridgeport hearing, p. 193.

"So, even after the incident occurred [cross burning] there wasn't anything in the way of harassment or anything like that. I think the school [Ridgefield] must have taken a position, protecting position, because the teachers were certainly now more aware of it and looking out for her interest."
Edward Brown, Norwalk hearing, p. 119.

"The family [of the girl cornered at a Rocky Hill School by five white students dressed up in Ku Klux Klan robes] turned to the principal and the principal simply smiled and wrote it off again as a prank."
Ben F. Andrews, Jr., State President, Connecticut NAACP, Danbury hearing, p. 168.

"What they [University of Connecticut administration] did is simply try to act as though this [incidents of racial harassment] didn't happen. It wasn't mentioned. It should be covered up. There's a whole history of these things."
Herbert Goldstone, Committee Against Racism; Faculty, University of Connecticut, Hartford hearing, p. 218.

"We have developed a broad plan of action which encompasses the entire University community and goes beyond our immediate boundaries to respond to the need to improve human relations at the University..."
Dr. Frederick G. Adams, Vice President of Student Affairs & Services, University of Conn., Policy Statement of U.Conn. Division of Student Affairs & Services, Exhibit H-16.

"The fact of the matter is that fundamentally nothing happened on the U.Conn. campus until the Committee Against Racism on that campus moved. The administration was doing nothing. They were awfully quiet about it. There was no public manifestation. Indeed these two black women were living in the dormitory under conditions which were less than optimal. Put yourself in the position of a freshman sleeping in the dorm that night and knowing what they were writing, and take it from there...What we demanded was that the administration enter the dormitory and investigate and they investigated and they came up in essence with nothing. It took them three weeks to determine what floor the incident had originated from. The two young women knew that right from the start. It would appear to be half-hearted and not effective. They had the tools to do that. We don't. Perhaps we're going to have to get those tools. It may be, indeed, that the Committee Against Racism has to handle this from beginning to end and maybe it is they who have to learn the lesson."
Tobias Schwartz, National Co-Chairperson, Committee Against Racism, Hartford hearing, pp. 243, 254.

Testimony was received on the response of United States law enforcement officials.

[The] "Federal Government traditionally, and I think quite properly, has an interest in deterring this type of racial incident, and I personally have had a concern with it. In many instances we responded to requests to be involved from State or local authorities...Well, we would investigate, speaking generally, any kind of incident, regardless of how the information came to us, whether we would read about it in the newspapers or hear about it from a victim, a potential victim, or from local police. Information regarding these types of incidents comes from a tremendous variety of sources, and we don't wait for the incident to have a consequence in terms of physical violence or to be directed at a specific individual, which indicates the possibility of imminent criminal action, and it is as much a subject of interest to us as the criminal offense itself...As to the outcomes of our individual investigations, I should say that I am speaking, for example, of other types of incidents that may involve potential violations of the Civil Rights laws. In one such investigation the outcome was a prosecution at the Federal level.."
Richard Blumenthal, United States Attorney, District of Connecticut, Hartford hearing, pp. 17, 23, 24.

"As you no doubt know already, and I regret to reiterate, Federal jurisdiction in these matters is narrowly defined, especially insofar as the criminal law is concerned. The Federal government has invoked Sec-

tions 241 and 242 of Title XVIII in the United States Code to prosecute interference with the exercise of civil rights by officials under cover of their authority and conspiracies aimed at such interference involving ordinary citizens...

Besides prosecuting violations of these two Civil Rights Statutes, we have also recently prosecuted violations of Section 3631, Title 42 of the United States Code, which prohibits the intimidation of the exercise of civil liberties in housing where the incident is alleged to have been motivated by the goal of intimidating the victims because of their race against living in a particular area or neighborhood. Pendency of one of these prosecutions in particular greatly limits the extent to which I can discuss criminal prosecutions regarding civil rights in general...

The criminal law is a blunt instrument. It does not readily lend itself to promoting racial peace and harmony. It may have a deterrent effect if wisely wielded, but its application depends always ultimately on proving beyond a reasonable doubt each and every one of the elements of the crime, including criminal intent. Even where the offender can be identified, it may be difficult to prove that his or her purpose in performing a malicious act is to intimidate the victims, to drive them from a neighborhood, for example. This burden of proving criminal intent is one that often is excruciatingly difficult to satisfy as well it should be...

If I may offer a personal comment, Mr. Chairman: Based on my ten years as Federal Prosecutor I would say, perhaps, that...the criminal justice process, creates more enemies than friends. A defendant has friends, specially where the prosecution is one involving a violation generically known as "White Collar Crime" or "Civil Rights Crime", since, more likely than not, he or she has no prior criminal record, does have credentials or background which generate credibility or sympathy and otherwise presents an aura of respectability that creates empathy among jurors. These are tough cases. We do not shurk from the duty to pursue them, but we must recognize that the deterrent effect of a successful civil rights prosecution, if there is such an effect, depends upon its success...

Again, Mr. Chairman, if I may continue on a personal bent, I have contemplated often the view that an ordinary member of the public must have of the criminal process and how different it probably is from my own. That view results from a picture presented in the media. A report of the indictment, arrest, filing of information or other forms by which the Grand Jury or prosecutor initiates criminal proceedings on behalf of the Government against an individual defender. The public is much less likely to read or hear

or see the outcome, the conviction or acquittal, and the sentence imposed. The assumption continues to prevail that the indictment in some sense is tantamount to guilt, a view which may be flattering for most of us responsible for the indictments but which is dangerous, nonetheless, and all of this is merely to say that the criminal process imposes obligations and restraints that make our work more complicated than ordinarily is understood.

Whatever the outcome of an individual criminal case, it rarely enhances racial harmony. Because it is an adversary process, because it pits the government against one or more private citizens, and because it may result in a harshly punitive sentence, its emotional impact may be to divide rather than unite a community. More productive than prosecution in many instances, especially Federal Prosecution, is the general effort at mediation and conciliation and education and fact finding of the sort that your Commission has undertaken. Even where acts of physical violence occur, as we have found in a number of instances that we have investigated in the Federal Government, establishing Federal jurisdiction is more difficult than commonly is perceived. We do not have the resources or authority, for example, to investigate, generally, the activities of any group, whether the Ku Klux Klan or Iranian students or the Socialist Workers' party, or any other collection of individuals that may be the object of popular suspicion when they gather in the exercise of First Amendment Rights...

In many of these instances we have found that they are the result of actions by juveniles, which creates special problems for us under Federal law since we have to make various findings, for example, that State or Local facilities regarding incarceration or treatment are inadequate, which we have not done with respect to Connecticut. On the contrary, we feel that the State has quite adequate facilities to handle juveniles, or we have to find that there is some purposeful disregard on the part of State or Local law enforcement authorities with respect to these kinds of violations. That is the problem when juveniles are involved." Richard Blumenthal, United States Attorney, District of Connecticut, Hartford hearing, p. 18.

[In response to a question how the Community Relations Service of the U.S. Department of Justice would respond to the above referenced incidents of racial terrorism particularly where there is some indication that local enforcement officers are not as responsive as they should be, the following response was received:] "Well, we certainly would---well, I think we'd want to talk to the next person that's in power. The Chief of Police has to respond to

somebody, right? [Yes.] So, I think that in the process we would be talking with the Mayor to find out what his reaction is to the kinds of things that we found out. We'd want to know why, you know, why it is this way. We'd want to talk to, even if necessary, the State Legislator who represents this community, because these people are a part of his constituency. These are the elected people. These are the people that are supposed to be representing us. It seems to me to be their problem. We have to do a number of different things to bring the pressures to bear, if it is the police, on the police."
Joshua M. Liburd, U.S. Department of Justice, Community Relations Service, Danbury hearing, p. 93.

[In response to a question whether the Community Relations Service of the Justice Department has been actively involved in any specific incidents in Connecticut, the following response was received:] "Yes. Last week I personally was down in Norwalk, Connecticut. I had an opportunity to talk to some of the people that were involved, the police officials also. I was in Milford and spoke with the Chief of Police there about the two incidents in Milford, the two that they had in Norwalk."
Joshua M. Liburd, U.S. Department of Justice, Community Relations Service, Danbury hearing, p. 82.

The Select Panel finds:

#8 That media coverage of these incidents is helpful but often lacking in depth.

"Some of the incidents which I have just described were publicly reported in the local news media, others were not. Still others were reported but were treated with something less than the serious concern they warranted. Typically, the news media treats some of these events, especially cross burnings and other symbolic expressions of racial hatred, as 'youthful pranks'. While I do take specific exception to the treatment of racism in the New Haven news media, my purpose here today is not to condemn the press. Rather, I believe our entire population, including elected leaders, police department officials responsible for affording safety to the victims of these acts and for apprehending those responsible for them, the media and even everyday citizens have collectively chosen to minimize the threat of racism by either ignoring it altogether or by viewing anything short of physical violence as a 'prank'".
Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, p. 19.

"I have a paper that I submitted to the Commission, The pow wow , which is a Conard High paper, and I think the students are aware and are making an attempt to try to eradicate the problem [of racial tension], but, again, the information that was conveyed to the greater public of the city of Hartford by this reporter from the Courant has distorted this whole issue to make it a minor issue, but yet the students realize that they do have a problem as relates to race relations in Conard High School."
Thomas Wright, President, Greater Hartford NAACP, Hartford hearing, p. 104.

"...say no in a loud voice...I think reporting this sort of thing [i.e. cross burning] is extremely important. It is a complicated issue, and I recognize that, but I come down very strongly on the side of publication of acts on this kind of thing, not sensationalism, but very definitely that people must know about it. You cannot really ask people not to do things if nobody knows that they are going on."
Lucy Johnson, Chairperson, Permanent Commission on the Status of Women,
Bridgeport hearing, p. 129.

[In response to a question regarding an opinion as to why these incidents have all occurred in the last five months, the following was stated:] "Well, I believe that the notoriety which was given to other

incidents in Westchester County, also in Norwalk certainly had some bearing on it...The first two incidents were decided among many of us to give as little notoriety as possible. We thought that they were a result of some of the incidents that were happening in New York."
Woodrow C. Glover, Executive Director, Stamford Commission on Human Rights, Norwalk hearing, pp. 65, 66, 43.

"...You have to look at the communities and see what the attitude in that particular community is... because I think that in this area, as in many areas, sunlight sometimes is the best disinfectant."
Austin McQuigan, Chief State's Attorney, State of Connecticut, Bridgeport hearing, p. 42.

[In response to the observation from the committee that on one hand the effect of media coverage seems to motivate more incidents whereas on the other hand, if you do not report an incident, you can't get strong positive community reaction, the dilemma was answered as follows:] "That is a $64 question. I think the only thing we can ask - the press certainly has a duty to report what they consider news and that becomes a very difficult proposition. I don't think we can ask the press not to publish anything. I think we can ask the press to report it in a responsible manner and not sensationalize it. I have seen some sensationalized reports. I think we need to know what is going on; at the same time I think we have to ask the press to do it in a very responsible manner...I would endorse the editorializing."
Malcolm C. Webber, Connecticut Regional Director, Anti-Defamation League, B'nai B'rith, Bridgeport hearing, pp. 74, 80, 82, 84.

"...We are concerned that the media should be looking for a legitimate opportunity to emphasize the success stories and affirmative action and social desegregation and neighborhood integration as models for replication elsewhere...My own feelings are that the media has to examine very carefully its own role in our social development. There is...the temptation to overplay the emotional and dramatic and negative potentialities, which only serve to give encouragement...There must be more positive press relating to our society...We don't have very much luck getting positive statements that we send in...A few lines to the positive things...would change considerably the whole atmosphere in which young people are living...Emotion and crisis, I guess is where the sales are."
Charles Sardeson, Executive Director, National Conference of Christians and Jews.
Hartford hearing, pp. 154, 158, 159.

The Select Panel finds:

#9 <u>That among the underlying causes of these incidents are economic insecurity, psychological disorder, and ignorance</u>.

"But who is it that practices racial discrimination? Certainly not me, is what most of us would say if asked this question directly. In fact, racism is one of the social ills which has afflicted our world virtually from the earliest recorded history. Some have postulated that racism has grown out of fear and ignorance of people who were different from ourselves. Others have viewed racism as being economically and even politically motivated. Still others have attributed more complex psychological motives to explain racism. Probably, all of these reasons have served from time to time to help create racial turmoil. Whatever the reasons though, history has indisputably recorded act after act of mass racism by mankind against various racial groups. Early biblical accounts describe vividly how entire civilizations were enslaved by other nations. In our lifetimes we have witnessed the incredible holocaust in Nazi Germany which was born out of a racist quest for development of a super race to rule the earth. Our own history in America has witnessed the inhuman incarceration of Asian-American citizens during World War II, the abuse and exploitation of Asians during much of the 19th century for economic gain, the enslavement of Black Americans for several hundred years and the almost total destruction of the civilization of Native-Americans. Fewer than fifteen years ago public laws still existed in much of this country which were systematically used to deny minorities the right to vote, access to public accommodations and prevented citizens who were racially different from marrying one another if they so chose to. In short, we as a civilization have been deeply rooted to racism, historically. Not isolated racism practiced by a few, but widespread racism, institutionalized by government edict and often routinely accepted by our society as a norm of behaviour. The racism which is sweeping across Connecticut and the nation in 1979 is merely an extension of the historical racism ingrained in our society.

In trying to further understand this resurgence of racism we need to understand that latent racism exists in all of us. In New Haven where there are fairly sizable population groups of both Blacks and Jews, black people express racism towards Jews by inaccurately and unfairly attributing the problems of slum housing in black ghettoes to Jews simply because there are some Jewish property owners. Blacks

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forget that there are "WASP" property owners, Italian property owners, even black property owners. Similarly, some blacks would place the blame on Jews for the serious problems and failures of a public school system in New Haven which is 75 percent minority in student population, but which has a disproportionately high number of Jewish teachers and administrators. The willingness of many Blacks to place at the doorsteps of Jews the responsibility for slum housing and the failure of the public school system is an example of latent racism...Jewish people have clearly attained a measurable degree of economic and political success in New Haven when compared to Blacks. Perhaps those achievements and a fear of losing them causes a Jewish racist reaction towards Blacks. Whatever the cause, many Jews do express racist feelings against blacks. Many Jews simply are afraid of blacks and seem to believe most blacks will ultimately forcibly take their belongings from them and/or physically harm them. Hispanic people experience severe racial prejudice. Asian-Americans, Native-Americans and, indeed, most all non-whites suffer racial discrimination in America. But, in turn, each of these groups practices racism against whites and frequently against other minorities as well.

I feel certain that there are some individuals in our society who have learned to be color blind and truly oblivious to race. They are the exceptions, however. Most of us have strong latent feelings of racism as a part of our makeup. This pervasive latent racism in each of us may be a product of the deeply rooted historical racism of our civilization which has practiced various forms of racism or this latent racism may reflect complex individual insecurities. The latent racism in each of us spawns the overt racism such as cross burnings which are now of sufficient concern that these hearings are being held. I believe that the current resurgence of racist activity has occurred within a framework of historical racism practiced by our civilization and a psychological framework of latent racism which most if not all of us harbors individually. The phenomenon which more specifically triggers the resurgence of racism is the white majority reaction to such controversial social programs such as school busing aimed at eliminating racial segregation in public schools and affirmative action programs designed to increase minority employment opportunities. Clearly, Bakke, Weber and now Fullilove have struck a responsive chord among much of white America...

I think to some extent we have witnessed much less activism on the part of the Government on behalf of civil rights activities. This reduction in Government activities may have caused a sense of security on the part of those who perpetrate such acts. I think that there has

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also been a very clear diminishment of activity on parts of groups like the NAACP and the many other groups who, during the '50's and '60's, were much more active than they have been in the '70's,.. I think the inactivity of some of these groups may also have let a vacuum develop in which racist activity resurfaced."
Edward White, Jr., President, New Haven Branch, NAACP, Bridgeport hearing, pp. 14, 25.

[As] "has been shown in history, when there are problems that you can't cope with is to jump at each other's throat and to say he is the cause or they are the cause of this problem...I think we did it with the Iranian students, which the general order of the Federal District Court turned down, to say that group is responsible for whatever that cause is,.."
George A. Athanson, Mayor, City of Hartford, Hartford hearing, p. 55.

"A lot of that [cross burning] is the economic conditions. The economy itself. In my business I'm aware of employment opportunities, how a lot of them are diminishing and how the requirements even to run a machine are becoming a little more rigid. You see minorities and you see a lot of individuals are moving into the suburbs for a variety of reasons. Individuals like me, for instance, I'm a prime target. I'm a prime target to a guy who may be a blue collar worker. This can spread and you can go into a local tavern and people are agitated and get themselves worked up and start pointing fingers as to why they're not making it economically and why the other guy is. Their feeling may be their jobs are being threatened, their livelihood, a lot of other things. I think this is a contributing factor why these incidents are occurring."
Edward Brown, Norwalk hearing, p. 113.

"There may be a more pronounced cause [of cross burnings]. In the last fifteen years, at least to be sure, this country has undergone profound and desirable social change. Social change occasions stress and stress in the society often brings out incidents such as this. Change in society and such changes in recent years has compounded with very considerable, significant economic fear and distress. That commonly engages aberrational behavior by people who are basically very fearful and feel threatened."
Kenneth J. Slapin, President, Norwalk Common Council, Norwalk hearing, p. 158.

"One thing that is of concern is that we are institutionalizing many of the responses we make to human situations, and I think that that is a process which, if it is not somehow reversed, can spell trouble for all of us in the future, because it releases individuals of their responsi-

bility to be a part of the building of social fabric in which people are treated with respect and equally. We cannot turn over to institutions all of those things for which we are personally and humanly responsible, one to another."
Charles Sardeson, Executive Director, National Conference Of Christians and Jews, Hartford hearing, p. 155.

"That is [on the causes of the cross burnings] that many whites, in particular, feel that blacks are making gains too fast. I don't see that personally. They feel that they have to do something to slow us down. Many blacks, as you know, are getting more educated nowadays because of certain colleges they're able to attend, better education all across the country, because of grants, loans, et cetera. Naturally if you get more education you're going to be a little smarter than just not having any education at all. Many whites feel the only way to slow us down is retaliate back to the way they did years ago in the cross burnings, in intimidating blacks and minorities by acts such as this to frighten us. As I stated in my statement earlier, many blacks today are new blacks. They're not afraid any more. They're not going to tolerate these kinds of actions."
Alexander Hinton, Bridgeport hearing, p. 200.

"We have a challenge to be human, as I see it, and it is unfortunate in this technologically oriented society that no one has time for human relations, nobody has time for something as basic as that. Don't bother me with talk about how to live with other people, that is too simple. I have a job to do, I have work to do. Do not bother me with human relations, and I submit that the basis of all major problems in this world today are not revolved around quadraphysics, they are not revolved around calculus, nor are they revolved around pharmacology or any of those so-called high powered sciences. They are revolved around human relations, and that is a challenge of not only our educational system to teach human relations, and not only a challenge of our religious institutions, but it is a challenge of our businesses to teach and practice human relations. That is something that we have not yet done because it is too simple, it is something that is too basic, it is something that I don't have time for because of my professional pursuits."
Dr. Thurman Evans, Area Director, Greater Hartford Chapter, Operation PUSH, Hartford hearing, p. 91.

"Basically it comes down to ignorance. It's ignorance and a lack of knowledge of other people."
Edward Brown, Norwalk hearing, p. 115.

"I feel it's [racially motivated acts] being taught around the dinner table. That's why these young people grow up this way. You see them as children when you move into the neighborhood. All of a sudden they're old enough to vote. Just by talking to them over the table they are told certain things that shouldn't be told to them. They come out and they exert themselves whereas their parents hide."
Goldie Palmer, Danbury hearing, p. 25.

"I think -- I feel that it's almost too late to reach a child once a child gets beyond an age, I say eight or nine, because at that point he fully understands what's going on. I say that in reference to the fact that children learn mostly what their parents teach them. As I was shopping in a particular store one day there was a baby in a carriage. The baby couldn't have been more than two years old. As I was looking for some draperies for my apartment the baby said to its mother, 'Oh, Mommy, that black lady is going to steal those.' The mother was totally embarrased and she put her hand on the baby's mouth. So, what I'm saying is that evidently that mother, to me, had implanted that within that child when you see black people they are in the store to steal. The same thing about prejudice. You sit and you talk to children.. ...You have to be taught at an early age, because... that child starts talking and that mother and father start talking back to that child, that child is taking in everything that they say."
Gladys Pernel Cooper, President, Danbury NAACP, Danbury hearing, p. 197.

"The racial violence is at its deepest root a problem of poor management of aggressive energy, and the poor management of aggressive energy in very many cases is taken out and expressed against the most vulnerable groups in our society. Individuals or groups are scapegoated and made the target of individual or group aggressive energy. We live in a competitive, political, economic system, and that system has many virtues. On the other hand, that system has some problems. In our system there are winners and there are losers and there are people at the top and there are people at the bottom, and yet at the same time we tell all people that we should strive to be winners. Not everybody can be a winner. There are large numbers of non-winners, and many of those non-winners must find ways to feel adequate about themselves in spite of the fact that they are not winners as they are told they should be... This often takes the form of identifying with people who are adequate and deprecating or putting down people they deem to be vulnerable by virtue of race, religion, sex, and so on. One of the problems for many of these

people is that they have a sense of personal inadequacy as a result of not being winners, as a result of not being at the top. Their personal inadequacy is not only based on income; it is based also on issues of social competence, competence in interpersonal relationships, sexual inadequacy, intellectual inadequacy and psychological inadequacy. Thus, it is possible for people who are well educated, people who are highly intelligent, to, at the same time, have great insecurities in other areas, in one or more areas, as I have listed, and to either participate in or head hate groups..."
Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center; Associate Dean of Yale University School of Medicine, Hartford hearing, p. 28.

"With the exception of kids growing up in the neighborhood, naturally they can be friends all along and the minute there's a fight over a doll or a toy it's you spicks are all the same..."
Ms. Kathie Garay, Bridgeport hearing, pp. 202, 205.

"The lack of appropriate action has merely served as encouragement for continuing illegal acts and violence."
Dr. Charles R. Gordon, President, Geater Waterbury Branch, NAACP, Danbury hearing, p. 203.

"I think what happens is when there are people going around such as the KKK and the Nazi Party and they're advocating the kinds of violence they are, these escalate and make it possible for people to feel frustrated by other things: unemployment taking place, inflation, existence of all those things combined result in oppression which exists in our society and can become much greater because you have all those other facets that exist."
Mr. Herbert Goldstone, Member of the Committee Against Racism; Faculty, University of Connecticut, Hartford hearing, pp. 214, 216.

Testimony received indicated that schools and housing are segregated by race and that there is employment discrimination, but that race relations are improving.

"Whites support integration as an ideal, but have become increasingly reluctant to support the mechanics of integration, and these mechanics, in my opinion, are the building of such things as public housing in the dominantly white suburbs, real affirmative action efforts, and metropolitan school districts which mesh urban and suburban schools.

To give you some examples of the direction in which we move, in Manchester they turned down a public housing

project recently, and most people, let's face it, identify public housing projects with blacks. It is doused in all sorts of sophisticated language, but the bottom line is or perceived to be that it means that blacks are going to be moved into the community. Most state agencies, as the record of this agency itself shows, are winking at the affirmative action laws in Connecticut, and we have in Connecticut massive segregation increasing in our public schools.

I have some statistics relating to how massive that is in this Greater Hartford Area. It adds up to, in my opinion, suburban apartheid. Exclusionary zoning, which is minimum lot size, minimum square footage of a house, a ban on multifamily housing units, has the effect, if not the intent, of keeping minorities out, and that kind of de facto exclusion of blacks in the suburbs reenforces de facto segregation in our cities. In this area of the state, for example, minorities represent 10 percent of the twenty-nine towns in the Capitol Region, but 90 percent of those minorities are concentrated within the City of Hartford. The City of Hartford contains only one-fourth of the region's population, and yet it holds 90 percent of the minorities. Within the City there are black areas in which one lives and there are white areas in which one lives...

Yesterday the United States Government, the Civil Rights Division of Justice, announced that two school systems in Connecticut were among the 100 most segregated in the United States. Those two school systems are New Haven and Hartford. I know a little bit about the Hartford system because I live and work here. The disparity in the racial composition is astounding here in the Hartford area. In the elementary schools the percentage of white students ranges from only 1 percent at the Mark Twain School to 78 percent at the Kennelly School. At the Barbour School, which is the so called North End, it has 3½ percent white, while 10 or 15 minutes away the Naylor School has 83 percent whites. If that is not racial segregation I don't know what is. Has there really been any discussion or leadership by educational officials in Hartford or at the state level about this degree of segregation? The answer is absolutely no. I could go into great depth about discussions that I have had, and the bottom line is there is no sensitivity to this particular issue...

And then you move over to the state level and we have to face squarely what has happened with the Regulations Review Committee of the state legislature has consistently rejected proposed regulations aimed at implementing Connecticut's racial imbalance law. It is doubtful that they would accept any proposal that they perceive to involve the integration of, probably, a single classroom. That law was passed ten years ago, in 1969, and today it shamefully remains on the shelf. Where has been the leadership on the question? Nor does the Connecticut State Board of Education, in my opinion, deserve any medals for its weak

attempts to desegregate the schools. After submitting proposed regulations to desegregate the schools in the early 1970's, the Board of Education waited over five years to submit new regulations to the Legislature, and the regulations which they proposed are really very weak. The State Board has skirted the question of seeking a metropolian-wide school district system, one which would join the suburbs and the urban areas in a school district, and, in fact, the latest State Board proposal would have no impact on the urban areas which are overwhelmingly black in the first place. Under the State plan you could have a black school system here in the City of Hartford which might be 90 to 95 percent minority oriented, and three or four miles away in one of the suburbs you could have a separate system that was 100 percent white. According to the State Boards' plans there is no violation of the racial imbalance law, but even that proposal is considered too liberal by the Regulations Review Committee.

To a large measure, the current resurgence in overt racist acts, such as cross-burnings, I think also reflects a backlash against affirmative action programs. After years of holding blacks away from decent jobs and decent housing and decent schools, affirmative action programs are continuously being characterized as so-called quote reverse discrimination unquote, and instead of slowing up, it is obvious that we need to do considerably better with affirmative action programs, but the record in this regard is very poor..When officials give tacit approval to the separation of the races through various devices, it is no wonder that we have overt acts like cross burnings. Years ago a National Presidential Commission said that we were moving in the direction of two societies - one black and one white. I would submit to this Committee to a large extent we have already reached that point. In Connecticut we have white areas in which whites may live, and black areas in which blacks may live. We have white schools, we have black schools..."
William Olds, Executive Director, Connecticut Civil Liberties Union, Hartford hearing, p. 114.

"For instance, in the area of education, recently, the State Department of Education noted that New Britain maintains a racially segregated school system. This has been known at least since 1974 when a community study indicated that the New Britain School System was racially segregated. DiLoreto Elementary School maintained a minority enrollment of 52.4 minority rate, while Stanley Elementary School had a .33 minority rate. Little action has been taken by the Board of Education to correct the situation, and it is not a surprise that the DiLoreto Elementary School enrollment, minority enrollment, is now almost 90 percent."
Thomas Connally, Director, Coalition for Basic Human Rights, Hartford hearing, p. 95.

"When I came to Bridgeport and witnessed what I have for all of these years I get sick. Our Police Department has no blacks with any rank other than patrolmen, not even one sergeant or detective. On our Fire Department two blacks, no Puerto Ricans. No Puerto Ricans to my knowledge at all. I said to myself one day, I wonder who puts out fires in Puerto Rico each day. Housing is very bad in Bridgeport. There is no kind of comprehensive plans for better or more housing for minorities. Inadequate security in housing to give people adequate protection of their personal property while people try to earn a living."
Alexander Hinton, Bridgeport hearing, p. 196.

"Despite the widespread belief of leadership groups that the country is in a regressive period in race relations, a landmark survey conducted by Louis Harris and Associates for the National Conference of Christians and Jews reveals major shifts in white thinking about the black quest for equality, indicating a period of real progress is now imminent.

Here are key highlights of the landmark study:

...Over a decade ago, back in 1966, 71% of all whites felt that blacks were trying to 'move too fast.' Today, 61% of national and community leaders surveyed in this study estimate that most whites still think blacks are trying to move too fast. Among national black leaders, an even higher 77% think most whites feel this way. The NCCJ survey shows that no more than 37% of all whites in fact think blacks are trying to move too fast, a dramatic decline of 34 points.

...Although both races express apprehension about busing children to school for racial purposes, when the 35% of all black families and 10% of all white families whose offspring have been bused are asked how the busing worked out, 63% of the blacks and 56% of the whites report the experience was 'very satisfactory.' When they volunteer why they feel that way, both black and white parents report that 'there just are no problems, no complaints from the children' and that 'the children learn to live with each other.' 'Fighting or trouble' is cited by no more than 8% of the blacks and 9% of the whites.

...On the key, front-line issue of integrated housing, the number of whites who say they would be upset 'a little, some, or a lot' by blacks moving into their own neighborhoods has dropped dramatically since 1963, from 62% to 39% today. On the controversial U.S. Supreme Court decision which gave the green light to public housing for blacks in the Chicago suburbs, in only two years time white attitudes have shifted from 40-34% against the decision to 45-35% in favor of that court mandate.

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...The Bakke decision of the U.S. Supreme Court turns out to be a critical threshold event in changing white attitudes toward affirmative action programs for blacks in both the jobs and higher education areas. Once the concept of 'rigid quotas' is ruled out, white conscience about discrimination and lack of opportunity for blacks begins to surface again. By 70-21% a majority of whites feel that 'as long as there are no rigid quotas, it makes sense to give special training and advice to women and minorities so that they may perform better on the job.' By a nearly identical 71-21% margin, whites also agree now that 'after years of discrimination, it is only fair to set up special programs to make sure that women and minorities are given every chance to have equal opportunities in employment and education.' A bottom line on affirmative action programs: by 67-17%, a majority of whites favor such programs for blacks in industry, and a comparable 68-15% majority favor affirmative action programs for blacks in higher education.

...Since 1963, there have been dramatic shifts in white attitudes toward a variety of contact situations with blacks: the number worried about 'a black family moving in next door to you' has dropped from 51% to 27%; the number concerned about 'your child bringing a black child home to supper' has gone down from 41% to 20%; the number concerned about a black using the same public restroom as you' has gone down from 24% to 7%.

...Despite these significant changes, one important front-line issue still shows a huge gap between blacks and whites: the area of jobs for blacks. A substantial 43% of all blacks volunteer that the top problem facing them and their families is the lack of adequate jobs. Yet, no more than 11% of all whites volunteer that they are aware of this problem. Whites are almost totally absorbed with their own inflationary troubles and have a low consciousness about black unemployment. If there is one issue with immediate explosive potential between the races, it is the jobs issue.

...One of the most startling results of the NCCJ study emerged when both blacks and whites were asked to assess black leadership. Both the white public and white leaders tend to think that black leadership is ahead of the rank-and-file of blacks in this country, feeling that blacks have become somewhat apathetic about their lot during a period of 'benign neglect.' In fact, blacks tend to think their own leaders are at best in step with them or are lagging behind their aspirations for equality and integration. Compared with 1970, black confidence in the leaders of traditional civil rights organizations has dropped 14 points, black public officials are down a full 30 points, and black ministers and religious leaders down 18 points. A majority of black leaders think the times are

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not right for blacks to take to the streets in non-violent demonstrations. Most blacks, however, disagree and are adamant about pressing their cause for equality and integration throughout the white establishment. Blacks yearn deeply for the kind of leadership given them by Martin Luther King, Jr., whom 78% say they miss 'very deeply.'

The National Conference of Christians and Jews, the nation's oldest and largest intergroup relations organization, commissioned this landmark survey for its 50th Anniversary. The results of the survey were revealed here today at the National Press Club by Louis Harris, President of Louis Harris and Associates, and NCCJ President Dr. David Hyatt. The occasion coincided with Brotherhood Week, a nationwide observance which NCCJ inaugurated in 1934.

A total of 2, 405 people were interviewed for the study. The nationwide sample included 1,673 whites, an oversample of 281 Jewish people, with subsamples of 86 Spanish-Americans, 450 Catholics, and 843 white Protestants. A separate nationwide cross-section of 732 blacks was also surveyed. All interviewers employed were indigenous to the groups surveyed, i.e., blacks interviewed blacks, and so forth."
Hartford hearing, exhibit H-9, News from National Conference of Christians and Jews, Inc.: 50th Anniversary Survey, Feb. 20, 1979.

"Fortunately most youths and most persons are not die-hard racists. Most are responsible citizens, even if they hold racist attitudes of one kind or another. Most of the polls and observations of behavior indicate that racial attitudes are changing in our society, that they are, in fact, improving, yet the future depends a great deal upon the economic and social conditions of the society because our sense of adequacy is so much predicated upon our ability to take care of ourselves, and that means that we have to be able to earn a living. The future also depends on how responsible authority figures in the society in politics, in government, in the economic system, in the religious areas, in the judicial system, in the educational system and in families address this particular problem."
Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center; Associate Dean of Yale University School of Medicine; Hartford hearing, p. 32

Testimony received indicates that the above referenced incidents stem from a pervasive albeit latent racism within our society, and that desegregation of institutions will contribute to a solution.

"...The criminal law is not going to solve the problems of social and economic disadvantage. Again, what we have got to do is we have got to attempt to deal with

the problem on a basis harder than merely changing the criminal laws. It involves changing attitudes and I think it involves, to some degree, the accountability on the actions of the community."
Austin McQuigan, Chief State's Attorney for Connecticut, Bridgeport hearing, p. 41.

"Until...the State of Connecticut itself and others are willing to deal with the root causes, the massive school segregation that takes place across this state that nobody wants to talk about because bussing is too controversial a word to deal with, until we deal with the issue of exclusionary zoning and deal head-on with that question, which nobody seems to really want to talk about, I think ultimately these problems are not going to be resolved through public action or through the legislature."
William Olds, Executive Director, Connecticut Civil Liberties Union, Hartford hearing, pp. 120, 21, 22.

"...People need to sit down and say well, how do we enlighten ourselves and have broader experiences? Part of this is due to the compartmentalization in which we live and the fact that people don't talk to one another outside their own job categories, and we are a very isolated society in one sense. ...I think there is this very real need...for people to think in terms outside their normal structures..."
Charles Sardeson, Executive Director, National Conference of Christians and Jews,
Hartford hearing, p. 157.

The Select Panel finds:

#10 That there is a lack of human relations education to young students, and to educators.

"It [racism and anti-semitism] represents a breakdown of everything we have been trying to achieve through our education systems...I would strongly advise a look at what we would call a broad term human relations training within our educational system. We should look to see that teachers have had some formal training in teaching those students what acts of this kind really amount to, what stereotyping amounts to, what racism and anti-semitism is and what it can breed and that the roots of this terrible problem somehow be eradicated through the use of education as well as law enforcement...There's absolutely no requirement at this moment in our education system that any teacher has any kind of training in human relations, that any kind of university have put into their curriculum courses on discrimination and prejudice. These are not required, cannot be required under state laws, but certainly our state Board of Education whould take a look at this kind of an area because I think we are reaping some harvests for not having such programs in our school systems. ...On the state Board of Education there should be a person, as there is in drugs, who will devise programs and units in the human relations area, make recommendations to the schools and audit the schools to see that they are doing something, or try to talk them into doing something...I think we can take a look at the Coleytown Elementary School in Westport. I think their program is extremely valuable."
Malcolm Webber, Connecticut Regional Director, Anti-Defamation League, B'nai B'rith.
Bridgeport hearing, pp.73, 75, 76.

"I think that by and large our public schools and our schools in general do not adequately address the issue of preparing young people to live and participate in a responsible way in a democracy; that we have concentrated on, we have focused on passing along academic skills but we have not concentrated and focused on passing along the attitudes, the ideas, the social skills that have to do with handling one's self in a society...They must learn to do so in school and at a very young age. The problem was [after a very quick statement in civics class on slavery followed by a black student being teased] that the teacher missed the opportunity to talk about what freedom means, some of the failures in our society in the past, some of the things we are trying to do now, what the responsibility of individuals is in a particular situation, what democratic principles are really all about...

It should be transmitted in our schools...The school offers the best opportunity to address this issue... There is the opportunity to transmit what America is all about. When you address it with children it has, also, an impact on adults and others."
Dr. James P. Comer, Professor of Child Psychiatry at Yale Child Study Center; Associate Dean of Yale University School of Medicine; Hartford hearing, pp. 33, 41, 42, 48.

"I don't believe the American Educational system is adequate in terms of protecting [sic] the true facts of what is happening. I am not just talking about black history; I am talking about history, period, and as a professor of history for nine years, and if the books on history are any indication of what kinds of things we are trying to promulgate to our children in the public school system, that is the basis for seeking the truth...Part of our problem is that we dont't know what the problems are... an educational system which doesn't teach things objectively and truthfully, ala history..."
George A. Athanson, Mayor, City of Hartford, Hartford hearing, pp. 52, 56.

"...It was recommended that the Board of Education [Milford] through the Superintendent-Assistant Superintendent of Instruction that he try to improvise programs perhaps through social studies, et cetera, to sort of educate the youngsters as to the distastefullness of these kinds of activities."
Wiley Bowling, Bridgeport hearing, p. 193.

"More productive than prosecution in many instances, especially federal prosecution, is the general effort at mediation and conciliation and education and fact finding of the sort that [the] Commission has undertaken."
Richard Blumenthal, United States Attorney for the District of Connecticut, Hartfoed hearing, p. 13.

