

POLICE MISCONDUCT

HEARINGS
BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-EIGHTH CONGRESS
FIRST SESSION
ON
POLICE MISCONDUCT

JUNE 16, JULY 18, SEPTEMBER 19, AND NOVEMBER 28, 1983

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POLICE MISCONDUCT

THURSDAY, JUNE 16, 1983

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

The subcommittee met at 10 a.m., in room 2226, Rayburn House Office Building, Hon. John Conyers (chairman of the subcommittee) presiding.

Present: Representatives Conyers and Gekas.

Staff present: Thomas W. Hutchison, counsel; Raymond V. Smietanka, minority associate counsel; Gail Bowman, assistant counsel.

Mr. CONYERS. The subcommittee will come to order. Good morning.

Today the Subcommittee on Criminal Justice receives testimony on a subject that has come before us many times, police use of deadly force.

Statistics demonstrate that blacks and Hispanics are disproportionately the victims of police shootings. While the last 10 years haven't seen 10 executions in this country through the court process, there have been 4,000 fatal shootings of civilians by police. More than half of those killed were members of minority groups.

In New York during 1971 through 1975 blacks and Hispanics comprised 36 percent of the population but were 82 percent of those killed by the police. In Philadelphia from 1960 to 1970 blacks constituted 22 percent of the population, 37 percent of those arrested and 90 percent of those killed by police.

Indiscriminate use of deadly force undermines real security and respect for the law and hampers police work. Unfortunately, many Americans do not perceive police misuse of deadly force as a serious problem. And so we have a very difficult time in courts and before juries, because juries have been extraordinarily reluctant to convict police.

Recent events demonstrate that the problems associated with the police use of deadly force and police abuse have not diminished or been resolved. Just since the first of the year the following events have made their way into the news:

In December 1982 in Miami, Fla., the shooting of Neville Johnson and Alonzo Singleton touched off several days of rioting in Overtown. In Miami, Fla., this year police have shot and killed five men during this period alone.

In Richmond, Calif., two families were each awarded \$1½ million after fatal shootings of two black men by the Richmond police. The plaintiffs contended, and apparently proved, that the shootings

were done by Cowboys, a violence-prone group of police officers within that city's police department, which had a pattern and practice of using great force against minorities, and whose attitudes and practices were known by the chief of police.

In Milwaukee, Wis., five white officers were found guilty of using excessive force and breaking department rules by forcibly subduing and then refusing aid to 22-year-old Ernie Lacy, who subsequently died, and was found not involved in the rape case for which they had arrested him.

At a minimum, indiscriminate use of deadly force must be perceived as a threat to all of our society. Those at the top, the city government, must be held more directly responsible for the actions of their law enforcers, and police must be far more carefully selected and trained than they are.

There must be enforcement laws available which can be used to bring those who misuse deadly force to justice.

I'm very pleased to have our committee hearings include our National Urban League officers and friends; Patrick Murphy of the Police Foundation; the city manager of Miami, Mr. Howard Gary; from SCLC in Miami, Raymond Fauntroy; and other distinguished witnesses.

I have asked Eileen Luna-Gordinier of the Berkeley Police Review Commission to testify out of order before the Urban League's very important testimony is commenced. She is an attorney who has been working as the director of the Berkeley Police Review Commission established by voter initiative in 1973, and has had wide experience. Ms. Luna-Gordinier brings to us something that seems to me to be an appropriate starting point for this hearing.

I've noticed in your testimony, Attorney Gordinier, that you have raised a very important threshold concern, and that is that many attitudes in the community and across the country, both public and individual, sanction police violence. It's a regrettable fact of life. But I think that your discussion is very important in kicking this off.

Too often this kind of violence is implicitly sanctioned by many people in the public and private sectors.

I was thinking, as the person who speaks to this subject with the Congressional Black Caucus—and I'm saying this in front of all of our witnesses so they can include any observations they may have: What should we in the Congressional Black Caucus and our friends in the Congress, first of all, be telling the Department of Justice, the Civil Rights Division in particular? What should we be telling our municipal leaders in our congressional districts? How can we make this subject far more meaningful and important to all of those who are just beginning to become aware of it. It's frequently read as a sensational headline concerning a particular city that lasts for a day or two, and then it is frequently ignored.

I'd like you to keep some of those thoughts in mind.

When any hearing or meeting is conducted by this committee or subcommittee, we request that permission be granted to cover the hearing, in whole or in part, by television broadcast, radio broadcast, still photography, and without objection this coverage will be permitted.

Welcome to our subcommittee, and I would ask you to summarize your statement, which will be included in the record, so we can get directly to the themes that you have raised before the subcommittee. Welcome.

TESTIMONY OF EILEEN LUNA-GORDINIER, BERKELEY POLICE REVIEW COMMISSION

Ms. LUNA-GORDINIER. Thank you, Mr. Chairman.

I'd like to thank you for inviting me to come and speak to this committee regarding the problem of police use of deadly force, because it's something that faces people and police day-by-day.

We believe that in order to deal with the police use of deadly force there must be a theory of what constitutes excessive force, because deadly force may or may not be an appropriate response to an actual situation. If it's an inappropriate response it becomes police misconduct. That's what concerns us particularly in Berkeley. Therefore we have to have a theory of why such misconduct exists, why it is allowed to exist and what can be done to minimize it.

I worked as a labor attorney before coming to the Berkeley Police Review Commission in 1981. I also represented deputy sheriffs in Napa County in California for a few years. I know the police are public employees just like any other, they have the same or similar rights and responsibilities as any other public employee. However, as citizen employers, we give them an arsenal of weapons and extraordinary powers. Consequently, we have the right and the obligation to expect from them more patience, more tolerance, and more discretion than we ask from other public employees.

As a teenager growing up in the Mexican-American section of San Diego, I saw repeated infringement of citizens' civil rights by police. I witnessed and experienced these infringements as well during the tumultuous days of the sixties. This practice of street justice jeopardizes our rule of law and erodes the Constitution.

Street justice can be stopped by community control of police. The Berkeley Police Review Commission is at this time the foremost example of this concept of citizen control. Largely through the efforts of Peter Hagberg, who was the director from the formative days of the commission from 1975 until May of this year, the Berkeley Commission has become the acknowledged leader in the field.

Police misconduct we believe exists because good men and good women believe it is necessary. It is allowed to exist because other good men and women accept its necessity or feel powerless to change it. Therefore it can only be changed when other good men and women have the position, the strength and the understanding to speak out when the force used is not necessary, desirable, or acceptable.

A corollary to this is that the ability and the willingness of a community to seriously consider citizen complaints of discourtesy, racism, bad judgment, and improper investigations is an important precondition to control of unnecessary use of force by police.

As an example, a citizen is alleged to have made some derogatory remarks to which the officer responded in kind. The citizen then

challenged the asserted authority, upon which the officer arrested the citizen for disturbing the peace.

Most departments will have regulations which require officer courtesy and respect to citizens. In many departments, however, these rules may not be enforced where there is verbal provocation. Indeed, in many departments unwritten policy would preclude sustaining a discourtesy complaint even if the officer's remarks were unprovoked, unless the citizen's allegations were verified by an independent credible third party witness. This criteria, in many departments' parlance, automatically excludes friends and family of the complainant.

While the testimony of a single perceptual witness may be enough to send a person to jail or to win a large damage claim, in this situation many police departments refuse to allow an officer to be disciplined, even so much as an admonishment, from the testimony of a single witness. As a result, problematic police officers soon learn that they can act with near impunity as long as they allow no witnesses. The issue, then, of the right to witness a police action becomes, in itself, an important issue to both police and citizens.

Why, then, do many good police chiefs refuse to sustain a citizen, no matter how credible, who complains of police misconduct unless there is independent witness corroboration? Why is this true even though the chief does not believe the officer's denial for a minute?

The reason is clear, although slightly complex. The accused officer who denies his guilt knows the proper story to influence other officers, who know nothing of the incident, in case the charges are sustained. His or her fellow officers then fall into line behind their colleague. The police chief is treated to various threats and cudgels from his troops for taking the word of a citizen over an officer. If he does this at all often, the chief is pinned with a jacket that he does not support his troops, and threatened with internal insubordination which takes the form of slowdowns in response time and ticket-writing, or the blue flu.

In some cases police associations give votes of no-confidence in their chief, which often results in the chief's dismissal. Police chiefs generally have no strong constituency other than the officers they lead, and, therefore, he is required to represent them.

The chief then holds a lonely position with few natural allies and many potential enemies. Therefore it is no wonder that he walks softly and fears the wrath of officers whom he is supposed to lead. Discipline by the police chief isn't feared because it is seldom forthcoming.

We then have a situation where we really can't rely on police chiefs to enforce the kind of citizen participation in community control and police officer appropriate response.

Internal affairs of citizen allegations of police misconduct involve reams of paper and no evidentiary, much less an adversary hearing. Because of the way that internal affairs operates it becomes very difficult for the police chief and the administrators of the police department to rely on that kind of a process to really get at the truth. The summarized statements by internal affairs very seldom are complete, very often are sketchy at best, and, therefore, the allegations are not sustained.

This failure to sustain allegations was a major factor in the creation of San Francisco's civilian Police Review Commission this year. Last year in San Francisco alone it was widely reported that there were over 800 citizen complaints of excessive force. Most of these allegations occurred as a result of widely publicized, and even televised mass incidents. According to news reports, one of these 800 complaints was sustained by the San Francisco Police Department.

Similar experience with inadequate internal police review of citizens' complaints led to the establishment of the Berkeley Police Review Commission.

Civilian review as it is practiced in Berkeley has several advantages over the typical internal investigative process. First, it holds evidentiary hearings with all parties present. These are open public meetings which are well publicized. Members of the press and interested citizens are encouraged to attend. Unlike internal police hearings, witnesses are heard first-hand by the decision-makers and are subject to cross-examination by all parties. This cross-examination maximizes the possibility of getting at the truth.

Second, unlike the chief of police, citizen judges are not in a hostage position vis-a-vis the officers within the department, and they are, in general, not subject to reprisals from inside or outside the department.

Third, the commissioners and the civilian investigators tend to be concerned, open-minded people who understand the positions of both the citizens and the officers involved. They also are not overly familiar with the situation which either party has found themselves in. This leads to a high degree of neutrality on their part.

Fourth, the public nature of the process, the independence of the commissioners, the civilian status of the investigators, as well as the participation of the police department in the process, provides balance, credibility, and objectivity in its decisionmaking and a deterrent effect on officers. Problem officers know that questionable conduct will not be condoned, ignored, or allowed to continue unchallenged because of generally accepted attitudes of the police department. Thus, officers tend to alter faulty conduct in order to avoid scrutiny by an independent agency.