The Select Panel finds:

#11 That current Connecticut statutes available for the prosecution of these incidents are too broad to address the sensitivities offended.

[Question: In your opinion do you not draw a distinction between propping up a burning broomstick as opposed to a burning cross on somebody's lawn?]: "Obviously I do. [Does the criminal law now draw a distinction?] No, it does not."
[Question: Yet we know the impact upon the family who are victims. Do you think that there is room for legislative action in amending the present offense to more conform with the consequences of that act?]: "I think that we should look to increasing the penalty, especially for a cross burning. It should not be viewed as some type of reckless burning. I would think that some of the poeple who have been involved in it do not really understand the fear that such an act can raise in the people who are subjected to it. They have not thought about that and perhaps if this society would deal with that specifically and increase the penalty for it we are, in effect, showing our distaste...

I feel that it [cross burning] can be dealt with specifically because we are dealing with a symbolic act... I would suggest that the Commission work with the Division of Criminal Justice in developing statutes to, in fact, do that...

...The problem...is that we are talking about some kind of reckless endangerment, [statute] which doesn't... focus on the act as it really is, symbolic burning, which, in effect, may intimidate the people who are subjected to the viewing of it, and we don't have a statute dealing with that particular type of activity. So we are all applying statutes which really did not take into consideration this type of conduct. In general we do not favor specific delineations of crime based on the victim...But I think in this particular instance it has got to be viewed favorably because of the symbolic sinnificance of the cross burning...We do recognize that certain things have to be dealt with individually, and I think a cross burning is clearly one of them. We have had prosecutions [under some kind of reckless endangerment statute]. Some people have not been satisfied with the severity of the sentence, but I think, really, they are not talking about the severity of the sentence but they are talking about the crime itself as it now stands."
Austin McQuigan, Chief State's Attorney for Connecticut, Bridgeport hearing, pp. 36, 37, 38, 41, 43, 45.

"My own feeling is that we do need to look at the legislation because, to my knowledge, there is no specific piece of legislation that deals with this type of activity, and while I am not prepared at this time to support a particular piece of legislation, I heard Representative Tulisano and I think that is the kind of language that generally, I believe, should be looked at, number one, because it would give us a specific section of law that covers the kind of misconduct and criminality we are talking about."
Hugo Masini, Police Chief, Hartford,
Hartford hearing, pp. 107, 108.

"As the chairman of the Judiciary Committee...I join the others in our State who have publicly condemned those acts, and further I am prepared to support legislation which strengthens Connecticut law in this area...I would suggest that Sec. 53-34 of the General Statutes be amended."
Richard Tulisano, Representative Connecticut General Assembly-House; Chairperson of the Judiciary Committee, Hartford hearing, pp. 82, 84.

"I would like to make reference to the laws in Connecticut. Some of the charges that have been placed against individuals are misdemeanor charges providing up to one year in jail, whereas some of the charges involving crime of arson become felony charges. It would appear that the penalties provided are sufficient if the law is properly enforced. However, in reviewing the Connecticut statutes I would think that specific legislation that would address specific acts such as cross burning and posting swastikas and other racial incidents would be advisable. In many cases we are using a broad law, such as a breach of peace, to enforce these violations."
Donald J. Long, Commissioner of the Dept. of Public Safety, Hartford hearing, p. 70.

Testimony was also received that the current statutes are adequate.

[Question: With regard to the incidents have you found that the penal code in Connecticut, Title 53a of the General Statutes, provides a vehicle for your department to operate in investigating and charging persons involved in such incidents?]: "Yes, we have no problem with the statute. In fact, the recent change in the arson statute making it a more serious crime, class A felony, has given us even a greater tool to work with... The problem we find and we continue to find is with the courts. If the courts would view these incidents in the serious light that they should be viewed in, exercise their maximum jurisdiction, then I believe it would serve as a deterrent to future acts."
Joseph W. Beres, Jr., Chief of Police, City of Norwalk,
Norwalk hearing, pp. 9, 10.

"The question really is, what is available to a citizen who thinks he has been victimized by such misconduct? Where can he go; are there any laws? It has been suggested that maybe our laws are not sufficient to deal with this problem. I don't think that is right...The problem is the law has not been enforced, and the question is why...The problem is not that the people don't have the tools but the people are unwilling or unable to use them...

...It [proposed Bill No. 5060 by the chair of the judiciary committee] violates the United States Constitution, First Amendment...[and] doesn't add anything to the statute on criminal mischief right now, whereby desecration, whether or not racially intended, would be punishable and it would be much easier to prove and a prosecutor would more likely be able to practice under that, or, anyway, in the exercise of his discretion."
Michael R. Sheldon, Professor University of Connecticut School of Law; Director, Criminal Law Program,
Hartford hearing, pp. 125, 129, 130.

[On the difficulties of proving intent in prosecutions of Civil Rights violations]: "Even where the offender can be identified, it may be difficult to prove that his or her purpose in performing a malicious act is to intimidate the victims, to drive them from a neighborhood, for example. This burden of proving criminal intent is one that often is excruciatingly difficult to satisfy as well it should be."
Richard Blumenthal, United States Attorney for the District of Connecticut, Hartford hearing, p.12.

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The Select Panel finds:

#12 That Connecticut lacks an adequate central data collection, analysis and distribution capacity to facilitate investigation of these incidents and prosecution of the perpetrators.

"...There is a concern because while I think we have a good reporting system, clearly, isolated incidents of vandalism or even writing slogans on walls...might not have been accurately, completely reported by either the person subjected to it, and it may have slipped through the system. [In] ...talking about condemnation and education, I think we ought to look at that with a bit of analysis. I think if a [police] department today is not gathering data in such a way so that it can key off a trend of incidents of this type, and I am reflecting on our own data system, which is very good, but I think we need some tuning up based on what we have heard today and what we have been reading, and that we should do so."
Hugo Masini, Chief of Police, Hartford,
Hartford hearing, pp. 106, 111.

[Concern was expressed about a student newspaper account of prejudice.] "My concern is the lack of total data that was presented, the lack of looking into and getting enough facts before presenting some of the data...I am concerned about the accuracy of the reporting."
Robert Milliken, School Psychologist, West Hartford Schools, Conard High School,
Hartford hearing, pp. 170, 175.

"I'm hoping that an effective means of recording such instances will be established, so it can be determined if this is just happening in one locale or is it something that's happening in all communities. A great percentage [of incidents] do not go reported to authorities."
Ted Meekins, Police Officer; Information Officer, the Bridgeport Guardians, Bridgeport hearing, pp. 170, 174.

"What we are attempting to do as the recommendation for the Greenwich-Stamford area is that if anyone has a cross burned on their lawn, that they, No. 1, contact the police; No. 2, contact the FBI; No. 3, contact Mr. Blumenthal's office; [U.S. Attorney for the District of Connecticut] and No. 4, contact the NAACP, hopefully that they would contact the NAACP first so that we can make sure that the rest of the stuff is in motion. In the case of the incident in Stamford, Mrs. Davenport, she did not know what to do or where to go."
Bernard Fisher, President, Greenwich NAACP,
Norwalk hearing, pp. 91, 92.

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[Any thoughts or suggestions helpful to appropriate officials?:] "I have from an investigator's standpoint...my feeling is that there should be an investigative task force made up of state police investigators and investigators from local police departments throughout the various counties in the state for the purpose of collecting data...so that information is at least available to investigators once there is an occurrence of such an incident which may not be sporadic or individually motivated."
Malcolm Skeeter, Sargeant Norwalk Police,
Supervisor of Community and Youth Services,
Norwalk hearing, pp. 27, 18.

[Question: Do you have any idea what might be done on a local level?:] "It is going to be necessary for us to assure that we regulate very carefully any group that borders on violations of the law ...I think the problem is many local law enforcement agencies are not as familiar with Civil Rights law as they may need to be. I'm not so sure community leaders are as familiar with Civil Rights law as they need to be."
James Dyer, Connecticut House of Representatives;
Mayor-Elect, Danbury, Danbury hearings, p. 12.

"My office is now coordinating, through the Connecticut Justice Commission, a state effort to establish the investigative capacity in an appropriate state agency to pursue and bring to justice those who perpetrate such acts of racial violence."
Lee Hawkins, Special Assistant to Governor
Ella Grasso, Hartford hearing, p. 7.

[Question: Does your organization have any data regarding the number of incidents such as those we are looking into?:] "Not really. We don't have any more information than we can get from the Associated Press or local newspapers. For example, there were incidents I heard about today from the woman who testified earlier, I never heard of these things before. I mean, there are a number of these incidents that are happening that we just don't know about."
Joshua M. Liburd, U.S. Dept. of Justice, Community Relations Service Conciliator, Danbury hearing, p. 87.

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LIST OF REPORTED INCIDENTS

Ansonia

Hate literature posted in shopping centers, perpetrators unknown. Norwalk hearing, p. 83. Also, 10/7/79 Hartford Courant.

Bridgeport

Cross at Bridgeport municipal airport, 9/11/79, perpetrators unknown. Exhibit B-6a.

Cross burned at 36 Beacon Street, 9/30/79, four teenagers arrested and charged with breach of peace. Exhibit B-6a.

Danbury

KKK newsletter/KKK calling card attached mailed to 61 Davis Street, perpetrators unknown. Danbury hearing, p. 7.

Hate literature leafletted on city streets through the Western Connecticut State College campus, 9/20/79, Mr. Bickel took credit. Danbury hearing, pp. 8, 14, 16, 39, 187; Bridgeport hearing, pp. 50, 85, 86, 114. Also 12/4/79 New Britain Herald and 10/7/79 and 12/31/79 Hartford Courant.

Harassing phone calls to people associated with the Danbury March for Racial Harmony, after 10/21/79, perpetrators unknown. Danbury hearing, p. 56.

Defacing apartment door of Western Connecticut student, 1979, perpetrators unknown. Danbury hearing, p. 102.

Hate literature distribution at high school and junior high school, 1978, 9/79 and 10/79, perpetrators unknown. Danbury hearing, pp. 103, 104, 150, 187. Also 10/7/79 Hartford Courant.

Refusal of white children to hold hands with Black child, 11/79. Danbury hearing, p. 143.

Three racially motivated disturbances since 1974, perpetrators not cited. Danbury hearing, p. 161.

East Haven

Attack on Blacks by Whites at Lighthouse Point Park, past several years, perpetrators unknown. Bridgeport hearing, p. 19.

Fire bomb thrown through window of home of Black family, 1978/1979, perpetrators unknown. Bridgeport hearing, pp. 77, 96, 98.

Enfield

KKK symbols spelled out, unknown date and perpetrators. Danbury hearing, p. 177.

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Fairfield Area

Nazi material distributed, 11/79, perpetrators unknown. Bridgeport hearing, p. 85.

Greenwich, Glenville

KKK letters sprayed on building, 1979(?), perpetrators unknown. Norwalk hearing, p. 85.

KKK materials distributed at a firehouse, date and perpetrators unknown. Norwalk hearing, pp. 83, 84.

Hamden

Auto spray painted with KKK marking, 11/19/79, perpetrators unknown. Bridgeport hearing, p. 24.

Home of rabbi marked with swastikas and slurs, 10/29/79, perpetrators unknown. Bridgeport hearing, p. 100.

Hartford

Harrassment of Black man by several white males in karate outfits. Hartford hearing, p. 262A.

Solicitation of students by KKK at Trinity College, U. Conn and University of Hartford campuses. Danbury hearing, pp. 61, 70.

Hate mail against Jews directed to mayor's office, continuous, perpetrators unknown. Hartford hearing, pp. 55, 56.

Parading down Main Street with signs bearing anti-Jewish slogans, 1978, perpetrators arrested. Hartford hearing, pp. 59, 60, 106.

"Nigger application for employment" placed in student's mailbox, 1979(?), perpetrators unknown. Hartford hearing, p. 138.

KKK literature distributed at Trinity College, 1979(?), perpetrators unknown. Hartford hearing, pp. 143, 144. Also see exhibit H-7.

Manchester

Wooden cross found on Main Street, 10/31/79, perpetrator unknown. 12/29/79 Hartford Courant.

Milford

Two cross burnings, early Fall, 1979, perpetrators arrested. Bridgeport hearing, pp. 100, 149, 203.

Skinned animals left at front door/on car, Fall, 1979, perpetrators unknown. Bridgeport hearing, pp. 186, 189, 191.

Girl in 7th grade harassed and punched at bus stop, and while riding bus to school, Fall, 1979, perpetrator unknown. Bridgeport hearing, pp. 189, 191, 192.

New Britain

Cross burning in field near housing project, 12/7/79, perpetrator unknown. Hartford hearing, pp. 198, 199, 203.

Harassment by man in white costume bearing KKK letters, date and perpetrator unknown. Hartford hearing, pp. 203, 204.

KKK symbols marked on buildings, date and perpetrators unknown. Hartford hearing, p. 203.

New Haven

Threat by KKK to kill a witness, week of 12/14/79, perpetrator unknown. Hartford hearing, p. 247.

Cross burning on Edgewood Avenue, August, 1979, perpetrator unknown. Bridgeport hearing, pp. 23, 24.

Trees stolen, swastika markings, vandalism at Holocaust Memorial, 7/28/77, perpetrators unknown. Bridgeport hearing, p. 96.

Harassment of Black family in Morris Cove area, 1978, perpetrator unknown. Bridgeport hearing, p. 98.

Cross burning at Henry Parker for Mayor headquarters, August, 1979, perpetrators unknown. Bridgeport hearing, p.99.

KKK literature distributed at Temple Street parking garage, Spring, 1979, perpetrators unknown. Bridgeport hearing, pp. 99, 102.

Phone threats to Black clergy, August, 1979, perpetrators unknown. Bridgeport hearing, p. 99.

KKK markings on third floor of Conte School, about 11/23/79, perpetrators unknown. Bridgeport hearing, pp. 100, 113. Also 11/28/79 New Haven Advocate.

Inclusion of cleaning fluid in milk and on fruit at Conte Elementary School, date and perpetrators unknown. Bridgeport hearing, p. 113.

Norwalk

Cross burning on Flintlock Road, 9/20/79, perpetrators arrested. Norwalk hearing, pp. 6, 7, 9, 26, 34, 44.

Hate literature left at railroad station, 1979(?), perpetrators unknown. Norwalk hearing, pp. 11, 38, 39.

Racial slurs written on minister's car, 11/79, perpetrators unknown, Norwalk hearing, pp. 52, 53.

Person harassed for having sold property to Blacks, 1979(?), perpetrated by neighbors. Norwalk hearing, p. 55.

Anti-Semitic taunts at budget hearing, 1978, perpetrated by citizens in attendance. Norwalk hearing, pp. 154, 155.

Swastika markings on synagogue, "fairly recently", perpetrators unknown. Norwalk hearing, pp. 157, 158.

Cross burning on lawn of Black person, 9/28/79, perpetrators arrested. Norwalk hearing, p. 171, Also 12/1/79 Hartford Courant.

Ridgefield

Cross burning, 12/24/78, perpetrators arrested. Norwalk hearing, pp. 86, 87, 100, 103. Also 10/7/79 Hartford Courant.

Hate mail and phone calls to victim of cross burning, after 12/24/78, perpetrators unknown.

"Son of Satan" cult meetings, 1978-1979(?), perpetrators unknown. Norwalk hearing, p. 110.

Rocky Hill

Young girl cornered by five white students dressed in KKK robes chanting harassments, at Rocky Hill High School, 10/79. Danbury hearing, p. 167.

Shelton

Cross burning on lawn of Jewish family, 1/29/80, perpetrators unknown. 1/31/80 Hartford Courant.

Southington

Klavern meetings, weekly/monthly, Bill Sickles. 1/3/80 Southington Observer.

Stamford

Cross burning in Shippan Avenue area, 6/79, perpetrators arrested. Norwalk hearing, p. 44.

Cross burning on Springdale Avenue, 7/79, perpetrators unknown. Norwalk hearing, pp. 47, 49.

Cross burning at corner of Carol Avenue and Woodrow Street, 11/13/79, perpetrators unknown. Norwalk hearing, pp. 43, 49.

Cross burning at Lockwood Avenue and Woodrow Street, 10/31/79, perpetrators unknown. Norwalk hearing, pp, 68, 69.

Cross burning at 21 Carroll Street, 6/79, 10/30/79, perpetrators unidentified. Norwalk hearing, pp. 69, 83, 129, 139.

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Cross burning at Shipman Street and Ocean Drive, 11/3/79, perpetrators arrested. Norwalk hearing, pp. 71, 72.

Vandalism to mail box at 31 Gray Farm Rd. over seven year period, most recent 11/18/79, perpetrators unknown. Norwalk hearing, pp. 42, 53, 54, 60, 62.

Threatening of young Black girl by two white boys with knife, 1978. Norwalk hearing, pp. 130, 138.

Storrs

Slurs on dormitory, 1978/1979, perpetrators unknown. Hartford hearing, pp. 227-234, 246, 247.

Bag with urine/water mixture tossed down stairwell, 9/5/79, perpetrators unknown. Hartford hearing, p. 227.

Harassment, stairway blocked in dormitory, 9/5/79, perpetrators unknown. Hartford hearing, p. 240.

Swastika painted on driveway of home in Storrs, 1978, perpetrators unknown. Hartford hearing, p. 245.

Threatening phone calls to home in Storrs, repeatedly, perpetrators unknown. Hartford hearing, p. 247.

Defacement of faculty offices with anti-Semitic stickers, perpetrators unknown. Hartford hearing, p. 245.

KKK recruiting of students, Fall, 1979. Hartford hearing, p. 246.

Waterbury

Slurs written on supermarkets, high school, streets, perpetrators unknown. Danbury hearing, p. 205.

Cross burning near Holy Cross School, 9/79(?), perpetrators unknown. Danbury hearing, p. 206. Also 10/7/79 Hartford Courant.

Hate literature distributed at Mattatuck Community College and U. Conn, Waterbury branch. Danbury hearing, p. 205.

Watertown

Periodic KKK meetings at home of Larry Bartley, 12/31/79 Hartford Courant. But see 1/3/80 Waterbury Republican.

West Hartford

Recruiting by KKK at Conard High School, 1979(?), perpetrators unknown. Danbury hearing, p. 168; Hartford hearing, p. 100; Bridgeport hearing, p. 113.

Some 70 houses marked with swastikas, 1977/1978; gas cap removed from car

of Jewish leader and wick inserted and lit; fire at home of Christian who spoke out for Jewish community, all 1977/1978. Bridgeport hearing, pp. 91, 98.

West Haven

KKK markings on auto at Meadowbrook Apartments, 9/79, perpetrators unknown. Bridgeport hearing, p. 24.

Westport

Hate literature distributed, 1979(?), Norwalk hearing, p. 83. Also 10/7/79 Hartford Courant.

Willimantic

Several assaults by police on minority citizenry, recently, by Willimantic Police. Hartford hearing, p. 288.

Seven whites blocked entry to home, 11/24/79, perpetrators unknown. Hartford hearing, p. 289.

Wilton

KKK symbols and swastikas burned on lawn, perpetrators unknown. Danbury hearing, p. 46.

Wolcott

Steps of home marked KKK, driveway marked with slur, 10/31/79, perpetrators unknown. Danbury hearing, p. 18, 206.

Harassment and chanting before a home at Bayberry Drive, Spring, 1979, perpetrators arrested. Danbury hearing, p. 24. Also 12/1/79 Hartford Courant.

Rocking auto in Bayview Circle neighborhood, 10/31/79, perpetrators unknown. Danbury hearing, p. 31.

Vandalism to home of Black person, perpetrators unknown, Danbury hearing, pp. 19, 24.

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LIST OF WITNESSES

Dr. Frederick Adams,
Vice President of Student Affairs and Services at the University of Connecticut
President of the Urban League of Greater Hartford

Mr. Ben Andrews, Jr.,
President of the State Conference of the NAACP Branches in Connecticut

Mayor George A. Athanson,
Mayor of the City of Hartford

Mr. Cesar A. Batalla,
Chairperson of the Spanish American Coalition;
Employee of the Southern Connecticut Gas Company

Mr. Joseph W. Beres, Jr.,
Chief of Police of the City of Norwalk

Attorney Richard Blumenthal,
United States Attorney for the District of Connecticut

Mr. Wiley Bowling,
Instructor with the Fairfield Board of Education

Mr. Samuel L. Briggs,
Executive Director of the Human Relations Commission of Norwalk

Mr. Edward Brown,
Self-employed Executive Recruiter

Mr. Robert Burgess,
Executive Director of the Norwalk Economic Opportunity Now, Inc.

Mr. James P. Comer,
Professor of Child Psychiatry at Yale Child Study Center and
Associate Dean of Yale University School of Medicine

Mr. Thomas Connally,
Director of the Coalition for Basic Human Rights

Ms. Gladys Cooper,
President of the Danbury NAACP

Ms. Linda Davenport,
Nurses Aide

Mr. James Dyer,
Member of the Connecticut House of Representatives;
formerly Mayor-Elect and now Mayor of the City of Danbury

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Dr. James Edler,
Co-Director of the Anti-Racism Project of the
Association of Religious Communities

Ms. Louise Etkind,
Director of Community Relations for the
New Haven Jewish Federation

Mr. John Ferguson,
Assistant to Senator Joseph J. Fauliso,
President Pro-Tempore of the State Senate

Mr. Bernard Fisher,
President of the Greenwich NAACP

Mr. James A. Fletcher,
Financial Program Administrator with IBM Corporation

Ms. Kathie Garay,
Officer U.E. 209 Union; Mother

Reverend Edward Geyer,
Episcopalian Clergyman; Rector of the Church of the Good Shepherd,
Hartford; Representing the Capitol Region Conference of Churches

Ms. Patricia Ginoni,
Secretary for a publishing company

Mr. Woodrow C. Glover,
Executive Director of Stamford Commission on Human Rights

Mr. Herbert Goldstone,
Member of the Committee Against Racism;
Faculty Member at the University of Connecticut

Dr. Charles R. Gordon,
Clergyman, Counselor, Educator, Administrator;
President of the Waterbury NAACP

Ms. Mea Guinta,
Field Organizer for the United Electrical and Radio Union
Statewide Political Action Committee

Ms. Loretta Hatten,
Student, University of Connecticut

Ms. Lee Hawkins,
Special Assistant to Governor Ella Grasso

Mr. Alexander Hinton,
President of the Second Stone Ridge Corporation
Board of Directors

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Mr. John Jakabouski,
Affirmative Action Officer of Western Connecticut State College

Mr. Arthur L. Johnson,
Director of Human Relations for the City of Hartford

Ms. Lucy Johnson,
Chairperson of the Permanent Commission on the Status of Women

Mr. James Lee,
Graduate Student at the University of Connecticut;
Member of the Committee against Racism

Mr. Joshua M. Liburd,
United States Department of Justice,
Community Relations Service Conciliator

Mr. Donald J. Long,
Commissioner of the Connecticut Department of Public Safety

Mr. Hugo Masini,
Chief of Police of the City of Hartford

Ms. Betty McCree,
Vice President of the Stamford NAACP

Attorney Austin McQuigan,
Chief State's Attorney for the State of Connecticut

Mr. Ted Meekins,
Information Officer for the Bridgeport Guardians

Dr. Robert Milliken,
School Psychologist of the West Hartford Schools,
Conard High School

Mr. Thirman L. Milner,
State Representative from the 65th Assembly District in Hartford

Attorney Joseph A. Moniz,
President of the George W. Crawford Law Association

Ms. Bridget Moore,
Student, University of Connecticut

Mr. Pasquale F. Nappi,
Superintendent of Schools, Danbury Public Schools

Mr. William Olds,
Executive Director of the Connecticut Civil Liberties Union

Ms. Goldie Palmer,
Licensed Practical Nurse

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Mr. David Payton, Jr.,
Self employed

Ms. Valerie Piedmont,
Recreational Therapist

Ms. Susan N. Pierce,
Director of Student Activities at William H. Hall High School, West Hartford

Mr. John Aristotle Phillips,
Businessman, President of Aristotle, Inc.;
Chairperson, Fund for Secure Energy

Mr. Mike Querner,
Student, University of Connecticut Medical School

Dr. Barbara Riley,
Educational Consultant; Co-Director of the
Anti-Racism Project in the Danbury School System

Attorney John Rose,
Chairperson of the State Advisory Committee to the
United States Commission on Civil Rights

Mr. Charles Sardeson,
Executive Director of the National Conference of
Christians and Jews

Mr. William Schmidt,
Sargeant, Stamford Police Department

Mr. Tobias Schwartz,
National Co-Chairperson of the Committee against Racism;
Faculty Member at the University of Connecticut

Mr. Michael R. Sheldon,
Professor at the University of Connecticut School of Law;
Director of the Criminal Law Program

Ms. Louise Simmons,
Member of the National Alliance against Racist and
Political Repression

Mr. Malcolm Skeeter,
Sargeant, Norwalk Police Department;
Supervisor of Community and Youth Services

Mr. Kenneth J. Slapin,
President of the Norwalk Common Council

Mr. J. Michael Smith,
Administrator at ABCD; Social Worker

Ms. Shirley Smith,
Employee of the University of Connecticut Health Center

Ms. Sheila Spigner,
Beautician

Attorney Richard Tulisano,
Chairperson of the Judiciary Committee,
Connecticut General Assembly, House

Ms. Kay Viar,
Factory Worker, unemployed

Mr. Malcolm Webber,
Connecticut Regional Director for the Anti-Defamation
League of B'nai B'rith

Mr. Edward White, Jr.,
Private Real Estate Developer at the Urban Housing Consultants;
President of the New Haven NAACP

Ms. Allenstine D. Willis,
President of the New Britain NAACP; School Teacher

Mr. Thomas Wright,
President of the Greater Hartford NAACP

LIST OF EXHIBITS SUBMITTED

Submitted at
Danbury Hearing

Exhibit	Nature of Exhibit	Presented by
D-1	Mail-o-gram to CCHRO	Mr. James Dyer
D-2	The Voice of the White Majority Newspaper ("Crusader"); Attached KKK Recruitment cards	Mr. James Dyer
D-4	Disciplinary Code, Danbury Public School	Mr. Pasquale F. Nappi
D-5	Pamphlet: "KKK" Application Literature	Mr. Ben Andrews, Jr.
D-6	"KKK" Calling Card	Mr. Ben Andrews, Jr.
D-7	Pamphlet: Facts on Institutional Racism; Misc. News Clippings ("KKK")	Mr. James Edler
D-8	Written Statement	Ms. Ella Roundtree

Submitted at
Bridgeport Hearing

Exhibit		
B-1	Flyer-Misc. Service Report WCSC Police Dept.; Racial Purity Card	Western Conn. State College
B-2	"Facts" - Nov. '79 Vol. 25, #3, Pub. by ADL	Mr. Malcolm Webber
B-3	The Holocaust Memorial-Pamphlet	Ms. Louise Etkind
B-4	Pamphlet - PCSW	Ms. Lucy Johnson
B-5	Written Statement: See Bridgeport hearing, p.12	Mr. Edward White, Jr.
B-6	Letter to Arthur L. Green, Director of CHRO;	
a.	Copy of letter to Ben Andrews; Bridgeport	
b.	Chief of Police Memo	Mr. Joseph A. Walsh
B-7a.	Letter to Commission Counsel	
b.	Newspaper "The Thunderbolt"	
c.	Newspaper "S.O.S! U.S.A., Ship of State"	
d.	Newspaper "National Vangard"	
e.	Newspaper "Attack!"(by mail)	Mr. Malcolm Webber

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Submitted at
Bridgeport Hearing

Exhibit	Nature of Exhibit	Presented by
B-8	Letter to Commission Counsel dated 12/12/79 (by mail regarding legislation)	Mr. Malcolm Webber
B-9	Letter to Director of CHRO from Ted B. Meekins and attached article See Bridgeport hearing, p. 165	Mr. Ted Meekins

Submitted at
Norwalk Hearing

Exhibit		
N-1a.	Written Statement - See Norwalk hearing, p. 33	
b.	NHRC Resolution	
c.	"KKK" Card	Mr. Samuel L. Briggs
N-2	Letter from Norwalk Human Relations Commission to Dr. Richard C. Briggs Superintendent of Schools - Norwalk	Mr. Samuel L. Briggs
N-3	Written Statement	Mr. Victor Cizanckas
N-4	Written Statement - Deposition	Ms. Linda Davenport

Submitted at
Hartford Hearing

Exhibit		
H-1	Written Statement of the Governor See Hartford hearing, p. 6	Ms. Lee Hawkins
H-2	"Hate Mail" received by CHRO	
H-3	Resolution - Capitol Region Conference of Churches	Rev. Edward Geyer
H-4	Written Statement: See Hartford hearing, p. 80	Attorney Richard Tulisano
H-5	Written Statement with Attachments: See Hartford hearing, p. 99	Mr. Thomas Wright
H-6	Written Statement: See Hartford hearing, p. 114	Mr. William Olds
H-7	Newspaper "White Student"	Attorney Joseph A. Moniz
H-8	"Nigger Application for Employment"	Attorney Joseph A. Moniz

Submitted at
Hartford Hearing

Exhibit	Nature of Exhibit	Presented by
H-9	"News from the National Conference of Christians and Jews, Inc." See Hartford hearing, p. 151	Mr. Charles Sardeson
H-10	Written Statement: See Hartford hearing, p. 167	Mr. John Ferguson
H-11	Conard High School Newspaper "Pow Wow"	Dr. Robert Milliken
H-12	"Connecticut NAACP Update"	Mr. Ben Andrews
H-13	Brochure: "How Classroom Desegregation Will Work"	Ms. Allenstine D. Willis
H-14	Flyer: "Build White Unity"	Professor Tobias Schwartz
H-15	Flyer: "Behind Busing: The Media Monopolies"	Professor Tobias Schwartz
H-16	"Enhanced Institutional Humanism"- Policy Statement of U. Conn. Division of Student Affairs and Services	Dr. Frederick Adams

Mr. CONYERS. The subcommitee stands adjourned.

[Whereupon, at 1:05 p.m., the subcommittee adjourned subject to the call of the Chair.]

RACIALLY MOTIVATED VIOLENCE

THURSDAY, NOVEMBER 12, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2141, Rayburn House Office Building, Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representative Conyers, Edwards, Sensenbrenner, and McCollum.

Staff present: Thomas W. Hutchison, counsel; Oliver Quinn, assistant counsel; and Ray Smietanka, associate counsél.

Mr. CONYERS. The Subcommittee on Criminal Justice will come to order.

We continue today our hearings on racially motivated violence, the fourth in a series. We are examining the nature and extent of the problem, the adequacy of protection afforded citizens so harassed by existing Federal law, and the State input.

Today we will continue our analysis of relevant Federal laws in this area, examining also proposals made in the several versions of the Federal Criminal Code before this subcommittee.

TESTIMONY OF HON. HARRY HUGHES, GOVERNOR OF THE STATE OF MARYLAND, ACCOMPANIED BY CONSTANCE BEIMS, CHAIRPERSON, GOVERNOR'S COMMITTEE ON VIOLENCE AND EXTREMISM

Mr. CONYERS. Our first witness today is the Governor of the State of Maryland, Mr. Harry Hughes. We are very honored that he would join us as a witness. He has extensive background in State government, was a legislator for nearly two decades, was head of the State's department of transportation, and has been actively concerned with the subject matter we will discuss here today.

We welcome you, Governor Hughes, and will accept your prepared statement, without objection, to be entered into the record at this time.

I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I ask unanimous consent that the subcommittee permit the meeting this morning to be covered in whole or in part by television broadcast, radio broadcast, and/or still photography, pursuant to rule 5 of the committee rules.

I would point out that rule 5 does specificially prohibit the stationing of photographers between the committee and the witness.

Mr. CONYERS. Without objection, so ordered.

Mr. SENSENBRENNER. And that applies to this gentleman down here.

Mr. CONYERS. Without objection, so ordered.

We welcome you, Governor Hughes. You may introduce your staff assistant and proceed in your own way.

Governor HUGHES. Thank you, Mr. Chairman. Thank you for the opportunity to appear before your committee. With me today is Connie Beims, who is the chairperson of the committee I established last spring on violence and extremism.

It had been my intention, Mr. Chairman, to read the statement I have. I will forgo that, if you prefer, and will ad lib it and respond to questions. Either way you prefer would be all right with me.

Mr. CONYERS. I think a summary of the high points would be very helpful to the committee.

Governor HUGHES. All right. And with your permission, Mrs. Beims can fill in where I leave off.

Last spring I met with a group of people that were very much concerned about the increase in violence and extremism brought on by racial or religious bigotry. This group consisted of the Baltimore Jewish Community Relations Council, the National Conference of Christians and Jews, the State Human Relations Commission, the Baltimore City Community Relations Commission, the Urban League, and the National Association for the Advancement of Colored People. They had formed an umbrella coalition known as the Coalition Opposed to Violence and Extremism, otherwise known as COVE.

The purpose of that meeting was for them to impress upon me how serious this increase in these incidents was, and to ask me to participate with them, to speak out, to try to counter this effort.

Well, we did, and in March I formed a committee on violence and extremism, comprised of the State agencies that are involved in this area, and Mrs. Beims became chairman of that.

The unique thing about this task force is that it comprises all of the branches of State government. The chief judge of our district court system, for example, is on it, a couple of legislators are there, and the other members are members of my executive branch that are heads of or involved in agencies that have some role to play, such as the State police and others.

Since that time that task force has worked very seriously and very deliberately, and some of the things they have been doing and are doing is to improve the reporting system for these kinds of incidents. Last year we were successful in having a bill enacted which would require the State Police of Maryland to gather this kind of information, to set up a reporting system to gather this information from local police units throughout the State, and then for the State police to make a monthly report to our human relations commission. This went into operation last July and those reports are being made and a significant degree of cooperation of the local police is being obtained, because as you probably know, many times these incidences are not reported as being racially or religiously motivated, even when they are.

Additionally, the task force has worked with the State department of education. A member of the task force is the superintendent of State schools. They have developed a program, a package, so to speak, that is being circulated to all the schools in the State, to principals, to teachers, and some training programs going on, a react package, so that that incident in the hall or in the playground that is racially or religiously motivated is not overlooked.

Mr. CONYERS. Do you have such a package here?

Governor HUGHES. Yes; we submitted to the committee my prepared testimony, but included with that is a package of exhibits, Mr. Chairman, one of which is the resolution of the State board of education, as well as the documentation that they have circulated to the schools to respond to these kinds of incidents.

Additionally, we have in the package a statement from the Baltimore County Police, who have done an excellent job, and nationally recognized under Chief Behan for the excellent work that they have done in the area of violence, extremism, motivated by religious or racial discrimination.

We have included some literature. We debated whether or not to include the literature, the kind that has been circulated in some of the schools, a scurrilous kind of literature, but we included it because we think it is important that you and others see that, and the effort through the school systems to counter that kind of move, to get the student councils involved in reacting to these incidents, to discuss them. There are even suggestions to the State board of education of the kinds of programs that can be conducted, how this kind of information, discussion can be used in various courses, even a math course, as well as other courses that are taken.

The whole effort here is to make people aware of what is going on, because we believe sincerely that the overwhelming, vast majority of people in Maryland, and I think in this country, do not condone these kinds of acts of violence, extremism, and bigotry. Our whole effort here is to make people aware of it, to respond to it, to have public officials speak out—and I started doing that last spring myself—and asking other public officials to speak out against this kind of thing, because we all know that history has shown when it is responded to by silence, that drastic things occur. County Executive Gilchrist is here today. He has been one who has been speaking out very strongly against this kind of thing.

It is a delicate balance to respond, to counter, but also to protect the rights of the individuals, the right to assemble, the right to freedom of speech, as Attorney General Sachs said some time ago, that it is important that we protect the speech we hate. So it is that delicate balance that we are trying to maintain—not ignoring the situation at all, speaking out on it, and at the same time preserving the rights of even those who are espousing the kinds of things we don't like.

Mr. CONYERS. Is there an increase in racially motivated violence in your State? What is the statistical record of——

Governor HUGHES. We have some statistics in the package. Yes; there has been an increase. In the last few months it has fallen off a little bit, as I recall. Maybe Mrs. Beims can give you a better count on it than I have. But there has been an increase in the last year, year-and-a-half; there is no question about that.

Mrs. BEIMS. I did want to make a comment.

Also remember July 1 was the first time we began gathering this information. Prior to that the State police held a day-long seminar for all law enforcement agencies throughout the State, so there was more of a sensitivity on what to report, what it is. So our figures are showing there is an increase, and there may well be, but it is also better gathering of data that is available also.

Mr. CONYERS. What are you doing that is different from the activities in other States and their agencies?

Mrs. BEIMS. Well, there are only five States that have put forth any kind of concerted effort on this issue. I think the closest counterpart to us is California, which has three branches of the government represented. I have met with people from West Virginia and Pennsylvania. They are, indeed, bogged down in paperwork, if you will, which is rather sad, because there are so many administrative processes one could use, which the Governor has put upon us—no report, and make the changes as you move, as opposed to sitting in a room deliberating on paper.

Connecticut has begun to move. I understand the work they have done there has been done very well, and I think they use private-public sector components in their task force. We are set up separate from that because we have a very strong private sector group functioning in the State and working in tandem with us.

Mr. CONYERS. Is the U.S. Commission on Civil Rights looking at your approach, and are other comparable State agencies taking a look at this?

Mrs. BEIMS. Yes, they are, particularly the U.S. Civil Rights Commission. The staff person, Tina Colabia, is with us at each one of our meetings, and the U.S. Department of Justice has been working very closely with us. I understand that they are using us as a model for the States to affirmatively speak out on these issues.

Governor HUGHES. As was pointed out in the testimony, last week or 10 days or so ago there was an all-day conference in which we participated, sponsored by the organizations that I mentioned earlier in my testimony. I thought it was very impressive because there were over 350 people that packed that conference room, all over the State of Maryland, and they conducted workshops all day long, which were well attended and well conducted.

Getting back to my task force, as Mrs. Beims has indicated, when I appointed them I specifically said "I don't want you submitting a lot of reports that are going to sit on the shelf and gather a lot of dust. I want you to do things." That's what they have been doing. They have been making changes through administrative action and will be submitting, if they deem it necessary, any new legislation that we might put in this coming session of the general assembly. But it really has been an active, ongoing working group and not one that is spending most of their time preparing reports.

Mr. CONYERS. Forgive me for asking but how much does it cost?

Governor HUGHES. Very little, and so little I can't give you a figure, Mr. Chairman, because as Mrs. Beims has indicated and I have, most of what they are doing is recommending or taking administrative action. The people involved are people already in, State government. We haven't had to hire new people to do this. So

the cost is some additional time of State employees, but from a dollar standpoint, unless Mrs. Beims can give you a figure, I can't.

Mrs. BEIMS. Stationery. Really it's not a significant factor.

Governor HUGHES. It really isn't a significant factor.

Mr. CONYERS. Finally, what is your experience in connection with the phenomenon of hate groups, neo-Nazi groups, and Klan organizations forming paramilitary camps or other kinds of activities within your State, and how is your law-enforcement operation dealing with that phenomenon if it is occurring in Maryland?

Governor HUGHES. The task force has looked at this and I will let Mrs. Beims again respond in more detail, and as of now at least, this appears not to be a problem in our State, and we don't have any specific action recommendations to take, but you might amplify that some.

Mrs. BEIMS. We do have in the task force a subcommittee dealing specifically with legislation. Three weeks ago the Governor sent a letter to every mayor, every county executive and every head of a commission in the State of Maryland telling them about the legislative committee. We are serving as a clearinghouse between the Federal, State, and local initiatives if you will.

As a result of that some legislators contacted us concerning paramilitary camps. We have no documentation of anything like that existing in the State of Maryland. We do have all the legislation proposed across the States, you know, in other States. We are reviewing them. We certainly are not going to take the initiative on this. It is not a problem in the State of Maryland.

Mr. CONYERS. Thank you very much.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Governor Hughes, you have submitted a very comprehensive statement for outlining what I believe is a model State program to try and cure this cancer at its source.

Do you think that the present State laws and executive actions that you have taken in Maryland are adequate to try and educate young people as well as stamp out racially motivated crime?

Governor HUGHES. I think so, even though we are continuously looking at this to see if there is any need for additional laws. Now I mentioned one law that was enacted last year in Maryland. There was another one which strengthened the penalties or increased the penalties for such an instance like cross-burnings, to increase the fine substantially and the possible imprisonment substantially, and make it a felony rather than a misdemeanor.

What we are doing insofar as young people is concerned is being done administratively through the State department of education, and we really don't at this point see any need for any laws in that area to respond to this spreading of hate.

We really think that most of what we are going to do, and that it will be effective, is administratively, plus as I point out in my written statement that a lot of the success that we are going to have has to come from the hearts and the minds of people.

And I think that is going to be the vehicle where we get most of our success, and I think that the signs already show that that is true in Maryland and that the people are not happy with this situ-

ation, they are willing to respond, and that is going to be the strength of our efforts, not so much the law.

Mrs. BEIMS. May I make a comment?

Mr. SENSENBRENNER. Surely.

Mrs. BEIMS. There is one dimension we are very concerned about and that is the exploitation by these fringe groups because of economics, because of inflation, because of unemployment. You could go through the list; that is a problem and concern of all of us, to counter that, and this is taking no money, just energy.

The secretary of corrections and public safety has agreed. He is beginning to go out into the community to meet with the community groups because of the serious concern about crime. A task force member will be going with him to give the theme that, do not let yourself be exploited by fringe groups because you are concerned about crime. We are all concerned about crime.

Your question really is dealing with attitudes, and that is the most elusive.

Mr. SENSENBRENNER. Do either of you think your efforts could have been assisted by amendments to Federal civil rights laws?

Mrs. BEIMS. I would be answering that in a vacuum because I don't know what——

Governor HUGHES. I really don't know. I couldn't answer that.

Mr. SENSENBRENNER. Have there been any prosecutions or convictions under this new law which increases the penalty for desecrating religious symbols from a misdemeanor to a felony?

Governor HUGHES. There was a prosecution and a conviction in Baltimore County, but I think that was prior to the effective date of the new law which increased the penalties and made it a felony. I don't believe there have been any since that. It just went into effect July 1.

Mr. SENSENBRENNER. The statistical information that you have submitted to the committee does indicate that there have been instances of desecration of religious symbols since the new law did take effect. I recognize that you are operating somewhat in a vacuum because these statistics were not assimilated earlier, but just using your own gut reaction, do you feel that the new law has actually provided the deterrent effect in that the instances of racially motivated cross-burnings, swastika paintings on synagogues and the like have actually decreased?

Governor HUGHES. Well, gut feeling, I would say it hasn't had time to do that yet. And maybe there might have to be a prosecution and a conviction under it for it to become that well known and for those people to be that aware of it that it is a deterrent.

Do you agree with that?

Mrs. BEIMS. Yes, I do agree with that. I do know there was one case in Baltimore County which was indeed prior to this where there was a conviction. It was under an action in the Federal courts under firearm laws in which the person was given a maximum 20-year sentence. I think that may account for last month's decrease, if one is able to correlate that, rather than the new law.

I would be pleased to get the information for you, find out how many charges have been made under this new law. I can get that information for you and how they are moving, and I would be pleased to do that.

Mr. SENSENBRENNER. Could you please?

Mrs. BEIMS. I would be pleased to do that.

Mr. SENSENBRENNER. I have one final question.

Governor, in the packet of materials that you have submitted to the subcommittee today there was a photocopy of a recruiting brochure for the Klan Youth Corps that has been passed out in front of schools in the State of Maryland. Do either your educational or police officials have any estimate on how successful this recruiting drive has been in terms of suspected numbers of members of the Klan Youth Corps?

Governor HUGHES. Do you have the answer?

Mrs. BEIMS. I don't have the answer to that, but it is a very good question and I will get back to you on that, also.

That literature that I received came to me third-hand. It is the only copy that I have received as chairman of the task force. We know of at least four schools in which the materials were handed out. If you note the cover says "at the school" not "in the school." It was on the periphery of the schoolyard.

If that is obtainable I will get that for you so you can have some guidance on the numbers.

Mr. CONYERS. It is pretty despicable trash. I am just wondering how fertile an audience the people who are passing this trash out in front of schools have received. I think that school officials would probably have a good idea, listening to the chatter that the kids are having. I would appreciate finding out if this stuff is starting to germinate.

Governor HUGHES. Thank you very much, Mr. Chairman.

Mr. CONYERS. Governor, what degree of cooperation do you get at the law-enforcement level between Federal, State, county, FBI, Drug Enforcement, and all the panoply of law-enforcement agencies in your State in general?

Governor HUGHES. In general, first, it has been my observation that we have had very good cooperation with Federal, State, and local police. And I am speaking generally now. The FBI, Maryland State Police, city police, I think there has been excellent cooperation there, and from what I have heard from, for example our Maryland State Police over the past, that they feel that that cooperation has been there.

In this specific field that we are talking about now, racial and religious hatred, the cooperation between State and local government has been excellent. There is still not quite 100 percent of the local police agencies reporting these incidents to the Maryland State Police, but it is well on the way to that and you must remember some of our local police forces may be only two people. But it is well on the way to 100-percent reporting.

I think the experiences that the Montgomery County Police, the Baltimore County Police, and I just use those as two, and the city in working with the State police and participating in this State effort has been excellent. Absolutely excellent.

I am not really familiar with whether there has been a need for or an opportunity for the similar kind of joint effort, cooperation with the Federal law-enforcement agencies, except I do know that the Civil Rights Commission has been very much involved. I have

met with them in my office, and they have worked very closely with the State on this effort.

Now Mrs. Beims might be able again to amplify that remark.

Mrs. BEIMS. Just a comment. We have had specific gatherings, not incidents if you will, but gatherings. In Frederick there have been five Klan rallies. The task force last month was briefed by the deputy sheriff in charge of the whole operation in Frederick County and by a citizens group, also.

It is a maturing process, you know, how to handle these incidents, and I can say from the last two in Frederick, the first four there were guns visible, the last one because of a lot of energy put out by the State police and the deputy sheriffs there were no guns visible that time.

I know that it was State, local, and Federal cooperation. The Klan rally that ended up being peaceful, with a tremendous community service in response to or counter to the rally on the shore in Preston last week. So when you are talking about an event as opposed to an incident, I can vouch for that very strong cooperation among those three sectors.

Governor HUGHES. I think there is, it just came to my mind, something unique about this whole effort. Usually if there is a problem somewhere that the State agency isn't cooperating or isn't producing or the local agency isn't working with us well or Federal agency isn't, you know the Governor hears about it.

Now in this effort I have never heard one word of that. I have never had anybody bring to my attention that some agency, some level of government, some person was not cooperating. I have heard just the opposite, that there has been a tremendous degree of cooperation at all levels, and a tremendous interest among individuals in doing the kind of thing we want to do. And that is unusual.

Mr. CONYERS. Thank you.

Tracking a question my colleague raised about the state of the law on enforcement of civil rights in general and racially motivated violence in particular, we have heard testimony, and I think our statistics back us up, that very little of these kinds of violations are prosecuted at the State level. Frequently the Feds are left with the responsibility of investigation and many times they are overwhelmed for whatever reasons, perhaps the complexity of the case, and very little progress is made. It is this subcommittee's particular responsibility to trace these efforts and know what improvements in the law may be necessary to make the law work more effectively and make violations thereof subject to a swift and certain prosecution.

We are now reviewing the civil rights laws in the context of the Federal Criminal Code revision. The experience at the local and State level where these cases are primarily, except where there are constitutional protection questions involved, is very important. We would be very pleased to have a continuing communication with you in respect to enforcement on the State level.

Governor HUGHES. We would be very happy to do that.

Mr. CONYERS. You may recall that one Member of the Congress from Maryland was the subject of threats by the Klan and that there have been prosecutions in your State at the Federal level for

firearms violations on the part of the Klan. So we know, as you do, that there is activity going on in your State——

Governor HUGHES. Oh yes.

Mr. CONYERS [continuing]. But that it is being appropriately observed in terms of any violations of Federal law, of constitutional violations, of Federal firearms law violations, and any State violations that may be going on. And we would appreciate your continued vigilance in this area.

Governor HUGHES. Well, that will happen.

In two ways, we are continually looking at the law to see if there is any need to change or improve the Maryland law, and secondly, impressing upon our State prosecutors throughout the State, the States' attorneys, the necessity to enforce the laws that are on the books, and that effort will continue.

In the Baltimore County situation it was in the Federal court, but the matter was really investigated and pursued by the Baltimore County local police system. So I share your concern and we will continue the efforts.

Mr. CONYERS. Thank you very much.

If there are no further questions we appreciate your testimony and your candid discussion with us, Governor Hughes.

Governor HUGHES. Thank you.

Mr. CONYERS. Thank you, Mrs. Beims.

[The complete statement of Governor Hughes, together with responses to specific questions, follows:]

PREPARED STATEMENT OF HON. HARRY HUGHES, GOVERNOR OF MARYLAND

In March 1981, I met with a group of community leaders who expressed concerns over the intolerable increase of the acts of violence and intimidation in our State. This group represented the Baltimore Jewish Community Relations Council, the National Conferences of Christians and Jews, the State Human Relations Commission, the Baltimore City Community Relations Commission, the Urban League, and the National Association for the Advancement of Colored People. These organizations and others had combined already to form a Statewide private umbrella coalition—the Coalition Opposed to Violence and Extremism (COVE).

This Coalition has served the State well and its most recent effort, a conference on October 29, 1981, attracted over 350 civic, business, educational, religious and governmental leaders from across the State for a full day if intense education and awareness on this issue.

As a result of the spring meeting with COVE, I established the public sector counterpart to COVE—the Governor's Task Force on Violence and Extremism.

Comprised of the heads of appropriate State agencies, two members of the legislature and the chief judge of our district court, I gave the task force three specific charges.

First, the task force was directed to make certain that each department in State government assess its internal structure and method of serving the citizens of Maryland. That assessment has been completed and many departments have begun to develop and implement policies and programs to strengthen the State government's ability to deal with such activity and to clarify that such incidences are in no way condoned by State agencies.

The following examples highlight some of the achievements under the first charge:

Department of Education.—The State Board of Education passed a resolution stating in part that "public education is provided best in an atmosphere where differences are understood and appreciated and where silence in the face of deliberate acts of wanton hatred cannot and must not be tolerated in this State." This resolution charges the State Department of Education to give positive emphasis in its curricular work, grants and awards to the unacceptability of this kind of activity and further encourages local school systems to do the same.

Subsequent to this resolution, the State Department of Education prepared a "Brief Guide of Responses for School Administrators" for use throughout our State's classrooms. The intent of the Guide is to insure that "the incident" in the hallway, the locker room, the play area or the community will be discussed, rather than ignored. The Guide provides the teacher with several alternatives to bring the discussion of such incidences into a proper and constructive forum—the classroom. A copy of the Guide is provided in the packet for Committee members.

Juvenile Services Administration.—The Juvenile Services Administration has prepared a seminar on this subject for all of its intake personnel. Many, although certainly not all, of the incidences have been attributed to youth in our State. It is the intent of the Juvenile Services Administration to treat these incidences seriously and to make certain that the staff who will be working with these youngsters have appropriate training.

Department of Law.—The Attorney General's Office in Maryland is in the process of developing a digest of Maryland Laws which are pertinent to this issue. This digest will be distributed to the State's Attorney's Offices throughout Maryland.

Maryland Human Relations Commission.—Through its Community Services Agency, the Human Relations Commission in cooperation with local Human Relations Commissions is putting in place neighborhood councils to provide local response to these incidences. One example of their work relates to Ku Klux Klan gatherings held in our State. The Human Relations Commission has worked closely with civic leaders, local elected officials and law enforcement agences well in advance of the gathering to make certain that the response of the community would protect the rights of the individuals participating in the event and at the same time, not condone or support the event.

The other appropriate departments in State government are working on policies and programs with similar diligence. The above examples were offered to give you some sense of the response within Maryland government.

My second charge to the Task Force required the establishment of a standardized system of identifying and reporting racial, religious or ethnic incidences of violence or intimidation and the development of an effective system of law enforcement, human relations and education programs to address the issue.

The reporting mechanism is in place. As a result of legislation which I signed into Law, effective July 1, 1981, the Maryland State Police is required to use the Uniform Crime Reporting procedure to report such activities occurring anywhere in the State. Prior to July 1, Maryland State Police held a day-long seminar for law enforcement agencies throughout the State to prepare them for this reporting procedure. The information, after collection and analysis is forwarded to the State Human Relations Commission.

For 9 months prior to July 1, random gathering of these incidences reflected 129 incidences. The first report under the uniform crime reporting procedure identified 33 incidences in Maryland during the month of July. It is difficult, at this time, to determine if incidences are increasing or whether the reporting procedure has provided a clearer, more accurate representation of the nature and extent of such activities.

The more illustrative dimension of this charge is that of identification—the cross-burning is obvious but the incidences which occur in schools, on the playgrounds and on the walls of our homes and churches may be harder to identify, partly because we are hesitant to report the incident. Instead we call the painter, the carpenter, or the custodian to remove the graffitis or object, and remove it quickly, so that our school, home, or place of worship remain inviolate.

To further fulfill this charge, the task force has established a legislative sub-committee to serve as a clearinghouse on Federal, State, and local legislative initiatives. The task force has been in contact with every mayor, county executive, and commissioner in the State and will be providing guidance for me in this area if additional legislative responses are necessary.

We are particularly proud of the efforts of the Baltimore County Police Force, under the leadership of Chief Cornelius J. Behan, which has established a special unit, with appropriate training to handle these incidences. The unit successfully infiltrated the Klan, brought charges of illegal activities and participated in the legal process which resulted in the trial and conviction of a Klan member who was constructing a bomb for use on the home of a NAACP officer.

These procedures, developed by the Baltimore County Police Department, are being applauded throughout the nation and may be replicated by other jurisdictions in our State. In fact, Montgomery County has already initiated these procedures.

The third responsibility of the task force is three-pronged: education, victim assistance and prevention. By their very nature, these subjects must be approached at the local, grassroots level.

Certainly many of the concepts initiated under the first two categories are of an educational nature. However, to make certain the issues of violence, bigotry, and intimidation are in a proper context, the State Secretary of Public Safety and Correctional Services has agreed to invite a member of the task force to accompany him to community meetings throughout the State. This task force member will serve to emphasize a salient point: "We must not let legitimate concerns and fears about crime and the rising rate of crime be exploited by conveyors of violence and extreme activities."

In Montgomery County, County Executive Charles Gilchrist is to be commended for establishing a community council comprised of civic, business and religious leaders to address concerns in Montgomery County. In his county, also, the Network of Neighbors has been working since 1977. Comprised of over 400 volunteers, this organization is geared specifically to victim assistance. This concept also has drawn national attention and several other counties in Maryland are exploring this concept in cooperation with local Human Relations Commissions.

County Executive Gilchrist will be addressing this subcommittee also and I am sure he will provide further details on the scope and directions of his county's efforts.

A transformation has been occurring in Maryland regarding these incidences. County Executives Gilchrist (Montgomery), Barranger (Harford), Hogan (Prince Georges) and Hutchinson (Baltimore), each have experienced the same evolution as I have. Our first tendency was not to speak out, not to give legitimacy to these abhorrent acts. There has been, over the past year, however, a growing consensus that silence condones. Hence, each of us, in our own time, has moved from fearing that our voices would inflame to the realization that the public and private leaders in our communities, counties and State must speak out frequently and forcefully.

These activities must be broached in two ways—in law and in the hearts and minds of our citizens.

Always cautious of our first amendment rights, we must, as Maryland's Attorney General Sachs stated last week, "protect the speech we hate."

Legislatively, Maryland passed two laws dealing with this area in its 1981 General Assembly Session. One, already discussed, requires the State Police to gather and analyze statistics through a uniform crime reporting procedure. The second bill which I signed into Law effective July 1, 1981, changes the crime of burning religious symbols from a misdemeanor to a felony and increases the maximum punishment from $1,000 to $3,000 and/or up to 3 years imprisonment.

The attitudes, or as I have stated, the hearts and minds of our citizens, will be the strongest avenue for the efforts of my task force and to which most of my appeal will be directed. I will continue to do this through the resources available to me—the public forum and administrative changes. To orchestrate successfully the administrative changes, I explicitly directed the task force to not become a report producer; not to generate a document to gather dust on a shelf. It is anticipated that the task force will be a standing committee whose continuing effort will make certain that the institutional changes are being put in place as they are proposed and developed.

A recent survey in Maryland reinforced the findings presented at a Conference on Violence in America that convened last month at the John F. Kennedy School of Government in Boston. Violence, or the fear of violence, ranks as the top concern of our citizens equal to the economy, unemployment, and inflation. The combination of hearing about violence and experiencing it produces two sets of deep-seated and primitive emotions—one of striking out and one of helplessness. It is important to stress that it was not apathy which many people have suggested as a reaction—but helplessness. This helplessness was based on the perception that America, in general, is out of control and that there is an increased perception regarding moral looseness and moral crisis.

Although this fear of violence and sense of helplessness apply to crime in general, they are part and parcel of why the State of Maryland has moved to reassure its citizens at the State and local level that these racially, ethnically, or religiously motivated acts of intimidation and bigotry will not get a foothold in our State.

There is considerable discussion on issues which are currently controversial, for example, affirmative action, busing, and a changing Federal role. There is, indeed, public anxiety over crime, employment, and inflation. We cannot, we will not, permit those issues, which are the daily concern of each of us as public officials, to be exploited by those who would ultimately take from us the very rights and privi-

leges which we are so carefully protecting for them—the right to assemble and to speak, and the privilege of being unique and different—the very bastions of our pluralistic Nation.

I want to thank you for the opportunity to address the Subcommittee on Criminal Justice of the House Judiciary Committee to share the Maryland experience with you.

STATE OF MARYLAND,
EXECUTIVE DEPARTMENT,
Annapolis, Md., December 9, 1981.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CONYERS: I testified before your committee on November 12, 1981 to present Maryland's efforts in combating racially, religiously or ethnically motivated acts of violence and extremism.

During the testimony, I addressed a new law in Maryland, effective July 1, 1981, which changed the crime of the burning of religious symbols from a misdemeanor to a felony and increased the maximum punishment from $1000 to $3000 and/or up to three years imprisonment. In response to this statement you asked if any arrests had been made under this law.

Since July 1, 1981, there have been ten arrests under the new law for cross-burnings—one in Prince George's County and nine arrests in Baltimore County, which involved three separate cross-burnings.

Your second area of inquiry was in response to our identification and reporting procedures in the school systems. As I noted on November 12, this is a more illusive problem. Some schools, however, have been responsive in reporting these incidents rather than ignoring or denying them. We are just beginning to place this issue systematically before local boards of education, superintendents and classroom teachers, so the results of that effort cannot be measured as yet. We have had three incidents in schools reported through the police uniform crime reporting mechanism—one in Anne Arundnel County and two incidents in Montgomery County. These incidents were not or a recruitment nature.

Significant recruitment efforts in the schools have not been substantiated. The one piece of recruitment literature submitted to your Subcommittee on November 12, 1981, was the only one retrieved in our State. This literature was found in a school in Harford County. The principal of the school contacted the local Human Relations Commission, the County Superintendent of Schools, the Sheriff's Department and the County Executive, so the community response was organized and clear.

To state that the recruitment has not been substantiated, obviously, does not imply that recruitment efforts are or are not occurring. The State Police, local law enforcement officals and school officials have been alerted to these recruitment possibilities, so I am certain our community leaders will be in contact with appropriate officials regarding any recruitment activities.

To ensure that your Subcommittee is aware of the incidents in Maryland, I have arranged for your Office to receive our monthly uniform crime reports. Information regarding any incident which is of a recruitment nature, either identified through the uniform crime reporting procedure, through our Human Relations Commission or through our school systems, will be forwarded to you also.

I want to take this opportunity to thank you for the privilege of appearing before your Subcommittee. The State of Maryland and its subdivisions continue to be concerned over the rise of these incidents. We are committed to working together diligently against these violent and extreme acts and addressing these issues in appropriate and constructive ways.

Sincerely,

HARRY HUGHES, *Governor.*

TESTIMONY OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY DAN RINZEL, CHIEF, CRIMINAL SECTION, CIVIL RIGHTS DIVISION

Mr. CONYERS. Our next witness is the Assistant Attorney General of the United States in charge of the Civil Rights Division, Mr. William Bradford Reynolds, who has only this spring been confirmed in his position. He has extensive legal experience in the private sector, has served under former Solicitor General Irwin Griswold, has been an Assistant Attorney General since the time mentioned and has been very busy since then. He is accompanied by the Chief of the Civil Rights Division's Criminal Section, Attorney Dan Rinzel.

We welcome you to your first hearing before the Criminal Justice Subcommittee, Mr. Reynolds, and we will incorporate, without objection, your prepared testimony and allow you to proceed.

Mr. REYNOLDS. Thank you, Mr. Chairman, and Congressman Sensenbrenner.

I do think it might be helpful if I take my prepared testimony and at least try to hit the high points of it initially, and then I would be more than happy to answer any questions, and Mr. Rinzel is here to help me answer some questions that you all might have.

I do want to say that I am pleased to have the opportunity to appear before you today and address this subcommittee on the topics of racially motivated violence and the pending Federal Criminal Code revision as it affects criminal civil rights statutes.

I do know that you particularly, Mr. Chairman, have devoted a great deal of time and attention to our enforcement of the Federal criminal civil rights statutes.

Since my confirmation as the Assistant Attorney General for Civil Rights I have become increasingly aware that there are repeated instances of black families being terrorized by crosses set ablaze on their property at night, of threats to injure leaders of civil rights organizations, of immigrants and refugees assaulted because of their race or national origin, and of random violent attacks on biracial groups.

Over the last 2 years alone the Justice Department has investigated approximately 350 complaints of criminal interference with housing rights nationwide. About 100 of these are still under active investigation. These complaints include cross-burnings, vandalism, and violence that appears to be racially motivated.

We have, in addition, investigated roughly 40 other matters of racial intimidation or violence, many involving racial hate groups such as the Ku Klux Klan. Approximately 15 incidents of suspected Klan activity remain under investigation today.

The view of this administration, the view of the Department of Justice and the view of the Civil Rights Division is that even a single act of racially motivated violence is intolerable. Such acts strike at the very fabric of society.

As Assistant Attorney General I intend to focus on this grave problem in our society as a priority matter. The Department of Justice will investigate thoroughly all instances of racial violence wherever Federal jurisdiction exists, and whenever our investigations produce sufficient evidence to warrant prosecution we will vigorously prosecute.

I would point out that not all acts of racially motivated violence are reached by Federal law. To be prosecutable most such acts, if engaged in solely by private parties, must fall within the purview of three principal statutes which generally require an intent to interfere with some federally protected activity.

Mr. Chairman, you and Congressman Sensenbrenner are, I am sure, fully familiar with the Federal statutes that I have made reference to, 42 U.S.C. 3631, dealing with forceful interference on account of race with an individual's rights to buy or sell or occupy property, and sections 241 and 245 of title 18, which are the criminal civil rights statutes that have general application in this area.

I have included in my prepared testimony a discussion of recent successful prosecutions under these statutes for the information of the subcommittee.

In spite of these accomplishments that I have listed in my testimony there is a difficult task that lies ahead of us. The menace of racial violence is real and hate groups such as the Ku Klux Klan and Nazi-type organizations seem committed to keep that menace alive.

Based on the most recent statistics, both complaints and prosecutions have increased in recent years. Of particular concern to me are the reports about the existence of paramilitary camps operated by such hate groups for the alleged purpose of training persons for racial warfare.

I intend to meet with FBI Director Webster in the immediate future to discuss these concerns and to explore ways to address them.

We must, of course, respect the first amendment rights of all groups and abide by proper limitations on investigative techniques. But we also must insure the possible criminal violations of such groups are investigated and prosecuted where appropriate.

Let me simply emphasize that I consider this a priority area for the Civil Rights Division that we will vigorously investigate and energetically prosecute violations, and that within the limits of the law we will be imaginative and resourceful both in the application of legal theories and in the use of investigative techniques.

Now if I may just for a few more minutes have your indulgence, Mr. Chairman, I do think that a few comments on the pending Federal Criminal Code provision as it affects the criminal civil rights statutes might be helpful before I submit to your questions.

In that connection I would like to second the remarks of the Attorney General of the United States recently made before this subcommittee and strongly applaud and support congressional efforts regarding Criminal Code reform and codification.

Recodification efforts are particularly important in the criminal civil rights area where ambiguous and outdated aspects of certain statutes dating from the Civil War era often present unwarranted and unnecessary impediments to successful prosecution.

Both the Senate and the House versions of the recodification, for example, eliminate the requirement of citizenship for victims of violations of 18 U.S.C. 241, and also eliminate the conspiracy requirement of that statute.

There is no sound reason for limiting the protection of the statute to citizens nor is there any reason why conduct which is prohibited by the present statute if two or more persons conspire together, should not also be prohibited if one person alone engages in the prohibited conduct.

In addition, each of the bills address the impediment to civil rights prosecutions raised by the specific intent standard in current

law. In order to save the civil rights statutes from vagueness, the Supreme Court has required proof of specific intent to interfere with a constitutional right.

Regrettably, this resolution of the constitutional question has raised numerous interpretive problems for courts, prosecutors, defendants, and juries.

House bill 4711, which is the one introduced by you, Mr. Chairman, attempts to deal with specific intent under 18 U.S.C. 242, and that, as you know, is the statute which prohibits deprivation of federally protected rights by persons acting under color of law.

Your bill, Mr. Chairman, deals with matters of specific intent in a manner different from the Senate bill, and that in turn deals with that problem in a manner different from the approach taken by House bill 1647 introduced by Congressmen Kindness and Hall.

I am not prepared at this time to take a position on behalf of the administration on the various versions of these bills, but I can assure you that I and the members of my staff will readily work with members of this committee and the committee staff to arrive at a mutually acceptable position regarding this question.

Another aspect of the Criminal Code revision which deserves special mention is the provision in the Senate bill allowing the Government to appeal sentences under certain circumstances.

Civil rights is one of the areas of criminal law most in need of uniform sentencing provisions, and the ability of the Government to appeal sentences below the guidelines to be developed under the bill will help to assure this result.

On one other point I would observe that the Senate version of the involuntary servitude statute, which essentially continues present law, appears to us to be preferable to the House bills as presently drafted, which add a requirement of interstate movement.

The House formulation, which I understand will be corrected, would in our view substantially impede the Department's efforts to deal with involuntary servitude and slavery since few of the cases we bring have an interstate aspect.

Mr. Chairman, that I think concludes a summary of my statement, and I would be more than happy to answer any questions that you or Congressman Sensenbrenner might have.

Mr. CONYERS. Thank you very much, Mr. Reynolds.

On the question of how we may improve the existing statutes I note that you will be working with us to come to some dispositive conclusion on the several versions that are floating around.

I might add another one just to keep our attention focused on it. There was a subcommittee version of the codification of the code reported by then-Chairman Drinan's subcommittee last term, which I think had yet a different, slightly different, provision for improving the statutes. So, please examine that too, because they are all up for examination at the same time.

Mr. REYNOLDS. We will.

Mr. CONYERS. I hope the objective to which we will be working as we review the existing civil rights statutes is toward the elimination of whatever prosecutorial impediments have made it so difficult to bring these suits.

I have been in discussion with a number of U.S. attorneys across the country, including your predecessor, about the nature of the problem, and the gist of it is that these cases are hard to prove. That is, essentially, because in the case of section 242 we have to prove that the sheriff who engaged in clearly illegal conduct had an intent to deprive somebody of their constitutional rights.

That becomes quite a formidable hurdle which in several cases has forced plea bargaining and the resultant modified sentences which you point out that you have another remedy for. And so it seems to me that ought to be what we are focusing on.

We need a law that works, not just in theory, but that works as an effective tool for U.S. attorneys who are frequently called into the courtroom to effectuate that remedy.

Would you not agree with this reasoning and acknowledge our need to look again at these statutes?

Mr. REYNOLDS. I do agree that that is a problem and it has been a problem and it is something that, as I say, has been treated differently in the various versions, but clearly the separate bills are seeking to address specifically that problem in a way that I think is a positive suggestion, and it is a question really of trying together to come to a formula for the statute which would, indeed, get over that hurdle, that you suggested is there so often, of trying to show a specific intent to commit the constitutional violation as opposed to a specific intent to do the act itself which is offensive.

But I do think that the different versions have focused on that problem, and in one way or another seem to have addressed it and looking at those versions together, I think that it would be something that we could come to a resolution on.

Mr. CONYERS. What do you think of the problem of racially motivated violence and its need to have a constitutional nexus? That is to say, should not the law of the United States provide every citizen with protection against racially motivated violence?

Mr. REYNOLDS. Well, I guess I would say to you that I would like to see that occur. I think that one of the frustrations in these areas and one of the concerns that a lot of people have is that you could have an isolated shooting by somebody, for example, such as the incident in Utah by Mr. Franklin, of two joggers, black joggers in Utah. And that that isolated situation would not have a Federal nexus to permit the Federal Government to reach that activity.

I do believe that that is the state of the law now. I think it is something that Congress could address, and perhaps there are ways to correct that problem or that gap in the law. It is something that is of concern to me, but I think that the way the law is at the present time the Federal Government does have to find the nexus, if you will, to a federally related activity before it can proceed with its investigation and prosecution of some of these acts that are motivated by racial concerns.

Mr. CONYERS. Well, I think that is our responsibility. I think that is a question that the Congress has to ask itself as we move along with the revisions of our Federal law. It seems to me that without that assurance we are leaving a huge gap in the network of laws that provide so many other things that are important.

The right to be federally protected against racially motivated violence is almost the very starting point of a network of protections.

And I think this is a point that we in the Federal Government need to examine very carefully. We will take into consideration the comments that you have made in this regard.

You are no doubt aware, that there are different views on this subject of where the Federal responsibility begins and leaves off.

Mr. REYNOLDS. I am aware of that.

Mr. CONYERS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I have two points that I would like to discuss with you, Mr. Reynolds.

First of all you mention the difficulty of proving the specific intent that is required by court decision to obtain a conviction under the present Federal civil rights statutes. If the revision of the Federal Criminal Code that is proposed lowers the standard of intent that must be proven would that increase prosecution of racially and religiously motivated violence as a priority in your department or not?

Mr. REYNOLDS. Well, I guess that as a priority in the division right now I don't think that there is anything on a higher priority than the activity that we are doing in the criminal section of the division. If there were a change in the intent standard it seems to me that that goes to a different question and the one that the chairman was raising with regard to the extent to which the Federal Government can proceed in this area.

The intent standard goes to the manner in which you prove your case once you have gotten to the point in your investigation where you feel that you have found the perpetrator of the activity. I don't think that a change in that area would impact at all on our priorities in this area.

We have put this as a top priority. We will continue to proceed in this area as one that is of top priority.

Mr. SENSENBRENNER. Have there been any cases that have not been prosecuted because the Department is determined that it cannot meet the intent standard in the present law?

Mr. REYNOLDS. Well, I am sufficiently new to the division that maybe I better ask Mr. Rinzel to respond to that for you. He would know more about our past activities.

Mr. RINZEL. Yes; there are cases that have not been prosecuted because we cannot meet the specific intent standard, but I would point out that my understanding of the House bills at least is that the current intent standard is carried forward in 241 and 245, which are the statutes that deal with private interference with protected rights.

It is 242 that the intent standard would be changed on and that is a color-of-law statute and is basically used most of the time in police misconduct cases.

The House and the Senate bills do attempt to deal with the intent standard in 241 by piggybacking, or reverse piggybacking, some specific statutes.

So the intent standard that we are talking about, at least that is proposed to be dealt with, is the specific intent standard for 242 in the House bill.

Mr. SENSENBRENNER. Have there been any cases that have been plea-bargained away for the same reason?

Mr. RINZEL. I don't know if I would characterize them as plea-bargaining them away. We certainly do occasionally take plea bargains in these kinds of cases, and it depends on a number of factors, including of course, the amount of evidence that we can present and the difficulty of the legal standard.

Mr. SENSENBRENNER. Finally, Mr. Reynolds, I would like to commend you for your support of changing the law to allow the Government to appeal abnormally low sentences under specific circumstances, and particularly commend you for citing a specific case in the civil rights area where the trial court judge did impose an abnormally low sentence which was appealed under a mandamus to the fifth circuit and the individual was incarcerated for a longer period of time.

So that will be very helpful in our discussions on this matter.

Mr. REYNOLDS. Yes, sir.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Mr. CONYERS. What happens, Mr. Attorney General, in a racially motivated violence case in which the State intervenes and acquits the defendants? There is jurisdiction still existing, is there not?

Mr. REYNOLDS. If I understand your question, Mr. Chairman, you are asking whether in that event the Federal Government would feel that it was precluded from stepping in at that juncture and proceeding with a prosecution under the criminal civil rights statutes, I would say that just as a general matter we would not feel that the acquittal by the State authorities would bar the Federal Government from getting into the picture.

There are guidelines for dual prosecution, as I am sure you are aware, that would suggest that the Federal Government in moving in this area do so to vindicate a Federal interest and we would look to insure that the situation was one that we felt warranted our investigation and our prosecution.

It would have to be a situation that was an investigation that was approved by me personally, but as a general matter I would not regard an acquittal by the State authorities in that kind of a situation as precluding the Federal Government from moving forward and seeking to prosecute under the criminal civil rights statutes.

Mr. CONYERS. So I suppose the *Greensboro* case involving Nazis, KKK, and Communist Worker Party members would be such a case that is being reviewed by your Department.

Mr. REYNOLDS. *Greensboro* is such a case. It is under active review by the Civil Rights Division right now. I received, I guess it was last month now, from Professor Van Alstyne, who is here today, a letter in which he suggested some possible theories for the Division to explore in connection with that investigation. That was helpful correspondence from him and we certainly are looking into his suggestions and are continuing with that investigation.

Mr. CONYERS. All right. That case, as you know, has attracted worldwide attention, and we are watching it to see how these principles that you have enunciated will be employed in the reality of your day-to-day operations.

Now, you have stated the number of investigations of racially motivated incidents that are being conducted by the Department in the last 2 years. We need additional information on the prosecutions and the results in terms of sections 241, 242, and 245. If you have them you can give them to us now. If you do not, you can send them in.

But what we really need is an ongoing current record of dispositions so that we can all be up to date on those statistics.

Mr. REYNOLDS. We can certainly provide that information to you, Mr. Chairman. Would you like that, back how far? What would be the time period that you want to go back?

Mr. CONYERS. Well, we will start off with a 2-year period.

Mr. REYNOLDS. All right. Certainly I do not have that information with me but we will be more than happy to provide it to you.

Mr. CONYERS. More and more parts of the criminal justice system are examining these statistics, and we need to have them current, and I am sure that you will keep them current once we begin with this 2-year period.

Mr. REYNOLDS. We can do that, and I would be more than happy to answer any questions that you or your staff have about those statistics or cases as we provide them to you.