Fifth, and perhaps the most important element of Berkeley's civilian review process, is its jurisdiction over police policy, practices, and regulations. The Berkeley Commission reviews police officer training, oversees implementation of various practices and establishes guidelines. Most recently, the commission recommended that the use of the carotid choke hold be characterized as deadly force. The proper use of this hold will now be limited to certain very specific situations where the use of deadly force is authorized. Use of this hold in nonlife threatening situations has resulted in numerous citizen deaths and huge lawsuits in California. There has been no such problem in Berkeley.

It is apparent to those of us who are part of the Berkeley Police Review Commission that civilian review works.

You mentioned Richmond. There has been a \$3 million lawsuit just recently reached. Other lawsuits are still pending, including those result in death by the use of the carotid choke hold.

In the city of Oakland there were 10 apparently unarmed minority males fatally shot by police in 1979. This precipitated widespread citizen demand for civilian review, which resulted in the formation of a citizen complaint board to investigate and hear complaints of police use of excessive force, including deadly force. There has been only one fatal shooting by police since that date.

Berkeley's Review Commission was formed as a result of similar situations. As a result of demonstrations in Berkeley that were fairly widespread in terms of free speech, civil rights, and opposition to the Vietnam war, many middle class white students and older people basically lost their faith in law enforcement. What happened then was, although the Berkeley police officers had originally been viewed as friends of the demonstrators, that changed as the police response escalated the demonstrations.

Mr. CONYERS. How do you think blacks feel having dealt with over 100 years of police violence?

Ms. LUNA-GORDINIER. That's right.

Mr. CONYERS. Reverend Nettles from Alabama called me, wanted to get here. We're going to have to hold an extra hearing, because in Alabama there's apparently a police shooting epidemic going on.

Ms. LUNA-GORDINIER. Unfortunately, what happens with civilian review, at least to date, is that it has taken such a crisis to develop it. It's our feeling in Berkeley that it shouldn't take that kind of a crisis to develop it. Because we feel that in Berkeley, for example, over 10 years our statistics show that it works, and that in fact you can have the very situation that you want, where police support it, where the citizens support it, where the police chief himself helps to write the testimony to come here, and that everyone feels that it works.

Our statistics have shown, with regard to excessive force, that it has gone way, way down. That comes from a position of police officers who basically support the concept.

Mr. CONYERS. You have a different kind of review procedure. I began to lose faith in citizen review boards because, as they were originally written during the sixties and seventies, they had such limited power, and the internal investigations in the police department were always controlling anyway, so they ended up getting the tip of the iceberg, and whatever disposition was going to be arrived at had been taken and had been determined elsewhere.

What you're doing is fundamentally altering the citizen review board so that it actually takes away the internal investigations and frequent secret decisions that are made in these matters.

Let me just summarize, because I've got members on the Urban League panel who are not going to be able to stay with me--I'm very, very impressed with the Berkeley Police Review Commission. But I want to deal with the theme that also characterizes your remarks.

You said that police are public employees. But they're really much more than that. They're hero figures in our society; young people grow up with deep admiration and respect for police officers. The mystique of carrying a gun in our society legally, with the ability to kill anybody in the name of the government, is a powerful responsibility.

So there's this mythical atmosphere that surrounds cops in our society. And, in my view, it's being very, very vastly abused.

In the south we're now having minority police come into the force. But in many of our civil rights cases it's the racism that the police not only sanction in the communities they serve, but the racism internal to the department that makes police departments—and, coincidentally—fire departments—one of the big public entities that are constantly in court over how do you hire a fair amount of blacks and Hispanics and women to protect the people that they're presumed to be giving support to. So that you have at least a double, maybe a triple, problem coming out of the racism that's endemic to law enforcement.

Two other little comments and then I'll let you respond to any part of this you want.

One of the big secrets about police, in my view, police organizations, is their political power. It isn't just by accident that everybody is willing to go along with a great deal of police attitudes and activity that would never be tolerated in the water department or by anybody working for the city clerk or the registrar, and that's because the police have powerful political organizations that not only sanction candidates, frequently the most conservative and segregationist oriented candidates that they can find, but frequently the police chiefs and the police officers become the candidates themselves.

My experience in Detroit can't be excluded in this matter, where, when the first serious black candidate for mayor was offered in 1972, the candidate that ran against him was none other than the chief of the Detroit police department, who had to be fired because he would not desist from his campaign full time on the job. And we have very similar episodes of this incredible political power that police organizations are wielding across the country.

Finally, you've touched on this fraternity of police. This works both ways: it not only inhibits decent police chiefs but it also intimidates new policemen coming on the force. The first thing a rookie cop is told—I've been told this many times—is: forget all that stuff you learned in school, forget all the training crap that the ministers and the civil rights groups made you take. This is the real world: you're at the 10th precinct now, you've got to survive, brother, and here's the way we play the game. So it doesn't just involve the chief, the new fellows coming on have to have some comrade, have to have some acquaintances, have to build some new friendships.

So this intimidation is something that this committee is going to look at very carefully. I deeply appreciate your testimony, and I'd like you to respond to anything in my testimony that you would like to tell me.

Ms. LUNA-GORDINIER. OK. I think what has to be realized is that when the Berkeley Police Review Commission was formed 10 years ago, there was very vehement opposition by the police association and by the department against the concept of civilian review.

What has happened over 10 years has been a very basic change in that approach because of the fact that we oversee training, because of the fact that we are part of policy in many ways. There has been a real movement primarily from the Third World Police

Officers Association, the Chicano Police Officers Association, and the Black Police Officers Association, which are very vocal in terms of their support of the PRC.

As a matter of fact, we have a black chief, we have a number of black captains, we have a number of people in very responsible positions inside the police department who are third world, who are black, and chicano. In addition the training officer is an Asian officer. And their support of the concept of civilian review is very exciting and encouraging for all of us who are part of that.

An interesting thing that you were mentioning was the political power. In 1982, when we still had a white chief, there was an election in Berkeley. For the first time in the history of the Berkeley Police Department, the Police Officers Association became very active in that election. And so in April 1982 there was very significant police action, walking precincts, et cetera, for certain forces within the community.

In fact, in that election they did tip the balance on the city council, and the more conservative forces in Berkeley became a majority—were a majority on the city council.

What then happened, interestingly enough, was a very significant increase in the number of discourtesy and excessive-force complaints that we had. So where in Berkeley we had had three excessive-force complaints sustained against the department in 1979 and 1980, we then had a whole raft of excessive-force complaints and discourtesy complaints.

Now what happens in Berkeley is we have jurisdiction over the whole range of police action, and it is as important to us to seriously consider and get a sustaining if warranted, on a discourtesy complaint as it is on an excessive force, because our belief is, if you can change officers' behavior at the level of discourtesy you may never get to excessive force. And so a discourtesy complaint is very important to us.

To see this increase in discourtesy complaints and excessive-force complaints was horrendous for us, and it was widely discussed in the press that in fact this was because of the fact that police officers had basically flexed their muscles and had managed to tip the balance on the city council.

What happened then was the search for a new police chief continued, and there was an acting white police chief who had been part of the old command staff, had been in the department for a long, long time.

We have a new police chief as of January. He is very much based in community policing. His name is Ron Nelson. He's listed in the back of the written testimony. And in fact, he is very supportive of the concept of police review in Berkeley.

What has happened now has been a change back from what was going on in 1982. Our excessive-force complaints and our discourtesy complaints are again way down. The process is working. We are getting the parts—the pieces of information from the police department that we need to be able to function.

Mr. CONYERS. Is police violence under control?

Ms. LUNA-GORDINIER. Basically, police violence is under control in Berkeley, and we feel very good about that.

Discourtesy is still a problem. We still have many, many complaints from people in all parts of our city.

Mr. CONYERS. I want to congratulate you for even having a procedure for discourtesy complaints. Let me tell you something:

In most cities, if all you got was discourtesy from the policeman, there would be no thought about going somewhere to complain about discourtesy because you probably were told in that discourteous conduct that you were probably one inch from getting your brains beat out, as well as being treated abusively by profanity or other kinds of threats.

But I think that is a very good theory. I think you've taken an exciting strategy and implemented it. I want to commend you, and I'd like to have you follow our hearing and advise this subcommittee and, by extension, the Congressional Black Caucus Braintrust which comprises many of our friends across the country that are working on this problem.

I thank you very much for joining us today.

Ms. LUNA-GORDINIER. Thank you very much.

[Prepared statement of Eileen Luna-Gordinier, with attachments, follows:]

TESTIMONY

OF

EILEEN LUNA-GORDINIER
INVESTIGATOR

OF THE

BERKELEY POLICE REVIEW COMMISSION

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE HOUSE JUDICIARY COMMITTEE

HEARING ON POLICE USE OF DEADLY FORCE

JUNE 16, 1983

TESTIMONY OF EILEEN LUNA-GORDINIER OF THE
BERKELEY POLICE REVIEW COMMISSION BEFORE
THE SUBCOMMITTEE ON CRIME OF THE HOUSE
JUDICIARY COMMITTEE ON POLICE-COMMUNITY
RELATIONS ON JUNE 16, 1983

Mr. Chairman, I would like to thank you for inviting me to come and speak to this Committee regarding the problem of Police Use of Deadly Force. This problem is faced day after day by both police and citizens.

INTRODUCTION:

To deal with police use of deadly force, we must have a theory of what constitutes excessive force. Deadly force may or may not be an appropriate response to an actual situation. If it is an inappropriate response, it becomes police misconduct. Therefore, it is essential to have a theory of why such misconduct exists, why it is allowed to exist, and what can be done to minimize its existence.

I worked as a Labor Attorney before coming to the Berkeley Police Review Commission in March 1981. I also represented the Deputy Sheriffs in Napa County for 2 years. I know that police officers are public employees much like any other. They have the same or similar rights and responsibilities as other employees.

However, as citizen-employers, we give them an arsenal of weapons and extraordinary powers. Consequently, we have the right and indeed the obligation to expect from them, more patience, discretion and tolerance than we expect from other public employees.

As a teenager growing up in a Mexican-American section of San Diego, I saw repeated infringements of citizens' civil rights by police. I witnessed and experienced these infringements as well during the tumultuous days of the 60's. This practice of "street justice" jeopardizes our rule of law and erodes the constitution.

Street Justice can be stopped by community control of police. The Berkeley Police Review Commission is at this time the foremost example of this concept of community control.

Largely through the efforts of Peter Hagberg, who was the Director from the formative days of the commission in 1975 until May of this year, the Berkeley Commission has become the acknowledged leader in this field. We are pleased with this opportunity to share information and experiences.