Mr. CONYERS. I thank you very much.

Do counsel have any questions?

Thank you very much, sir. We appreciated your appearance here today.

[The complete statement and written responses of Mr. Reynolds follow:]

PREPARED STATEMENT OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

I am pleased to have the opportunity to appear before you today to address this Subcommittee on the topics of racially motivated violence and the pending criminal code revision as it affects criminal civil rights statutes. I know that you particularly, Mr. Chairman, have devoted a great deal of time and attention to our enforcement of the federal criminal civil rights statutes.

Since becoming the Assistant Attorney General for Civil Rights, I have become increasingly aware of, and alarmed by, reports of senseless acts of apparently racially motivated violence in this country. There are repeated instances of black families terrorized by crosses set ablaze on their property at night; of threats to injure leaders of civil rights organizations; of immigrants and refugees assaulted because of their race or national origin; and of random, violent attacks on biracial groups.

Over the last two years alone, the Justice Department has investigated approximately 350 complaints of criminal interference with housing rights, nationwide. About 100 are still under active investigation. These complaints include crossburnings, vandalism, and violence that appears to be racially motivated. We have, in addition, investigated roughly 40 other matters of racial intimidation or violence—many involving racial hate groups such as the Ku Klux Klan. Approximately 15 incidents of suspected Klan activity remain under investigation today.

The view of this Administration, the view of the Department of Justice and the view of the Civil Rights Division is that even a single act of racially motivated violence is intolerable. Such acts strike at the very fabric of society. We fought a civil war and struggled for over a century in an effort to achieve for all citizens the full range of constitutional protections so that each individual has the opportunity, free from interference and intimidation, to accomplish whatever his or her talents and abilities will permit. To retreat at all from that commitment would offend the most cherished principles on which this Nation is founded. This we will not do.

As Assistant Attorney General, I intend to focus on the grave problem of racial violence in our society as a priority matter. The Department of Justice will investigate thoroughly all incidents of racial violence wherever federal jurisdiction exists. Whenever our investigations produce sufficient evidence to warrant prosecution, we will vigorously prosecute.

I should point out, however, that not all acts of racially motivated violence are reached by federal law. To be prosecutable, most such acts, if engaged in solely by private parties, must fall within the purview of three principal statutes which generally require an intent to interfere with some federally protected activity. As you know, § 3631 of Title 42, makes criminal any forceful interference on account of race with a person's right to buy, sell or occupy a dwelling. Section 245 of Title 18, generally prohibits forceful interference, whether or not on account of race, with a person's right to vote, campaign for office, participate in federal or federally funded programs, hold federal employment and serve as a federal juror. The statute requires racial motivation, however, if the forceful interference involves one's rights to attend public school, participate in any state program or use state facilities, hold state employment, join a union, serve as a state juror, travel in interstate commerce, or use any public accommodations. Section 241 of Title 18, prohibits conspiracies to injure, oppress, threaten, or intimidate a citizen in the free exercise of, or because of the exercise of, a right secured by the Constitution or laws of the United States. This section also protects against conspiracies by persons acting as private citizens in certain instances and against conspiracies by persons acting under color of law to violate Fourteenth Amendments rights. The protection against the rights protected purely private conspiracies includes, among other things, the right to travel interstate, to be a federal witness and to vote in a federal elections.

Recent successful prosecutions under these laws are worthy of mention.

When a sniper in Salt Lake City, Utah, shot and killed two young black men as they were jogging out of a city park with two young white women, we quickly joined forces with local authorities there. Our exhaustive national investigation led to the apprehension and conviction in federal court of Joseph Paul Franklin, and avowed racist who is also under investigation in connection with a number of other apparently racially motivated shooting and killings across the country. Franklin was sentenced to two consecutive life sentences following our prompt and vigorous prosecution.

In Muscle Shoals, Alabama, two white men were convicted of federal civil rights violations after they assaulted two black ministers for patronizing a restaurant.

Also in Alabama, several white men were convicted for assaulting an interracial couple in their car on the highway in an effort to intimidate them to leave the area.

We have secured convictions of two Ku Klux Klan members who fired a sawed-off shotgun into the mobile home of a black family in Cartago, California, and have successfully prosecuted numerous klansmen in Alabama for shooting into the homes of biracial couples and local NAACP leaders.

And, when two Vietnamese refugees were told at knifepoint to quit their jobs in a local factory, a prompt federal prosecution in Birmingham, Alabama, led to the conviction and imprisonment of the perpetrator.

With respect to Klan cases alone, 34 defendants have been charged with federal criminal civil rights violations over the past two years in nine separate cases resulting in 31 convictions. In addition, Klan activity has been investigated under the federal explosives and firearms statutes by the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department, working in conjunction with the United States Attorneys. This year, in three separate cases in Tennessee, North Carolina, and Maryland, the Bureau of Alcohol, Tobacco and Firearms helped to foil plots to bomb a synagogue, businesses and an NAACP chapter office.

In spite of these past accomplishments, a difficult task remains. The menace of racial violence is real and hate groups such as the Ku Klux Klan and Nazi-type organizations seem committed to keep that menace alive. Based on the most recent statistics, both complaints and prosecutions have increased in recent years. Of particular concern to me are reports about the existence of paramilitary camps operated by such hate groups for the alleged purpose of training persons for racial warfare. I intend to meet with FBI Director Webster in the immediate future to discuss these concerns and to explore ways to address them. We must, of course, respect the First Amendment rights of all groups and abide by proper limitations on investigative techniques, but we also must ensure the potential criminal violations by such groups are investigated and prosecuted where appropriate.

We have, of course, elicited the able assistance of local authorities whenever possible to assist us in achieving this goal. Many violent incidents can be prosecuted under state criminal statutes governing assault, murder, arson and the like without the necessity of proving racial motivation. We, therefore, encourage local authorities to become active in the fight against racial violence, providing full support and cooperation from the federal government when and as needed. The Federal Bureau of Investigation, for example, rendered substantial investigative assistance and gave manpower support to officials in the Buffalo, New York, area in their investigation

of the slayings of black men there, and to the city of Atlanta in its investigation of the disappearances of black children. As you know, local prosecutions are now pending in both cities.

In concluding my remarks on racial violence, I want again to emphasize that I consider this to be a priority area for the Civil Rights Division, that we will vigorously investigate and energetically prosecute violations, and that within the limits of the law we will be imaginative and resourceful both in the application of legal theories and the use of investigative techniques.

I was also asked to comment on the pending criminal code revision as it affects criminal civil rights statutes.

In this connection, I would like to second the remarks Attorney General Smith recently made before This Subcommittee and strongly applaud and support Congressional efforts regarding criminal code reform and codification. Recodification efforts are particularly important in the criminal civil rights area where ambiguous and outdated aspects of certain statutes dating from the Civil War era often present unwarranted and unnecessary impediments to successful prosecution.

Both the Senate (S. 1630) and House (H.R. 1647, H.R. 4711) versions of the recodification, for example, eliminate the requirement of citizenship for victims of violations of 18 U.S.C. 241, and also eliminate the conspiracy requirement of that statute. There is no sound reason for limiting the protection of the statute to citizens, nor is there any reason why conduct which is prohibited by the present statute if two or more persons conspire together, should not also be prohibited if one person alone engages in the prohibited conduct.

In addition, each of the bills addresses the impediment to civil rights prosecutions raised by the specific intent standard in current law. In order to save the civil rights statutes from vagueness, the Supreme Court has required proof of specific intent to interfere with a constitutional right. Regrettably, this resolution of the constitutional question has raised numerous interpretive problems for courts, prosecutors, defendants and juries. H.R. 4711, introduced by Chairman Conyers, attempts to deal with specific intent under 18 U.S.C. 242 in a different manner than the Senate bill, which is in turn somewhat different from the approach taken by H.R. 1647 introduced by Congressmen Kindness and Hall. I am not prepared at this time to take a position on behalf of the Administration on the various versions of these bills, but I can assure you that I and members of my staff will readily work with members of this Committee and the Committee staff to arrive at a mutually acceptable position regarding this question.

Another aspect of the criminal code revision which deserves special mention is the provision in the Senate Bill allowing the government to appeal sentences under certain circumstances. Civil rights is one of the areas of criminal law most in need of uniform sentencing provisions, and the ability of the government to appeal sentences below the guidelines to be developed under the Bill will help to assure this result.

United States v. *Denson,* 603 F.2d 1143 (5th Cir. 1979) amply demonstrates the point. That case involved a Hispanic victim named Jose Campos Torres who was beaten by some Houston police officers and pushed into a bayou where he subsequently drowned. The defendants were convicted of a misdemeanor under 18 U.S.C. 242 for the beating and of a felony under 18 U.S.C. 241 resulting in death. Notwithstanding that the latter conviction carried a possible sentence of life imprisonment, the district court inexplicably sentenced the defendants only to one year on the misdemeanor and probation on the § 241 felony count. Our effort to appeal the sentence was rejected. We applied for a writ of mandamus to the court of appeals on the grounds that only because the sentence was illegal (i.e. the probation statute did not allow imposition of probation in cases where a life sentence is possible) did the court of appeals accept our simultaneous application for a writ of mandamus and order resentencing. Even then, on remand, the district court sentenced the defendants to one year and one day. The provisions of the Senate Bill allowing government appeals of sentences would help to alleviate such problems.

On another point, I would observe that the Senate version of the involuntary servitude statute, which essentially continues present law, appears to us to be preferable to the House bills, as presently drafted, which add a requirement of interstate movement. The House formulation, which I understand will be corrected, would, in our view, substantially impede the Department's efforts to deal with involuntary servitude and slavery since few of the cases we bring have an interstate aspect.

Mr. Chairman, this concludes my prepared statement. I will be glad to answer any questions you may have.

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U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION,
Washington, D.C.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Criminal Justice,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN CONYERS: During my recent testimony before the House Judiciary Subcommittee on Criminal Justice, you requested statistics on the number of criminal civil rights prosecutions during the past two years along with the results of those prosecutions. Those statistics are attached.

If you have any questions concerning this material, please do not hesitate to contact me.

Sincerely,

WM. BRADFORD REYNOLDS,
Assistant Attorney General, Civil Rights Division.

CONTINUED

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CIVIL RIGHTS PROSECUTIONS 1980-1981

Case Name	District	Date of Incident	Statute	Defendants	Disposition	Type
U.S. v. Whitley, et al.	W.D. Texas	9/8/78 9/21/78 9/24/78	18 USC 241 18 USC 242	John H. Whitley Nathaniel Parker, Jr. Ted S. Spurgeon Aaron Ealy John W. Keeton Leonard R. Tillis	convicted convicted acquitted pled guilty pled guilty pled guilty	Jail Officials
U.S. v. Otherson, et al.	S.D. California	7/3/79 7/4/79 7/25/79	18 USC 242	Jeffrey Otherson Bruce Brown Dirk Dick Daniel Charest	convicted convicted acquitted acquitted	Border Patrol
U.S. v. Brown	N.D. Alabama	10/1/79	18 USC 245	Clarence E. Brown	convicted	Ku Klux Klan--employment
U.S. v. Gideon	W.D. Arkansas	4/7/79	18 USC 242	Clyde E. Gideon	acquitted	Police
U.S. v. Demotses, et al.	Connecticut	2/5/79	18 USC 242	Peter Demotses Angel L. Duran Victor Diaz Leonard Samaltulski	hung jury-charges dismissed for all defendants	Police
U.S. v. McRae, et al.	W.D. Texas	9/16/77	18 USC 241 18 USC 242	Johnnie McRae Martin Reyes Richard Ramos Ruby Fonseca Eddie Rivera Robert Riojas	acquitted convicted acquitted acquitted pled guilty pled guilty	Death, Jail Officials
U.S. v. Welch	E.D. Texas	5/15/79	18 USC 242	Tom Welch	charges dismissed	Police

* On Appeal

Case Name	District	Date of Incident	Statute	Defendants	Disposition	Type
U.S. v. Carr, et al.	M.D. North Carolina	1975-1978	18 USC 371 18 USC 1584	Robert A. Carr Gloria C. Cain Larry Cain Jimmy Conyers	pled guilty pled guilty * pled guilty * convicted	Involuntary Servitude
U.S. v. Creekmore, et al.	N.D. Alabama	10/29/79	18 USC 245	Ricky L. Creekmore Charles J. Puckett	pled guilty pled guilty	Ku Klux Klan--public accommodations
U.S. v. Kerley	M.D. Florida	9/10/78	18 USC 242	Lawrence W. Kerley	convicted	Police
U.S. v. Morton	C.D. California	11/1977	18 USC 241	Harold Morton	convicted *	Death, Witness Intimidation
U.S. v. Denson, et al. **	S.D. Texas	5/5-6/77	18 USC 242	Louis Kinney	pled guilty	Death, Police
U.S. v. Wilson	South Carolina	6/20/79 to 7/10/79	18 USC 1583	Larry Wilson Barbara Wilson	pled guilty pled guilty	Migrant
U.S. v. Hogeland	N.D. Alabama	10/20/79	18 USC 371 42 USC 3631	Dulon D. Hogeland	convicted	Ku Klux Klan--Housing
U.S. v. Stewart	Connecticut	12/24/78	42 USC 3631	Robert D. Stewart	convicted	Housing
U.S. v. Mills	E.D. Louisiana	6/19/78 to 1/29/79	18 USC 242	Herbert E. Mills	charges dismissed	Private citizen
U.S. v. Dawson	N.D. Georgia	6/10/79	18 USC 242	Roy Dawson	pled guilty	Correctional Officer
U.S. v. Jones	E.D. Texas	9/14/79	18 USC 242	Albert Jones	convicted	Police
U.S. v. Mrozek	Montana	6/29/79	18 USC 242	Theodore Mrozek	convicted	Police
U.S. v. Carruth	E.D. Tennessee	9/5-6/79	18 USC 242	Fletus V. Carruth	acquitted	Police

* Three defendants were convicted in 1978 and one pled guilty in 1977.

Case Name	District	Date of Incident	Statute	Defendants	Disposition	Type
U.S. v. Harrison, et al.	S.D. Mississippi	2/14/80	18 USC 241 18 USC 242	George J. Harrison Ernest Cook	acquitted acquitted	Police
U.S. v. Alvarez	Puerto Rico	9/28/78	18 USC 242	Samuel Alvarez Pinet	acquitted	Police
U.S. v. Booker, et al.	E.D. North Carolina	4/13/79 to 4/20/79	18 USC 1583	Tony Booker J.D. Rollins Tony Gibson	convicted convicted convicted	Migrant
U.S. v. Fricke, et al.	S.D. Texas	2/25/79	18 USC 241 18 USC 242	Wayne Fricke Terry Baldwin Angel Salcido	convicted * convicted * charges dismissed	Police
U.S. v. Scanlan, et al.	E.D. California	10/9/78	42 USC 3631 18 USC 371	Gregory R. Scanlan Richard L. Fonger	pled guilty pled guilty	Ku Klux Klan--Housing
U.S. v. Johnson, et al.	N.D. Oklahoma	9/30/79	18 USC 242 18 USC 371 18 USC 1510	Jeffrey K. Johnson Jack Friday Rudy McCarty	pled guilty pled guilty pled guilty	Police
U.S. v. Golden	N.D. Oklahoma	9/16/79	18 USC 242	Bobby R. Golden	convicted *	Police
U.S. v. Hightower, et al.	N.D. Georgia	1/15/80	18 USC 241 18 USC 242	James E. Hightower George W. Jury Pelham Warren	convicted convicted acquitted	Police
U.S. v. Huber	C.D. California	6/21/80	18 USC 242	Ulrich Huber	convicted	Police
U.S. v. Wood	S.D. California	4/9/80	18 USC 242 18 USC 111 18 USC 1801 18 USC 1623	J. Gillespie Wood Jose Barker Lester M. Fullen	pled guilty convicted * hung jury--charges dismissed	Border Patrol
U.S. v. Dean	E.D. Louisiana	4/14/80	18 USC 242	Joseph D. Dean	convicted *	Police

Case Name	District	Date of Incident	Statute	Defendants	Disposition	Type
U.S. v. Bishop, et al.	E.D. Michigan	10/79	18 USC 241 18 USC 924 (c)(1)	Ronald Bishop, Jr. Raymond E. Echlin Richard Johnson Donald Johnson Charles Furtaw	pled guilty pled guilty pled guilty pled guilty charges dismissed	Ku Klux Klan
U.S. v. Gauthier	Massachusetts	1/15/80 to 3/3/80	18 USC 371 42 USC 3631 18 USC 876 18 USC 2	Karen I. Gauthier	pled guilty	Housing
U.S. v. Sennings	C.D. Illinois	7/8/79	18 USC 242	Carl A. Sennings	pled guilty	Police
U.S. v. Benson	N.D. Texas	8/13&25/79	18 USC 242	Toy Benson	pled guilty	Police
U.S. v. Veverka	S.D. Florida	12/17/79	18 USC 242	Charles Veverka	acquitted	Death, Police
U.S. v. Brophy, et al.	W.D. New York	1974-1979	18 USC 241 18 USC 242	Patrick Brophy William Mahoney Raymond Cornelius John Kennerson Dennis Marinich Reginald Hawkins	convicted convicted acquitted pled guilty pled guilty pled guilty	Public Officials
U.S. v. Cundiff, et al.	N.D. Illinois	1/1/79	18 USC 241 18 USC 242	Thomas Cundiff Larry Evans Dewey Kell Michael McCray William Snell Homer Ward	pled guilty convicted * convicted * convicted * convicted * convicted *	Correctional Officers
U.S. v. Lundgren	S.D. Iowa	5/31/80	18 USC 242	Timothy W. Lundgren	convicted	Correctional Officer
U.S. v. Dugas	E.D. Louisiana	7/23/80	18 USC 1623	Rayelynne W. Dugas	pled guilty	Perjury
U.S. v. Hill, et al.	N.D. California	8/27/78	18 USC 242	Curtis Hill Richard Solano Albert McDermott Robert Kittrell	hung jury-- charges dropped for 3 defendants acquitted	Police

Case Name	District	Date of Incident	Statute	Defendants	Disposition	Type
U.S. Weglein	Maryland	4/22/80	18 USC 242	James V. Weglein	acquitted	Police
U.S. v. Harlton	N.D. Oklahoma	1980	18 USC 3 18 USC 242	Bruce Harlton	pled guilty	Accessory after the fact/ Police
U.S. v. Bashir	N.D. Georgia	1/2/80	18 USC 242	A. H. Bashir	acquitted	Police
U.S. v. Bowers	C.D. California	9/27/80	18 USC 241	Michael Bowers Joseph Jones	fugitive convicted *	Witness intimidation
U.S. v. Hanigan	Arizona	9/18/76	18 USC 1951	Patrick Hanigan Thomas Hanigan	convicted * acquitted	Hispanic Aliens
U.S. v. Nelson	S.D. Texas	10/15/80	18 USC 1581 18 USC 1583 18 USC 2	Benjamin H. Nelson	convicted *	Undocumented Workers
U.S. v. Dawson	Wyoming	9/2/77	18 USC 242	Lance G. Dawson	pled guilty	Correctional Officer
U.S. v. Franklin	Utah	8/20/80	18 USC 245 (b)(2)(B)	Joseph Paul Franklin	convicted *	Death (racial)
U.S. v. Fite, et al.	N.D. Ohio	10/23/77	18 USC 242 18 USC 1510 18 USC 1623	Richard C. Fite David C. Messmore John Arcudi	acquitted acquitted acquitted	Police
U.S. v. Kachulis, et al.	Connecticut	7/80	18 USC 241 18 USC 242	Dean C. Kachulis Lester Bellin Scott Douglas John McCulloch	convicted convicted convicted convicted	Witness Intimidation

Case Name	District	Date of Incident	Statute	Defendants	Disposition	Type
U.S. v. Zamer, et al.	Massachusetts	7/19/80	18 USC 242	James W. Zamer Edward Flannery William Simmons	acquitted acquitted acquitted	Police
U.S. v. Kilgore, et al.	N.D. Alabama	2/16/80	18 USC 241 18 USC 245 (b)(2)(E)	Jimmy D. Kilgore Walker B. Brock James P. Durham Jeffrey J. Newman	convicted * pled guilty pled guilty pled guilty	Ku Klux Klan
U.S. v. McQueeney, et al.	Rhode Island	10/10/79	18 USC 2 18 USC 242	Francis J. McQueeney Richard R. Patterson	convicted convicted	Police
U.S. v. Metheny	Connecticut	10/2/80	42 USC 3631 26 USC 5861(d)	Charles N. Metheney	acquitted	Housing
U.S. v. Clayton	N.D. W. Va.	4/21/79	18 USC 242	William B. Clayton	acquitted	Police
U.S. v. Matteo, et al.	M.D. Florida	10/24/79 5/16-24/80	18 USC 241 18 USC 242	Thomas A. Matteo Ronnie D. Simpson	convicted charges dismissed	Police
U.S. v. Cruz, et al.	Puerto Rico	12/11/78	18 USC 241 18 USC 242	Perfecto Cruz Laureano Jose Gonzalez Vazques Anastacio Martinez Tirado	convicted acquitted acquitted	Police
U.S. v. Morales	S.D. Texas	7/29/79	18 USC 242 18 USC 1623	Eluterio Morales	convicted	Police
U.S. v. Gaston, et al.	E.D. Missouri	1/2/81	18 USC 242 18 USC 1623	Derrick Gaston Douglas Harrison Cedric Charles	convicted convicted acquitted	Police
U.S. v. Juarez	S.D. Texas	8/20/78	18 USC 242	Augustin Guarez	acquitted	Police

Case Name	District	Incident	Statute	Defendants	Disposition	Type
U.S. v. Simoneaux, et al.	M.D. Louisiana	1976	18 USC 241 18 USC 1503	Steve Simoneaux Clayton Kimble Jules Kimble Kenneth Brouillette Benny O'Quinn	pled guilty pending pending pending pending	Death, Witness Intimidation
U.S. v. Rummell	W.D. Texas	7/13/80	18 USC 241	Boyce W. Rummell	pled guilty	Death, Witness Intimidation
U.S. v. Biggs	W.D. N.C.	8/3/80	18 USC 242	Robert L. Biggs	pled guilty	Police
U.S. v. Clark, et al.	W.D. Arkansas	9/17/80--	18 USC 371 18 USC 113(c)(d)(e)(f)	Curtis A. Clark Jimmy P. Davis Eugene Palleschi Wayne Richardson James A. Lane	Mistrial. Retrial scheduled for 11/30/81	INS Officers
U.S. v. Koon	S.D. Florida	11/21/79	18 USC 241 18 USC 1503	Joseph Koon Raymond Koon	pled guilty pending	Death, Witness Intimidation
U.S. v. Matthews	E.D. Texas	3/31/79	18 USC 241	Benjamin Matthews Kimberly Matthews	pled guilty pled guilty	Police
U.S. v. John Doe, Jr.	M.D. Pa.	9/8/80	42 USC 3631	Juvenile	convicted	Housing-Cross Burning
U.S. v. Calabrese, et al.	E.D. Pa.	10/76	18 USC 241 18 USC 1503	John Calabrese Silvo Ioannucci William Kinsley	deceased acquitted acquitted	Death, Witness Intimidation
U.S. v. East, et al.	N.D. Georgia	2/7/80	18 USC 241 18 USC 242	Rick East Samuel Storey Steven Hornsby	pending pled guilty pled guilty	Police
U.S. v. D. Flanagan	N.D. Alabama	4/2/81	18 USC 242	Dwight S. Flanagan	Mistrial	Police

INDICTMENTS HAVE BEEN RETURNED IN THE FOLLOWING CASES WHICH ARE PENDING

Case Name	District	Race of Victim	Date of Incident	Statute	Defendants (Race)	Disposition	Type
U.S. v. Hunt	S.D. Texas	White	4/22/79	242	Anthony D. Hunt (B)	pending	Police
U.S. v. Jones	S.D. Florida	Black	1/9/79	242	Willie T. Jones (W)	pending	Police
U.S. v. Carter, et al.	S.D. Texas	Hispanic	10/23/78	242	Tom Carter (W) Alfredo Saldana (H) Jaime Contreras (H)	pending	Police
U.S. v. Fitzgerald	Connecticut	Hispanic	7/6/77	242 1623	Richard D. Fitzgerald (W)	pending	Death-Police
U.S. v. R. Flanagan, et al.	E.D. Pa.	Black	1979-81	241 242	Robert Flanagan (W) Sidney Landis (W) Thomas McNamee (W) James Keweshaw (W)	pending	Police
U.S. v. Graveson	W.D. Wisconsin	White	9/24/78 10/21/79	242	Gerald W. Graveson (W)	pending	Police
U.S. v. Gutierrez, et al.	W.D. Texas	Hispanic	7/27/80	113(c)(f)	Frank A. Gutierrez (H) Arturo Guzman (H) Marcus P. Hopkins (B)	pending	INS Officers
U.S. v. Hansley	Rhode Island	Black	7/19-28/81	18 USC 2191	Dale J. Hansley (W)	pending	Cruelty to Seamen
U.S. v. Ybaney	S.D. Texas	White	5/20/79	242	Isidro Ybaney (H)	pending	Police

Case Name	District	Race of Victim	Date of Incident	Statute	Defendants (Race)	Disposition	Type
U.S. v. Jordan U.S. v. Guilliams	W.D. La.	Black	10/25/80	242	Cranford Jordan (W) Dorman Guilliams (W)	pending	Police
U.S. v. Ramos	S.D. Texas	Hispanic	1977	242	Roberto Ramos (H)	pending	Police
U.S. v. Warren, et al.	E.D. N.C.	Black	9/3-24/81	241 1583 1584	Dennis Warren (B) Richard Warren (B) John L. Harris (B) Halsey Norwood (B)	pending	Migrant
U.S. v. Welch, et al.	N.D. N.Y.	Asian	7/5/80	242 2	Leonard Welch (W) Stephen Pageau (W)	pending	Correctional Officers
U.S. v. Williams, et al.	N.D. Ala.	Black	5 & 6/81	241 242	Newton M. Williams (W) Douglas F. Acker (W) Thomas L. Cruce (W) Stephen D. Crump (W) Robert E. Bassett (W)	pending	Police

CIVIL RIGHTS PROSECUTIONS 1980-81

Case Name	Race of Victims	Defendants (Race)	Sentence
U.S. v. Whitley, et al.	White	John H. Whitley (W)	Two one-year consecutive terms
		Nathaniel Parker, Jr. (B)	Two one-year concurrent terms
		Ted S. Spurgeon (W)	N/A
		Aaron Ealy (B)	Six months imprisonment
		John W. Keeton (B)	Two one-year concurrent terms
		Leonard R. Tillis (B)	Two years imprisonment
U.S. v. Otherson, et al.	Hispanic	Jeffrey Otherson (W)	Otherson and Brown received 3 years probation and $1,000 fine. 750 hours community service
		Bruce Brown (W)	
		Dirk Dick (W)	N/A
		Daniel Charest (W)	N/A
U.S. v. Brown	Asian	Clarence E. Brown (W)	8 mos. imprisonment, 4 yrs. probation
U.S. v. Gideon	White	Clyde E. Gideon (W)	N/A
U.S. v. Demotses, et al.	Hispanic, White	Peter Demotses (W)	N/A
		Angel L. Duran (W)	N/A
		Victor Diaz (W)	N/A
		Leonard Samaltulski (W)	N/A
U.S. v. McRae, et al.	Hispanic	Johnnie McRae (H)	N/A
		Martin Reyes (H)	30 yrs. imprisonment
		Richard Ramos (H)	N/A
		Ruby Fonseca (H)	N/A
		Eddie Rivera (H)	10 yrs. imprisonment
		Robert Riojas (H)	25 yrs. imprisonment
U.S. v. Welch	White	Tom Welch (W)	N/A

N/A Not Applicable

Case Name	Race of Victims	Defendants (Race)	Sentence
U.S. v. Carr, et al.	Black	Robert A. Carr (B) Gloria C. Cain (B) Larry Cain (B) Jimmy Conyers (B)	Two five-year consecutive terms, $5,000 fine Two five-year consecutive terms, $5,000 fine Five years imprisonment Twenty years imprisonment
U.S. v. Creekmore, et al.	Black	Ricky L. Creedmore (W) Charles J. Puckett (W)	One year imprisonment One year imprisonment
U.S. v. Kerley	White	Lawrence W. Kerley (W)	$1,000 fine, three years probation
U.S. v. Morton	Black	Harold Morton (B)	Life imprisonment
U.S. v. Denson, et al.	Hispanic	Louis Kinney (W)	One year imprisonment
U.S. v. Wilson	Black	Larry Wilson (B) Barbara Wilson (B)	Two years imprisonment Three years probation
U.S. v. Hogeland	Black	Dulon D. Hogeland (W)	18 months imprisonment, five yrs. probation
U.S. v. Stewart	Black	Robert D. Stewart (W)	One yr. imprisonment suspended, three yrs. probation--must seek vocational training and treatment for alcoholism.
U.S. v. Mills	White	Herbert E. Mills (W)	N/A
U.S. v. Dawson	Black	Roy Dawson (B)	Two yrs. probation--must stay out of law enforcement for 18 months.
U.S. v. Jones	White	Albert Jones (W)	Imposition of sentence was suspended
U.S. v. Mrozek	Indian, White	Theodore Mrozek (W)	One yr. probation--4 hours of community work per week and restitution of victim's medical expenses.
U.S. v. Carruth	White	Fletus V. Carruth (W)	N/A

Case Name	Race of Victims	Defendants (Race)	Sentense
U.S. v. Harrison, et al.	Black	George J. Harrison (W) Ernest Cook (B)	N/A N/A
U.S. v. Alvarez	Hispanic	Samuel Alvarez Pinet (H)	N/A
U.S. v. Booker, et al.	White	Tony Booker (B) J. D. Rollins (B) Tony Gibson (B)	Ten years imprisonment Five years imprisonment Five years imprisonment--all but six months suspended, probation for remainder with no connections with migrant farm workers
U.S. v. Fricke, et al.	White	Wayne Fricke (W) Terry Baldwin (W) Angel Salcido (H)	Ten years imprisonment Five years probation N/A
U.S. v. Scanlan, et al.	Black	Gregory R. Scanlan (W) Richard L. Ronger (W)	One year imprisonment Three years probation
U.S. v. Johnson, et al.	White	Jeffrey K. Johnson (W) Jack Friday (W) Rudy McCarty (W)	One year imprisonment, 2 yrs. probation--no law enforcement Six months imprisonment, 18 mons. probation--no law enforcement One year imprisonment suspended
U.S. v. Golden	White	Bobby R. Golden (W)	One yr. imprisonment with all but 60 days suspended; five yrs. probation with no law enf. act.
U.S. v. Hightower, et al.	White	James E. Hightower (W) George W. Jury (W) Pelham Warren (W)	60 days imprisonment, five yrs. probation with no law enforcement and cannot carry firearms. 30 days imprisonment, five yrs. suspended, five yrs probation with no law enforcement N/A
U.S. v. Huber	Black	Ulrich Huber (W)	60 days suspended, one year probation--must advise USA of place and nature of employment and obey all rules and laws.

Case Name	Race of Victims	Defendants (Race)	Sentence
U.S. v. Wood	Hispanic	J. Gillespie Wood (W)	One year suspended, 3 yrs. probation, $1,000 fine
		Jose Barker (B)	One year imprisonment
		Lester M. Fullen (W)	N/A
U.S. v. Dean	White	Joseph D. Dean (W)	One year suspended, 3 yrs. probation, $1,000 fine and 16 hours of public service per month for a year.
U.S. v. Bishop, et al.	Black	Ronald Bishop, Jr. (W)	Two four-year concurrent terms
		Raymond E. Echlin (W)	Two four-year concurrent terms
		Richard Johnson (W)	One year imprisonment
		Donald Johnson (W)	Two years imprisonment
		Charles Furtaw (W)	N/A
U.S. v. Gauthier	Black, White	Karen I. Gauthier (W)	Two years imprisonment with 18 months suspended; two years probation--during the first six months 8 hours each week is to be spent on community service.
U.S. v. Sennings	White	Carl A. Sennings (W)	Three years probation; required to resign from police department
U.S. v. Benson	White	Toy Benson (W)	One year probation; no further contact with victim
U.S. v. Veverka	Black	Charles Veverka (W)	N/A
U.S. v. Brophy, et al.	White	Patrick Brophy (W)	$500 fine
		William Mahoney (W)	$2,000 fine
		Raymond Cornelius (W)	N/A
		John Kennerson (W)	One year suspended sentence
		Dennis Marinich (W)	Three years probation
		Reginald Hawkins (W)	Three years probation
U.S. v. Cundiff, et al.	Black	Thomas Cundiff (W)	Two years probation
		Larry Evans (W)	Four years imprisonment and 3 concurrent one-year sentences
		Dewey Kelly (W)	Three years imprisonment and 3 concurrent one-year sentences

Case Name	Race of Victims	Defendants (Race)	Sentence
U.S. v. Cundiff, et al.	Black	Michael McCray (W)	Two years imprisonment and three concurrent one-year sentences
		William Snell (W)	One year imprisonment and three concurrent one-year sentences
		Homer Ward (W)	Three years imprisonment
U.S. v. Lundgren	White	Timothy W. Lundgren (W)	30 days imprisonment
U.S. v. Dugas	N/A	Rayelynne W. Dugas (W)	Four years supervised probation--imposition of sentence was suspended
U.S. v. Hill, et al.	White	Curtis Hill (W)	N/A
		Richard Solano (W)	N/A
		Albert McDermott (W)	N/A
		Robert Kittrell (W)	N/A
U.S. v. Weglein	White	James V. Weglein (B)	N/A
U.S. v. Harlton	N/A	Bruce Harlton (W)	Six months suspended sentence; five years probation--must resign from Bar Association and cannot practice law for duration of probation.
U.S. v. Bashir	White	A. H. Bashir (B)	N/A
U.S. v. Bowers	Black	Michael Bowers (B)	N/A
		Joseph Jones (B)	Three years imprisonment
U.S. v. Hanigan	Hispanic	Patrick Hanigan (W)	Three years imprisonment
		Thomas Hanigan (W)	N/A
U.S. v. Nelson	Hispanic	Benjamin H. Nelson (W)	$10,000 fine, three years probation
U.S. v. Dawson	White	Lance G. Dawson (W)	$100 fine; sentence was suspended
U.S. v. Franklin	Black	Joseph Paul Franklin (W)	Two consecutive life terms

Case Name	Race of Victims	Defendants (Race)	Sentence
U.S. v. Fite, et al.	Black	Richard C. Fite (W)	N/A
		David C. Messmore (W)	N/A
		John Arcudi (W)	N/A
U.S. v. Kachulis, et al.	White	Dean C. Kachulis (W)	Life imprisonment
		Lester Bellin (W)	Ten years imprisonment on 241 count
		Scott Douglas (W)	30 years imprisonment
		John McCulloch (B)	Ten years imprisonment on 241 count
U.S. v. Zamer, et al.	White	James W. Zamer (W)	N/A
		Edward Flannery (W)	N/A
		William Simmons (W)	N/A
U.S. v. Kilgore, et al.	Black, White	Jimmy D. Kilgore (W)	Six months imprisonment, probation
		Walker B. Brock (W)	90 days imprisonment with 75 days suspended
		James P. Durham (W)	90 days custodial sentence
		Jeffrey J. Newman (W)	90 days custodial sentence
U.S. v. McQueeney, et al.	White	Francis J. McQueeney (W)	One year suspended, one year probation, resign from PD and cannot reapply for 3 months
		Richard R. Patterson (W)	One year suspended, one year probation, resign from PD and cannot reapply for six months
U.S. v. Metheney	Black	Charles N. Metheney (W)	N/A
U.S. v. Clayton	White	William B. Clayton (W)	N/A
U.S. v. Matteo, et al.	White	Thomas A. Matteo (W)	one year imprisonment with all but 5 mos., 29 days suspended.
		Ronnie D. Simpson (W)	N/A
U.S. v. Cruz, et al.	Hispanic	Perfecto Cruz Laureano (H)	3 years probation, $1,000 fine and treatment for alcoholism
		Jose Gonzalez Vazques (H)	N/A
		Anastacio Martinez Tirado (H)	N/A
U.S. v. Morales	Hispanic	Eluterio Morales (H)	6 months suspended sentence, 2 years probation with no law enforcement.

Case Name	Race of Victims	Defendants (Race)	Sentence
U.S. v. Gaston, et al.	Black	Derrick Gaston (B) Douglas Harrison (B) Cedric Charles (B)	6 months imprisonment, five years suspended with five years probation N/A
U.S. v. Juarez	Hispanic	Augustin Juarez (H)	N/A
U.S. v. Simoneaux, et al.	White	Steve Simoneaux (W) Clayton Kimble (W) Jules Kimble (W) Kenneth Brouillette (W) Benny O'Quinn (W)	pending
U.S. v. Rummell	White	Boyce W. Rummell (W)	40 years imprisonment
U.S. v. Biggs	Indian, White	Robert L. Biggs (W)	One year suspended, 3 years probation, pay medical treatment of victims, fined $1,000 and no law enforcement during probation.
U.S. v. Clark	Hispanic	Curtis A. Clark (W) Jimmy P. Davis (W) Eugene Palleschi (W) Wayne Richardson (W) James A. Lane (B)	Trial pending Trial pending Trial pending Trial pending Trial pending
U.S. v. Koon	White	Joseph Koon (W) Raymond Koon (W)	To be scheduled Trial pending
U.S. v. Matthews	White	Benjamin Matthews (W) Kimberly Matthews (W)	To be scheduled To be scheduled
U.S. v. John Doe, Jr.	Black	Juvenile (W)	To be scheduled
U.S. v. Calabrese, et al.	White	John Calabrese (W) Silvo Ioannucci (W) William Kinsley (W)	N/A N/A N/A
U.S. v. East, et al.	White	Rick East (W) Samuel Storey (W) Steven Hornsby (W)	Trial pending To be scheduled To be scheduled
U.S. v. D. Flanagan	White	Dwight S. Flanagan (W)	N/A

U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION,
Washington, D.C., March 10, 1982.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Criminal Justice,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request enclosed is a listing of incidents of alleged racially motivated violence investigated by the Justice Department over the last two years.

Please let me know if I can provide further information.

Sincerely,

WM. BRADFORD REYNOLDS,
Assistant Attorney General, Civil Rights Division.

INVESTIGATIONS INTO INCIDENTS OF RACIALLY MOTIVATED VIOLENCE

1. (a) 144-1-2256; (b) 2/16/80 Birmingham, Alabama; (c) A black male traveling with his white wife in a private car was pursued by a car containing four white males. After stopping at a relative's residence, the male victim was attacked by the defendants with a shovel.

2. (a) 144-3-965; (b) 2/28/80 Selma, Alabama; (c) Smoke bomb was placed in victim's car after he received a call from the KKK. Victim was active in securing voting, education and housing for blacks; (d) Matter closed on 12/12/80 for lack of corroborative evidence.

3. (a) 144-17M-1751; (b) 2/11/81 Mandarin, Florida; (c) Attempted cross burning at newspaper office after an anti-Klan article; (d) Closed on 6/5/81 since no suspects were identified.

4. (a) 144-20-1346; (b) 1975-1980 Jacksonville, Florida; (c) Victim and his family were allegedly threatened by Klan member attempting to stop him from encouraging the equal employment of minorities at a bus company; (d) Closed on 1/29/81 due to lack of sufficient evidence to indicate a violation.

5. (a) 144-15-138; (b) March 1981 Baltimore, Maryland; (c) Klan members conspired to bomb victim's home which also serves as the headquarters of the Baltimore NAACP; (d) Subjects were convicted for federal firearms and explosives violations. Closed on 12/22/81.

6. (a) 144-19-1720; (b) 12/11/80 Lindale, Georgia; (c) Two high school students, one black and one white, were disciplined by school officials for having committed alleged acts of sodomy and indecent exposure aboard a school bus. Local KKK members picketed the high school and the black student was transferred; (d) Investigation continuing.

7. (a) 144-23-1737; (b) 1979 Willow Springs, Illinois; (c) Victim was the subject of threats and harassment by the KKK as a result of her equal employment activities; (d) Closed on 2/19/81 due to inability to identify subjects regarding the alleged incidents.

8. (a) 144-23-1803; (b) 4/79-1981 Rockford, Illinois; (c) Victim alleged that he was denied a liquor license because he was black and that he has been harassed by the police. After victim received threatening correspondence, there was a suspicious fire in the basement of his club; (d) Closed on 12/11/81 as no suspects were identified.

9. (a) 144-32-212; (b) 4/7-8/81 Scotlandville, Louisiana; (c) Arsonist started fires in a day center, vacant house, two recreation centers and two schools; (d) Closed on 5/20/81 as no suspects nor motive were developed.

10. (a) 144-35-857; (b) June 1981 Frederick, Maryland; (c) A klansman was stopped on an anonymous tip that he was going to assassinate an NAACP official. He was released when no weapons were recovered. The NAACP official later received a call asking him to meet the caller to receive more information about the assassination plot. The police staked out the location and arrested the klansmen there for carrying concealed nunchuks and assault on a trooper; (d) Closed on 12/24/81; (e) The state initiated prosecution against the klansman.

11. (a) 144-35-876; (b) 1981 Prince George's County, Maryland; (c) Complainant alleged that he saw a policeman in a civilian truck try to run a black victim off the road; (d) Under investigation.

12. (a) 144-35-831; (b) 1980 Wheaton, Maryland; (c) Alleged racial harassment of high school assistant principal; (d) Closed on 2/24/81 for lack of prosecutive merit.

13. (a) 144-37-1040; (b) 1981 Jackson, Michigan; (c) NAACP member alleged threats from KKK members; (d) Under investigation.

14. (a) 144-37-1053; (b) 8/13/81 Detroit, Michigan; (c) Victim was asked to leave a bar by a white customer who told him that blacks were not wanted there. When the

victim did not leave, a number of white males, believed to belong to a motorcycle club, attacked and stabbed the victim; (d) Under grand jury investigation.

15. (a) 144-40-1237; (b) 9/23/79 Charlestown, Mississippi; (c) An older black man was attacked by two young white males. No racially derogatory statements were made and there was no apparent racial motive for the assault; (d) Closed on 12/17/81 for lack of jurisdiction.

16. (a) 144-41-2249; (b) 12/79-1/80 Gulfport, Mississippi; (c) Church burned by incendiary device. Also, burning cross set against church building; (d) Closed on 9/17/81 since no subjects identified.

17. (a) 144-54M-351; (b) 11/3/79 Greensboro, North Carolina; (c) Five persons were killed in a shooting incident during an anti-Klan rally being held by the Communist Workers' Party. Nine others were wounded; (d) Grand Jury investigation scheduled; (e) The state prosecuted six klan and/or Nazi members identified as responsible for the shooting deaths. They were acquitted and charges against 16 others were voluntarily dismissed.

18. (a) 144-55-652; (b) 7/5/81 Asheville, North Carolina; (c) White male reported to local sheriff's office that he heard two Klan members talk about killing a national civil rights leader on July 6 or 7, 1981. Informant gave false name and refused to disclose background information; (d) FBI alerted civil rights leader and other appropriate authorities. They were unsuccessful in attempting to locate informant.

19. (a) 144-58-1141; (b) 1979-1980 Oxford, Ohio; (c) Harassment of black students attending Miami University; (d) Closed on 5/12/80 as no subjects were identified.

20. (a) 144-58-1212; (b) 10/17/81 Neville, Ohio; (c) Two automobiles parked at victim's residence were vandalized and painted with the letters KKK; (d) Under investigation.

21. (a) 144-70-1124; (b) 4/19/80 Chattanooga, Tennessee; (c) Several Klansmen burned a cross in a downtown black business area. One subject then proceeded to fire several rounds from a shotgun, injuring four black women; (d) Under review; (e) The state prosecuted the three Klan members. Two were acquitted and one was found guilty of simple assault.

22. (a) 144-70-1130; (b) 6/1/80 Dunlap, Tennessee; (c) Victim, white, alleged that he was beaten by KKK member; (d) Closed on 9/15/80: victim sustained no injuries and there was no evidence of Klan involvement.

23. (a) 144-71-646; (b) 5/26/81 Nashville, Tennessee; (c) After an undercover AFT investigation, several Klan members were arrested as they approached a synagogue they had conspired to bomb; (d) The defendants were prosecuted by the U.S. Attorney's Office and convicted on conspiracy and explosives charges (18 U.S.C. 371 and 842).

24. (a) 144-74-3315; (b) 1981 Seabrook, Texas; (c) Harassment of Vietnamese fishermen by Klan members; (d) Attorneys for the Vietnamese sought and were granted an injunction by a Federal District Judge ordering the Klan to cease and desist from harassing the victims. There has been no violence since the order. The federal inquiry is ongoing with regard to the source of threatening communications which were received while the court proceedings were in progress.

25. (a) 144-77-195; (b) 8/20/80 Salt Lake City, Utah; (c) Two black males who were jogging with two white girls near a municipal park were shot and killed; (d) Defendant was convicted of violating 18 U.S.C. 245(b)(2)(B) and sentenced to two consecutive life terms. Defendant's appeal is pending.

26. (a) 144-79-871; (b) 7/9/80 McLean, Virginia; (c) Victims were harassed inside a restaurant and physically assaulted once outside; (d) Closed on 4/1/81 in light of state prosecution; (e) Subject was prosecuted locally and found guilty of assault.

27. (a) 144-83-171; (b) June-November 1980 Smithburg, West Virginia; (c) Victim alleges he was stopped, harassed and threatened by Klan members; (d) Recommended closing as no suspects have been identified.

28. (a) 166-41-185; (b) 6/28/81 Tchula, Michigan; (c) A Jitney food store was robbed by several armed men. The victim, a black part-time employee of the store who was also an elected alderman, was shot and killed during the robbery; (d) Under review; (e) The state has charged one subject with murder and three other suspects with related charges.

29. (a) 175-1-86; (b) 10/20/79 Birmingham, Alabama; (c) White assailants shot up a house occupied by several whites and one black who was beaten; (d) Defendant was convicted of violating 18 U.S.C. 371 and 42 U.S.C. 3631.

30. (a) 175-11-108; (b) Nov. 1980 Contra Costa Co., California; (c) Vandalism to home of black family; (d) Closed 8/6/81; (e) Juvenile subjects convicted by local authorities.

31. (a) 175-11-110; (b) December 1980 Contra Costa Co., California; (c) Klan shooting into minority-occupied homes in a housing project; (d) Department is monitoring

state prosecution; (e) Defendant was convicted of three felony violations in local court.

32. (a) 175-11E-33; (b) 10/9/78 Cartago, California; (c) Shotgun blast fired into mobile home of black family by Klan members; (d) Defendants pleaded guilty to violating 42 U.S.C. 3631. One defendant also pleaded guilty to violating 18 U.S.C. 371.

33. (a) 175-14-88; (b) Feb. 1979, Nov. 1980 Waterbury, Connecticut; (c) Shootings into two black occupied residences; (d) Closed 8/24/81; (e) Subject pleaded guilty to two felonies in local court.

34. (a) 175-14-103; (b) 10/2/80 Manchester, Connecticut; (c) Firebombing of black family's residence; (d) Defendant was charged with violating 42 U.S.C. 3631 and 26 U.S.C. 5861 and was acquitted.

35. (a) 175-20-60/61/62/63/64/65; (b) July/August 1981 Atkinson County, Georgia; (c) these matters involve a series of cross burnings, shootings into cars and homes of minorities and whites associating with blacks, and threatening letters signed KKK; (d) Under investigation.

36. (a) 175-23-319; (b) July 1980 South Holland, Illinois; (c) Rock throwing at the home of a black family. (d) Closed on 11/23/81 since victim shot and wounded two subjects; (e) Four subjects were arrested and charged by local authorities. The charges were dropped by agreement with the victim whose charge for shooting at the subjects was also dropped.

37. (a) 175-23-343; (b) June 1981 Chicago, Illinois; (c) Vandalism to property occupied by Asian family; (d) Under investigation.

38. (a) 175-35-298; (b) August/Sept. 1981 Baltimore, Maryland; (c) Vandalism (painting of swastikas, egg throwing) to Jewish family's residence; (d) under review; (e) Juvenile subject apprehended by local authorities.

39. (a) 175-35-299; (b) Oct. 1980; Feb., April, Oct. 1981 Montgomery Co., Md.; (c) Threatening letters (including swastikas) and vandalism to car owned by black family; (d) Under investigation.

40. (a) 175-36-142; (b) January 1980 Great Barrington, Massachusetts; (c) Threatening letters and telephone calls directed toward a black family who had recently moved into an all-white neighborhood. Additionally, a stink bomb was thrown into their residence and the garage was set on fire; (d) A seven count indictment was returned against the subject who was charged with violating 18 U.S.C. 2, 18 U.S.C. 371, 18 U.S.C. 876 and 42 U.S.C. 3631. She pled guilty to all counts.

41. (a) 175-37-87/144-37-1001; (b) Oct./Nov. 1979; August 1980 Romulus, Michigan; (c) KKK members staged attacks upon the victim with shotguns and automatic weapons at his home and at a bar. In another incident, KKK members agreed that a victim should be killed or his house blown up; (d) Five defendants were charged with violating 18 U.S.C 241, 18 U.S.C. 245, 18 U.S.C. 922 and 18 U.S.C. 924. Four defendants pled guilty to 241 violation; two of whom also pled to 924 violation. Charges were dismissed against the fifth defendant.

42. (a) 175-37-97; (b) 10/27/80 Bedford, Michigan; (c) A brick wrapped with a KKK note was thrown at NAACP member's residence; (d) Closed on 6/1/81 as no subjects were identified.

43. (a) 175-57-209; (b) Nov. 1979 Cleveland, Ohio; (c) Threats to owner of residence rented by a black family. Several days later the house was set on fire and destroyed; (d) Grand jury investigation is being conducted.

44. (a) 175-57-223; (b) 1/1/81 Cleveland, Ohio; (c) Firebombing of black family's residence; (d) Grand jury investigation is being conducted.

45. (a) 175-57-225; (b) June 1981 Cleveland, Ohio; (c) Fire, probable arson, at home of Puerto Rican family; (d) Under investigation.

46. (a) 175-63-55; (b) August 1980 South Williamsport, Pennsylvania; (c) Cross burning and rock throwing at home of black family; (d) Juvenile subject was prosecuted and adjudicated delinquent for violating 42 U.S.C. 3631.

TESTIMONY OF WILLIAM VAN ALSTYNE, PERKINS PROFESSOR OF LAW, DUKE UNIVERSITY SCHOOL OF LAW

Mr. CONYERS. The next witness is the Perkins Professor of Law at Duke University Law School, Prof. William Van Alstyne, who we welcome before this committee.

Professor Van Alstyne has done a great amount of work in constitutional law, conflicts of laws, and other subjects. We have a draft copy of your statement and now we have your final copy. I

suppose it would be better procedure to include the final copy and at this point discard the draft copy.

Professor VAN ALSTYNE. That is correct, Mr. Chairman.

Mr. CONYERS. We will do that. We will incorporate it in the record and welcome you to the subcommittee.

We thank you for the great amount of time you have spent in this and related matters.

Professor VAN ALSTYNE. It is a pleasure to be here, Mr. Chairman.

As with all witnesses, I have some hesitation in the usual dilemma as to whether to go through the prepared statement, virtually a full copy of which was submitted well in advance to the staff and the slightly modified copy which I brought on request of the staff today. I am prepared to read it, but conventionally that has been unnecessary, and I have prepared a short version as well.

Frankly, what I would prefer to do is to assume some familiarity with my submitted testimony and extemporize some remarks and then see of what more specific aid I can be to the business of the committee.

Now it is my understanding that the task before the subcommittee is exclusively and appropriately a legislative one: that you have been about the business of attempting to review the existing Federal criminal civil rights statutes in light of events of racial violence over the last several decades, and the somewhat disquieting pattern of unsuccess in the Federal enforcement of these preexisting laws.

The object being then to determine whether or not proposed revisions would aid the more efficient protection of the rights of Americans against racial violence.

That is an entirely appropriate function for the committee, and I fully respect the chairman's earlier suggestion that committees of Congress do not sit as a grand inquest to try to expose certain particular cases, and through publicity associated with the legislative process reach ends that are inappropriate for Congress, as distinct from the Justice Department. I fully respect that and don't want to depart from it.

At the same time, Mr. Chairman, it really is quite difficult to talk about these problems in the abstract. Even my attendance this morning has made quite clear that we are mutually aware of the fact that most of these criminal statutes are cast in very ambiguous language.

The principal statutes date back fully 100 years. Their language is somewhat antiquarian. It is obscure. One's capacity, therefore, to determine whether or not these statutes, not merely as they were originally drafted in reconstruction days but as they have gradually evolved in the pace of judicial construction, whether or not they are adequate in 1981, partly can be determined only by laying them beside the concrete facts of specific recent instances to try to determine whether or not these statutes would appear to reach these instances. And if not, then to what extent may their shortcomings be met by the proposed revisions.

Concretely, the current statutory restriction of protection merely to those who are "citizens" is clearly archaic and can be easily amended to extend protections to all [natural] "persons."

The scienter requirement, to which the Assistant Attorney General drew your attention, undoubtedly has been an awkwardness in the enforcement of the law albeit respectfully, Mr. Chairman, I do not think the awkwardness is as great as it has necessarily been represented here or may have been felt internally in the Civil Rights Division.

If I may expand upon that there is at least one case in the application of these laws involving a police officer, and this extraordinary requirement of willfulness in section 242—that not only violence be done and homicide be in mind but that the murder must be done for the purpose of depriving a person of due process—takes the view that a police officer is presumed to know the entitlements to procedural due process of those subject to his arrest.

And correspondingly, therefore, the Government may ask for an instruction to a jury, that when a police officer misconducts himself in a violent way against a private party he is presumed to know the 14th amendment due process rights and that that instruction, therefore, is an extremely efficient aid in the more perfect prosecution of such persons under the law as it exists.

So, again, I am not opposed to the change which would ease the course for the Civil Rights Division with regard to the scienter requirement, but I am somewhat puzzled as to why it is felt to be such a very significant hindrance to the more efficient enforcement of the law as it exists.

Correspondingly, as reflected in my prepared testimony, and not necessarily to disparage the ongoing investigation by the Civil Rights Division—the elements of which I have no privilege to know intimately—it is my view that a relatively and puzzling conservative attitude toward the current scope of the statutes appears to be reflected in the Division's review of recent race-related violence in Greensboro, N.C.

In the testimony I have submitted in advance, I summarized not less than eight alternative approaches that I believe are readily available for systematic exploration and possible application with regard to the Greensboro violence itself, under the existing Federal statutes.

None of these, I assure you, Mr. Chairman, seeks to duplicate a simple State prosecution for homicide. They do not seek to undercut the constitutional protection against double jeopardy. It is not a matter of trying to repeat the abortive effort of the State to find persons guilty of murder.

If one assumes that the verdict of acquittal in respect to the Greensboro incident of 1979 on the basis of self-defense was entirely correct, nonetheless that decision and that prosecution did not go at all as to whether or not there may have been, for instance, a conspiracy by two or more persons to disrupt persons from holding a peaceful parade in an authorized State activity and to disrupt it in part or in whole, partly because of either the race of some of the participants or the race of other persons who were sought to be intimidated by the disruption of that particular demonstration.

I repeat that that this Federal approach has nothing to do with trying to duplicate a prosecution for murder. It is the vindication of constitutional rights from interference arising from race-related violence, in an appropriate Federal prosecution.

Under either set of facts adverted to a moment ago, I am quite clear that the additional legislation might clarify the situation but it is really quite inessential. The existing statutes, both in section 245 quite concretely, and section 241 by judicial construction, would reach those actions.

Beyond that let me give you a further illustration. We are dealing with having groups who, by organization, by recruiting precept, and by historical tradition—the Nazis and the Klan—have from time out of mind been the principal racial supremacist groups in the United States. Indeed, one of them was the original target of the very statutes I am trying to direct your attention to, section 241 was informally known as the Ku Klux Klan Act, Mr. Chairman.

The Assistant Attorney General has taken the very modest position that unless the violence is both race related, and related to the race of the participants, and also has in mind the disruption of the right to participate in some local program or Federal program that the statute would not necessarily apply. You have to hit all of those, and I understand the magnitude of burden of proof that that prosecution would shoulder, Mr. Chairman.

In a variety of opinions since these statutes were last applied, however, they are civil analogs, adopted at the same time, have been applied and, when aggressively tested by litigants, have been given a more generous construction. 42 U.S.C. section 1985 is such a statute.

In my professional view, therefore, if it could be shown that acts of the kind which allegedly took place in Greensboro were racially motivated and that were all, that is, that they were engaged in by two or more persons for that purpose, section 241 very probably applies to that transaction.

Under the language of the statute, Mr. Chairman, it is true that the two persons must conspire to act to deprive another person or citizen of a constitutionally protected right. It is quite true. It is on the face of the statute.

But the Supreme Court's view has been that the 13th amendment's ban on involuntary servitude, coupled with the power in Congress to enforce that amendment in section 2 of the 13th amendment, has empowered Congress to reach all private acts of a racially discriminatory kind.

If that is sound—and there are several Supreme Court decisions on the civil side that so declare—it seems to me that that construction would be sustained by the Court if this approach were tested under section 241 as well.

Mr. CONYERS. Does that derive from the phrase, "badge of servitude?

Professor VAN ALSTYNE. You are quite right, Mr. Conyers. The crucial case in——

Mr. CONYERS. Badges are indexes of previous involuntary servitude.

Professor VAN ALSTYNE. The linkage is direct and concrete and your recollection is nearly perfect.

In an equivalent civil suit addressed to private parties not acting under color of law, thus not based on the 14th amendment but purely on the 13th amendment, a mere racial refusal to deal in the

sale or disposition of property or the making of contracts, the Supreme Court sustained the law applied to such a party on the basis that refusals to deal or other racially related acts constitute vestiges of institutionalized chattel slavery or at least may be so regarded by Congress, and when so regarded by Congress for the purpose of furnishing civil relief those statutes will be respected and sustained by the Supreme Court.

A crucial case is one in the late 1960's, *Jones* v. *Mayer*. Now that statute is the exact counterpart. Indeed it was passed originally as an omnibus bill in 1866 with the forerunner of section 241 which was reenacted as the Ku Klux Klan Act in 1870.

So by a merely parity of reasoning, Mr. Chairman, the criminal statute should equally address itself to the same circumstances.

Now I don't want to go on in this way because my submitted testimony attempts to outline the several alternative approaches, not merely to the Greensboro transaction but more theoretically to the general waterfront of incidents that you have drawn attention to in the previous hearings of this committee.

What I do want to suggest is that in the last 20 years when the Civil Rights Division has been adventurous in its own constructive and affirmative view as to what kinds of activities these rather ancient statutes will reach rather than extremely conservative, the tendency of the Supreme Court of the United States in the last two decades has been to defer to the optimism of those tendered interpretations by the Justice Department.

Concretely, for instance, in prosecutions in the late 1960's the cases of *United States* v. *Guest* [1] and the *United States* v. *Price* [2] depended for their success on a theory of the scope of the statute, which until those cases were brought, Mr. Chairman, did not have much antecedent judicial authority to sustain that use of the statute. But it was a close case, the Justice Department felt the circumstances were truly deserving, the cases were poignant cases, there seemed to be an inadequacy in the capacity of local courts to fill the gap by local justice.

And thus, by acting optimistically as to what the courts would sustain by way of a positive construction of those statutes, they took a certain prosecutorial risk.

Correspondingly, the Supreme Court acquiesced in the interpretation which was then rather novel. If, then, one merely optimistically extrapolates that tendency of judicial deference to a more aggressive posture by the Civil Rights Division it does seem to me that many of the kinds of instances that are currently regarded as being conceivably beyond the purview of current Federal jurisdiction might indeed rather be seen as within that jurisdiction.

So the net effect of this presentation then is to suggest again that while I am not opposed to modifications of the statute—albeit I have profound reservations in giving the Government unilateral capacity to appeal from sentences and do not favor that one proposal, Mr. Chairman.

I do think that the current tapestry of Federal criminal civil rights statutes is reasonably broad-reaching and reasonably well

[1] 383 U.S. 745 (1966).
[2] 383 U.S. 787 (1966).

arms the Civil Rights Division if it will take a reasonably aggressive and optimistic attitude toward the coverage of those statutes.

Mr. CONYERS. It seems to me that *Screws* has never developed from its instance of first decision because no cases have ever been sent up the way that parallel the theories that were employed there. This may also be true for the other cases that you have mentioned, and as well as one that I don't think you have mentioned, the *United States* v. *Original Knights of the Ku Klux Klan,*[1] a 1965 case.

Professor VAN ALSTYNE. Yes.

Mr. CONYERS. And that they all suffer from the lack of appropriate followthrough, not only by the Department but by the civil rights legal community as well.

I have had lawyers testify that in many instances in their view the civil rights sector of the bar has not always followed through on some of their own successes.

Professor VAN ALSTYNE. Well, that is quite true, although, of course, the civil rights bar is not a Federal agency and in brief, as you know so much better than I, Mr. Chairman, it is not a monolithic organization. It is a diverse group of people, many of whom, of course, must necessarily stop in the litigative process when the immediate needs of their own client have been satisfied. So that they cannot at a client's expense simply press on for the national objective of attempting to clarify the law at a higher level.

And I have a great deal of sympathy for the budgetary constraints and the professional ethics of that bar, that necessarily leaves many of these decisions somewhat incomplete in the lower courts.

Mr. CONYERS. Well maybe we need a Federal civil rights bar, the same way poor people need lawyers as a matter of necessity. If the Justice Department is not doing it and the few and far between civil rights lawyers rarely go beyond the immediate responses of their clients, somewhere along the line this needs to be addressed.

And I must say that I had never looked upon the bar previously as deficient because I was busy hailing them for the few heroic cases that they manage to eke out of the legal process. I never examined some of the very large gaps that were occurring and that need not necessarily be there.

There could be one lawyer in America who could decide, without consulting with the NAACP, that *Screws* ought to be updated and take on a case or maybe a consortium of civil rights lawyers to share the burden, but it seems to me that nobody has discussed it from that point of view until fairly recently. Or at least the discussion has not reached the public domain sufficiently for enough people to be aware that this point of view perhaps has increasing validity.

Now, that puts some of us in a dilemma. This testimony may come back to haunt us. We can now be told that you don't need to modify the existing civil rights laws if the judges, the civil rights bar and the Justice Department would get on the stick. The law is OK; it's what we're doing with it that is probably less than appropriate.

[1] 250 F. Supp. 330 (E.D. La. 1965) (3 judge court).

That was a question.

Professor VAN ALSTYNE. I wasn't quite sure.

I think that is an excellent statement. It presents a dilemma which I think is largely false, with all respect.

Again, a variety of these changes can certainly be urged.

As I have tried to be attentive in this hearing I gather there is fairly firm and uniform support for most of the changes. And nothing I have said is meant to suggest that all of these proposals are sheer surplus or frivolous.

There are some few of them that I think professionally and personally are ill-advised, Mr. Chairman, and I will speak to those if you invite me a little bit later on.

I am not trying to suggest, therefore, that no improvement is feasible, and I certainly do not mean to suggest that the FBI or the Civil Rights Division is generally delinquent. I do mean to suggest something in between. And that is that we are to a certain extent a victim of our own self-fulfilling prophecies.

If we take a very conservative view of the scope of the existing law on the basis of rather aged precedent, and if we are not attentive to collateral developments that courts have tended to sustain in related areas of Federal law, then by acting on the prophecy that these statutes are inadequate we tend to generate the outcome that sustains the proposition.

My reproach then is certainly not to suggest that there has been an inattentiveness in the Civil Rights Division. It is that there has been a lack of optimism in the aggressiveness with which these statutes have been construed. That with the attitude that inhabited the Civil Rights Division 20 years ago when I was a member of it, Mr. Chairman. At that time, alas, I felt the attitude was warranted because the lower Federal courts had then construed those statutes very tightly. It was very difficult.

But in successive administrations, when a more aggressive stance was taken, an adventurous stance, as in the *Guest* case and the *Price* case in particular, then that law was changed by judicial acquiescence in the more adventurous construction tendered by the Justice Department and in my view with no unfairness to the accused at all.

We are not talking, respectfully Mr. Chairman, in most of these actual situations about altercations where a reasonable American citizen might suppose that that which he is about to do or has just done is an innocent act, that it does not hurt and that he is unlikely to be the object of some criminal statute. Indeed in most of these transactions we already know that there may be serious violations of numerous State laws.

To put it in a lawyer's talk these are almost all mala in se, kinds of activities people have reason to understand, are cruel, and very likely to be criminalized. When that is so, therefore, generally in criminal jurisprudence, courts are impatient with defendants who attempt to use the lack of familiarity with ambiguous statutes as a shield against the criminal prosecution of what they have done.

Their lack of having an awareness of a particular statute is not a defense, and when the conduct itself surpasses any reasonable human being's expectation of what would be deemed innocent under the law, correspondingly a very aggressive application of the

statute is fully warranted, and in my view again, is likely to be sustained by the courts.

After my departure from the Civil Rights Division that different spirit tended to prevail, and at least in a variety of instances, some few of which I have attempted to cite for your assurance, Mr. Chairman, they were all sustained.

So I think then the business of the committee is significant, improvements can be made, but concurrent with that activity the Federal Government may also be somewhat more aggressive than it has in the manner in which it comes to its task and assesses the facts that its investigations yield against the coverage of the law as the statutes already exist.

Mr. CONYERS. Which suggestions do you caution us to examine carefully?

Professor VAN ALSTYNE. Well, for reasons too strong for me to overcome, both personally and professionally, I am not sympathetic to the Government's prerogative unilaterally to appeal a sentence because it may find that the sentence was not harsh enough from its prosecutorial perspective after the conduct of an errorfree trial.

My own commitment to principles of double jeopardy is too strong for me to submit to the cutting up of the double jeopardy clause by allowing the Government, in its discontent, to appeal merely from the sentence. We pay a price for the double jeopardy clause, but it is a proper price.

That portion of the bill relies upon a split decision by the U.S. Supreme Court within the last 3 years, suggesting that merely appealing from the sentence, though not from the balance of the case, is in conformity with the double jeopardy clause. My own views really would bear with the dissent.

The other reservation I have, Mr. Chairman, is more general. The modifications themselves do use necessarily rather general language. It is ambiguous language. There is a risk, Mr. Chairman, that to the extent that we revise statutes and import new ambiguous language, we will start the tradition of uncertain judicial construction all over again.

One advantage of these older laws, quite frankly, is that at least since the Warren court their original ambiguities have now been resolved to render them quite concrete.

Section 245, for instance, was adopted by Congress on the urging of the Justice Department to get very specific in light of the terribly ambiguous language in sections 241 and 242. It was a job well done. It has now been given substantial judicial content.

Concurrently, both sections 241 and 242 have been interstitially filled in so that the annotated meaning of the statutes is really quite crisp and clear. We risk something, Mr. Chairman, when then we so modify these statutes as to begin again, under the risk of a tabula rasa, new phraseology. We have optimism accompanying it with a suitable legislative record giving examples, pointing to the alleged deficiency of the older statutes. The courts will correspondingly be guided in that construction. But it is a risk.

And so my own approach is to urge the committee to be careful as to what particular inadequacies there are in the current statutes and to be very specific in the concreteness of the improvement they propose, lest we take the risk that did happen after the original

adoption of the Ku Klux Klan Act, which was that the courts interpreted them very narrowly. That rather than this being a reform it might be, accidentally, a conservative revision.

Mr. CONYERS. Well, you have caused me to restrain some of my original impulses in this direction. Now I will review my positions on these very carefully in the light of this testimony.

Finally, would you tell us about some of the suggestions you have made to the Department of Justice in terms of enforcement of the civil rights statutes?

Professor VAN ALSTYNE. Well, I don't know how to do that more concretely or better, Mr. Chairman, than simply to review the summary which is on a single page.

I do not know to what extent the members and the staff of the committee are fully conversant with the circumstances of the violence that occurred in Greensboro, N.C., that provided the background for suggestions I have shared with the Civil Rights Division.

Very briefly, you may recall that it was nearly 2 years ago that under the auspices of an authorized parade permit members of the Communist Workers Party and other private citizens seeking to assemble with them for purposes of a parade in Greensboro, confronted in a black neighborhood a van full of members of the Ku Klux Klan and Nazis, after which there was what has been called, neutrally, a shootout. Five people died in the transaction.

Prosecutions were brought under the State homicide and riot, felony riot acts, acquittals were returned, apparently on the theory of self-defense.

Now the associated facts lend themselves without reproducing any kind of prosecution for murders, as I have suggested earlier, to a variety of approaches, the most significant of which is that which I have already tried to review with you, Mr. Chairman. And that is that if it can be shown that an object of the confrontation on the part of the Klan and the Nazis was at least for purposes of racial intimidation, not necessarily even of the immediate participants [many of whom were white and indeed among the dead I gather there was only one who was black], but if this act of violence is to further the common objective of racial intimidation than the conspiring is subject to successful Federal prosecution.

Respectfully, Mr. Chairman, it is my view that that is within the scope of section 241 as justly applied through the enabling clause of the 13th amendment and the theory of vestiges of slavery that you and I have previously discussed.

There are a variety of associated lesser possibilities. One that I have not noticed in the Justice Department's earlier work was this.

Just to show you how some seemingly irrelevant things can be brought under the Federal statute. It is my impression—and I do not pretend to be in command of all the facts—my impression has to be much as yours, Mr. Chairman, derived from journalistic reports or outside studies and not be an FBI report—that among the various activities that were pursued by the Communist Workers Party and those who work with it are labor law-related activities. To attempt to encourage unorganized workers in North Carolina to take advantage of their collective bargaining opportunity.

If this disruption were animated even in part by a purpose to intimidate persons from seeking recourse to their rights under the Federal Wagner Act, under the labor laws of this Nation, their entitlement to use the auspices of the Labor Board in their grievances against companies in North Carolina, that is an object then relates to the enjoyment of a privilege offered by the United States and is expressly reached in one part of section 245 of the statute.

Alternatively, if it can be shown that any part of this was the general intimidation of persons with respect to voting rights, or if it was the purpose to interfere with any persons because of their race, even from participating in the parade itself, an authorized local activity, that is a fourth ground separately reached under a concrete provision in section 245.

Finally, all of those approaches assume, Mr. Chairman, that this is entirely a private conspiracy, as it may well be.

On the other hand, if as has been suggested, any person acting under color of law misused his or her office knowingly to facilitate these activities [any of the above that I have described], that then appropriately identifies them under section 242 as a person acting under color of law to assist others to deprive persons of their constitutional right, and both they and all of the private parties are reachable. They under section 242, the private parties under the general conspiracy statute of the United States, section 371.

Correspondingly, if the suggestion is correct that there may have been even a Federal person acting under color of Federal authority, who knowingly used his position for the purpose of facilitating these activities, that person can be reached and the conspirators can be reached under section 241 in connection with the due-process rights.

Now I realize that is a large menu. It is very iffy. And I have not seen the FBI investigation reports. I have not sought access to them. There is no proper reason they should be shared with me.

My closing note is again merely, Mr. Chairman, that this particular transaction in my part of the country has created a deep sense of grief and a considerable sense of perplexity. There is unquestionably profound local dissatisfaction among some on the outcome of the State criminal prosecution.

There is beyond that, in my opinion, an honorable sense of quandary as to what appears to be at least a current inadequacy of Federal response.

Now I measure my words. It appears to be. We have ultimately to trust those in Federal office. But the circumstances, the history, the germaneness of these statutes, the irony of their caption as the Ku Klux Klan Act, all suggest to me as an attorney and as a citizen that this is one of those instances where the Government should be at its greatest aggressive, its most concern to do justice and to appear to do justice.

Mr. CONYERS. Have you shared these views with the Civil Rights Division?

Professor VAN ALSTYNE. I have, and I have no reproach in the candor of their conversations with me. I discussed it with Mr. Michaux who the U.S. attorney earlier before I had an opportunity to develop all of the legal approaches, some which have been researched since that time. A special attorney from the Civil Rights

Division shared a conference call with me quite early on but again before some of this research was done. I received a very courteous acknowledgement, from the Director of the FBI, Mr. Webster, and would be very pleased to provide you with his letter, together with the response which I was requested to offer for your interest from one of the attorneys for the Greensboro justice firm, and their request was that if it were in the courtesy of the committee, their response might become a part of the record as well.

So I have no sense of estrangement or aloofness from the Civil Rights Division, but at the end, despite the courtesy of that rapport still, a great sense of profound quandary, perplexity, and uncertainty. The circumstances outwardly seem so different from the lack of additional activity as necessarily to create a sense of disappointment.

Mr. CONYERS. Do you still remain available for any consultation or discussion that they might seek?

Professor VAN ALSTYNE. Oh, yes, of course.

Mr. CONYERS. I would like to recognize Mr. Edwards who, in addition to his responsibilities on this subcommittee is chairman of the Civil and Constitutional Rights Subcommittee of the Judiciary Committee.

Mr. EDWARDS. Thank you, Mr. Chairman. I compliment the chairman for scheduling this important hearing today and for inviting such a distinguished authority as Professor Van Alstyne who has made massive contributions in the past and is doing the same today. I apologize for being late, having been chairing another committee next door.

The subcommittee I chair has been struggling with these cases throughout the United States that are brought or should be brought or are not brought under 18 U.S. Code 241 and 242.

Even under a previous administration we had arguments with Drew Days who would say why can't you move ahead on ABD. We would send over a list of 80 or 90 and they are very difficult cases.

There are little problems that arise in these cases, especially in 242 where the FBI has a great deal of difficulty operating without the cooperation of the local police.

They do have to work very closely together, and so when an FBI agent is having a cup of coffee with somebody in the police department that is very important to him in a number of cases and he will just have to say, by the way, Mr. Policeman, I am also investigating you for a violation of Federal law, it doesn't work very well toward cooperation.

Professor VAN ALSTYNE. May I barge in, Mr. Edwards?

I am sure Mr. Days spoke correctly about that. Only the nature of the difficulty has changed. That was precisely true in the origins of the Division when I belonged to it in 1959 and where the inquiry was merely to protect voting rights the agent in the field expressed a reluctance to compromise the usefulness of local people who they otherwise relied upon for information of other Federal violations because mere inquiry to the protection of black Americans with regard to their voting rights was considered so touchy that to enlist local law-enforcement cooperation was regarded as compromising those sources of information in other respects.

The attorneys in the Division themselves frequently had to supplant the agents in the field to conduct those interviews. So I am not surprised, and not incredulous to the testimony you have received.

Mr. EDWARDS. But you have made it clear, and we are in complete agreement that these are very important cases for the good health of the country. I am concerned about disaffected groups within our country, especially minority groups who feel that there is nothing that they can do about a certain sheriff or a situation in a local part of the country.