Police misconduct exists because "good men" and yes, some "good women" believe it is necessary. It is allowed to exist because other "good men and women" accept its necessity or feel powerless to change it. Therefore, it can be changed only when other "good men and women" have the position, strength and understanding to speak out when the force used is neither necessary, desirable or acceptable.

There is a corollary to this proposition which is extremely important because findings of excessive force in the police world bring such dramatic and high pressure responses from police associ-

ations and from those officers in the field who like to use force to resolve disputes. The corollary is that: the ability and the willingness to seriously consider citizen complaints of discourtesy, racism, bad judgement and improper investigations is an important precondition to control the unnecessary use of force by police.

The reason for this, upon analysis, boils down to a single human motive (or to the simple physics of causal relationships): A minimum infraction tends to generate a minimum response. In turn a major infraction tends to generate a major response. A minor infraction generates a smaller counter-response, and a major response generates a far greater counter-response, as opposing groups line up to fortify their positions.

As an example:

A citizen is alleged to have made some derogatory remarks to which the officer responded in kind. The citizen then challenged the asserted authority upon which the officer arrested the citizen for disturbing the peace.

Most departments will have regulations which require officer courtesy and respect to citizens. In many departments however, these rules may not be enforced where there is verbal "provocation". Indeed, in many departments, unwritten policy would preclude sustaining a discourtesy complaint, even if the officer's remarks were unprovoked, unless the citizen's allegations were verified by an independent, credible third party witness. This criteria in many departments' parlance automatically excludes friends and

family of the complainant.

While the testimony of a single perceptual witness may be enough to send a person to jail or to win a large damage claim, in this situation many police departments refuse to allow an officer to be disciplined, even so much as an admonishment, from the testimony of a single witness. As a result, problematic police officers soon learn that they can act with near impunity as long as they allow no witnesses. The issue then of the right to witness a police action becomes, in itself, an important issue to both police and citizens.

Why then, do even many good police administrators refuse to sustain a citizen (no matter how credible) who complains of police misconduct, unless there is "independent witness corroboration?" Why also is this true even though the Administrator does not believe the officer's denial for a minute?

The reason is clear although slightly complex. The accused officer, who denies his guilt, knows the proper story to influence other officers (who know nothing of the incident) in case the charges are sustained. His or her fellow officers then fall into line behind their colleague. The police administrator is treated to various "cudgels" from his "troops" for taking the word of a citizen over an officer. If the administrator does this at all often, the Chief is pinned with a "jacket" that he does not support his troops and threatened with internal insubordination which take the form of slowdowns in response time and ticket writing or the "Blue Flu".

In some cases, police associations give votes of "no confidence" in their Chief which often result in the Chief's dismissal. Police administrators generally have no strong constituency, other than the officers they lead, and therefore the Chief is required to represent them. Since the Chief is also the only visible representative of the Department to City Managers, City Councils and local citizens, he is saddled with responsibility for any perceived wrongdoing within his department. Thus, the Chief holds a lonely position with few natural allies and many potential enemies. It is no wonder that he walks softly and fears the wrath of the officers whom he is supposed to lead. Discipline by the Police Chief isn't feared because it is seldom forthcoming.

Added to the Chief's problems is the fact that he has no process under which he can justify a decision against an officer in all but the most flagrant cases.

Internal review procedures of citizen allegations of police misconduct involve reams of paper and no evidentiary hearing, much less an adversary hearing. Internal Affairs Bureaus compile a raft of statements which are reduced to writing via either summary, transcriptions or signed statements. The police administrator and his advisors then review the papers to determine whether or not a clear violation of regulations occurred. Without hearing and questioning the individual witnesses and parties, how can this panel possibly decide among the discrepancies, variations and gaps which recorded statements inevitably leave? Most often it cannot, and therefore it votes not to sustain. Such a ruling means the alleged impropriety may have happened but that there is not enough evidence to prove it.

This failure to sustain complaints was a major factor in the creation of San Francisco's Civilian Police Review Commission this year. Last year in San Francisco alone it was widely reported there were over 300 citizen complaints of excessive force. Most of these allegations occurred as a result of widely publicized and even televised mass incidents. According to news reports, only one of these 300 complaints was sustained by the San Francisco Police Department. Similar experience with inadequate Internal Police Review of Citizen Complaints led to the establishment of the Police Review Commission in Berkeley.

Civilian Review (as it is practiced in Berkeley) has several advantages over the typical internal investigative process. First, it holds evidentiary hearings with all parties present. These are open public meetings which are well publicized. Members of the press and interested citizens are encouraged to attend. Unlike internal police hearings, witnesses are heard firsthand by the decision-makers and are subject to cross-examination by the decision-makers, the parties (the complainant and the officer) or their attorneys. This cross-examination maximizes the possibility of getting at the truth.

Secondly, unlike the Chief of Police, the citizen judges are not in a hostage position vis-a-vis the officers within the Department and they are, in general, not subject to reprisal from inside or outside the Department.

Thirdly, the Commissioners and the civilian investigators tend to be concerned, open-minded people who understand the

positions of both the citizens and the officers involved. They also are not overly familiar with the situations which either party has found him or herself in. This leads to a high degree of neutrality on their parts.

Fourth, the public nature of the process and the independence of the Commissioners as well as the participation of the Police Department in the process provides balance, credibility and objectivity in its decision-making and a deterrent effect on officers. Problem officers know that questionable conduct will not be condoned, ignored or allowed to continue unchallenged because of generally accepted attitudes of the Police Department. Thus, officers tend to alter faulty conduct in order to avoid scrutiny by an independent agency which is watch-dogging conduct on a daily basis.

Fifth, perhaps the most important element of Berkeley's civilian review process is its jurisdiction over police policy, practices and regulations. The Berkeley Commission reviews police officer training, oversees implementation of various practices and establishes guidelines. Most recently the Commission recommended that the use of the carotid "choke" hold be characterized as deadly force. The proper use of this hold will now be limited to certain very specific situations where the use of deadly force is authorized. The use of this hold in non-life threatening situations has resulted in numerous citizen deaths and huge lawsuits in California. There has been no such problem in Berkeley.

It is apparent to those of us who are a part of the Berkeley Police Review Commission that civilian review works.

In recent years other cities have developed citizen police review processes in response to crisis situations.

In the City of Oakland there were ten unarmed minority males fatally shot by police in 1979. This precipitated widespread citizen demand for civilian review which culminated in the formation of a citizen complaint board to investigate and hear complaints of police use of excessive force, including deadly force. In those years since, there has been only one fatal shooting by police.

In the City of Richmond, California, similar circumstances have led to a City task force which has recommended a civilian review board there. A \$3,000,000 jury decision was just reached on behalf of the families of two unarmed black men who were fatally shot by police this year. Other lawsuits for other deaths, including deaths by use of carotid chokeholds are still pending.

Berkeley's Police Review Commission was formed as a result of similar situations. The demonstrations of the 60's in Berkeley around such issues as free speech, civil rights and opposition to the Vietnam War changed the views and experiences of many white middle-class students and older citizens toward their local and regional law enforcement. The Berkeley police officers who were seen initially as friends of the demonstrators were viewed differently as the demonstrations and the police response escalated. Minority groups had a similar experience of complaints of police mistreatment, excessive force, harassment and demeaning behavior in Berkeley as in other communities. At the same time, the Berkeley Police Department was experiencing internal conflicts as many officers, supervisors and command staff personnel attempted to

resist affirmative action and the inclusion of minorities and women in significant numbers in the Department and in positions of authority within the Department. In turn, these minority officers often had a sense of the interrelationship between the traditional problems of treatment of minority citizens on the street and the treatment within the Department. It was in the context of increased allegations of police brutality and inadequate response from the Department that the Berkeley Police Review Commission was created by voter initiative.

In 1973, the Department was opposed to civilian review in any form. The Police Association campaigned against its passage. Lawsuits were brought against the Commission's right to exist or to investigate complaints. There was resistance and fear from individual officers who were told by their Police Association leaders that the Commissioners' backers wanted to eliminate the Police Department, take their jobs and obstruct the enforcement of certain laws.

Ten years later, the majority of officers accept the function of the Police Review Commission. They have come to realize, and in many cases to express the belief, that the Commission does not wish to eliminate the Police Department nor to destroy police work but rather to improve it. For example, the Commission has been hearing witness officer testimony for over six years. When witness officer testimony was first required, the effort was met with lawsuits and recalcitrance. Once a single officer was disciplined for refusing to testify, witness police officers began testifying

as a matter of course. Cooperation is now the rule, rather than the exception. In other words, firm action brings results and experience dispels irrational fears. In one instance, a young white officer stated to me, "Eileen, I wouldn't want to work in a city without a civilian police review commission." On July 1, 1983, the Berkeley Police Review Commission will become the first in the country to compel Accused Officer Testimony in addition to witness officer testimony.

The proof of the effectiveness of civilian review is not merely in its emulation, its theoretical justifications, and reduced death rates; its greatest claim to effectiveness, at least in Berkeley, is in the great reduction of excessive force complaints which resulted from the implementation of civilian review.

From 1974 to 1977, complaints of excessive force dropped 67%. Discourtesy complaints had a similar drop. The crime rate decreased, arrest and conviction rates were not affected. The resulting increased police-community dialogue and support began to address and ameliorate certain crime situations. An escalating rape problem was significantly reduced as was a problem of street prostitution in low income areas. Special police task forces were set up at the urging of the PRC. The proliferation of massage parlors which were allowing prostitution and hard drug trafficking was stopped and many licenses revoked as a result of community pressure through the Police Review Commission for increased enforcement to address these issues. Complaints of inadequate police response to situations of domestic violence or street violence between low income citizens

disappeared under PRC insistence that these cases be handled with the same professionalism and enforcement techniques as were used in other incidences of assault, i.e. professional investigation and arrest of responsables.

These, and other incidences of community-civilian review support for increased law enforcement served to ameliorate police concerns about civilian review; to improve the citizen's view, particularly the low income citizen's view of police service; and to create an atmosphere of police-community cooperation, rather than police-community opposition. This change signified to both police and community that they had less to fear in terms of violence from the other in the day to day conduct of police activities. The de-escalation of confrontation and paranoia increased both officer and citizen safety and increased citizen cooperation in the mutually supported task of the reduction and solution of crime.

Such results are not accomplished without disagreement and verbal conflict. Almost every major complaint sustained by the Commission in its early days was greeted with opposition from the Police Department and outrage from the Police Association. That conflict is indicated by the comparative statistics of the Police Department and the Police Review Commission during its early activities. In 1976, the first full year in which complaint hearings were regularly held, the Police Review Commission sustained one or more allegations in 70% of the cases it heard. Of those same cases, the Berkeley Police Department sustained only 4%.