I think about the *Hannigan* case where only these statutes could be used with a very difficult local situation, and the Federal statutes were used and a lot of good was done for racial harmony in the Southwest.

But I thank you, Mr. Chairman, and thank the witness.

Mr. CONYERS. We are deeply grateful for your labors and your concern over this matter.

I must say, Professor Van Alstyne, it is very encouraging to hear from legal and constitutional authorities in your part of the country who are deeply interested in how these matters are being processed in Washington and what their implications are for the citizens throughout the country; we are all in your debt.

Mr. VAN ALSTYNE. Thank you very much.

[The complete statement of Professor Van Alstyne follows:]

PREPARED STATEMENT OF WILLIAM VAN ALSTYNE

Pending before the Subcommittee are proposed modifications of certain criminal code provisions, including 18 U.S.C. §§ 241 and 242. It has been thought important to determine the coverage of these and of related statutes to existing circumstances, as a first step in deciding whether some change in these laws is advisable. More particularly, the question has arisen whether, when local violence occurs in a civil rights setting, and local law enforcement may not be adequate to redress that violence, is the existing federal law insufficient to provide appropriate investigation and federal prosecution? I have been requested to address that issue in specific reference, as an example, to homicides that occurred in the fall of 1971 in Greensboro, North Carolina. Without necessarily disagreeing with certain proposed changes in respect to 18 U.S.C. §§ 241 and 242, the basic conclusion of my testimony, on the question I have been asked to address, is that the existing statutes do provide reasonably adequate grounds for federal action. Whether such constitutional grounds for more vigilant federal action could be enhanced by some changes in the statutes I am prepared to address in oral testimony. In what follows, I mean only to illustrate the ways in which existing law does address the kind of problem which concerns this Subcommittee. Briefly, by way of introduction, the ensuing testimony outlines how several statutes may apply as an aid in the investigation and possible federal prosecution of identifiable persons involved in the death of five citizens and the intimidation of many others, arising from a civil-rights related authorized parade and assembly, in Greensboro, North Carolina.

I. 18 U.S.C. § 245. The imbroglio involving identified members of the Ku Klux Klan and the Nazi Party occurred at the start of a pre-announced assembly and march on the publicly-owned, municipally-administered streets of Greensboro, North Carolina. The assembly and planned march were pursuant to a parade permit for which application was made to the City of Greensboro, and which the City had granted for the day and route of the event. There is substantial reason to believe that the purpose of the Klan-Nazi engagement at the gathering site was to intercept and disrupt or prevent the march from being held, to deprive the participants of the use of the streets of Greensboro (a "facility * * * provided" and "administered" by the City), and to deprive them of the "benefit" of the parade permit furnished by the City of Greensboro. The relevant statutory language addressed to such circumstances follows:

"Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—(2) any person because of his race, color, religion or national origin and because he is * * * (b) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof—shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."

A matter that would have to be determined would be whether, although not all participants of the pending assembly and parade were black, nonetheless *a* motivating consideration of the Klan/Nazi action was significantly racial, i.e., to intimidate at least some persons because of their race. Alternatively, if investigation foreclosed such a showing (despite the fact that both the Klan and the Nazi appear to be emphatically racist groups), still an indictment would be warranted upon sufficient evidence that those set upon, though not set upon because of their race, were set upon as part of a larger purpose to intimidate other, third parties because of their race or to intimidate the marchers from encouraging third parties to participate in voting or other public benefits without discrimination on account of race. This alternative basis for indictments is provided by subsections (4) and (5) of this same statute. Additionally, any persons conspiring to violate § 245, whether or not they were among those members of the conspiracy actually involved in the violence, would be subject to indictment and conviction under the general conspiracy statute, 18 U.S.C. § 371.

A separate statutory basis for investigation and possible indictment under 18 U.S.C. § 245 would seek to determine whether Klan/Nazi members, or persons acting with them, sought to disrupt the assembly and parade sponsored by the Communist Workers Party as a means of intimidation of either members of that Workers Party or of others from taking full and lawful advantage of a program or service provided by the Government of the United States. The relevant portion of the statute is this:

"Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or inteferes with, or attempts to injure, intimidate or interfere with—(a) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—(b) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States * * * shall be fined (etc.)."

In this respect, racial motive is irrelevant. Insofar as the Communist Workers Party may have been the object of Klan/Nazi hostility because of its activities encouraging worker organization in North Carolina, a prerogative protected by and a benefit provided by the Wagner Act, and administered by the United States (through the NLRB and the federal courts), such efforts of intimidation and/or reprisal are clearly reached by this statute. Neither involvement of any person acting under color of law, or racial motive for the interfering, retaliatory, or intimidating acts are required by the statute.

I have, incidentally, considered possible constitutional objections to any of the above-suggested applications of 18 U.S.C. § 245 (and of 18 U.S.C. § 371) and, without burdening this brief memorandum with the appropriate research, I have no serious doubts whatever that each of these applications is readily constitutional.

As to this approach, then, unless the Department of Justice has already made a thorough investigation and can confidently report that *none* of the following explain any of the Klan/Nazi actions in Greensboro, I should think the Department may not excuse its apparent, current passivity;

"(a) that there was no conspiracy or action to deprive anyone of participating in the Greensboro assembly and parade because of race, or in order to intimidate other persons from participating because of their race, or to injure the participants because of their encouragement of others to seek the full and equal advantage of state or local programs, services, and benefits provided by the state or local government, without racial discrimination;

"(b) that there was no conspiracy or action to injure or intimidate members of the Communist Workers Party as a means of discouraging either them or others from seeking full benefits under any program or service provided by the United States, including protected rights or labor organization under the National Labor Relations Act and associated Acts of Congress."

To an "outsider" such as myself, that violent activity might be pursued by the Ku Klux Klan and/or Nazis without either racial motives or anti-labor motives is not very plausible. The extrinsic circumstances would surely warrant a serious investigation before so concluding.

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II. 18 U.S.C. § 241. This statute is more general than § 245 and undoubtedly overlaps § 245 ('which was adopted partly for purposes of clarification of § 241). Significantly, in its reconstructions origin it was (and still is) known as the "Ku Klux Klan" Act. Briefly it provides:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same * * * They shall be fined (etc.)."

This statute would secure indictments against persons acting in concert to accomplish any one or more of the following objectives:

(1) To disrupt or interfere with a peaceful assembly and parade held to demonstrate felt grievances within the power of Congress to redress, insofar as the object of the acts of intimidation or disruption is itself to frustrate the purpose of this means of petitioning. (The validity of the statute, as applied to private parties interfering with efforts to attract national governmental attention to grievances within the legislative power of Congress, is quite clear.)

(2) To disrupt or interfere with those seeking to hold the assembly because of their race or because of their support of others whom those disrupting the assembly seek to intimidate, albeit indirectly, because of their race. (The validity of the statute, as applied to private parties on such facts, is readily valid as within the power of Congress under Section 2 of the 13th amendment.)

(3) If one or more persons collaborating with the Klan/Nazi conspiracy knowingly facilitated the conspiracy through any use of authority possessed under color of state or federal law, then all may be indicted and prosecuted under § 241 insofar as one object of the conspiracy was to interfere with the assembly and parade regardless of the subject-matter or object of the parade, or insofar as one object of the conspiracy was to inflict injury and harm without due process of law.

There are unconfirmed reports of possible federal-agent, undercover excessive behavior which facilitated and encouraged the private conspiracy, and reports, as well, of local officials furnishing information to Klan/Nazi members assisting them in ascertaining the time and place of the assembly and parade. Depending very much on the nature of such involvement by persons acting under color of either federal or state law, if it were the case that their activities knowingly facilitated an otherwise-private conspiracy, they and the private conspirators are responsible under § 241 for violation of 5th and 14th amendment due process rights, and 1st and 14th amendment free speech rights. The case law is quite clear in respect to this kind of application of § 241.

III. 18 U.S.C. § 242. This statute requires linking at least one person knowingly acting under color of state or local law to assist private parties in their concerted effort to attempt to disrupt the assembly or otherwise to injure them. It also has a seemingly difficult scienter requirement (of specific purpose), but that requirement, according to the case law, is easily met on the reported facts of the Greensboro imbroglio. If investigation were to confirm that knowing assistance was furnished to the Klan/Nazi parties by any state or local official, prosecution of all the conspiring parties would be proper. The general conspiracy statute, 18 U.S.C. § 371, would reach the private parties. § 242 provides:

"Whoever, under color of law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State * * * to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States * * * shall be fined (etc.)."

Having summarily reviewed the four principal applicable statutes and groups of facts sufficient to apply each statute to various Klan/Nazi members and others, let me briefly comment on the matter as I see it as a whole:

(1) The fact that some Klan/Nazi members were tried and acquitted outright under particular, different state statutes (principally, the felony riot and murder statutes), raises no double jeopardy barrier under any of the federal statutes I have mentioned and no problems of collateral estoppel either.

(2) Even if, on careful review of the state criminal trial transcripts, the Department of Justice were fully convinced that the successful defense (of self-defense) entered by the Klan/Nazi defendants to the homicide charge were sound on the merits respecting the actual deaths of the five Communist Workers Party members, that conclusion would have virtually nothing to do with determining whether the Klan/Nazi members nonetheless violated any one or more of the federal statutes discussed above. The matters I have discussed above may be applicable even if the Klan/Nazi members did not intend to kill anyone (despite having come heavily armed to the scene), even if the actual shootings were something they were prepared for but did not intend themselves to initiate, or even if they killed wholly in self-defense. That they may, despite the state jury conclusion, have hoped for a "shoot-out," provoked it, fired to kill without believing their own lives to be in peril, etc., would of course make neglect by the Justice Department of the case all the more unforgivable. But my basic point is that none of the matters addressed in this Memorandum depend even in part upon proof beyond reasonable doubt of a conspiracy to commit murder. Correspondingly, a failure to return indictments based only on a lack of sufficient evidence to prove murder would be no excuse whatever.

(3) Timidity or hesitation by the Justice Department is least defensible in this instance. To put the matter more strongly, if there is any reasonable doubt as to the applicability of the statutes I have reviewed, against the known or ascertainable facts, this is an instance where every doubt, at this stage, should assuredly be resolved in favor of going forward, rather than in favor of stopping. Please bear in mind that the very statutes we have been reviewing were adopted in the first place from an overriding congressional concern with the very kind of racial intimidation, the very kind of racist groups, and the very area of the nation involve here. If, for instance, we had at hand an "unfortunate" riot arising in Seattle, Washington, between overzealous members of the American Legion and, say, a proposed street assembly and march by anti-war young people, while the statutes we have reviewed might well apply to that kind of situation, if the facts were not wholly convincing one might understand why, after state court trials acquitting the defendants of related state offenses, the Justice Department might be hesitant to intervene.

Whatever of such a case, however, there is a highly disturbing sense of aloofness and a wholly suspect "silence," when the very kind of situation which produced these federal statutes over a century ago is not fully explored and dealt with by the Justice Department. This is, after all, the Ku Klux Klan Act. This is part of the South (and Greensboro, incidentally, is the very place where the modern sit-ins originated in 1960) with its history of unequal racial treatment. There is, here, a background of general intimidation linking race, unorganized labor, left-leaning ideological groups harassed as such and because they seem "threatening" to anti-union and to anti-black groups. It is a mistake of an inexcusable sort to ignore all these things in the attitude one takes toward federal law enforcement, as it quite artifically ignores what a careful and comprehensive investigation may well be able to establish.

(4) This Subcommittee may be the sole forum in which those of us who wish to be fair, but who cannot help but be uneasy in this matter, can look to for some explanation. The silence and public passivity of the Justice Department may, of course, be misleading. It is possible that all of the about listed theories have been comprehensively explored, the fullest possible investigation made, and nothing adequate to present to a federal grand jury was established. But from here, this would be highly surprising were it so. From here, we cannot help but wonder and, in wondering, feel an ebb of confidence in the interity and zeal of the Justice Department. I hope, therefore, the Subcommittee will press seriously and aggressively its determination respecting why, given the existing federal law, nothing seems to be going forward at all. If it is said that the statutes will not reach anything an assiduous investigation has turned up, I hope that answer will be tested very critically. I am professionally doubtful whether Congress need amend or significantly enlarge these several laws, as I do think they permit meaningful federal protection of basic civil rights already, in the hands of a conscientious and concerned federal government.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., November 2, 1981.

Prof. WILLIAM VAN ALSTYNE,
Duke University School of Law,
Durham, N.C.

DEAR BILL: Thanks for sending me a copy of your very thorough analysis of the Federal criminal statutes applicable to the shooting incident involving the Communist Workers Party, the Ku Klux Klan, and the Nazi Party in Greensboro, North Carolina, in November, 1979.

As you may be aware, I directed FBI Agents to the scene within hours after the events took place and we gave the fullest cooperation to local law enforcement authorities with respect to matters within their jurisdiction. The result of our own investigation, predicated upon Federal jurisdiction, have been under study for some time by the Justice Department, and it would be inappropriate for me to anticipate the Department's conclusions. There are as you know some important judgment calls both on the sufficiency of the evidence and matters of policy on dual prosecutions where there are overlapping jurisdictions.

Warm best wishes,
Sincerely,

WILLIAM H. WEBSTER, *Director.*

GREENSBORO JUSTICE FUND,
Greensboro, N.C., November 10, 1981.

SUBCOMMITTEE ON CRIMINAL JUSTICE,
House of Representatives,
Washington, D.C.

DEAR SUBCOMMITTEE MEMBERS: We are following with interest your inquiry into the progress of Justice Department action on the November 3, 1979, Greensboro murders and accompanying civil rights violations. We wish to inform you of our efforts to obtain Justice Department prosecution of those responsible, and the response of the Justice Department to these efforts.

In November 1980, our legal team of about twelve lawyers filed a civil rights suit under the Civil Rights Act on behalf of 16 individual plaintiffs who are survivors of the November 3, 1979 Klan/Nazi attack. Even though the Justice Department, FBI and Community Relations Service are among the named defendants, and the Justice Department represents the various federal defendants in the suit, we initiated contact with the Civil Rights Division of the Justice Department in December 1980 to offer our clients and any other assistance to facilitate Federal criminal prosecution of those responsible for the constitutional violations on November 3, 1979.

Since November 3, 1979, we have repeatedly seen conduct by Justice Department officials which caused us to question the integrity of their alleged "investigation". Let me briefly list some examples:

(1) FBI agent Andrew Pelczar, head of the Greensboro FBI office, has been quoted in the press as saying that an FBI investigation of the WVO (forerunner of the CWP) was concluded on November 2, 1979. Since that time the FBI has denied that any such investigation ever occurred.

(2) In April 1980, the Justice Department concluded, and notified the Greensboro Police Department in writing, that no police officials committed civil rights violations on November 3, 1979. This flies in the face of the facts and was done with no written report available to the public answering the crucial questions concerning the Greensboro Police Department's relationship to Klansman, ex-FBI informer, and paid police informer Edward Dawson.

(3) For at least six months after our initial December 1980 meeting with the Justice Department, the Justice Department continuously and publicly asserted it could find no jurisdiction to begin an investigation but was researching the law to find jurisdiction. These statements were made by officials claiming to be in close consultation with Michael Johnson, the Justice Department attorney handling the November 3rd Greensboro case. The point here is that jurisdiction has deemed present and the facts settled when the Police Department is cleared of wrongdoing, but jurisdiction is a "very complicated and complex" issue and the facts are unsettled when prosecution is urged by the community and victims. For the more than six months that "jurisdiction" was lacking, there was no attempt by the Justice Department to interview any of our clients nor to respond to any of the material we supplied in support of jurisdiction.

(4) Meanwhile a request to the Justice Department for release of information under the Freedom of Information Act was denied on January 30, 1981, because of "an on-going Civil Rights Division investigation". This was during the same period that the Justice Department was asserting to the public that no investigation could be begun until a basis for jurisdiction was found.

(5) Six months after we initiated contact with the Justice Department, and several weeks after former U.S. Attorney H. M. Michaux's recommendation on May 5, 1980 that the Justice Department immediately seek indictments, the Justice Department finally contacted the legal team about interviewing some of our clients. Following an exchange of correspondence concerning the procedures for these interviews, there was another delay of just under two months before the Justice Department in fact sought to schedule interviews. They did so the day before the Institute for Southern Studies report, "The Third of November", was to be released.

(6) Despite our concerns that questioning of our clients by the Justice Department would be aimed not at prosecution of those responsible but a discovery in defense of the federal defendants in our civil suit, we allowed 3 plaintiffs, leaders of the WVO/CWP, to be questioned without limit, including questions about events years prior to November 3, 1979. Nelson Johnson was questioned for nearly six hours, without objection to a single question, even though many of those questions dealt not with the conduct or intent of the culprits but the frame of mind of the victims, and appeared

to be aimed at continuation of blaming the victims instead of prosecution of the culprits. (Nelson Johnson is available to explain how the interviews were conducted.)

We were also concerned about the fact that one of the two FBI agents conducting the interviews with our clients has had personal financial dealings with Edward Dawson, the Klansman/FBI informer/police informer who played a major role prior to and on November 3, 1979, and who must be a prime suspect in any serious investigation. (The agent testified to some of these dealings during the 1980 state court trial.) Furthermore, the same FBI agent was involved with a Greensboro police detective in taking statements of some of the Klan and Nazis arrested on November 3rd. The FBI agent and detective managed to erase or not record 25 minutes of a key Klan defendant's statement to the police. Our protest against the participation of this agent in the interviews of our clients was ignored.

(7) No valid reason has been given why in the two years since November 3, 1979, a number of the residents of Morningside Homes who were terrorized and even had their apartments penetrated by bullets have not been interviewed by the FBI, even though the FBI claims it has been investigating since November 3rd. A number of these residents have been publicly identified and testified during the state court trial.

The three plaintiffs interviewed by the Justice Department have the most extensive memory of the entire sequence of events and were able to cover the entire sequence of events before and during November 3rd. They unreservedly answered questions about this entire sequence. Yet the Justice Department attorney says he needs to interview all our clients and everybody present on November 3rd before making a decision about bringing charges. Given the vast amount of evidence already in their possession or examined by them, including the videotapes of the actual events; the failure to interview easily available witnesses; the types of questions asked of the plaintiffs; the past history of tremendous delay; and the number of considered legal opinions on the existence of federal jurisdiction and on the ability of the Justice Department to seek indictments immediately, then to say everyone must be interviewed before any action is taken is tantamount to another delay tactic.

Meanwhile the Justice Department has refused to give us any indication that there is any serious effort or intent to prosecute those responsible. They have refused to tell us, for example, whether anyone besides our clients has been interviewed or is scheduled to be, or what they consider the deficiencies in their case to be, either legal or factual, so we can provide the assistance necessary. We can get no explanation as to why former U.S. Attorney Michaux's recommendation to seek indictments has been ignored. Given the history of unjustified delay, prosecution of the victims in the past, and the existence of the civil suit (with the Justice Department as defense counsel), we feel we are justified in seeking some indication that the Justice Department is in good faith in continuing to interview our clients. The Justice Department attorney claims he is not authorized by the Attorney-General to release any such information. Your committee may be in a position to have Attorney-General Smith provide a detailed status report of this matter.

We are confident that after you review the law and facts of the case, including in particular the videotapes, existing information, and the delaying tactics of the Justice Department which we recount above, you will agree that immediate prosecution is warranted and called for. The recent interviews of 3 key plaintiffs removed any question that the barrier to action on this matter is not the plaintiffs, the facts or the law but Justice Department inaction. A full and thorough Congressional investigation of both Justice Department inaction and November 3rd itself (in particular the role of government agents) seems appropriate. We will be happy to make available an attorney from our legal team to testify about the facts and document the above points.

More immediately, we seek your help in evaluating the good faith nature of the Justice Department's inquiry with regard to this case. If further questioning of our clients is motivated by the desire to build a defense to the civil suit, then we see no public interest to be served by continuing and we must refuse further interviews. However if the public interest in justice is really being pursued, we will readily continue with the interviews. We will contact the Justice Department in three to four weeks on the status of the interviews. Within this period we hope to hear from the subcommittee on their findings and conclusions on the Justice Department, and/or the results of the hearings as they pertain to the Greensboro case. At that time we will discuss the continuation of the interviews.

In our opinion, there can be no excuse for not proceeding with a federal criminal prosecution of those responsible for the killings and other constitutional violations on November 3, 1979. We would request a response from your staff on this issue as

soon as you have concluded your inquiry, or considered the testimony on the particular civil rights violations in the Greensboro November 3rd case.

Thank you for your consideration of this matter.

Sincerely,

LEWIS PITTS,
Attorney, for the Greensboro Civil Rights Suit Legal Team.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., June 23, 1981.

Mr. LEWIS PITTS,
Southeastern Building,
Greensboro, N.C.

DEAR MR. PITTS: This is in response to your letter dated June 8, 1981, relative to your clients availability for interview regarding the November 3, 1979 shootings in Greensboro, North Carolina.

Our investigation of this incident commenced immediately following its occurrence and is on-going at this time. Since your clients were present during the shootings, it is our belief that they may shed important light on the events that transpired. We intend to ask them about all relevant events which occurred on November 3, 1979 as well as all relevant events preceding and following the shootings. We are interested in any and all information your clients have, regardless of who it may implicate as having violated federal law.

It is our intention that your clients will be interviewed by Special Agents of the Federal Bureau of Investigation in the presence of an attorney from the Criminal Section, Civil Rights Division. A member of your legal team may be present, if you desire. Furthermore, the interviews will be tape recorded if you desire. Otherwise, we intend to ask your clients to provide signed statements which they will have an opportunity to review and make any necessary corrections before signing. Your clients, of course, will be entitled to a copy of their statements.

It is the policy of this Department not to disclose information regarding on-going investigations. Accordingly, your clients will not, at this time, be given access to the information obtained from any other witnesses nor will we comment on who has been or will be interviewed during our investigation.

Lastly, as you probably know, statutory jurisdiction rests on the facts of a particular incident. Accordingly, until we are able to obtain and evaluate the information from your clients, we cannot fully ascertain which federal statutes may provide a basis for proceeding.

Please contact me at your earliest convenience to advise me whether your clients will agree to be interviewed and, if so, to discuss the necessary arrangements.

Sincerely,

JAMES P. TURNER,
Acting Assistant Attorney General, Civil Rights Division.

GREENSBORO JUSTICE FUND,
Greensboro, N.C., July 20, 1981.

Re: DJ 144-54M-351.

MICHAEL JOHNSON,
Department of Justice, Civil Rights Division,
Washington, D.C.

DEAR MR. JOHNSON: Our legal team has discussed your letter of June 23, 1981 to me, the overall conduct of the Justice Department with regard to the November 3, 1979 murders, and the recent revelations by former U.S. Attorney H. M. Michaux. Let it suffice to say that our "concerns" about your good faith, some of which were set forth in my letter to you dated June 8, 1981, have not been alleviated. Mr. Michaux was sufficiently convinced that presently available facts justified prosecution that he recommended indictments for conspiracy and charges under Section 245 before leaving office. We are not clear what our clients can offer that is not already available to you, but to demonstrate their willingness to assist in any federal criminal prosecution of those responsible for the November 3 murders, the following is proposed.

Dr. Paul Bermanzohn, Dale Sampson, and Nelson Johnson will be made available for interviews immediately under the agreement that (1) up to three members of our legal team may be present to advise the client on whether to answer the question as relevant to the federal prosecution or not answer because the question is intended to build a defense for government defendants named in our lawsuit; (2) the interviews will not be electronically recorded but the client will have an opportunity to read and correct a typed statement prepared by you or your designee reflecting the substance of the interview; the client will then sign the statement and be provided with a copy.

No more of our clients will be made available until we are satisfied that you have interviewed other witnesses, including government officials, and are proceeding in good faith.

The interviews of Ms. Sampson and Dr. Bermanzohn should take place in New York City; the interview of Mr. Johnson should take place here in Greensboro.

When we have your written agreement to these terms, we can arrange mutually agreeable dates for these interviews.

Sincerely,

LEWIS PITTS, *For the Legal Team.*

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., August 4, 1981.

Mr. LEWIS PITTS,
Greensboro Justice Fund,
Greensboro, N.C.

DEAR MR. PITTS: This is in response to your correspondence dated July 20, 1981, concerning the interview of your clients regarding the November 3, 1979 shootings in Greensboro.

We will be in contact with you in the near future to arrange the interview of Dr. Bermanzohn, Ms. Sampson and Mr. Johnson. Your clients will be permitted to have up to three members of your legal team present and will be asked to sign a statement after the interview. The interview will be conducted by two agents of the Federal Bureau of Investigation and the undersigned.

After these interviews have been completed, we can discuss arrangements to interview your other clients.

Sincerely,

WM. BRADFORD REYNOLDS,
Assistant Attorney General, Civil Rights Division.

GREENSBORO JUSTICE FUND,
Greensboro, N.C., June 8, 1981.

Re Justice Department interviews with November 3d victims.

MICHAEL JOHNSON,
Department of Justice, Civil Rights Division,
Washington, D.C.

DEAR MICHAEL: This letter is to reaffirm the willingness of our legal team and the victims to cooperate fully with any good faith Justice Department investigation of the November 3rd, 1979, murders and the events before and after that date. Dan Sheehan and Nelson Johnson met with Justice Department officials December 12, 1980 in Washington, D.C., to urge a federal criminal investigation and offer our cooperation.

However, given the events transpiring since that first meeting and the fact that the Justice Department, Civil Rights Division, FBI and other federal officials are named defendants in our suit in which the victims are plaintiffs, we are sure you understand that we must proceed with caution and insist on written guidelines or assurances. Let me list some of our concerns:

(1) You have concluded and notified the Greensboro Police Department in writing that no police officials committed civil rights violations. Our primary contention is that federal and state officials along with corporate interests planned and instigated the attack on November 3rd, 1979. What is the relationship between this first investigation and the present one? Are the same personnel involved in conducting the present investigation?

(2) For at least 6 months after our initial December 1980 meeting, the Justice Department continuously and publicly asserted it could find no jurisdiction to begin an investigation but was researching in an effort to find jurisdiction. The speciousness of this assertion of difficulty in finding jurisdiction is so apparent no comment is necessary. How can we now be assured that investigatory efforts are in good faith? How do you explain the sudden discovery of jurisdiction?

(3) Meanwhile, a request to the Justice Department for release of information under the Freedom of Information Act is denied on January 30, 1981, because of "an on-going Civil Rights Division investigation" and "the investigative reports are exempt from mandatory disclosure". Was there in fact an investigation?

(4) Finally after much public pressure to investigate the rule of government agents, Section 245(2)(b)(2) was selected as the goal for indictment. Proceeding under this esoteric statute raises concerns about whether the scope of the investigation will even touch upon governmental misconduct. Have you already investigated and determined that there was no governmental misconduct? If so, why has that issue, of so much public concern, not been clarified publicly?

(5) Are you investigating to determine wrongdoing by Dawson and Butkovich and their superiors?

(6) Have you interviewed Dawson and Butkovich?

(7) Do you intend to interview witnesses other than our plaintiffs?

(8) Will we have access to your interviews with non-plaintiffs? Will we have access to the information obtained from non-plaintiffs? If so, under what terms?

(9) Who is to be present during interviews of plaintiffs? Are they to be recorded? Who within the Justice Department will have access to the information obtained?

(10) Will the interviews be made part of any Grand Jury proceedings?

(11) What is the purpose of interviewing our clients? As the FBI has been involved in the investigation since November 3rd, including support for the District Attorney in the Klan/Nazi trial and exoneration of the Greensboro Police Department, what further information do you need from our clients to make your decision? What is the barrier to indictment at this point?

(12) What will be the focus of the questions to be asked our clients?

If you will respond to these concerns in writing, our legal team will immediately examine your proposed guidelines. Hopefully we can proceed jointly to uncover the truth about the November 3rd murders.

Sincerely,

LEWIS PITTS, *For the Legal Team.*

TESTIMONY OF CHARLES W. GILCHRIST, COUNTY EXECUTIVE, MONTGOMERY COUNTY, MD., ACCOMPANIED BY BERNARD D. CROOKE, CHIEF OF POLICE, MONTGOMERY COUNTY, MD., AND ALAN P. DEAN, EXECUTIVE SECRETARY, MONTGOMERY COUNTY HUMAN RELATIONS COMMISSION

Mr. CONYERS. The next witness is the county executive in Montgomery County, Mr. Charles W. Gilchrist, who has been in previous incarnations a State senator and has made public safety one of his top priorities, which includes the protection of those citizens victimized by racially motivated violence.

He is accompanied by the chief of police of Montgomery County, Bernard Crooke, and the head of the human relations commission, Mr. Alan Dean.

Welcome, gentlemen.

Your statements are incorporated in the record, and you may proceed.

Mr. GILCHRIST. Thank you very much, Mr. Chairman.

I can briefly summarize the statement, and I think the committee may be interested in some information from our chief of police and from the executive director of our human relations commission.

This year we have had, unfortunately, over 80 reported incidents of racially or religiously motivated acts of defamation or of violence.

Mr. CONYERS. They are on the upswing?

Mr. GILCHRIST. Last year there were 25. We think that to a significant extent, the increase is attributable to the emphasis we have placed on reporting.

The Governor described to you earlier the increase at the State level. At our local level, we have emphasized reporting. We also have established an organization, the Network of Neighbors, that

has more than 400 members which are throughout our county who help victims of such incidents and encourage reporting.

I have received calls about our improved reporting from a number of citizens. For example, a rabbi who called is the principal of a school. He told that heretofore he simply lived with these incidents of swastika paintings as vandalism because he felt nothing could be done about them. However, because of the emphasis that we have placed on reporting, he called the county. We have written to our State's attorney setting forth our commitment to deal with and eradicate hate activity, and our chief of police is enforcing the law. Consequently, we have encouraged citizens to report incidents that were not reported before.

I also have made an intensive effort to work cooperatively with the school system, we are making changes in curriculum that point out the effects of such incidents, and the history and the results of the holocaust and KKK activities. We think these and other changes are beginning to benefit our students to the extent that the young people in our county know that this kind of activity is absolutely unacceptable.

I want to emphasize that we agree with the Governor of the State in his belief that we should talk about this issue, it should be brought foward and discussed because we think only in that way can we begin to resolve it.

We have established, in addition to the 400-member Network of Neighbors that I described to you, a coordinating committee charged with developing and implementing a plan of action to address hate violence activity in Montgomery County and to reduce its impact on the community. Membership includes people from religious, minority, and civil rights organizations, schools, and the public/private sectors.

Before creating the committee we very carefully explored the issues involved with publicizing this matter. I met with leaders from the Jewish, black, and Hispanic communities, and a number of staff persons.

We feel that we have done the right thing in identifying this as unacceptable behavior which no decent person can tolerate, we have told our police force, in agreement with our State's attorney, that we will do everything that we can to prosecute fully these acts, not as mere vandalism but as much more serious acts of hatred and I believe that our county has done much to begin to make it clear that our society simply can't tolerate this kind of behavior.

Mr. CONYERS. We appreciate that, Mr. Gilchrist.

Have you uncovered Klan or Nazi-type training camps or paramilitary situations in your State, or in your county?

Mr. GILCHRIST. We have not, to my knowledge, and I will ask the chief of police to comment if he has found any such camps in our county. We have had some recruiting and leafleting of KKK activities, but no such training.

Is that correct?

Chief CROOKE. That is correct.

Mr. CONYERS. What are the impressions that you get generally? As you know, we now have several Klan watches nationwide, we have the Bureau of Alcohol, Tobacco and Firearms monitoring for

the violations of firearms laws. Do you sense that these kinds of activities in particular are in existence in your general area in your State, or is yours one of the States that is excluded?

Mr. GILCHRIST. I think they are in existence in our State. I might ask Mr. Dean and the chief of police to comment on that question.

Chief CROOKE. Mr. Chairman, the Ku Klux Klan for the past 3 years has been very active in the State of Maryland, especially in the recruitment area. They have had several activities, and field gatherings in the attempt to recruit and generate membership in Montgomery County. Their headquarters is in Baltimore County.

There has been activity in Montgomery County, and just north of our border in Frederick County, which we have monitored very closely. There have been attempts at recruiting by individual members in Montgomery County, on street corners and in neighborhoods, with some rumored attempts in schools.

There was a tremendous effort by Baltimore County, State police, and Federal authorities in enforcement and apprehension in Baltimore County of one of the leaders of the Ku Klux Klan and swift prosecution after these arrests. I think that has had a chilling effect on the Klan recruiting in the entire State. But they are still in existence and they are still attempting, but I don't think they have been that successful.

Mr. CONYERS. Chief, which counties have had the most activity?

Chief CROOKE. Pardon me?

Mr. CONYERS. Which counties have had the most activity?

Chief CROOKE. Frederick County has probably had the most activities such as public cross-burnings, and organized cross-burnings, as part of their ceremonies. Baltimore County has principally been the head or the hub in the State of Klan recruitment throughout the State because the leader resided in Baltimore County.

Mr. CONYERS. How do you rank your State's activity with that activity that may be going on across the country?

Chief CROOKE. How do we rate?

I think we rate very low. From what I have read in intelligence reports and in the local media we have some activity, such as military camps actual training and military activities, but in comparison to some other States the organization particularly regarding firearms training and other training, is very low.

Mr. DEAN. The Commission is mainly concerned with the concept of providing support to the victims disseminating information, keeping statistical reports on incidents as they occur, and reporting any incidents we might know of to the police so that they can do the investigatory work.

Mr. CONYERS. So are you on top of the situation?

Mr. DEAN. I feel that we have the network reporting vigorously and the police providing us with contacts that they have that we don't have. I think that our contacts are very, very up to date. Our statistical data is very much up to date. As of the 15th of October we had approximately 87 incidents: 26 incidents involved placing swastikas on Stars of David; other incidents included cross-burning, verbal or written harassment, destruction of property, and things of that nature. About 23 blacks were targeted, as well as interracial couples, approximately 41 Jews, 5 Asians, and 15 of unknown origin. We are keeping this type of data so that we have some type

of physical profile to show what sections of the county it is happening in and who are the victims of this particular activity.

Mr. CONYERS. Do you get cooperation from other branches of law enforcement, FBI, the U.S. attorney's office, and others?

Mr. DEAN. Most of the contact we have had so far has been with the Department of Justice. They have worked with us very, very closely. We have also worked closely with the U.S. Commission on Civil Rights, but we have not worked with the other agencies.

Chief CROOKE. As far as law enforcement is concerned, Mr. Chairman, in Federal, State, and local jurisdictions throughout the country, the passing of criminal intelligence is excellent. From my criminal intelligence division I can get information from Federal, Maryland, or other State levels very quickly. Of course it has to be criminal intelligence.

Mr. CONYERS. I suppose you feel you are a model, then?

Mr. GILCHRIST. In terms of activity that is so repulsive, it is hard to be proud of anything that goes on in connection with it. However, I think we have established a model program that has been recognized, to some extent, as such. The main asset of our program is that it brings together all of the elements of the community to combat noted activity. I feel very strongly that law enforcement should be a major element.

We have to make clear that we intend to prosecute fully any of these activities. The private sector, particularly the churches and members of our community, should be speaking out on it. I think that we have done that. The network of neighbors program that we have has increased from 200 to 400. As far as we know it is a unique community program. As Mr. Dean said, the network has done a great deal to work with the victims of this kind of activity, because as you know a victim feels isolated and threatened. It is a terrible experience to have and we think that having people throughout the county who are reaching out to victims is extremely helpful in reducing fear and isolation as well as encouraging reporting and dealing with these cases.

Mr. CONYERS. I think you are a model.

What causes racial violence or racial hatred which then manifests itself in racial violence?

Mr. GILCHRIST. I think we all have difficulty in knowing. I think in part the typical response of some human beings to economic troubles is scapegoating. I think there is an increased level of scapegoating.

When public officials don't speak out there becomes a feeling of respectability and acceptability of such activity. That is why it is so important for each State and each political leader to speak out strongly against such activity, lest young people in particular think that it is acceptable.

Young people tend to forget or are unaware of history. The passage of time since the forties and the holocaust, and some of the early activities of the Klan, subdues the memory of how horrible these events can be. That is why it is so important to be sure that the schools make curriculums available that spell it out. The attention we are giving to it is beneficial in the sense that we are talking about things that were not talked about heretofore.

Mr. CONYERS. Mr. Dean.

Mr. DEAN. I think a major cause appears to be unrest throughout the entire county, our entire society in fact. It is an unrest that says I have got to do something. I feel trapped. I feel frustrated. Unfortunately the scapegoating concept does come up in those instances. An unbelievable degree of unemployment now means that there is an awful lot of competition for jobs. It means I have got to find somebody who is less fortunate than I am to dump on.

What's happening is that a lot of people are looking for a traditional whipping person to whip again. I think an awful lot of younger people are taking, an example from their elders—it's OK to do this, go ahead and do it. Your father was in the Klan. Your grandfather was in the Klan, and this is the way to express yourself.

Mr. CONYERS. Chief Crooke.

Chief CROOKE. The only thing I can suggest, Mr. Chairman, is ignorance. I think that is something that we in Montgomery County are bound to address as well as enforcement, intelligence communication and cooperation with many agencies. I think it all falls under the heading of ignorance, which would include racial or religious prejudice.

Mr. CONYERS. Thank you.

Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman, and I compliment the witnesses on the work that they are doing in Montgomery County, and I am pleased that for the many years I lived there I was able to pay three income taxes.

I have just one question, Mr. Chairman, and that is, as a result of the reporting mechanism that you have set up have you been able to develop any kind of a profile of perpetrators of these racially motivated acts?