Berkeley has a dual system in which the BPD investigates and hears all cases which the PRC hears. Therefore, conditions exist for absolute comparison. While the City Manager, who as the final decision-maker resolves discrepancies between the two agencies' findings, supported the Police Department more often than the PRC, he followed the PRC recommendation in several important cases and questioned, upon occasion, the credibility and objectivity of some Department findings. In the following years, statistics indicate that the Commission has consistently sustained allegations in between 30% and 40% of the cases it hears. The Police Department's rate of sustaining citizen complaints increased dramatically to a high of 28% of those same cases in 1979. Through the years, various City Managers have mentioned a similar record of resolving disagreements. More often the Manager resolves disagreements in favor of the Department's version but in many significant (and less significant) cases the Manager agrees with the Commission's findings and analysis. At this point, the Department and the Commission agree in their findings 80% to 90% of the time. And most often the disagreements occur where the Commission sustains complaints which are not sustained by the Department. But the now well-coordinated interchange of information and views between the PRC and the BPD has led to a significant improvement in both processes.

The deterrent effect of more credible complaint processes has meant that complaints of excessive force decreased, that the level of alleged excessive force decreased and that such complaints were sustained less often. In 1976, six excessive force complaints were sustained. By 1978, not a single allegation of excessive

force was sustained and in the next two years (1979 and 1980) only three excessive force allegations were sustained.

The marked decrease in the inappropriate police use of force (deadly and otherwise) and concomitant improvement in police service and police-community relations is accomplished at a minimum cost to the taxpayers. The Berkeley PRC's yearly budget is less than \$100,000. That contrasts favorably with the \$3,000,000 adverse settlement in Richmond, California. It is also cheaper than the death of any citizen as the result of the improper use of deadly force by police officers.

ADDENDUM

I wish to thank several people for their assistance in preparation of any testimony here today: Ron Nelson, Chief of Police in Berkeley; Police Review Commissioners Bruce Haldane (gardener and reporter for a local newspaper GRASSROOTS) and Professor Sandy Muir, who is chairperson of the Political Science Department at U.C. Berkeley; Jon Read, architect and community activist; and most especially to Peter Hagberg, whose knowledge and understanding of the history, effects and meaning of civilian review in Berkeley have been essential.

While these friends and associates may not agree with everything I have said, it is a sign of our success that we can all work together for a common end: the best possible police service, that deserves and enjoys widespread community support, with the least possible conflict and unnecessary use of force.

ORDINANCE NO. 4644 -N.S.

ESTABLISHING A POLICE REVIEW COMMISSION

Adopted by

PEOPLE of BERKELEY

April 17, 1973

(referenced for Court decision April 12, 1976)

Amended To: April 15, 1975

Annotated: June 9, 1976

Amended To: December 3, 1982

Index to Text Changes

<u>Section</u>	<u>Action</u>	<u>Ordinance No.</u>	<u>Eff. Date</u>	
2	Amended	4779-N.S. (Vote of the people)	4-15-75	
3	Amended	4779-N.S. (Vote of the people)	4-15-75	
Attached	3	Amended	5503-N.S. (Vote of the people)	12-3-82

ORDINANCE NO. 4644 -N.S.

ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION.

The people of the City of Berkeley do ordain as follows:

Section 1. The general purpose of this ordinance is to provide for community participation in setting and reviewing police department policies, practices, and procedures and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department.

Section 2. There is hereby established a Police Review Commission of the City of Berkeley. Said Commission shall consist of nine (9) members. Each Councilmember shall appoint (1) member to the Commission. All members shall be residents of the City of Berkeley. No officer or employee of the City shall be appointed to the Commission.

~~Section 3. The term of each member shall be two (2) years commencing on October 4 of each odd numbered year and ending on October 3 of each succeeding odd numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council. No member shall serve more than two (2) consecutive terms or portions thereof.~~

Section 4. Vacancies on said Commission, from whatever cause, except temporary vacancies as hereinafter provided, shall be filled for the unexpired term by the City Council member whose appointee has ceased to serve. The appointment of any member of the Commission who has been absent and not excused from three (3) consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term. A member of the Commission may be granted a leave of absence not to exceed three (3) months by the City Council, and a temporary vacancy shall thereupon exist for the

1.

Revised to: 4-15-75

*Section 3 Amended 12/3/82; see attachment.

period of such leave of absence. During the period of such temporary vacancy, the Council may fill such vacancy by a temporary appointment to said Commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full and permanent membership on said Commission.

Section 5. The Commission shall elect one of its members as Chairperson and one as Vice-Chairperson, who shall each hold office for one (1) year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected no later than the second meeting of the Commission following its appointment.

Section 6. The Police Review Commission shall be a working Commission. In order to compensate Commissioners for their time and work in investigating complaints, reviewing policies and practices, and attending meetings, Commissioners shall receive \$3.00 (three dollars) per hour, but in no case shall compensation for any one Commissioner exceed \$200 (two hundred dollars) per month. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Commission and filed with the office of city clerk.

Such clerical and secretarial assistance as are needed by the Commission shall be provided by the office of the City Clerk. The Commission is further authorized to secure and define the duties of same, in the manner consistent with existing law, as it may deem necessary or appropriate.

Section 7. The Commission shall establish a regular time and place of meeting and shall meet regularly at least once every two weeks or more frequently as workload requires. The regular place of meeting shall be in an appropriate central location in the City capable of accommodating at least 75 people, but shall not be held in the building in which the Police Department is located. At least once every three months, or more frequently if the Commission desires, the Commission may meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people in the various neighborhoods in the City at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Commission, upon personal notice being given to all members or written notice being mailed to each member and received at least thirty-six (36) hours prior to such meetings, unless such notice is waived in writing.

All Commission meetings, and agendas for such meetings shall be publicized in advance by written notice given to newspapers, radio and television stations serving the City at least three (3) days prior to regular meetings, and at the same time as members are notified of special meetings. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the City as are designated by the Commission.

2.

Note: Language shown in ~~strike out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.

All meetings shall be open to the public, unless the Commission, in order to protect the rights and privacy of individuals, decides otherwise and if such closed meeting is not waived by the individual concerned. The Commission shall cause to be kept a proper record of its proceedings. The records and files of the Commission and its officers shall include, but not be limited to, all official correspondence, or copies thereof, to and from the Commission and its members, gathered in their official capacities, and shall be kept and open for inspection by the public at reasonable times in the office of the Secretary to the Commission.

A majority of the appointed Commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take any action.

The Commission may appoint such subcommittees as are deemed necessary or desirable for the purposes of this ordinance, provided that, membership on such subcommittees shall not be limited to the Commission members but may include members of the public who express an interest in the business of the subcommittees. The members of such subcommittees shall serve without compensation.

Section 8. On the petition of fifty (50) or more citizens in the City of Berkeley filed in the office of the Secretary of the Commission, the Commission shall hold a special meeting in an appropriate and convenient location for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission. In no case shall the Commission meet later than five (5) working days following the date the petition is filed.

Section 9. In carrying out its objectives, the Commission shall receive prompt and full cooperation and assistance from all departments, officers and officials of the City of Berkeley. The Chief of Police, or his deputy if the Chief is ill or absent from the City, shall as part of his duties attend meetings of the Commission when so requested by the Commission, and shall provide such information, documents, or materials as the Commission may request. The Commission may also require the attendance at its meetings of any other police department personnel or City officials it deems appropriate in the carrying out of its responsibilities under this ordinance.

Section 10. The Commission established by this ordinance shall have the following powers and duties:

- a) to advise and make recommendations to the public, the City Council, and the City Manager;
- b) to review and make recommendations concerning all written and unwritten policies, practices and procedures of whatever kind and without limitation, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law

3.

Note: The language shown in ~~strike out type~~ was declared invalid by the California State Supreme Court on April 12, 1976

enforcement generally, such review and recommendation to extend to, but not be limited to, the following:

- i) Treatment of rape victims;
- ii) Police relationship with minority communities;
- iii) Use of weapons and equipment;
- iv) Hiring and training;
- v) Priorities for policing and patrolling;
- vi) Budget development;
- vii) Other concerns as specified from time to time by the City Council;

d) to request and receive promptly such written and unwritten information, documents and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this Ordinance from any office or officer or department of the City Government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each and all of which are hereby directed as part of their duties to cooperate with and assist the Commission in the carrying out of its responsibilities; provided that information the disclosure of which would impair the right of privacy of specific individuals or prejudice/pending litigation concerning them shall not be required to be made available to the Commission/except in general form to the extent police activities in specific cases reflect police department/policies and; provided that, the individual involved in the specific situation may consent in writing to the disclosure of information concerning him or her, in which case it shall be made available to the Commission;

d) to receive complaints directed against the Police Department and any of its officers and employees, and fully and completely investigate said complaints and make such recommendations and give such advice ~~including/~~ *including/disciplinary action and action* relating to departmental policies and procedures) to the City Council and the City Manager in connection therewith as the Commission in its discretion deems advisable; provided as follows:

- i) that investigation of all complaints filed with the Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible;
- ii) that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred to the Commission for investigation and that the Police Department shall conduct its own investigation only at the request of said Commission, and;
- iii) that regular quarterly reports relating to the number, kind, and status of all such complaints shall be made by the Commission to the City Council and the City Manager;

e) consistent with provisions of the Berkeley City Charter and to the extent permissible by law, to exercise the power of subpoena;

4.

Note: The language shown in ~~italics~~ *italics* was declared invalid by the California Court of Appeals on April 12, 1976.

f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this ordinance and its general purposes.

Section 11. That Ordinance No. 4061-N.S. and Ordinances No. 4149-N.S. and No. 4887-N.S. in amendment therof are each and all repealed by this Bill. To assist in an orderly transition between the Citizens Committee on Public Safety, herein abolished, and the Police Review Commission established by this Bill, all files, records, books, publications, and documents of whatever kind of the former Committee shall be promptly deposited in the Office of the City Manager for the use and benefit of the newly created Police Review Commission.

Section 12. If any provision of this ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the ordinance which can be given effect without the invalid provisions or applications, and to this end any phrase, section, sentence, or word is declared to be severable.

In effect: April 17, 1973

ORDINANCE NO. 5503-N.S.

AMENDING SECTION 3 OF INITIATIVE ORDINANCE NO. 4644-N.S. ENTITLED "ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND RENOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION."

BE IT ORDAINED by the People of the City of Berkeley as follows:

That Section 3 of Initiative Ordinance No. 4644-N.S., as above entitled, is hereby amended to read as follows:

Section 3. The term of each member shall be two (2) years commencing on December 1 of each even numbered year and ending on November 30 of each succeeding even numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council.

This ordinance was approved by the electors of the City of Berkeley at the General Municipal Election held in the City of Berkeley on November 2, 1982.