Chief CROOKE. The reporting gives us a track record of what is occurring. To set up a profile requires arrests. In 1980 and so far in 1981 we have had 51 arrests. Half have been juvenile, half have been adult, most under 30, most white male.

You may think that's too small a number to set up a profile, but I think the profile that we discovered in Montgomery County would be unique to Montgomery County.

Mr. EDWARDS. What about education?

Chief CROOKE. Most of the juveniles were in high school, actively in school. I don't have that information for adults.

Mr. CONYERS. I hope the police chiefs' associations and some of the local law enforcement units which are national in scope will be apprised of and become interested in the work that is coming out of Montgomery County.

Chief CROOKE. Mr. Chairman, the Maryland Chiefs of Police Association has a very strong legislative committee and I am on that committee. They are very interested in this issue. Chief Belhan of Baltimore County is a very progressive chief of police. He is interested in this issue. The recent change of the State law making cross burnings or burnings of religious symbols a felony still has a loophole in it. Some people are now placing crosses and getting the same, emotional impact and not setting them afire. Therefore it does not fall under the felony statute.

This is something we addressed in our first meeting of this session as a loophole that State legislation can tighten up.

The people who read these laws are not all ignorant bumpkins. They know what the criminal impact is and they circumvent it through this loophole of not setting the crosses on fire.

Mr. CONYERS. Any further comment?

Mr. GILCHRIST. No, thank you, Mr. Congressman.

We have learned a lot from the hearing and we appreciate the opportunity to discuss it with you.

Mr. CONYERS. We are very grateful for your time, and we thank you all.

[The complete statement of Mr. Gilchrist follows:]

U. S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CRIMINAL JUSTICE
JUDICIARY COMMITTEE

STATEMENT OF

CHARLES W. GILCHRIST, COUNTY EXECUTIVE
MONTGOMERY COUNTY, MARYLAND
On The Subject Of

Violent Acts Motivated By Racial Or Religious Prejudice

Mr. Chairman, Members of the Committee,

I am grateful for the opportunity to appear before you today. I share the resentment of the vast majority of my fellow Montgomery County citizens at acts of violence based on racial or religious bigotry. Like the rest of the nation, we have become victims of bigots' attacks. Unlike many of our fellow citizens elsewhere in the country, we have mounted a counter-attack. We welcome allies who can help us in our efforts and we can offer assistance.

Let me describe, first, the nature of the population in our County because the increasing minority population, as well as the large percentage of Jewish people living in the County, has made this an extremely sensitive issue. The minority population in Montgomery County has increased in the last ten years. As of April 1, 1980, out of a total population of 579,053, Blacks comprised 8.8 percent, Asians 3.9 percent, and other racial minorities, 2.6 percent. Over the preceding decade, the white population decreased overall from 94.5 percent to 85.6 percent. Included in this 85.6 percent are people of Spanish origin who comprise 3.9 percent of the County population, and Jewish people, for whom the current estimate is 16 percent of the County population.

During all of 1980, twenty-five racially, religiously or ethnically motivated incidents were reported to the Montgomery County Human Relations Commission. Over eighty such incidents have already been reported this year. This increase is comparable to increases noted nationally by both the U.S. Department of Justice and the Anti-Defamation League of B'nai Brith.

Incidents reported in Montgomery County include cross burnings, swastika paintings, hate mail, harassment, and vandalism. Minorities targeted for attack consist primarily of Blacks and Jews, although incidents directed at Asians and interracial couples have also been reported. I am attaching as Exhibit A to this testimony, a Fact Sheet on the incidence of these offenses.

Let me say, here, that I do not believe that Montgomery County is uniquely the situs of such actions. It is nation-wide. Indeed, we have made it a point to encourage citizens to report such crimes so that we can assess the dimensions of the problem and deal with it. The reports reflect the confidence of our citizens that we mean business in our opposition to such conduct.

As evidence of this increase reached my desk, I wrestled with the tactical problem: if we give these incidents publicity will we encourage some people to copy it who would otherwise not torment their neighbors or, will we, alternatively, be generating discussion and opposition to this conduct? Frankly, there were extensive arguments for silence as well as for a public outcry.

I consulted the experts in the field - including the NAACP, the Jewish Community Council and staff people in the County government who help us relate better to our Black and Hispanic minorities. The judgment they gave was that if I was sure that these were racially or religiously motivated acts and if the trend was showing an increase, it would better serve the cause of justice to bring the problem out in the open.

Realizing the situation was reaching alarming proportions, the County Council President, Ruth Spector, and I summoned a meeting of 100 community leaders on June 24 of this year to explore solutions. There was unanimous agreement among the representatives of minority organizations, business, labor, religious, civic and government sectors that racial and religious attacks must be confronted head on.

As a result, in July of this year, the County Council and I created a Coordinating Committee on Hate/Violence to address the problem. The membership

is attached as Exhibit B to the testimony. The Committee is composed of representatives from all of the sectors which participated in the Community Leaders Meeting. The goal of the Committee is "To develop, implement and coordinate a plan of action to address hate/violence activity in Montgomery County, and to reduce its impact on the community." Objectives which must be met to accomplish this goal fall into four major categories:

(1) Assessing the needs of sectors represented by the Committee and obtaining information from agencies currently dealing with the problem;

(2) Obtaining a commitment from all sectors to address the concerns arising from hate/violence activity;

(3) Educating the community as to the scope of the problem, as well as methods of assisting victims;

(4) Implementing specific strategies, such as coordinating information, recommending organizational responses, recommending new legislation and encouraging enforcement of existing legislation, monitoring the role of the media, and recommending programs to deal with juvenile offenders.

Activities which have already resulted from the Committee include current efforts by the National Conference of Christians and Jews to develop a Communication Network among religious leaders. The Montgomery County Council of PTA's is planning a human relations workshop for local units. Also underway are plans for a symposium sponsored by the Montgomery County Chamber of Commerce to educate business leaders.

The Montgomery County government approach to these violent and senseless attacks on our citizens is that a strong public stand accompanied by concrete actions is called for. All relevant agencies are attempting to deal with the issue. Our Chief Administrative Officer has informed County agencies that activities such as recruitment by the Klan on County property constitute racial and religious harassment, a violation of the Civil Rights Act of 1964.

The Chief of Police has instructed his department to report all incidents and to enforce all appropriate laws vigorously. The State's Attorney's Office has indicated that it will prosecute such cases with the seriousness they deserve.

Aware of the important role of education, the School System has developed a multifaceted approach. A curriculum incorporating information about the Ku Klux Klan and other extremist groups, as well as material aimed at preventing prejudice and discrimination, is currently being implemented. School personnel have attended human relations workshops, and the Superintendent of Schools has requested the reporting of all racial and religious incidents which occur on school property. The union representating the teachers made this a high priority effort.

The Human Relations Commission records incidents, disseminates information, and represents County government agencies on the Coordinating Committee on Hate/Violence. The Human Relations Commission also sponsors the Network of Neighbors, a community group with over 400 members, which gives support and assistance to victims of hate incidents. These private individuals receive training on how to reassure the victims of racially or religiously based violence that they are not alone in the community - that their neighbors care. In addition, the Human Relations Commission, at the request of the Criminal Justice Commission, is developing an educational and counseling program for juvenile offenders.

We feel strongly that these offensive, destructive attacks on citizens cannot be tolerated in a civilized community. Programs aimed at preventing future racial and religious incidents must be pursued as well as programs which deal with the devastating impact on victims.

Maryland has made cross-burning a felony. State law also permits a judge, under certain conditions, to make parents financially liable for the damage done by their children. Thus, my County's efforts are helped by Maryland's efforts.

I do not profess to know why there has been an upsurge in this kind of criminal activity. Perhaps as World War II is farther behind us, we have neglected to teach succeeding generations the lesson that hate begets destruction of all values in society. Indeed, the lunatics who parade around with swastikas and deny the very occurrence of the holocaust should be shunned by our society.

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The people who copy the KKK night riders of the last century, burning crosses and assualting people whose only "offense" is a different skin color, cannot be permitted to equate their venom with rational dialogue.

We are doing what we can at the local level to marshall the entire resources of the community to demonstrate that these are not pranks - that we are dealing with particularly cruel crimes. This is the message from the public and the private sector of our County. Governor Hughes is helping at the State level.

It would be helpful if Federal officials, and nationally prominent people would echo the same message so that the perpetrators of these acts and advocates of this philosophy would be condemned by decent people -- and victims would be comforted by the knowledge that their neighbors share their pain. This is what we are trying to do.

EXHIBIT A

MONTGOMERY COUNTY, MARYLAND HUMAN RELATIONS COMMISSION

HATE/VIOLENCE INCIDENTS
FACT SHEET

National Statistics

Anti-Defamation League of B'nai B'rith (ADL) - recorded 377 anti-Semitic incidents in 1980, a 200% increase over 1979.. Over 700 have been recorded so far this year, a rate of more than double that of 1980.

Justice Department - from 1978 through 1980, noted a 550% increase in cases related to incidents generated by the Klan.

State Statistics

1/1/81 - 10/31/81: 218 incidents (statistics for September and October are incomplete).
40 cross burnings (7 occurred July through September).
Rest include:
assault, arson, vandalism, bombing, verbal threats, and mail threats.

County Statistics

1/1/81 - 10/31/81: 84 incidents (compared with 25 in all of 1980)

1981 Hate/Violence Incidents in County

Act:	
Cross burnings	9
Cross placing	2
Swastika/star of David	16

Rest include:
Verbal and written harassment, graffiti, vandalism and destruction.

*Target Group:	
Black	31
Interracial	2
Jewish	36
Asian	5
Ambiguous	8
Public Property - Multiple	2

Incidents have been evenly distributed across the county.

Montgomery County Human Relations Commission
Network of Neighbors (community support group for victims)
As of 10/31/81 - over 400 households

*A new classification system was instituted in November, 1981. The target group, when not clear, reflects the probable intent of the perpetrator. Hence, a swastika on public property is assumed to be directed against Jews, and "KKK" or a cross burning on public property is assumed to be directed against Blacks. Incidents labeled as "Ambiguous" are those which do not seem to have logical motivation, e.g., a cross burning on the lawn of a white Methodist family.

EXHIBIT B

Montgomery County Government

COORDINATING COMMITTEE ON HATE/VIOLENCE

Alan P. Dean, Executive Secretary
Montgomery County Human Relations Commission
6400 Democracy Boulevard
Bethesda, MD. 20817

Larry Pignone
National Conference of Christians and Jews
416 Hungerford Drive, Rm. 315
Rockville, MD. 20850

Barry Scher
Montgomery County Economic Advisory Council
President, Montgomery County Chamber of Commerce
Box 1804
Washington, D.C. 20013

Rev. Lincoln Dring
Community Ministry of Montgomery County
114 W. Montgomery Avenue
Rockville, MD. 20850

Marlene Gorin
Jewish Community Council of Greater Washington
1522 K Street, N.W. Rm. 920
Washington, D.C. 20005

Zoe P. Lefkowitz
President, Montgomery County Council of PTAs
11508 Colt Terrace
Silver Spring, MD. 20902

Micheal Gildea
AFL - CIO
815 - 16th St., N.W., Rm. 309
Washington, D.C. 20006

Roscoe P. Nix, President
Montgomery County NAACP
1161 LeBaron Terrace
Silver Spring, MD. 20902

Wilma Fairley
Montgomery County Public Schools, Superintendent's Office
850 Hungerford Drive
Rockville, MD. 20850

Elizabeth Spencer
Montgomery County Public Schools, Board of Education
850 Hungerford Drive
Rockville, MD. 20850

Henrietta Villaescusa
IMAGE and MANA of Maryland
12719 Helen Road
Silver Spring, MD. 20906

Judy Catterton
Office of the State's Attorney
50 Courthouse Square
Rockville, MD. 20850

Bernard D. Crooke
Chief of Police
Montgomery County Police Department
2350 Research Blvd.
Rockville, MD. 20850

11/81

TESTIMONY OF PATRICK V. MURPHY, PRESIDENT, POLICE FOUNDATION

Mr. CONYERS. Our final witness is the president of the Police Foundation, Patrick Murphy, who has served as police chief in three of the most crime-ridden areas in America.

We welcome him.

We incorporate his testimony and invite him to participate in his own way.

Mr. MURPHY. Thank you.

Mr. CONYERS. Excuse me, there is one more witness from the Bureau of Alcohol, Tobacco and Firearms.

Thank you.

Mr. MURPHY. Thank you very much, Mr. Chairman and Mr. Edwards.

I have submitted a prepared statement and, Mr. Chairman, I would like to comment briefly that some of the tragic acts of violence which concern us are often extremely difficult cases to solve.

A concern that every police chief and every police department should give a high priority to, in my opinion, is the problem of organized conspiracy and any evidence that organized activities might be developing or occurring. Through a variety of methods which I have attempted to outline in my statement, I think prevention should be thought of by a police chief as the most appropriate approach.

Among the things a chief can do is to attempt to have minorities adequately represented among the personnel in his agency, and to work cooperatively with all law enforcement agencies, local, State and Federal, in the exchange of information.

I think one of the weaknesses in law enforcement generally, in the United States, is a very inadequate system of exchange of information.

I recall specifically in 1971, after 11 New York City police officers had been killed, appealing to the Director of the Federal Bureau of Investigation to improve the availability of information that could be exchanged throughout the Nation. It was our experience that a problem manifesting itself in St. Louis, for example, resulted in a short period of time in the shooting or death of a New York City police officer.

It is extremely difficult to obtain that kind of valuable information without the assistance of the Federal Government. I know we are in a time of fiscal restraint. But one of the reasons I regret what is happening with the Federal law enforcement assistance program is that perhaps not enough support will be available in the future to continue the development and the improvement of systems of information. Exchange of information which can be useful with this problem as well as many other organized crime, and violence problems.

Mr. CONYERS. Were you chief of police at the time you made that appeal?

Mr. MURPHY. Yes, I was then police commissioner in New York.

Mr. CONYERS. Now, in what direction are we moving in terms of a compilation of crime statistics in this country?

Mr. MURPHY. The availability of criminal statistics is improving every year. The Federal Bureau of Investigation has improved crime reporting. For example, the Uniform Crime Report each year has statistics from more police departments than in previous years. More useful information is being added so that the volumes which may have been that thick 10 years ago are now two or three times as thick.

I am very positively impressed with the leadership of Judge Webster as I was with Director Clarence Kelly. Those of us in law enforcement are very pleased with the improvement that we have seen in the exchange of information.

I am sorry to report that there was a time when many of us in local law enforcement thought there was a one-way street in the exchange of information with the FBI. That has changed dramatically in recent years. It is a decided improvement, but any agency can only do what its budget will permit it to do. I know the law enforcement agencies as well as the law enforcement assistance program will be suffering from appropriations restraints.

Mr. CONYERS. Well, has the quality of statistics furnished by local police agencies to the FBI improved?

Mr. MURPHY. I think the quality of the statistics is improving concerning criminal intelligence information that would apply to this specific problem.

We have a long way to go. I don't mean to imply for a moment that we are in good shape. I don't think policing in the United States is in good shape. I think it is in bad shape, will continue to be in bad shape for a long time to come, and the exchange of information is one of the critical aspects of this problem.

Neither the States nor the Federal Government yet have provided adequate backup support systems for criminal intelligence information generally. That is why so many criminals are able to continue to beat the system in ordinary street crime. Certainly, this same problem is similar in many respects to organized crime.

Mr. CONYERS. What about the unfortunate reported problem of Klan involvement with some local police organizations? Are you aware of that?

Mr. MURPHY. Mr. Chairman, I don't claim to have a good direct knowledge, but I have read a number of reports. I am aware that there have been cases of Klan membership or some kind of Klan involvement among police officers.

Only on Monday the newspapers reported an incident from Houston, Tex. It is not clear what that was all about, but apparently 10 police officers were suspended, and obviously the investigation is now underway. The implication is some kind of racial discrimination or hostility or perhaps even violence in that case.

This is just an example, but it is a problem because very often police officers in their attitudes are reflective of what is going on in the general community. If there is a problem, it is possible that one or more police officers will reflect that same negative attitude as the community.

Mr. CONYERS. This problem also applies, as it has been reported to the subcommittee, in the area of correctional employees, those who work in prisons. It has been reported that those persons have

been made the object of Klan, neo-Nazi, and other hate group recruiting.

Mr. MURPHY. Yes. In Upper New York State, Mr. Chairman, there was a specific case within the past few years of Klan recruitment among corrections officers in the New York State prisons. I believe the administration of the State agency addressed that problem courageously and promptly and it has been resolved, but there was that experience.

Mr. CONYERS. Well, now, given this as a national phenomenon, what recommendations can be made at the various levels of government by the foundation or by you personally in terms of dealing with it?

Here we have an incredible collusion and collision of law enforcement officers, sworn members of the government, who are specially empowered with the rights and authority to take life if necessary, implicated in the most undermining activity of our legal system.

Mr. MURPHY. I can think of few problems that should give us more concern, Mr. Chairman.

One of the underlying difficulties is that our police departments are far from representative of the communities they serve. Our corrections systems are far from representative of the communities they serve, and there is a very good question about our corrections systems, specifically our prisons, since we incarcerate minorities disproportionately, as to whether the representativeness should not be related to the populations of the institutions as well as to the general population of the State.

It is a complex problem. I don't mean to suggest any simple solutions. But both in policing and in corrections, and, of course, even in prosecution it would be healthy, in my opinion, to make the personnel in all of those important functions of government more representative of the communities.

Mr. CONYERS. Well, are we making any progress?

Mr. MURPHY. I am sorry to report, Mr. Chairman, that in New York City, Chicago, and Philadelphia today there are fewer black police officers than there were 15 years ago. In many cities the curve is moving in the opposite direction. As a general proposition we are making progress nationally, but, slowly in specific cities, as a result of budget cuts, layoffs, retirements, and other factors. Most people are very surprised when I quote that statistic to them, but it is a fact.

Mr. CONYERS. Can the foundation have an impact upon the national police associations and the local police units in terms of bringing to their attention some of the new techniques that are being utilized in combating racially motivated violence?

Mr. MURPHY. Yes, Mr. Chairman. I know you know we are not a membership organization ourselves. We are a research nonprofit organization although we are honored to have assisted in the formation of the National Organization of Black Law Enforcement Executives and the Police Executive Research Forum. Both organizations are doing excellent work on these problems. And through our research reports and our statements we attempt to disseminate new knowledge.

For example, we do a great deal of work on the controversial issue of police use of deadly force. This issue is related to the prob-

lem we are addressing today in the sense that when there has been a violent incident in a community it escalates emotions on all sides. We see backlashes in various directions when these things occur.

So we do attempt to have our impact, but we are not a membership organization. The membership organization has its own board and officers and policy.

Mr. CONYERS. Couldn't your organization chief develop a plan that introduces the newer techniques to the Police Chiefs' Association and other police associations, State and national?

Mr. MURPHY. Yes. Mr. Chairman, within the limits of our own budget, we have done demonstration programs and will continue to do demonstration programs with individual departments or groups of departments. We then disseminate the reports of those experiences which we believe to be very helpful in changing policies and in making police administrators aware of some of these issues. Many are more complex than would appear on the surface.

It is very helpful to them to learn how some of these problems are solved in particular departments.

Mr. CONYERS. What is the foundation's relationship with the Police Chiefs' Association?

Mr. MURPHY. I wish it were better, Mr. Chairman. I regret that my opinions often differ with many chiefs, although I am happy to have strong support from many other chiefs.

Mr. CONYERS. Well, it is rough being in a minority situation, Chief. I can understand that.

Mr. MURPHY. I know what you mean, Mr. Chairman.

Mr. CONYERS. Well, just for my edification, are there other national police organizations?

Mr. MURPHY. Of course the largest organization is the International Association of Chiefs of Police.

Mr. CONYERS. That is the one I have been referring to.

Mr. MURPHY. It includes in its membership most of the police chiefs in the country, several thousand of them, because we have so many departments in the country. Many of them are from smaller departments.

Then there are the unions and police associations. Frankly, many enlightened police chiefs have a great deal of difficulty making progress because of union resistance.

For example, in the minority recruitment issue, the minority promotion issue, some of the strongest resistance has come from the police unions.

Some of the police unions have brought petitions in Federal courts when police chiefs have attempted affirmative action or some effort to improve the situation.

So in all fairness to the chiefs it must be explained that there is a great deal of power in the unions and associations. Those organizations have become much more political in recent years, endorsing candidates for elective office, and contributing to political campaigns. I am sorry to say that I see a part of the problem rooted in political demagoguery and news media sensationalism, which sometimes feeds unhealthy attitudes in certain segments of the community. The attitudes manifest themselves sometimes in violence or cross-burning, or racial discrimination.

Mr. CONYERS. Can I assume that the foundation has a similar relationship to the union and associations of individual police officers that it does to the organizations that revolve around police chiefs?

Mr. MURPHY. Yes, Mr. Chairman. And we have been happy to work with some of the unions. On particular problems we have gotten support from some of the unions.

On an issue like the deadly force issue some of the police chiefs organizations have sought our help and we have been able to be of great assistance to them.

For example, in the State of Delaware all of the police chiefs of the State through their organization have adopted a policy of restraint in the use of firearms by the police. It is a model policy, and we were very happy to be called upon and to be able to provide research assistance to the Delaware chiefs.

We have also helped many police chiefs in the country in changing their policies and training to reduce the levels of violence involving police officers and the use of force of any kind, whether with weapons or without weapons.

Mr. CONYERS. Well, thank you for your testimony.

Just for my information, how many local police units are there in the United States of America?

Mr. MURPHY. We are not sure, but there are more than 17,000 and probably 20,000 police departments in the country.

Mr. CONYERS. Townships, villages, unincorporated——

Mr. MURPHY. Yes; 90 percent of them have fewer than 10 officers. And perhaps there is a point to be made about that. Many of the small departments, understandably, cannot afford a sufficient level of training, experience, and the technical expertise. If they have an incident, for example, they would not be able to mobilize the talents Chief Crooke from Montgomery County could mobilize in his department.

Mr. CONYERS. I thank you very much.

If you have no concluding comments we welcome your prepared statement and the additional discussion you have brought to the subject.

Mr. MURPHY. Just, Mr. Chairman, I commend you for holding these important hearings. I think it is a very timely subject and we stand ready to be of any further assistance if we might be.

Mr. CONYERS. Well, we have code hearings that touch on a lot of police responsibilities, including incarceration, corrections, and the sentencing disposition. I think your organization should look at these provisions and feel free to provide testimony on them.

Mr. MCCOLLUM. Mr. Chairman, may I at least direct him in that direction?

Mr. CONYERS. Let me recognize our colleague from Florida, Mr. McCollum.

Mr. MCCOLLUM. As the chairman indicated we are in the middle of a code review and although you are certainly probably not prepared today with the background on that, I would like to particularly ask you to look at one area.

As you know, under the present Federal law if somebody is shot by a police officer under color of law, if they are injured or killed or whatever and there is excessive use of force involved in that, whether there was an intent to deprive the person of a civil right

or not you have a remedy in the courts under civil law to collect damages and so on.

There are quite a number of people who believe that because of the oftentimes difficulty of grand jury proceedings in the State level the obvious, and I understand it, desire to protect the police from having public scrutiny that would detract from the morale and deter the interest of the public causes they do perform, frequently overzealous prosecutors on one side of the coin sometimes go overzealous the other way and do not on a State level and local level prosecute the actual criminal conduct under State law that might be there.

As I understand the law federally in the criminal area in this light there is a need for there to be and a specific intent to deprive a person of the constitutional right before the Federal authorities can be involved.

What I am curious about is what your organization, what you think of suggestions made to increase the power of the Federal Government in this area of criminal prosecution, of whether or not we should do away with the current restriction on the intent, should we bring in specific crimes that absolutely are committed by police officer under color of law or are Federal crimes just by the virtue of the fact that the police officer was involved, should we simply retreat from the specific intent and say whenever a civil right is violated, that is whether it is racially motivated or otherwise where it is just simply, you have done it recklessly, you have done it with excessive force, you have maybe committed manslaughter if you will, and have him committed to a higher offense, but you have done it in a way you shouldn't have, is not justifiable, should that be a Federal crime? I don't know that you are prepared to answer that today, but I know with the chairman we are all concerned with that.

Mr. MURPHY. I would not want to attempt a definitive answer today, Mr. Congressman. But I think the involvement of the Federal Government, specifically in recent years of the Federal Bureau of Investigation in some of the cases of excessive use of force by State and local police, has been a very, very positive development.

I have the highest admiration for Judge Webster, and before him, Director Kelly in pursuing those investigations. In American law enforcement the Federal Bureau of Investigation is held in such high esteem that when it finds reason to pursue a Federal investigation it has an impact beyond that jurisdiction, throughout the country.

I think the Federal Government does need adequate tools to do that job.

Mr. MCCOLLUM. Let me just throw this by you in conclusion, not to take up time in an area that again you aren't ready to testify in, but I just want to give you food for thought.

I know of a case in my home State which I was involved with, not in the criminal area but in the civil area, but I was aware of the criminal process that had gone on. A woman was shot to death in her home by a police officer and there was some question of a ballistic study to try to determine powder on a nightgown and so on, how far away was the person who did the shooting at the time, and whether or not the statement of the police officers were accurate with respect to struggle, or was she really shot clear across the room, and the FBI did get involved.

The studies were sent a way for, but the fact of the matter was the grand jury in that case at the State level was convened within 2 days of the shooting and returned a particular bill that said there was no need to indict or to try a person, and yet the FBI study didn't come back for a month. Not any criticism of the FBI, that is just the way it has to work.

And they didn't wait around for that. They weren't going to wait around for it. And privately, the prosecutor involved informed me that you know, this is too big a thing for us in this county, we can't afford to have a police officer sitting around or our police department waiting on that.

But the Federal prosecutors might have felt a little differently. So it is that kind of thing that I would like for you to examine.

In light of that I don't want to see us going down the course of action up here that unduly hampers our police enforcement in this country. I don't want to see police officers put on the pedestal more than they should be. Most of them are very upstanding citizens, of whatever race they are, and they are trying to do their job, and gosh, I don't want to see that happen either.

I think there is a balance involved in this.

But I am concerned, and I think all of our committee is.

Thank you, Mr. Chairman.

Mr. MURPHY. I agree.

Mr. CONYERS. Well, then, that means you will be back before us.

Mr. MURPHY. It will be a pleasure, Mr. Chairman. Thank you.

Mr. CONYERS. We appreciate you coming before us, Chief Murphy, as always.

[The complete statement of Mr. Murphy follows:]

PREPARED STATEMENT OF PATRICK V. MURPHY, PRESIDENT, POLICE FOUNDATION

I am honored by your invitation to appear before this distinguished committee and I commend you for using this forum to bring to the nation's attention the recent, troubling rash of acts of criminal violence against members of minority groups.

My testimony is from the perspective of a career of 35 years in American policing. Policing has undergone many changes in those years, but the basic job of the police today is the same as when I was a rookie patrolman in the Red Hook section of Brooklyn. The job of the police is to control crime and maintain order.

For many, controlling crime evokes the image of police officers nabbing burglars, arresting muggers, deterring vandals. Maintaining order suggests police officers keeping in line crowds of unruly demonstrators or keeping the peace at a rock concert. And, of course, it is vital that the police do this work.

But the job of controlling crime and maintaining order includes aspects that go beyond what most people consider to be typical police work. Controlling crime and maintaining order includes helping to keep damped the fires of bigotry and rage that can erupt in a community.

If the police are to control crime and maintain order, they must be alert to, and prepared for, the occasional waves of violence and hate that have occurred in this nation's history. One of the principal responsibilities of the police in a democratic society is to protect the weak and the vulnerable, who often are members of minority groups, from becoming prey to violence.

Herman Goldstein, among the most thoughtful of scholars who examine American law enforcement, notes that "a democracy is heavily dependent upon its police * * * to maintain the degree of order that makes a free society possible. It looks to its police to prevent people from preying on one another; to provide a sense of security; to facilitate movement; to resolve conflicts; and to protect the very processes

and rights—such as free elections, freedom of speech, and freedom of assembly—on which continuation of a free society depends."

Mr. Chairman, your staff this year compiled a state-by-state list of recent acts of violence against blacks and Hispanics. This list should act as a warning to the nation's police agencies that they must be alert to the possibility of racial violence in their communities and be prepared to deal with such violence when it first occurs.

A good local police department—one that is skillfully managed, well-trained, and representative of the community it serves—will be able to detect racial tensions as they build up and be ready to deal with the possibility of violence. That is because a good police department is close to its community and its officers receive a continuous stream of information about the temper of the community.

Information from citizens is the lifeblood of successful policing. If citizens trust their police officers, they will provide the information police must have to deter crime. Just as citizens tell the police about suspicious behavior that may mean a neighboring house is being burglarized or a street robbery is about to occur, so, too, citizens usually know when the racial harmony in a neighborhood is being disturbed. It is therefore the local police, not state or federal agenices, who have the capacity to be the first to detect the possibility of violence against minorities. This is one more reason why it is important for a police department to have the confidence of its community and to be responsive to the information it receives.

When violence does occur, the challenge to the police agency is to detect quickly and apprehend those who are responsible. The police must be able to determine whether the violence is merely the result of perpetrators seeking out random targets of opportunity or has a racial motivation. In my experience, criminal violence against minority group citizens is usally the work of young, poorly educated people. It is most often youth vandalism tinged with racial hatred. A good police department can determine who is responsible for such violence. The best deterrent is quick apprehension and quick prosecution of the people involved in the violence.

Being able to gauge the temper of the community, being alert to the possibility of violence against minorities, being able to apprehend those involved, sometimes requires the establishment of a special unit within a police department. If a community has had a history of acts of criminal violence against minorities, then a wise police chief will make a key subordinate responsible for regular monitoring of the state of race relations within a community. The police chief also will have ready contingency plans to deal with such violence if it appears.

If there is a cross burning or, worse, a racially motivated physical attack on a member of a minority group, the police department should be prepared not only to apprehend those responsible, but also to make clear to the community that the department's officers are putting special emphasis on patrols and other strategies designed to deter immediately any further occurrences.

If, for any reason, a police chief fails to respond quickly and appropriately to acts of criminal violence against minority groups, then that chief contributes to the climate of lawlessness that such acts represent. There can be no question that ignoring or wishing away racially motivated attacks on citizens amounts to a dereliction of duty on the part of the police chief. Most police chiefs know what is going on in their community most of the time or they would not have the political skills necessary to obtain the job in the first place. For a police chief to learn that racial tensions are rising and that attacks against members of minority groups are occurring and to do nothing is to surrender to the forces of ignorance and hate. The police chief cannot evade responsibility for enforcing the law. Neither can the police chief fail to provide elements necessary to protecting the rights of members of minority groups.

Education and training, not surprisingly, are important elements in a successful police agency program to deal with criminal violence against minorities. Police officers who have received some college-level education probably have had enough background in the history of this nation and in the social sciences to put in perspective local occurrences of violence and racism. Criminal attacks on racial and ethnic minorities have been a police problem at least as far back as the activities of the Know-Nothings of the mid-19th century. An officer who has studied the causes of racism should be better able to understand and deal with local eruptions of violence.

Local police departments' training programs should include instruction geared to making the department immediately responsive to violent acts against minorities. That training also should stress keeping the individual patrol officer aware of evidence of possible racial confrontations and violence in the community.

A police department which, in the composition of its personnel, represents the community it serves is likely to be able to read the disposition of that community. This is another reason why the racial composition of a police department should reflect the racial makeup of the community. In my experience, a police department that attempts to recruit and select blacks and other minorities for its ranks gains the trust of minority members in the community and is a better police department for its efforts.

The officer on patrol represents the community's principal 24-hour-a-day, seven-day-a-week service agency. That officer, if educated and trained to understand the area he or she patrols, is the key person in gauging the potential for racial unrest and the possibility for attacks on minorities. Police chiefs should make certain that their command staff are able to gather and interpret the information the patrol officers pass along.

In sum, the job of the police in controlling crime and maintaining order includes being aware of the state of race relations and being alert to, and prepared for, acts of violence against members of minority groups. If a community has a history of racial violence, then a police chief must be especially on guard against new flareups and should establish a special monitoring and planning unit. If flareups occur, the well-managed police department will be quick to investigate the incident and apprehend those responsible. The message should be that the police department's full resources will be directed against racially motivated acts of violence.

Although cumulatively these acts of violence have national impact, individually they must be dealt with on a local level. The responsibility for dealing with this violence lies with the local police department and the community it serves.

Thank you for the opportunity to testify on this important issue. I will be pleased to answer any questions you may have.

TESTIMONY OF ROBERT E. SANDERS, ASSISTANT DIRECTOR, CRIMINAL ENFORCEMENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. CONYERS. Our final witness for today is the Assistant Director for Criminal Enforcement in the Bureau of Alcohol, Tobacco and Firearms, Mr. Robert Sanders, who, in addition, has served as the head of the Organized Crime Branch of BATF and has been the Regional Director of Investigations.

We incorporate your testimony and welcome you before the committee. You may proceed in your own way, sir.

Mr. SANDERS. Thank you, Mr. Chairman.

I hear the buzzers and I get the impression that everybody is in a hurry, and so I will proceed by summarizing some of the testimony that has already been submitted.

As you are aware, Mr. Chairman, Treasury is currently studying to what degree ATF must sustain budget reductions in fiscal year 1982. In that context it is examining the possible reallocation of functions of this agency to another or other enforcement agencies.

In whatever agency the firearms and explosives functions continue Treasury will seek to enhance the delicate relationships of that agency with State and local authorities to impact on violent crime at the local level.

Racially motivated violent crime is particularly repugnant in a free society such as ours. Those who resort to violence to harm or threaten minorities always use firearms or explosives. They must. Firearms and explosives are the sine qua non of racially motivated violence.

The use of explosives is most often indiscriminate in nature and in many cases causes death and damage to whole groups of people rather than individual persons.

(Note.—Patrick V. Murphy, president of the Police Foundation, has headed police departments in New York City, Detroit, Washington, and Syracuse, N.Y. The Police Foundation is a Washington-based nonprofit organization dedicated to fostering innovation and improvement in policing.)

When firearms and explosives are used in violent crime ATF has a statutory mandate to initiate investigations. The role of ATF is limited by narrow jurisdictional boundaries, as contrasted with the broader jurisdiction for civil rights violations found in the Department of Justice.

This in no way, however, diminishes the efforts of ATF nor its success in concert with State and local agencies in applying Federal investigative expertise.

The fine men and ladies of ATF are particularly sensitive to racially motivated crimes.

Mr. CONYERS. Mr. Sanders, could we suspend here until we have taken the vote that is in progress on the floor right now?

Mr. SANDERS. Certainly, Mr. Chairman.

Mr. CONYERS. The committee will stand in brief recess.

[Recess.]

Mr. CONYERS. The subcommittee will come to order. Mr. Sanders may continue.

Mr. SANDERS. Thank you, Mr. Chairman.

If I may proceed I would like to just recite some significant cases.

In Baltimore, Md., in the fall of 1980, ATF initiated a case on four persons in the Delaware/Maryland area who were selling substantial numbers of firearms without the proper Federal license. All were members or associates of the Ku Klux Klan in either Maryland or Delaware.

The two main suspects in the case were the Imperial Wizards of the KKK in their respective States.

During this investigation an undercover officer of the Maryland State Police was advised by one of the principals of a plan to bomb the headquarters of the National Association for the Advancement of Colored People in Baltimore, Md.

Richard Savina, the Imperial Wizard in Maryland, provided a gasoline bomb to the undercover officer for use against the NAACP Building. ATF, local and State police arrested him. He was tried, convicted of possession of a destructive device, and received a 15-year sentence in the Federal penitentiary for his participation in this violation.

Savina's coconspirator, William Sickles of Delaware, the other Imperial Wizard, was convicted of Federal firearms violations in Delaware and received 5 years in the Federal penitentiary.

In Chattanooga, Tenn., in July 1980, three members of the Ku Klux Klan were tried in State court for an alleged shotgun assault against four black persons. The jury acquitted two of the defendants and gave the third defendant a 20-month sentence. The acquittals triggered riots, burning and shootings in the Chattanooga area and received extensive nationwide press coverage.

In the following days numerous black leaders and known members of the KKK converged on Chattanooga. The tense situation between the groups continued to mount throughout that week.

On July 26, 1980, the self-proclaimed Titan of the United Empire of the Ku Klux Klan and two associates were arrested by a Chattanooga police officer after a high-speed automobile chase.

During that chase officers observed several items being thrown from the car by the suspects.

The suspects, incidentally, were all dressed in full military camouflage fatigues with KKK emblems sewn on the shoulders.

ATF assistance was requested and a search of the vehicles and portions of the roadway by local police and ATF agents resulted in the recovery of a 6-volt battery, an alarm clock, and numerous blasting caps.

ATF used a trained dog to locate explosives and were successful in locating one stick of dynamite which was thrown from the vehicle during the chase.

On March 17 of this year two of the three defendants were convicted in the State court and received prison terms.

In November 1979 ATF began an investigation in Asheville, N.C., of Frank Braswell and five associates for suspected possession of explosives and various firearms charges.

Braswell, a member of the American Nazi Party and the Ku Klux Klan in North Carolina, boasted to an undercover ATF agent that he would get the prosecutor of the persons who were involved in the Greensboro, N.C., shootout.

That shooting occurred between the Klan and the Communist Workers Party on November 3, 1979, when five members of the Communist group were killed. Braswell and his associates revealed a plan to the undercover agent to take violent action if the accused Nazis and Klansmen were in fact convicted for the killing of the five members of the Communist Workers Party.