In effect: December 3, 1982

CITY OF BERKELEY



POLICE REVIEW COMMISSION
1844 ADDISON STREET

BERKELEY, CALIFORNIA

(415) 644-6716
94704

REPORT OF FINDINGS
OF POLICE REVIEW COMMISSION BOARD OF INQUIRY HEARING
HELD 6/29/76

BOARD OF INQUIRY MEMBERS: Commissioners Walker , Fuller, Chanin

COMPLAINT NO. 166

Complainant: Ron Brown

Accused BPD Employee: Officer G. B. Dvorak

ALLEGATIONS:

	<u>Finding</u>	<u>Vote</u>
1. Improper Display and/or Negligent Handling of Firearm	Sustained	3-0
2. Negligent Investigation--Overreaction	Sustained	3-0

JIM CHANIN, Member
Police Review Commission Board
of Inquiry

REPORT OF FINDINGS
OF POLICE REVIEW COMMISSION BOARD OF INQUIRY HEARING
HELD 6/29/76

Complaint No. 166

Complainant: Ron Brown

Accused BPD Employee: Officer G. B. Dvorak

On June 29, 1976, the Police Review Commission Board of Inquiry unanimously voted to sustain both allegations raised by complainant Ron Brown in Complaint No. 166. An unusual amount of legal work has prevented our forwarding findings on this matter before this date. However, this delay should in no way be interpreted as indicating any reluctance on our part in seeing this very serious matter resolved. The Board of Inquiry for Complaint No. 166 hopes that the City Manager will carefully review our deliberations and will support our findings toward this end. We offer our further assistance if such help is needed. A tape of our proceeding can also be made available.

Allegation No. 1, Improper Display and/or Negligent Handling of Firearm: Sustained.

The basic facts of the incident can be gotten from the resume of the complaint which is enclosed with this report.

There are two distinct issues involved in this allegation: (1) whether Officer Dvorak was justified in initially drawing his weapon on Mr. Brown and in pointing the weapon at him; (2) whether Officer Dvorak acted properly in running across the child care center with his weapon pointed towards the ground where children of one to three years of age were playing.

Initial Drawing of the Weapon

Both the police version of the incident and the Investigator's report agree that Officer Dvorak knew only that the suspect in the robbery at Foley's Drug Store was a black man, 20 to 30 years old, wearing a dark blue sweatshirt. The Police Department, however, concludes that it was "reasonable" for Officer Dvorak to control Mr. Brown at gunpoint because Mr. Brown's description approximated that given to Officer Dvorak. The Board of Inquiry believed otherwise. First, Mr. Brown was wearing a purple football jersey with the Number 82 in large white numerals on both sides. He was also wearing a very distinct white panama hat. But far more importantly, Officer Dvorak had no right to draw his gun on any subject given the dearth of information concerning the victim's identity that was available to him without significant further proof of guilt or evidence of identity.

Board of Inquiry Findings
PRC Complaint No. 166
Page Two

The Board of Inquiry heard from five adult witnesses, Mitchell Gordon, Del Appleby, Jill Meader, Janet Robinson, and Michael Hughes, all of whom were working in the child care center at the time of this accident. None of these witnesses observed any provocative gestures or acts of flight on the part of the complainant.

Janet Robinson was by the sandbox near the complainant, Ron Brown, when she heard Officer Dvorak approaching. She testified that she turned and could see the complainant pivoting toward the gate and then heard Officer Dvorak's order to freeze and saw his gun pointed at the complainant.

Michael Hughes, who testified that he looked toward the complainant because Hughes' infant son was near Brown, observed Ron turn slowly toward Officer Dvorak.

Mitchell Gordon testified that he was talking to the complainant when the incident began. They both walked from their position by the brick wall in a generally north direction toward the gate, west of the sandbox, after hearing screeching tires in the parking lot, in an attempt to observe what was happening beyond the south fence of the child care center. The complainant, Ron Brown, was ahead of Gordon and proceeded to a spot northeast of Gordon. Both the complainant and Gordon testified to stopping and observing Officer Kish arrest the suspect near a church door, just beyond the southeast corner of the play yard. Within seconds, Gordon heard Officer Dvorak running through the bushes toward the gate at the northwest corner of the play yard. He turned and observed Officer Dvorak approach the gate, point the gun, and order someone to stop. He turned and saw the gun pointed at the complainant.

Del Appleby heard Officer Dvorak's order to get on the ground and turned to observe the gun pointed at the complainant on the ground. She did not observe the complainant just previous to Officer Dvorak's order, as her attention was drawn to the arrest of the suspect by Officer Kish.

Jill Meader observed the suspect's arrest and then walked to a crying child. She then heard Officer Dvorak's voice ordering the complainant to freeze and get down. She saw the complainant get down on the ground.

In general, the testimony indicated that Officer Dvorak drew his gun and pointed it almost immediately after reaching the fence; that the complainant was pivoting slowly to face the officer at the time he was ordered to freeze and get on the ground; and that the

Board of Inquiry Findings
PRC Complaint No. 166
Page Three

complainant was not fleeing, moving quickly, or otherwise acting in a manner which would create a physical difficulty in complying with the officer's order, or which might reasonably arouse the suspicion of Officer Dvorak.

Based upon the paucity of information, with the exception of the fact that the suspect was black, the timing of the events indicates that Officer Dvorak took little or no time to evaluate the situation inside the play yard before taking action and that he did not take adequate time to observe or evaluate the complainant's actions before acting. According to the testimony and facts received by the Police Review Commission, the complainant had neither motive nor opportunity to flee; nor did anyone in the play yard observe any precipitous motion on the complainant's part. This, coupled with the fact that the complainant was wearing a white hat and a purple football jersey with a large "82" on both front and back, led the Board of Inquiry to the conclusion that the officer had no reasonable grounds to believe that the complainant was the suspect or was an immediate danger to the officer or to others.

Even if the complainant were moving away from the officer at the moment he arrived, which the evidence the Board of Inquiry heard would strongly tend to deny, the Board could find no facts or inferences which would reasonably justify the officer's conclusion that the complainant "started to flee."

The Board has no quarrel with the fact that the officer reached the conclusion that the complainant was the suspect and for that reason the officer drew his gun. The Board is saying that Officer Dvorak acted precipitously and unreasonably under the circumstances then reported and known to him and that even a little more observation and investigation, prior to brandishing his weapon, would have clarified the situation and avoided this incident.

The inescapable conclusion from the Department's version is that Officer Dvorak had a right to draw his gun on any black man with a dark shirt whom he happened to see in the course of his pursuit of the shoplifter at Foley's Drugs. The Board of Inquiry categorically rejects this assumption. In the absence of a direct threat to his safety, Officer Dvorak had a responsibility to observe further and press for further information and proof of guilt before subjecting any citizen to the horror of having a loaded gun pointed at him. His failure to do this is a patent violation of Police Regulation 322 (see Investigator's Report, Page Four) and good police procedures.

The Police Department's version suggests that Mr. Brown indicated on May 18, 1976 to Officers Bone, Guinn, Pittman, and Casimere that he was moving away from Officer Dvorak and that Officer Dvorak was therefore justified in taking the action that he did. This

Board of Inquiry Findings
PRC Complaint No. 166
Page Four

account is admitted to be a departure from both Mr. Brown's written statement to the Police Department and from Mr. Brown's statements to the PRC Investigator and the PRC Board of Inquiry. It is also a departure from the testimony of witnesses before the PRC Board of Inquiry.

The Board of Inquiry believes that the evidence supports a finding that Mr. Brown made no hostile move toward Officer Dvorak, no flight away from the officer, and that in fact he may well have made no move at all, except to pivot towards the sound of the approaching officer.

Running Across the Yard with Gun Drawn

It is important to note at the outset that Officer Dvorak released the complainant after both Mitchell Gordon and Del Appleby advised him that the suspect had been captured by another officer beyond the far side of the play yard.

Gordon said that he told the officer: "Hold it. He's a teacher here. They caught the suspect over there." Gordon repeated the statement and pointed to the location where Officer Kish was standing with his gun.

Del Appleby heard Gordon and also spoke when it appeared to her that the officer was still unclear as to the true situation. She said, "He works here. Your man is over there."

"Where?" asked Officer Dvorak.

"Over there," Mrs. Appleby said, pointing to the location across the courtyard.

These statements were confirmed by other witnesses. According to the testimony, Officer Dvorak, after considering this information and looking across the play yard, told the complainant that he could get up. The testimony was that Officer Kish was visible, as he pointed the gun at the suspect who was now on the ground out of sight from where Officer Dvorak was standing. Officer Dvorak then jumped over the brick wall to the right of the gate and trotted briskly across the play yard.

The police version of the incident said that it was not certain that Officer Dvorak had his gun out when he ran across the child care center. Moreover, the Department maintained it was unnecessary to resolve this point, since Officer Dvorak was well-trained in weapons use and had performed his job with skill in the past.

The PRC Board of Inquiry heard from three witnesses who positively stated that Officer Dvorak had his gun out when he ran across the child care center. Two witnesses, Del Appleby and Jill Meader, only saw the gun displayed during part of Dvorak's run. (Their

Board of Inquiry Findings
PRC Complaint No. 166
Page Five

vision was obscured at certain points or their attention was drawn to the area where the right suspect was being held.) One witness, Janet Robinson, had an uninhibited view of Officer Dvorak with the gun in his hand running the whole way across the yard. Ms. Robinson also noted that the yard was littered with toys and that Officer Dvorak might have tripped at any time. The teachers testified that there were 20 to 25 small children standing or crawling on the ground in the area. She said that children were as close as three feet from Officer Dvorak's gun.

It is important to note here that this was not a situation where the pointing of a gun to the ground was a safe act. Children, some not old enough to walk and others standing no higher than two to three feet tall, were all around Officer Dvorak. His gun was pointed toward the ground ahead of him as he proceeded; but this did not provide adequate protection against accidental injury to small children who were also close to the ground.

Officer Dvorak's extensive training in firearms does not mean that his actions on May 18 were presumptively correct. Were this true, an officer could never be disciplined for a firearms violation once he or she received the requisite degree of training.

Moreover, Officer Dvorak's courage and tact are in no way relevant to whether he acted correctly on May 18, 1976. The PRC has consistently refused to allow prior commendations or complaints to determine its findings on a specific incident. Towards that end, the PRC refused to consider a prior complaint it had sustained against Officer Dvorak, including his stopping a black man even though he had an insufficient description at the time of the stop (PRC Complaint No. 124). It also refused to consider a number of letters both praising and condemning Officer Dvorak and his actions on May 18, 1976.

Allegation No. 2, Negligent Investigation

Much of our findings on this matter has already been discussed. Officer Dvorak clearly had insufficient identification and cause to pull his weapon on Mr. Brown and tell him, "Freeze, or you're dead." More investigation needs to be done before Berkeley citizens can be subject to this type of activity. Officer Dvorak could have made a mistake and still not have this charge sustained against him; however, given the facts as they happened on May 18, a charge of negligent investigation is certainly warranted.

Board of Inquiry Findings
PRC Complaint No. 166
Page Six

Conclusion

The PRC has received an increasing number of complaints from black citizens who have been subject to police stops based solely on information that some black person is a suspect in some recent crime. Often, the description of the purported criminal is inconclusive save for the fact that he is a black man with certain very general identifying characteristics. The citizens who have been subject to these stops, and who were not in fact criminals, have become understandably indignant about the manner in which they were treated. Their anger is often supplemented by BPD personnel's failure to apologize concerning the incident.

The PRC Board of Inquiry believes that this problem can only be exacerbated by the failure of City officials to sustain complaints against officers who engage in this kind of activity. Policy changes and additional training may also be appropriate, but the fact remains that not all BPD officers have been guilty in this matter. As long as individual officers can engage in the type of activity which Officer Dvorak did with City approval, these incidents will not be discouraged and can only continue with increased frequency and attendant dangers to black citizens and police officers.

JIM CHANIN

WILLIAM WALKER

MARGURITE FULLER

Board of Inquiry Members
PRC Complaint No. 166

CITY OF BERKELEY



CITY MANAGER'S OFFICE
2134 GROVE STREET

BERKELEY, CALIFORNIA

(415) 644-6580

94704

October 12, 1976.

RECEIVED

OCT 12 1976

POLICE REVIEW COMMISSION

To: Police Review Commission

From: Elijah B. Rogers, City Manager

Subject: POLICE REVIEW COMPLAINT #166 - RON BROWN, COMPLAINANT

The following allegations were considered by the Police Review Commission's Board of Inquiry.

Allegations:

1. Improper display and/or negligent handling of firearm.
2. Negligent investigation; over reaction.

Findings Votes

Sustained 3-0
Sustained 3-0

After reviewing the records and findings of the Police Review Commission, the Police Department, a hearing between Officer Dvorak and his attorney, a letter from Officer Dvorak's attorney, and letters of support of Officer Dvorak's actions from citizens of Berkeley, I have arrived at the following conclusions:

1. Officer Dvorak was initially justified in drawing his weapon on complainant Ron Brown.
2. Officer Dvorak was negligent in running across the play yard with his gun drawn.
3. Officer Dvorak was not negligent with regard to his "investigation" immediately prior to confronting complainant.

My reasons and rationale for the conclusions reached above are as follows:

1. Drawing of Weapon. The facts as I see them are that a crime had been committed in which a weapon was used and that the suspect, a black male between 20 and 30, wearing a dark blue sweatshirt, was identified. Given this limited set of facts, the question of what constituted a reasonable arrest and the degree of force necessary must be answered in terms of the exigent circumstances

prevailing at the time of the arrest. These exigent circumstances as I see them were (1) the subject officer was in "hot pursuit" of the suspect, and (2) the suspect was determined to be in the immediate area of the subject child care facility. Complainant Brown was a black male, between 20 and 30 years of age and was wearing a purple football jersey. Obviously, it could be argued that this limited description would fit many young black males. However, the existing facts and circumstances isolate only two men as fitting this description - complainant Brown and the actual suspect. These were the only two black men in the subject area. Officer Dvorak's behavior should then be viewed in this context. The standard to determine whether Officer Dvorak was justified in drawing his weapon should not be that of the various witnesses' perception, but rather in terms of what would an otherwise reasonable and prudent officer have done under the same circumstances. Thus, I find that Officer Dvorak's conduct was justified under these circumstances.

There is one additional fact which both reports ignore, but requires some consideration. The radio call indicated that the suspect was being pursued by the shopkeeper and others. I would surmise from this that the suspect was either not armed or if armed, the deadliness of the weapon was questionable. This leads me to the conclusion that perhaps Officer Dvorak's belief that complainant Brown posed an immediate threat to life was not wholly justified. Nonetheless, I think the totality of the facts and circumstances support my position in sustaining the department's position.

2. Running Across the Yard With Gun Drawn. It is important to remember several factors as they relate to this allegation. Officer Dvorak was informed by several employees of the child care facility that the actual suspect had been apprehended by Officer Kish. Based on these representations, Officer Dvorak released complainant and proceeded to the location indicated by the witnesses. These witnesses did not say that the actual suspect was fleeing, resisting or otherwise not in custody. These same witnesses who Officer Dvorak believed as to where the actual suspect was, further testified that Officer Dvorak ran through the yard, leaping walls and fences with his gun drawn while children were in the area. There are no provisions in Police Regulation 322 or 323 which support Officer Dvorak's behavior in this instance. I therefore conclude that his conduct was negligent and in reckless disregard for the safety of those children in the play yard.

It is worth mentioning here that I find the department's response somewhat insensitive and raises serious questions of credibility in what appears to be an attempt to defend this officer at any cost. Clearly, a drawn weapon is more dangerous than a holstered one. A running and jumping officer with a drawn weapon in the midst of young children is a dangerous situation, particularly in view of the fact that the only information which Officer Dvorak had to act upon suggested that the suspect was already in custody.

POLICE REVIEW COMPLAINT #166 -
RON BROWN, COMPLAINANT

October 12, 1976
Page 3

3. Negligent Investigation. In retrospect, I would agree that the officer could have made a closer examination of the facts and circumstances before moving in with his gun drawn. However, I think it would be unfair to substitute my judgment for his, being far removed from the stress and urgency which prevails in street arrest situations. Errors of judgment do not necessarily constitute negligence. The degree to which the error violates reasonable standards of conduct, given the same or similar stresses an officer experiences on the street, is the degree to which his or her conduct ought to be perceived as negligent. I do not find that Officer Dvorak's conduct was so gross as to constitute negligence.

I would also caution the department with respect to its apparent inclination to support any officer irrespective of the facts. Corrective measures can only be instituted if transgressions or violations are faced. Finally, I am extremely concerned about the seemingly inability of the department to provide adequate training as it relates to handling of fire arms. The department has come under severe criticism from the public over the last two years for not providing adequate staff training in this area. Therefore, I am directing the Acting Chief of Police to submit a training plan for all police officers relative to the use of fire arms to me no later than 15 days from this date.

Conclusion

For the reasons stated above, it is my intention to suspend Officer Dvorak without pay for three (3) days. This three-day suspension is equivalent to a \$206 fine. There will be some arguments that this suspension is not enough. Others will argue that Officer Dvorak should not have been suspended at all. However, it is the job of the City Manager to weigh all the facts and come to some reasonable conclusion. I am absolutely convinced that a drawn weapon is more dangerous than a holstered one. However, recognizing that Officer Dvorak has been commended for some of his work in the past, and consistent with my philosophy of progressive disciplinary action, I have decided that a three-day suspension without pay is justified.

I intend to see that police officers' individual rights are protected just as we try to protect the rights of all other citizens. However, at the same time, police officers will not receive special consideration simply because they are police officers.

cc: Acting Chief of Police
City Attorney
Director of Personnel

CITY OF BERKELEY



POLICE REVIEW COMMISSION
1844 ADDISON STREET

BERKELEY, CALIFORNIA

(415) 644-6716

94704

May 28, 1976

To: PRC Secretary Lynn Boardman

From: Peter Hagberg, Investigator
Police Review Commission

Re: Report of Investigation, PRC Complaint No. 166

- I. Allegations:
- 1) Improper Display and/or Negligent Handling of Firearm
 - 2) Negligent Investigation--Overreaction

Complainant: Ron Brown
1203 Allston Way, Apt. 1
Berkeley, California

642-1123

Berkeley Police Department Employee: Officer G. B. Dvorak

Date of Initial Incident: 5/18/76

Date Complaint Filed: 5/18/76

II. Resume of Complaint:

The complainant, Ron Brown, teacher at the University Child Care Program's Infant Care Center, was tending some preschool children inside a fenced-in, outdoor play area behind the First Congregational Church at 2340 Durant Avenue on Tuesday morning, May 8, 1976.

Several teachers heard the squealing of tires in the parking lot of the church, as they had many times before. They assumed it was the police, chasing someone. Looking up, they saw a black youth on the raised walk above the southeast corner of the play yard attempt to open a church door. It was locked. The youth turned, whereupon he saw a Berkeley Police officer with a gun drawn who ordered him to lie on the ground.

Ron Brown and other teachers then heard someone running through the bushes toward the northeast corner of the playground. They turned and saw Officer Dvorak reach the fence, point his pistol at Ron Brown and order him to the ground. Other teachers started telling Officer

Dvorak that Ron worked there and that the man he was looking for was at the other end of the play yard.

The teachers reported that Officer Dvorak climbed over the brick wall and ran across the yard with his gun out. Several children were in the middle of the yard as he ran across to join other officers around the captured suspect.

III. Report of Investigation:

A. Initial Incident, Chase and Arrest

At approximately 10:30 a.m. on Tuesday, May 18, 1976, Margie Wilkerson was standing in the doorway of Foley's Drug Store, 2312 Telegraph Avenue, after making a purchase, when she observed a white male in a striped T-shirt tackle a young black man and bring him back into the store as an apparent shoplifting suspect. As everything appeared calm, Ms. Wilkerson left the store and began to walk down Telegraph toward Durant.

Doug Parker, an employee of Foley's, walked the suspect to the back of the store where store manager Marshall Storz called the police at 10:39:30 a.m. The suspect was reported to have a knapsack filled with merchandise from the store. When Parker asked the suspect to sit down while the police were called, the suspect drew a "knife" and threatened to stab Mr. Parker if they did not let him go. Parker backed up and the suspect fled the store.

Store manager Marshall Storz was on the telephone to the Berkeley Police Department dispatcher when the escape attempt was made. Sounds of a struggle can be heard on the background of that telephone conversation as Mr. Storz reports having a shoplifting suspect. Mr. Storz states, "It's dangerous, it's dangerous." Storz then reports to the dispatcher that the suspect had a knife and was going out on Telegraph toward Durant. Storz describes the suspect as black, 20, with a dark navy blue sweatshirt and a knapsack. Storz then hung up.

The BFD Communications Center Control then reported to Berkeley cars that a theft (a misdemeanor if under \$200 in merchandise is taken, a felony if more) and illegal brandishing of a deadly weapon (misdemeanor) had just occurred at Foley Drug by a black male, about twenty, in a dark sweatshirt, with store employees in pursuit.

Three Berkeley officers immediately responded over the radio. And then a fourth officer, Officer Dvorak, responded and asked the direction of flight.