On March 2, 1980, a Federal grand jury in Asheville, N.C., indicted Braswell and five others for conspiracy to use explosives and for terrorist attacks against property in Greensboro, N.C.

The indictment alleged that the attacks were to consist of dynamite bombings directed toward petroleum storage facilities, a fertilizer plant in the vicinity of Greensboro, N.C., and a shopping mall in the downtown area of Greensboro.

On September 18, 1981, a Federal jury convicted Braswell and all five associates of the charges stated in the indictment. Braswell and two of his associates received a 5-year prison sentence while the three others received probation.

In Salt Lake City, Utah, ATF assisted the Salt Lake City Police Department in an investigation of Joseph Paul Franklin who was the subject of a nationwide manhunt after he murdered two black males in Salt Lake City, Utah.

Franklin had come to the focus of ATF in Louisville, Ky., because of numerous firearms purchases in violation of the Gun Control Act.

Franklin is a self-proclaimed white supremacist with outspoken racist attitudes. ATF, in addition to developing its own case was actively assisting State and local law-enforcement agencies throughout the country in the attempted recovery of firearms purchased by Franklin which could possibly be linked to the many crimes that Franklin was suspected of committing.

ATF was instrumental in arranging an interview between the Salt Lake City Police Department and an ATF informant in San Francisco, Calif. That led to the identification of the murder weapon in the Utah killings.

One of the more notable crimes in which Franklin was a primary suspect was the shooting of Urban League President Vernon Jordan in May of 1980 in Fort Wayne, Ind.

ATF did develop firearms charges against Franklin, but they were dismissed by the U.S. attorney because of the fact that Franklin was convicted of the murders.

In Nashville in May of 1981 ATF concluded the investigation of a group who had conspired to bomb a Jewish temple in the city of Nashville. Six persons were arrested after ATF and the Nashville Police Department halted their plans to place the destructive device. A fake bomb was substituted by ATF and the arrests took place as the defendants actually placed the fake device at the temple.

Of the six defendants, three were admitted members of the Ku Klux Klan and two claimed membership in the American Nazi Party. The trial is pending on four of the six while two have already pleaded guilty to the Federal explosives violations.

I trust that these case summaries may demonstrate to the committee how it is that ATF actively investigates to develop evidence of racially motivated crimes, and at this point I would be happy to respond to any questions that the committee may have.

Mr. CONYERS. Thank you very much.

What is the relationship between ATF, the FBI and the U.S. attorney's office?

Mr. SANDERS. The relationships with respect to racially motivated crimes would be of course that ATF's jurisdiction only comes into play if there is reason to believe or suspicion or an allegation that a violation of either the firearms or the explosives laws has taken place.

The FBI's jurisdiction is much, much broader in terms of the civil rights, 241 and the other tools that this Congress has provided to the Department of Justice.

With respect to U.S. attorney's offices ATF has an excellent relationship, sharing of information, and it is just excellent in every judicial district that I am aware.

Mr. CONYERS. How do you find out about possible violations of Federal firearms laws?

Mr. SANDERS. Well, each special agent in the employ of ATF maintains informants on his own, in addition local jurisdictions, State and local officials of every kind in every place provide information to ATF. And we reciprocate in kind.

As we develop information from our informants of violations without our jurisdiction we share that information and sometime the informants willingly.

Mr. CONYERS. So groups that have potential for causing trouble could be infiltrated by Alcohol, Tobacco and Firearms?

Mr. SANDERS. Yes, sir, and we have done that work extensively.

Mr. CONYERS. That would apply, presumably, to all of hate groups?

Mr. SANDERS. Yes, sir, it would.

Mr. CONYERS. And potentially other violent groups?

Mr. SANDERS. Yes, sir. Groups or individuals.

Mr. CONYERS. So that one group could be infiltrated by Alcohol, Tobacco and Firearms and FBI?

Mr. SANDERS. It is possible, sir.

Mr. CONYERS. And possibly other local and Federal law enforcement agencies, including the Drug Enforement Administration and the Secret Service?

Mr. SANDERS. Yes, sir.

Mr. CONYERS. And Defense Intelligence as well?

Mr. SANDERS. It is possible, sir.

Mr. CONYERS. So that there could be more agents than there are other members of the organization?

Mr. SANDERS. It is entirely possible, Mr. Chairman. I think the safeguard is the coordination and the cooperation between the various elements of the criminal justice system within the Federal Government.

Mr. CONYERS. That is why I raised the question. What is the relationship? First of all, how would you know that there were other agents? Could there not be an instance in which an ATF undercover agent is unwittingly talking to an FBI undercover agent? In the theory of statistics that must have happened at some point.

Mr. SANDERS. I am saying it is possible, Mr. Chairman.

Mr. CONYERS. Well, I am saying it is possible, too. I am asking you, hasn't it happened in fact?

Mr. SANDERS. Not to my knowledge, it has not. On any of these investigations.

Mr. CONYERS. Was there not a time when one of the Communist organizations had more undercover agents of Federal varieties than real members in it?

Mr. SANDERS. I have no personal knowledge of that, Mr. Chairman. I have read that.

Mr. CONYERS. I have, too. I thought you might be able to help me document it.

Mr. SANDERS. I have no personal knowledge, sir.

Mr. CONYERS. Well, now, in the one case involving racially motivated hate groups, this Greensboro matter that you and other witnesses have mentioned here today; can you recount the Alcohol, Tobacco and Firearms role in that matter?

Mr. SANDERS. Of my personal knowledge I am aware that ATF had an undercover agent operating in Greensboro.

Mr. CONYERS. So am I.

The question is, what can you tell us in connection with their activity and your findings in the matter?

Mr. SANDERS. Perhaps, Mr. Chairman, I could respond to that rather than to give an extemporaneous answer. I was not in this position when those events occurred, but I would be happy to respond to that.

Mr. CONYERS. I want you to consider, too, any information that might bear on another point you made in another matter reported in your testimony, of whether there were any threats made with reference to the outcome of the trial that could have affected the disposition of the trial at the State court level.

Mr. SANDERS. Yes, sir.

Mr. CONYERS. That could be an important area of concern, could it not?

Mr. SANDERS. I would be happy to respond to that.

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Mr. CONYERS. It is my understanding that your organization has had some activities in terms of the investigation and reviewing of the paramilitary camps and training camps being operated by the Klan and other organizations. If that is true can you give me some detail about this?

Mr. SANDERS. Yes, sir, that's true.

We have had a number of investigations initiated as a result of allegations of violations of the Federal firearms and explosives laws by members of paramilitary groups, the KKK and American Nazi Party, posse comitatus and others. We have used methods available to us. We have worked undercover in those situations and have not in any of those investigations uncovered any violations of the Federal firearms and/or explosives laws.

Mr. CONYERS. In no cases?

Mr. SANDERS. In no case have we with respect to the paramilitary training.

Mr. CONYERS. You mean in every paramilitary camp the KKK registers in conformance with Federal law all of the weapons and ammunition that they use?

Mr. SANDERS. In investigations that we have conducted most of them were based on allegations that, of the use of automatic weapons by these military groups, and our investigations have indicated that there have been no possessions which would require registration of title 2 or automatic weapons, but rather they were legal, semiautomatic firearms which would not be a violation of Federal law absent some other event co-occurring, such as the person being a prohibited person or one proscribed by the statute.

Mr. CONYERS. Well, these weapons would have to be registered pursuant to Federal law whether they were automatic or not, isn't that correct?

Mr. SANDERS. No, sir, there are no registration provisions in the Federal firearms law.

Mr. CONYERS. In other words, anybody can own a gun in the United States without complying with the Federal laws on the subject?

Mr. SANDERS. Well, by complying with the Federal laws.

Mr. CONYERS. Well, I am saying without complying with the Federal laws.

Mr. SANDERS. Well, I think I am confused, Mr. Chairman.

Anyone is entitled to possess a firearm if he is in compliance with the Federal laws.

Mr. CONYERS. Well, let's start at the beginning.

What are the Federal laws on the possession of a firearm? What are the laws that you are implementing?

Mr. SANDERS. With regard to possession or receipt unless someone is proscribed by statute, such as a convicted felon, or a narcotics addict, or illegal alien, or the other categories, there is no prohibition on possession of firearms.

Mr. CONYERS. Well those are some pretty large categories. What if the gun is stolen? If it's not registered?

Mr. SANDERS. If the guns are stolen there is a possibility of a Federal violation if the person knowingly transported them interstate. Yes, sir, that would be an angle that we would be pursuing in these investigations.

Mr. CONYERS. Then to investigate a paramilitary camp for violation of laws you would be looking for several possible violations?

Mr. SANDERS. Yes, sir.

Mr. CONYERS. What are they?

Mr. SANDERS. Mere possession of any firearms by someone proscribed by the law, but primarily for possession of automatic weapons, a weapon that would be capable of discharging more than one round with a single pull of the trigger.

Mr. CONYERS. If a camp were being run by nine persons who had a known criminal record you would be dealing with a person who would be in violation of Federal law, would he not?

Mr. SANDERS. Yes, sir, he would.

Mr. CONYERS. It is my understanding that a fair amount of people in these hate organizations have records of prior felony convictions. Is that an erroneous assumption?

Mr. SANDERS. No, I think that is a quite correct assumption, and that is the focus of these kinds of investigations, but they are very careful not to possess or receive the firearms themselves, at least in those investigations that we have made of those paramilitary groups.

Mr. CONYERS. Is there some form of recordkeeping in connection with the number of organizations and their camps that are being investigated?

Mr. SANDERS. We don't keep any formal records, but I will be happy to provide you with a number of investigations that we have made pursuant to allegations of Federal firearms statutes.

Mr. CONYERS. Well, there is an increase of racially motivated violence, is there not? Or has your organization determined that?

Mr. SANDERS. Our organization, I can determine that there is an increase in the number of investigations that we have pursued. We don't have comprehensive records to indicate that there is an increase generally, but I know and I can state that there is an increase in the number of investigations that we have made.

Mr. CONYERS. Well, if you don't know whether or not there is an increase in the number of racially motivated incidents you may not know whether there is an increased need for investigation and activity in this area of your responsibilities. Or do you perceive racially motivated violence as being connected with the responsibilities of BATF?

Mr. SANDERS. Yes, we do. We perceive that violations of the Federal firearms and explosives statutes are very high priority when they are connected or could be connected to individuals who would commit crimes of racial violence.

Mr. CONYERS. Do you have any idea of the nature and frequency of the members of organizations of the kind we have discussed carrying and bearing firearms?

Mr. SANDERS. It is very widespread, Mr. Chairman. It is very widespread, and with no violations of Federal law.

Mr. CONYERS. Well, how do you know? I mean, have you ever surveyed a Klan meeting to determine how many that were carrying guns were carrying them legally and how many were carrying them illegally?

Mr. SANDERS. Yes, sir, we have. That is the nature of the kinds of investigations that I have described. We would scrutinize every in-

dividual's record to see whether he is in a proscribed category, and thus far we have not found, purely on the basis of investigations at paramilitary camps.

Now we have made cases against individuals who were at one time or another at a paramilitary camp in another context. But purely investigations of paramilitary camps has not been a very fruitful effort.

Mr. CONYERS. What about the Federal law on the possession of firearms as it relates to dealers?

Mr. SANDERS. Yes, sir.

Mr. CONYERS. What is the law?

Mr. SANDERS. A person to engage in a business must be licensed and we issue the license provided that that person is not in a proscribed category, and the dealer then is enabled to sell, or deal, or transfer firearms to, basically to residents of his State, without any limits on quantities or time limits or anything else.

Mr. CONYERS. And approximately how many such licensees are there in America?

Mr. SANDERS. There are approximately 180,000 at this time.

Mr. CONYERS. Now, has it come to the attention of BATF that some number of those may be trafficking legally and illegally with organizations of the proscribed kind under investigation here?

Mr. SANDERS. Yes, sir, that has come to our attention. We have pursued that. We have made cases against those criminals who happen to have procured a——

Mr. CONYERS. What has your investigation revealed about the nature and frequency of those kinds of relationships?

Mr. SANDERS. We have, I would have to estimate, Mr. Chairman, but we have made several cases, sufficient, significant numbers of firearms involved, but several cases against individuals.

Mr. CONYERS. Well against 180,000 licensees it seems to me that this may pose a far greater problem than your statistics reveal.

Mr. SANDERS. Well, the assumption is that the overwhelming majority of the persons holding a Federal firearms license are legitimate businessmen, but there are some who are criminals who happen to function under color of law and our priorities are that this is, this ranks close to the top.

Mr. CONYERS. But what about a legitimate businessman who has never been convicted of a felony who happens to subscribe to the principles of the Ku Klux Klan? Is he not still a legitimate businessman?

The answer is yes.

Mr. SANDERS. Yes, sir.

Mr. CONYERS. And then what about this legitimate businessman who determines to be of maximum assistance to Klan members and Klan organizations, or kinds like them?

Mr. SANDERS. Yes, sir. Well, there would be no prohibition against selling to members of Klan, or Nazi, or any other group, provided that the transferee were a resident of the same State and were not, had not been previously convicted of a felony, et cetera.

Mr. CONYERS. Absolutely.

Mr. SANDERS. So if that condition arose there would be very little under Federal law.

Mr. CONYERS. Now will you explain to this committee how we prevent that condition from arising, since we know that there are no individual checks of these licensees by BATF, the FBI, or anybody else?

Mr. SANDERS. I have no answer on how under existing legislation anything could be done.

Mr. CONYERS. I would like to arrange a meeting between the Director and yourself and the interested members on the committee in connection with some statistical material, all relating to our discussion, that I think should be very helpful in answering the questions that bring us all here.

Mr. SANDERS. Yes, sir.

Mr. CONYERS. What States do you perceive have large problems in terms of paramilitary camps and organizations, and need your organization's greatest attention?

Mr. SANDERS. Traditionally, we perceive the largest problem in the Southeastern States, but recently we have been experiencing these kinds of paramilitary camps and training grounds in areas that heretofore had not had that kind of activity, places like Wisconsin, the Midwest, California, the Northeastern States, and the Southwestern States, are all areas where our investigations have indicated some violations of the Federal firearms or explosives statutes with respect to these kinds of training camps.

So I think that it is becoming more nationwide of recent years.

Mr. CONYERS. How many conversion kits to automatic weapons do you estimate exist in the United States?

Mr. SANDERS. I would have absolutely no idea, sir.

Mr. CONYERS. Could it number in the hundreds of thousands?

Mr. SANDERS. Conversion kit could be for some weapons as simple as a paper clip which could convert a firearm from——

Mr. CONYERS. Could it be in the neighborhood of hundreds of thousands of such conversion kits?

Mr. SANDERS. It could very well be.

Mr. CONYERS. And your organization has attempted to halt that?

Mr. SANDERS. Yes, sir, we have.

Mr. CONYERS. It has been stopped by official prohibition?

Mr. SANDERS. There is a recent regulation that made a commercially manufactured conversion kit, but that would not cover the universe of all conversion kits.

Mr. CONYERS. Could you hazard an estimate on the number of commercially available conversion kits that——

Mr. SANDERS. I could not, but I can certainly get some of our staff to work that figure up for you, sir.

Mr. CONYERS. Can you estimate the number of handguns in circulation in the United States?

Mr. SANDERS. The most recent estimate that we made officially in ATF was somewhere in the vicinity of 50 million.

Mr. CONYERS. Can you estimate the number of long-barrel weapons that are in usage in the United States?

Mr. SANDERS. Again a pure estimate would probably be four times that figure or greater. Maybe 200 to 250 million.

Mr. CONYERS. Can you estimate the combined amount of new weapons coming into citizen hands on an annual basis?

Mr. SANDERS. I think the figure is somewhere around 2 million handguns per year, and I am a little sketchy on the number of long guns.

Mr. CONYERS. Can you estimate the number of handguns being legally and illegally brought into the United States?

Mr. SANDERS. I don't perceive that many are being brought in illegally. This Nation is primarily an export market for guns.

There are a number of parts, as certainly you are aware, Mr. Chairman, that are being entered into this country, perfectly legally, to be assembled here.

Mr. CONYERS. And how many, would you estimate that amount——

Mr. SANDERS. They would be within that 2 million figure that I cited earlier, and I don't know that I can get that figure for you.

Mr. CONYERS. What would be the requirements for an ordinary peace-loving American citizen to obtain an automatic weapon?

Mr. SANDERS. Lawfully, the procedure is to make application for the transfer of an automatic weapon with ATF. The application would include the payment of a $200 transfer tax and it would require fingerprint identification and certification from the chief law enforcement officer in the community where the individual resides, certifying that it would be in compliance with all State and local statutes.

The requirements are rather stringent.

Mr. CONYERS. How many such transfers occur, roughly, annually?

Mr. SANDERS. It is not a large figure, and I don't have it, sir, but I would be happy to provide it.

Mr. CONYERS. Now how would that transaction, from your experience, go about on an illegal basis?

Mr. SANDERS. On an illegal basis? It would probably be out of the trunk of a car and transferred, no registration, nothing, and we buy thousands of them a year, in an undercover capacity.

Mr. CONYERS. Has there not been noted by your organization an increase in the black marketing of all weapons, including handguns and automatic weapons?

Mr. SANDERS. Yes, sir, there have, and especially in the area of automatic weapons being used in crimes.

Mr. CONYERS. And that may have impelled you to become more restrictive of the commercially manufactured automatic devices?

Mr. SANDERS. Yes, sir.

Mr. CONYERS. Well, then has the Department in its statistical bureau computed that day and year in American history when there will be one weapon for each and every American citizen, at the rate of the present proliferation?

Mr. SANDERS. I don't know.

Mr. CONYERS. Or have we reached it?

You say there are 200 million long-barrel weapons and 50 million handguns and they are increasing at the rate of 2 million a year.

Mr. SANDERS. We may have reached it, sir.

They don't wear out very frequently, and there are very little that go out of circulation. Some are exported illegally et cetera, but they have a long life and they very infrequently are confiscated or

lost. Many of them are stolen, but only very infrequently do they leave the market.

Mr. CONYERS. Can you briefly describe the U.S. military role in the release, resale and gift of guns?

Mr. SANDERS. Other than those sanctioned for sale to the civilian rifle practice, et cetera, I am not aware of any program that the military has, and I am probably not your best witness for that, Mr. Chairman.

Mr. CONYERS. If branches of the U.S. Armed Forces were releasing large numbers of surplus handguns on the American market, that would be of vital concern to the Bureau of Alcohol, Tobacco and Firearms, would it not?

Mr. SANDERS. Yes, sir.

Mr. CONYERS. Could you determine for me to what extent that practice goes on currently?

Mr. SANDERS. Yes, sir.

Mr. CONYERS. Is it fair for me to gather that BATF may need to more stringently inquire into the relationship between paramilitary camp operations and the organizational activities separate from paramilitary camps in relation to possible violation of firearms activity?

Can that be beefed up?

Mr. SANDERS. It can be, Mr. Chairman, but I am not aware of the nexus. That is what we are looking for, the connection between the paramilitary training and racial violence. We have not found that. The training that we have investigated we have found to meet the requirements of Federal law.

Now that is not to say that all of it does, but with respect to our very limited, very narrow jurisdiction, we have not found any violations there. Nor have we found the nexus between that activity and violent crime.

Mr. CONYERS. Well, if an organization advertises for members and for training on the basis of a coming race war and solicits membership on the basis that they must be prepared for it, would you not see a nexus between racially motivated violence and those camps?

Mr. SANDERS. It is the logical conclusion, but as I say with overt evidence we have not.

Mr. CONYERS. Well, what about handbills and advertisements in magazines to that effect, and letters sent directly from the organizations? Would that have some bearing on resolving this question?

Mr. SANDERS. It certainly does and it has, Mr. Chairman. That has really been the basis under which we have gone into these investigations.

Mr. CONYERS. When that kind of evidence arises is there a question about the nexus?

Mr. SANDERS. There isn't to us, but I guess, we are having a problem with jurisdictional violations. We referred many allegations of civil rights violations to the Department of Justice in the course of our investigations, but we have not found the firearms and explosives violations that we expected.

Mr. CONYERS. Would it surprise you to find that organizations and memberships that organize along racial lines may not be too scrupulous in observing other laws of the society?

Mr. SANDERS. Not in the least.
Mr. CONYERS. Among which could be the gun laws?
Mr. SANDERS. Yes, sir.
Mr. CONYERS. And since they advocate violence that it might very particularly have to do with weapons?
Mr. SANDERS. Yes, sir.
Mr. CONYERS. That this could be a very serious source of major violations, admitting that it may be hard for you to determine how and to what extent they occur?
Mr. SANDERS. Yes, sir, I completely agree.
Mr. CONYERS. Well, I thank you very much for your patience here, Mr. Sanders. I think your testimony has been very helpful.
Can you indicate or are you at liberty to indicate the direction your organization may be headed with reference to any reorganization activities?
Mr. SANDERS. I just don't know of my own personal knowledge.
Mr. CONYERS. We thank ycu very much for coming.
Mr. SANDERS. Thank you, sir.
[The complete statement of Mr. Sanders follows:]

PREPARED STATEMENT OF ROBERT E. SANDERS, ASSISTANT DIRECTOR (CRIMINAL ENFORCEMENT)

Mr. Chairman and the Members of the subcommittee, it is a privilege to appear before you and to address this committee on the subject of racially motivated violence. The Bureau of Alcohol, Tobacco and Firearms (ATF) welcomes the opportunity to provide you with its comments. I trust that this appearance will be of benefit to the work of your committee.

As you are aware, Treasury is currently studying to what degree ATF must sustain budget reductions in fiscal year 1982 and in that context is examining the possible reallocation of functions of the agency to other enforcement agencies.

In whatever agency the firearms and explosives function continues, Treasury will seek to enhance its partnership with State and local authorities to impact on violent crime at the local level

Racially motivated violent crime is particularly offensive in a free society such as ours. Those groups of people who resort to violence to achieve their goals always use firearms and explosives as the tools of their trade. The use of explosives is indiscriminate in nature, and in many cases cause death and damage to whole groups of people rather than individual persons. When firearms and explosives are used in violent crime, ATF has a statutory mandate to initiate investigations. Our role is limited to this type of involvement, rather than the broader jurisdiction in the area of civil rights violations one finds in the Department of Justice. This in no way, however, diminishes our efforts in applying our jurisdictions where applicable. ATF is particularly sensitive to ethnically motivated crimes and assigns a high priority to investigative activity in this area.

As the Assistant Director for Criminal Enforcement, I have directed that all violations of ATF jurisdictions that involve racial violence receive immediate attention and the most vigorous investigation. I am pleased to report to the committee that ATF has been successful in pursuing these type violations, and I would like to take this opportunity to discuss briefly some of the more significant cases that we have developed.

SIGNIFICANT CASES

Baltimore, Md.

In the Fall of 1980, ATF initiated a case on four persons in the Delaware/Maryland area who were selling substantial numbers of firearms without the proper Federal license, all of who were members or associates of the Ku Klux Klan (KKK) in either Maryland or Delaware.

In fact, the two main suspects in the case were the Imperial Wizards of the KKK in their respective states. During this investigation an undercover officer of the Maryland State Police was advised by one of the principals that he was planning to bomb the headquarters of the National Association for the Advancement of Colored

People in Baltimore, Maryland. The principal provided the undercover officer with a gasoline bomb to use against the NAACP, and prior to this event occurring, ATF, local, and State police arrested the suspect, Richard Savina. He was subsequently tried and convicted of possession of a destructive device. Savina received a 15-year sentence in the Federal penitentiary for this violation. Savina's co-conspirator, William Sickles of Delaware was also convicted of Federal firearms violations in Delaware and received 5 years in the Federal Penitentiary.

Chattanooga, Tenn.

In July 1980, a State trial relating to an alleged shotgun assault on four black individuals by three members of the Ku Klux Klan was concluded in Chattanooga, Tennessee. The jury acquitted two of the defendants and gave the third defendant a 20-month sentence. The acquittals triggered riots, burnings and shootings in the Chattanooga area and received extensive nationwide press coverage. During the following days numerous black leaders and known members of the KKK converged on Chattanooga. The tension between the groups continued to mount throughout the week.

On July 26, 1980, the self proclaimed Titan of the United Empire of the Ku Klux Klan and two associates were arrested by a Chattanooga police officer after a high speed automobile chase. During the chase officers obvserved several items being thrown from the car by the suspects.

The suspects were all dressed in full military camouflage fatigues with KKK emblems sewn on the shoulders. A search of the vehicles and portions of the roadway by local police and ATF agents resulted in the recovery of a 6-volt battery, an alarm clock, and numerous blasting caps. ATF asked for and received the cooperation of a U.S. Customs dog team trained to iocate explosives. The dog and his handler were successful in locating one stick of dynamite which was believed to be thrown from the vehicle during the chase.

On March 17, 1981, two of the three defendants were convicted in the State court and received prison terms.

Asheville, N.C.

In November 1979, ATF initiated an investigation on a suspect by the name of Frank Braswell and his associates for suspected possession of explosives and various firearms charges.

Braswell is a member of the American Nazi Party and the Ku Klux Klan in North Carolina. The investigation was initiated as a result of Braswell boasting to an undercover ATF agent that he would "get" the prosecutor of the persons involved in the Greensboro, North Carolina shoot-out. This shooting occurred between the Klan and the Communist Workers Party on November 3, 1979. It resulted in the death of five members of the communist group. Braswell and his associates made many statements to the undercover agent that they were planning to take violent action if the accused Nazi's and Klansmen were in fact convicted in the killing of the five members of the Communist Workers Party.

On March 2, 1980, a Federal Grand Jury in Asheville, North Carolina indicted Braswell and five others for conspiracy to use explosives and terrorist attacks against property in Greensboro, North Carolina in retaliation for the anticipated guilty verdict in the Greensboro murder trial.

The indictment further alleged that the attacks were to consist of dynamite bombings directed toward petroleum storage facilities and a fertilizer plant in the vicinity of Greensboro, North Carolina. Further, a shopping mall and the downtown area of Greensboro were also to be targets of explosive devices. On September 18, 1981, a Federal jury convicted Frank Braswell and all five associates of the charges stated in the indictment. Braswell and two of his associates received 5-year prison sentences while his wife and the other two associates received probation.

Salt Lake City, Utah

This investigation involves a man identified as Joseph Paul Franklin who was involved in a nationwide manhunt resulting from his murdering two black males in Salt Lake City, Utah.

These two men were shot while jogging with two white females in downtown Salt Lake City. Franklin had come to the attention of ATF in Louisville, Kentucky due to his numerous firearms purchases in violation of the Gun Control Act. Franklin is a self proclaimed white supremacist, with outspoken racist attitudes. ATF, in addition to developing its own case, was actively assisting State and local law enforcement agencies throughout the country in the attempted recovery of firearms purchased by Franklin which could possibly be linked to the many crimes that he was suspected of committing. In fact, ATF was instrumental in arranging an interview

between Salt Lake City Police and an informer in San Francisco, California which led to the identification of the murder weapon in the Utah killings. One of the more notable crimes in which Franklin was a primary suspect was the shooting of Urban League President, Vernon Jordan in May of 1980 in Fort Wayne, Indiana.

ATF subsequently developed firearms charges against Franklin in Louisville, Kentucky but they were dismissed by the U.S. Attorney due to the fact that Franklin was convicted for the murder of the two black joggers in Salt Lake City.

Schenectady, N.Y.

On September 22, 1981, an anonymous caller contacted a Schenectady radio station and reported that a bomb would go off at the Eastern Rugby Union Office in Schenectady. The radio station employee believed the threat to be a hoax and did not report the incident to the police. Seventeen minutes later a bomb detonated at the above the mentioned offices and damage was incurred in the amount of $40,000. There were no injuries or deaths.

The Eastern Rugby Union was sponsoring a South African Rugby Team match in New York State, and a tour by this Rugby team had received widespread national media coverage. Additionally, various activist and civil rights groups were demonstrating against the team due to South African racial policies. ATF agents in New York responded immediately in conjunction with local law enforcement agencies, and conducted a crime scene search of the explosion. This investigation is active at this time.

Nashville, Tenn.

In May 1981, ATF concluded the investigation of a group who had conspired to bomb a Jewish temple in the City of Nashville. A total of six persons were arrested after ATF had halted their plans to place the destructive device. In fact, a fake bomb was substituted by ATF and the arrests took place as the defendants actually placed the fake device at the temple.

Of the six defendants, 3 were admitted members of the Ku Klux Klan and 2 claimed membership in the American Nazi Party. Trial is pending on 4 of six, while the remaining two have already pled guilty to Federal explosives violations.

I trust that the foregoing case summaries have adequately demonstrated to the committee that ATF actively investigates racially motivated crime within its jurisdiction. I believe these cases demonstrate that Federal involvement, working in concert with State and local enforcement, can combat this type of violence in America. In fact, by maintaining a high level of teamwork and cooperation many potentially catastrophic acts of violence can actually be prevented. The Asheville, North Carolina and Nashville, Tennessee investigations graphically emphasize this point. ATF has also demonstrated that hate groups dedicated to racially motivated violence can be effectively investigated and prosecuted through a cooperative enforcement effort.

A system of give and take, as exemplified by our sharing of information with State and local law enforcement officers, has been a highly successful program and fosters the commitment to cooperation, the principle to which we are dedicated.

It is gratifying to me to be able to show the committee how these criminal acts were successfully addressed by ATF and its enforcement partners. It is even more rewarding to know that through our joint efforts with other law enforcement agencies, some of these incidents were prevented before any death or injury could occur. Be assured that the Treasury Department will continue to pursue these types of violent crimes and those persons who commit them with the same determination as evidenced in the past. I would now be pleased to accept questions from the members of the committee.

Mr. CONYERS. There being no further witnesses the subcommittee stands adjourned.

[Whereupon, at 1 p.m., the subcommittee was adjourned.]

APPENDIX

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., January 18, 1982.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Criminal Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Because Community Relations Service Director Gilbert Pompa was unable to testify as scheduled at the Subcommittee hearings on racially motivated violence, we are forwarding the attached copy of his written testimony, should you wish to include it in the hearing record.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

Enclosure.

PREPARED STATEMENT OF MR. GILBERT G. POMPA, DIRECTOR, COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE

As Director of the Community Relations Service, I am pleased to respond to the request of the Committee to discuss the perceptions of my agency on hate group activity and racially motivated violence. This report is based on experience dealing every day with racial conflict throughout the United States.

As you know, the Community Relations Services was established by Congress in 1964 to help communities to reduce and resolve racial and ethnic conflict.

Within the past 3 years we have seen a steady rise of cases which involve the brutalizing, harassing, or intimidating of members of minority groups. Such matters may have as their precipitating activity an event of minimal or of extreme violence. At one end of the spectrum may be the circulation in a high school of recruitment literature for the Ku Klux Klan and at the other end of the spectrum—the hanging of a Black man before or after his death in Mobile, Alabama, or the shooting by Klansmen of four women in Chattanooga. Along this spectrum are such matters as Klan rallies, cross burnings, vandalism, defacement of structures with the Swastika and other graffiti of hate. Other incidents included: Threats and vandalism against Black families venturing to reside in the white neighborhoods of Delaware County, Pennsylvania; Klan harassment and intimidation of Indo-Chinese refugee fishermen along the Gulf Coast; attempts to intimidate and cause bodily injury to a Black man for moving his family into a white neighborhood in Romulus, Michigan; the shotgun blast aimed at a Black man patronizing a public bar usually patronized by whites in Detroit; the burning of a cross of the lawn of an African diplomat who recently moved into a white neighborhood in Silver Spring, Maryland; the shooting of two Black joggers in Salt Lake City, Utah; the establishment of paramilitary training camps in Alabama, Illinois, North Carolina and Texas.

In 1979 we were alerted to 44 such acts of harassment and intimidation. In 1980 the number had risen to 96. In 1981 the number was 126.

Dealing with so many cases in the course of the year we can see a step by step relationship that links what in the eyes of many may appear to be innocent pranks of youngsters involved in a cross burning to the ultimate acts of brutality in the form of racist incited murder. Dealing with these matters on a day-to-day basis we have become aware that for all the progress of recent decades in race relations, American soil is still polluted with dormant seeds of racial hatred. The experience of the last few years has demonstrated to us that these seeds are nurtured in a climate of economic anxiety—a climate in which people who see their security threat-

ened by forces which they cannot understand seek scapegoats who can be blamed and punished.

In response to community conflicts at the non-violent end of the spectrum, the greatest difficulty we encounter is on the part of local officials, civic leadership and law enforcement who attribute the matter to innocent juvenile pranks and seek to dismiss it. In a community climate that condones such behavior, similar acts can follow. When civic leadership fails to react to acts of racial intimidation and violence, a vacuum is created which may be filled by further encroachments upon the rights of innocent victims. Where community disapproval is not apparent, imitative behavior will flourish, and imitative behavior can grow into a pattern and then into an accepted way of life. While this is happening, every intimidating act, whether innocent prank or something far more serious, is causing deep pain and suffering to the victims.

It is of critical importance that American leadership at national, state and local levels make clear that such acts are despised and scorned and will not be tolerated in the American community. President Reagan, in noting a disturbing reoccurrence of bigotry and violence in America, has taken the lead in denouncing—in his words—"* * * Groups in the backwater of American life (who) still hold perverted notions of what America is all about." The President stated in strong terms that groups that still adhere to senseless racism and religious prejudice are out of step with society—a society that will not stand for this type of conduct.

Attorney General William French Smith has stated, "Just as divisive elements of this society fail to understand the importance of diversity to America, this Nation will not tolerate their activities that pass beyond the mere expression of contemptable ideas and become criminal.

"We will not countenance their attempts at intimidation or violence and will use all our legal capabilities to insure the failure of their methods."

At state and local levels, various jurisdictions have seized the initiative and taken steps to address the increase in hate group activity. Examples of responsive efforts include legislation proposed by the Governor of Oregon that would make racial harassment a crime. That law would prohibit harassment based on race, color, religion, ancestry, or national origin, and makes such harassment a Class "C" felony, which calls for a fine of up to $2,500, a 5-year imprisonment, or both. Similar legislation was enacted on May 18, 1981, in the State of Washington.

Just a few months ago Governor Harold Hughes of Maryland, signed legislation that classified cross burning as a felony if the offender has been convicted previously of the crime, and increases the maximum penalty for first-time offenders to a $5,000 fine and 3 years in jail, or both.

During the last term, four anti-Klan bills were introduced in the Texas legislature: One bill would re-enact a 1925 anti-mask law; another would forbid members of secret organizations from bearing firearms at meetings; another would establish a racial and ethnic goodwill commission; and the final one would encourage the teaching of racial tolerance in schools.

In West Virginia, the Governor, acting on a CRS recommendation, has developed a Governor's Civil Tension Task Force—an entity which, geared to quick response, makes available the varied resources of State Government to discourage and deter racial harassment.

A number of other city and county governments about the country are strengthening their sanctions against unlawful racial activity.

Agencies in the private sector also are mobilizing to reverse the tide of racist activity. In Maryland, a number of public and private groups have formed the Coalition Opposed to Violence and Extremism, known as COVE. This group renders and mobilizes support for victims, and in the process helps law enforcement and other public agencies see more clearly why and how acts of racial and religious harassment are not to be treated casually.

In Connecticut a coalition is forming in support of an initiative by the Connecticut Education Association to win the introduction into social studies curriculums of material that will equip students to recognize and resist the propaganda of hate.

CRS is playing a catalytic role in many of these activities, providing technical assistance to concerned citizens, agencies and organizations.

Police agencies, of course, can play a most significant role in reducing the criminal behavior of hate groups. Baltimore County police have developed an exemplary 9-step program which insures full investigation, support and protection of the victims and the involvement of civic leadership in developing a preventive climate.

We are all familiar with the observation of Edmund Burke that the way to assure the triumph of evil is for good men to do nothing. In too many communities which have experienced hate group activity and anti-minority violence good men and

women have done nothing. Often they have not known what to do. It would be helpful if, from this hearing could go forth a message of guidance to these good men and women—citizens, private organizations, agencies of government—that there are many productive steps that they can take to insure that hate groups and the anti-minority violence they encourage will not flourish in the United States. Such guidelines would include the following:

(1) Governmental and civil leadership should speak out to make it clear that acts of violence and verbal defamation against any minority group are anathema to the conscience of the community.

(2) Law enforcement must give serious treatment to all instances of anti-minority criminal behavior, including investigation, comfort and protection of the victims, preventive activity and enlistment of community support.

(3) Prosecutors should diligently pursue and bring to court criminal activity of this nature. It should be noted that the Attorney General of the State of Maryland has published a digest of relevant state laws that would facilitate prosecution and made it available to local prosecutors. Similar activity in other states would provide local prosecutors with guidance as well as encouragement.

(4) Local and state legislatures should review their legal codes and make whatever strengthening additions are necessary to provide law enforcement and prosecution with appropriate tools to control the problem.

(5) Educational administrators at state and local levels should develop materials and provide training to equip teachers better to deal with incidents of racial divisiveness and to help immunize students against hate propaganda.

(6) Parents have a responsibility to discuss with their children their feelings and understanding about children of minority groups and particularly with respect to expressions of hatred and incidents of violence to make sure the children develop a Democratic code of values.

(7) Private citizens should utilize the media and the public positions of the religious and civic organizations to which they belong, to make clear that the community will neither condone nor tolerate the incitement of hatred or violence against minority groups.

In conclusion, I would like to state that America indeed is threatened by the possible rise of intergroup divisiveness, antagonism and violence. If the American people stand idly by the likelihood of this threat being realized is enhanced. But the threat can be readily and totally overcome if American leadership at all levels makes it clear that the people have within themselves the power to overcome this danger.

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