Margie Wilkerson, who was by then crossing Telegraph at Durant, saw the suspect running down Telegraph and saw him turn west on Durant with the store employee in the T-shirt, Doug Parker, in pursuit. She saw the three officers appear from around the donut shop further east on Durant who ran up to Mr. Parker. The men talked briefly.

Parker reports that he saw the officers and signalled them. He reports that he described the suspect as a black male in a blue sweatshirt and that two of the officers saw the suspect and gave chase through the dorm complex toward Channing Way. Over the police radio, the suspect's movements were described quickly, first as fleeing west on Durant and then through the block south to Channing. The suspect was described as a black male in a dark blue sweatshirt. Channing Street was covered by police and within a very short time Officer Kish, Badge No. 76, reports capturing the suspect at 10:42:15, less than three minutes after the initial telephone call was received by the BPD.¹

B. Arrival and Conduct of Officer Dvorak

Several teachers at the Infant Care Center report hearing Officer Dvorak approach the play yard shortly after the suspect had been apprehended and ordered to the ground by another police officer. Del Appleby, a teacher at the Center, reported escorting two small children away from the area of the arrest before she heard a police officer on the other side of the fence ordering someone to the ground. She turned and saw Officer Dvorak pointing his gun at Ron Brown, another teacher at the Infant Center. Ms. Appleby estimates that Officer Dvorak's arrival occurred 30 to 45 seconds after the apprehension of the suspect. Other teachers had similar estimates.

Ron Brown reported that Officer Dvorak initially told him to "stop or you're dead." Janet Robinson thought the officer said, "Freeze or I'll blow your head off," and later told Ron to "get down on the ground and if you move you're dead." Other teachers, Mitchell Gordon, Del Appleby and Jill Meader heard orders to "stop" and to "get down on the ground"; but they did not hear any verbal threats.

All confirm, however that the officer's gun was pointed directly at Ron Brown; that Brown moved slowly to the ground; that Mitchell Gordon and Del Appleby then started telling the officer that "Ron works here" and that the man had been arrested on the other side of the play yard.

All the witnesses confirmed that it took the officer another approximately 30 seconds to absorb this information, check out the scene, and locate the other officers. Officer Dvorak then jumped from the wall with his gun out and ran across the play yard where small children were standing.

¹The report of capture was repeated over the air 15 seconds later. A minute and 20 seconds after the initial capture report, Officer Michler requested the location of capture so that he could bring the victim by for identification. The location was reported at Durant west of Dana by Badge #13 ten seconds later. Three minutes after the capture is first broadcast, Badge #48, Officer Dvorak makes his first report to control since copying the initial crime report: "O.K. It's my case. I have the guy in custody here. Are they bringing a witness by?" Control: "That's affirmative."

The description broadcast over the police radio was a black male about 20 in a dark blue sweatshirt. Ron Brown, who was standing inside the Infant Center with other teachers, was wearing a purple football jersey with the Number 82 in large white numerals on both sides. He was wearing a straw hat with a blue band and sun glasses. Mr. Brown is 26 and black. Teachers report that Brown was neither breathing heavily nor moving quickly as he stood in the play area. Mr. Brown indicates that he started to move to open the gate for Officer Dvorak at the point the officer drew his gun.

Officer Dvorak in his police report indicates that when he ran to the fence where the Infant Center was located he observed a black male (Ron Brown) in the yard who started "to flee in the opposite direction," at which time the officer brandished his weapon. Other witnesses did not report such flight on the part of Mr. Brown.

Officer Dvorak's report states that he and Officer Kish were proceeding westbound on Channing from Dana in a police car in an attempt to locate the suspect when Officer Kish spotted him running along the rear portion of the church. Officer Dvorak reports dropping Officer Kish off at the parking lot entrance and proceeding to the opposite end of the parking lot in an attempt to apprehend the suspect if he ran through to Durant Street.

The police report indicates that the suspect stole approximately \$25.00 worth of merchandise and was not armed with a knife or any weapon. The suspect had brandished a black marking tube, which he called a knife, in effecting his escape from store employees.

The suspect was 31 years old, 5'6", 150 lbs. and was wearing Levi's and a blue sweatshirt. However, the physical description of height and weight was not available to pursuing officers.

IV. Analysis

The Berkeley Police Department has the following regulations on the display and use of firearms:

PR 322 Firearms--Use of--By Officers.

1. The term "display" shall be used to describe the unholstering or brandishing of a lethal firearm during the conduct of police business.
2. The term "lethal firearm" shall be used to describe a firearm that is loaded with ammunition designed to kill.
3. Lethal weapons shall be displayed only in a defensive manner.
4. A lethal firearm may be displayed only if the officer feels such action is, or may become, necessary in the defense of his or another's life.
5. Lethal firearms shall not be discharged as a warning.
6. Lethal firearms shall not be pointed at a person in an attempt at apprehension unless the officer has reasonable cause to believe the person falls within the purview of PR 323.

7. Officers shall not unnecessarily display any firearm in any public place or carelessly handle a firearm at any time.
8. "Dry snapping" of weapons in the Hall of Justice shall be confined to the range. (Revised September 27, 1972)

PR 323 Firearms--Discharge of--When Permitted. Officers shall not discharge firearms in connection with police duty except under the following circumstances:

1. At an approved range.
2. Killing animals seriously wounded or dangerous, when other disposition is impractical.

Or, when all other reasonable means have failed:

3. In the necessary defense of the officer's life.
4. In the necessary defense of the life of another person.
5. To apprehend a KNOWN felon, when the officer has reasonable cause to believe he may be armed and may be an immediate threat to life. (Revised February 1, 1971)

Under the above quoted police regulations, an officer may not point a gun in an attempt to apprehend an individual unless the officer has "reasonable cause to believe" that the individual is a "known felon" who "may be armed and an immediate threat to life."

In the case at hand, the radio broadcast indicated that the reported criminal activity was possibly a felony shoplifting and that the suspect was armed.

The question for the Trial Board to determine is whether or not Officer Dvorak used reasonable judgment and had reasonable cause to believe, under the circumstances then known to him, that the complainant, Ron Brown, was a felon who might be armed and dangerous.

A second issue raised by the complaint is whether Officer Dvorak improperly handled his firearm by failing to holster it before dropping over the wall and running across the play yard.

BPD Regulation 322 (#7) provides that an officer "shall not unnecessarily display any firearm in any public place or carelessly handle a firearm at any time."

The allegation of negligent investigation is intimately tied to the question of the officer's brandishing of his gun. For the issue, here, is whether the officer could have taken further steps to determine the situation and Mr. Brown's identity and function before pointing a loaded gun at him.

V. Further Statements

Officer Kish, the arresting officer, stated that he was riding with Officer Dvorak up Durant to his assignment as a foot patrolman on Telegraph when the radio call concerning the fleeing suspect from Foley's was broadcast.

Officer Kish states that Officer Dvorak continued driving up Durant and turned south on Dana. Officer Kish states he saw a black male with a dark shirt running. Officer Kish states that the police car turned west on Channing. He observed the suspect run into the block between Channing and Durant. Officer Kish got out of the car at a parking lot and pursued the suspect, arresting him shortly thereafter. He states that Officer Dvorak drove through the parking lot. Officer Kish stated that he did not observe Officer Dvorak again until after the arrest had been made and Officer Kish was leaving the area. Officer Kish could not recall any further details as to where he next saw Officer Dvorak. He did not observe Officer Dvorak in the Infant Care Center nor did he observe Officer Dvorak's handling of his gun. Officer Kish could not state whether Officer Dvorak observed the suspect while they were both in the police car.

VI. Police Courtesy: A Policy Issue

While there is no regulation that Berkeley officers explain to unwitting victims why a police officer has pointed a gun at them, and although Chief Pomeroy had indicated that Berkeley citizens may just be unduly "picky" in complaining about "discourtesy" of Berkeley officers, the complainant and other teachers at the school indicated that there might not have been a complaint if the officer had offered an explanation for his conduct or had apologized for any inconvenience and apprehension which his sudden appearance with a gun had caused. Apparently, no such effort was made. Rather, the officer is reported to have departed with his prisoner, and the Infant Center personnel were left with no alternative but anger and extreme concern about the armed intrusion into an area filled with little children. Citizens are every bit as concerned with having guns pointed at them as policemen are; and examples of citizens accidentally, mistakenly, or wrongfully shot by police are legion.

This is not the first instance of a complaint alleging that neither an explanation nor apology was given to an innocent person stopped at gun point.

At the very least, an explanation and apology could be given at the scene of such incidents, as an elementary part of good community relations. A recommendation for instruction to officers in that regard might be appropriate.

Submitted.

cc: Officer Dvorak
Complainant Ron Brown
Chief of Police
City Manager

City of Berkeley

CITY MANAGER'S OFFICE
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704



(415) 644-6580

RECEIVED

APR 26, 1982

POLICE REVIEW COMMISSION

April 22, 1982

To: Police Review Commission
From: Daniel Boggan, Jr., City Manager *DB*
Subject: POLICE REVIEW COMMISSION COMPLAINT NO. 557

On January 20 and January 29, 1982 the Police Review Commission's Board of Inquiry considered the above complaint and made the following findings:

<u>Allegation</u>	<u>Finding</u>	<u>Vote</u>
As to Officer D. A. Simmons:		
1. Improper search	Sustained	3-0
2. Excessive force -- brutality	Sustained	3-0
3. Discourtesy -- aggressive manner threatening language, derogatory racial remarks	Sustained	3-0

The Police Department's Board of Review considered the above complaint on January 15, 1982. There is agreement between the two boards regarding the above allegations.

As a result of these findings appropriate disciplinary action against Officer Simmons has been taken for his misconduct.

I have reviewed this complaint and concur with the findings of both Boards.

cc: Acting Chief of Police
City Attorney
Contract Compliance Officer

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

REPORT OF FINDINGS

OF POLICE REVIEW COMMISSION BOARD OF INQUIRY HEARING

HELD JANUARY 20 AND JANUARY 29, 1982

BOARD OF INQUIRY MEMBERS: Commissioners Abascal, Fink, Muir

COMPLAINT NO. 557

Complainant: Kevin Cox

Subject of the Complaint: Officer D. A. Simmons

ALLEGATIONS:

		<u>Vote</u>
1. Improper search	Sustained	3-0
2. Excessive force -- brutality	Sustained	3-0
3. Discourtesy -- aggressive manner, threatening language, derogatory racial remarks	Sustained	3-0

ROBERT A. FINK, M.D., Member
Police Review Commission
Board of Inquiry

REPORT OF FINDINGS OF POLICE REVIEW COMMISSION
BOARD OF INQUIRY HEARING
Held January 20, 1982 and Completed
January 29, 1982

Complaint #557

Complainant: Kevin Cox
Subject of the Complaint: Officer D. A. Simmons
Allegation #1: Improper search; sustained 3-0.

This complaint was sustained based upon findings by the Board which suggested that, although the first search of the complainant may have been consented to (although apparently quite grudgingly), the subsequent searches made by Officer Simmons, especially involving the complainant's wallet and other personal effects, were not consented to; and, under the circumstances (no arrest was made), these subsequent searches were considered to be improper. There was testimony presented that the complainant did not consent to the subsequent searches; and there is also evidence in the testimony that whatever consent was implied at the time of the first search (when the complainant was originally stopped), was subsequently withdrawn by the complainant.

Allegation #2: Excessive force - brutality; sustained 3-0.

The Board found that there were several instances of excessive force involved. There was testimony corroborated by 2 witnesses, that Officer Simmons bodily picked up the complainant and placed him on the hood of the police car; this reportedly because Officer Simmons felt that the complainant "wasn't acting right", and was "fidgety". It was felt by the Board that a feeling of some anxiety and nervousness was justified on the part of the complainant, since he had been stopped by a police officer. There was no evidence presented to suggest that the complainant in any way physically resisted the stop or failed to comply with Officer Simmons' orders even though the complainant protested verbally throughout the stop (which, it was felt by the Board was his right). It was further found by the Board that Officer Simmons did, in fact, strike the complainant in the mouth; and, although no apparent serious injury was inflicted, it was felt that such an act did, in fact, represent brutality under these circumstances.

Report of Findings
 PRC Complaint No. 557
 Page Two

Allegation #3: Discourtesy - aggressive manner, threatening language, derogatory racial remarks; sustained 3-0.

It was found by the Board, based upon testimony from a witness officer and others, that Officer Simmons did call the complainant a "Nigger", and made reference to the complainant's "Nigger mouth".

COMMENTS:

This case is a most unfortunate one. It was the opinion of the Board members that Officer Simmons severely overreacted to this situation, and gave evidence of loss of personal control of the situation. The circumstances of the original stop were felt to be legitimate, since the complainant was seen at an unusual hour in an area where burglaries had apparently been reported on previous nights, and the Board felt that Officer Simmons was justified in making the stop to ascertain the identity and activities of the complainant. The initial "pat search" that was made was also felt to be legitimate; but the subsequent and repeated searches were felt to be excessive. The use of physical force by the officer (putting the complainant up on the hood of the car and the subsequent blow to the mouth) were felt to be unjustified; and the racial slurs were felt to be totally unacceptable as behavior on the part of a Berkeley police officer.

A further problem which seems to have been present was the fact that the complainant, a temporary employee hired by Alta Bates Hospital, did not have Alta Bates identification on his person) although he provided the officer with his California identification), and verification of employment could only be made after checking with the complainant's supervisor at Alta Bates. It was suggested by the Board that communication be had with Alta Bates regarding the possibility of supplying some sort of temporary identification to its temporary employees so that this type of occurrence might be prevented in the future. One of the Commissioners hearing this case (Fink) is a medical staff member at Alta Bates; and has informally contacted the administration of Alta Bates with the recommendation.

RALPH S. ABASCAL
 ROBERT A. FINK, M.D.
 WILLIAM K. MUIR

Board of Inquiry Members
 for PRC Complaint No. 557

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

December 21, 1981

To: Dorothy F. Morris, PRC Secretary
Attention: Commission Board of Inquiry

From: Peter N. Hagberg, Investigator
Eileen Luna-Gordinier, Associate Investigator
Police Review Commission

Re: Report of Investigation, PRC Complaint No. 557

I. Allegations:

1. Improper search
2. Excessive force--brutality
3. Discourtesy--aggressive manner, threatening language, derogative racial remarks

Complainant: Kevin Cox

Subject Officer: Officer D. Simmons

Date and Time of Initial Incident: Nov. 13, 1981, at 4:10 am

Location of Initial Incident: Alta Bates Hospital

Date Complaint Filed: Nov. 13, 1981

II. Resume of Complaint

The complainant states as follows:

He is employed at Alta Bates Hospital in the Business Office. He was sent to the hospital kitchen by his supervisor to have two sugar containers filled. As he was on his way from the business office building, across the street from the main hospital, to the kitchen, he was stopped by Officer Simmons.

Officer Simmons began searching Mr. Cox without asking him for I.D. or telling him what he was suspected of having done. Mr. Cox had an empty sugar container in each hand.

Report of Investigation
PRC Complaint No. 557
Page 2

Mr. Cox asked Officer Simmons why he was doing this, and simultaneously produced his identification. Officer Simmons asked him what he was doing at the hospital and Mr. Cox told him. Officer Simmons repeatedly stated that Mr. Cox was "up to no good" even though Mr. Cox kept trying to tell him that he worked there.

Officer Simmons called Hospital Security to check out his story. A black female BPD officer accompanied the hospital security officer to Mr. Cox's worksite. Mr. Cox was left alone with Officer Simmons.

Mr. Cox states that he again asked what the problem was. At that point Officer Simmons grabbed him by the coat and hit him on his mouth, which made his lip swell up. Officer Simmons told him, "Shut up nigger, I'm tired of your nigger mouth." Mr. Cox was very upset by this but didn't say anything until the other officers came back. When they arrived Mr. Cox began to cry and asked the woman officer not to leave him alone with Officer Simmons again. Officer Simmons let Mr. Cox leave and go back to his job as his story had checked out.

III. Report of Investigation

A. Statement of Sergeant Charles Scott

Sergeant Scott is in charge of security on the night shift at Alta Bates Hospital.

Mr. Scott states as follows:

He was in the hospital cafeteria assisting with a "money drop". It was approximately 4:30 AM and the cafeteria was about to close.

He got a phone call from the hospital operator saying that BPD was on the line. They wanted him to come to the south parking lot. He went to the lot and saw Officer Simmons pat searching a young black man. The young man was holding two empty sugar containers. He was verbally protesting being stopped and was asserting his innocence.

The young man, Mr. Cox, asked Sergeant Scott to identify him but he was unable to do so. Mr. Cox explained where he worked but didn't know the name of the building nor the department. He told Sgt. Scott his supervisor's name but Sgt. Scott didn't recognize it.

Officer Simmons asked Mr. Cox for his I.D. Mr. Cox stated "I already showed you my driver's license, isn't

Report of Investigation
PRC Complaint No. 557
Page 3

that enough?" Officer Simmons told him that he was supposed to have a hospital I.D. card if he worked there. Mr. Cox responded that he didn't have the card with him but that he had the hospital keys which his supervisor had given him. Officer Simmons told Mr. Cox that anyone could have keys and that there were "lots floating around".

Officer Simmons had Mr. Cox's wallet and keys in his hand. He then began going through Mr. Cox's pockets. Mr. Cox was becoming very agitated and upset. He was not resisting Officer Simmons in any way however. He never called Officer Simmons any names and was not abusive.

Officer Simmons was not being loud or abusive in his language. Sgt. Scott states however, "you could just look at him and you just knew he was upset." Sgt. Scott states that Officer Simmons was being very matter of fact. He states that Officer Simmons' voice wasn't hostile or threatening, but that "there was no warmth there." Sgt. Scott states "It was kind of obvious that he (Officer Simmons) was on his way to having his button pushed, it was obvious."

Sgt. Scott and a BPD female officer, who was Officer Simmons' cover, left to verify Mr. Cox's story. It took them approximately four to five minutes to go to the building and verify Mr. Cox's employment with his co-workers and supervisor. Sgt. Scott states that once he saw the employees he recognized them, he just hadn't known their names when Mr. Cox referred to them.

Sgt. Scott and the female officer, whose name he does not know, returned to where Mr. Cox and Officer Simmons were. When they arrived the two men were standing on either side of the front of the car. Officer Simmons was going through Mr. Cox's wallet and writing on a scratch pad. Sgt. Scott never heard Officer Simmons ask permission to search Mr. Cox's wallet while he was present.

When Mr. Cox saw the two approach he began saying that Officer Simmons had hit him and asking them not to leave him alone with them again. Mr. Cox said, "Don't leave me here with this cop cause he beat me up. He hit me in the mouth. He threw me on the car. He's trying to kill me." Mr. Cox also said, "as soon as you left, he beat me up."

Mr. Cox was crying the whole time he was saying these things and was very upset. He approached the woman officer and said to her "Don't leave me alone with this man cause he's beating me up. As soon as

Report of Investigation
PRC Complaint No. 557
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you left he beat me up, as soon as you leave, he'll beat me up again."

Mr. Cox then asked the woman officer to be a witness that he had not been resisting Officer Simmons nor been abusive. He stated that Officer Simmons had stopped him because he was black. He further stated that he hadn't done anything to deserve being treated like he was.

Officer Simmons began denying that he had done anything. Mr. Cox stated, "yes you did, you hit me in the mouth and in the chest. Go ahead and deny it, go ahead and deny it."

Officer Simmons began explaining that he had good cause to stop him because he had not recognized him as an employee and he hadn't had any hospital I.D. Officer Simmons stated that he could have arrested him for suspicion.

Mr. Cox was crying and saying that Officer Simmons had "busted" his lip. Sgt. Scott didn't notice Mr. Cox's lip being swollen but states "I had no cause to doubt him."

Mr. Cox then said that Officer Simmons had called him a nigger. Officer Simmons said, "Yes, I called you that, but you just kept on and kept on and that's why I put you up against the car." Sgt. Scott states that when Officer Simmons said this he (Sgt. Scott) looked at the female officer, who was black. Sgt. Scott states that she looked shocked. Sgt. Scott said Officer Simmons said "I apologize but you kept asking for it, I told you to stop and you just wouldn't."

Mr. Cox kept repeating that Officer Simmons had hit him in the mouth. Officer Simmons gave him back his wallet, the keys and the sugar containers. Sgt. Scott states that Mr. Cox kept going on about being hit and that "Simmons was stewing". Officer Simmons said, "Get out of here, go on and do what you have to do."

Mr. Cox continued to be verbal about being hit. Officer Simmons then said loudly, "I told you to get out of here now." Mr. Cox then said, "What are you going to do, beat me up again?" Officer Simmons then said very loudly, "Get out of here."

Mr. Cox then left and walked towards the hospital. Officer Simmons told Sgt. Scott and the other officer, "He just kept running off at the mouth." Sgt. Scott told Officer Simmons "You've got to understand." Officer Simmons replied, "Yeah, I understand, but he doesn't understand."

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 PRC Complaint No. 557
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Sgt. Scott then left and went back toward the hospital. At the Emergency entrance he found Mr. Cox attempting to enter the hospital in order to go to the hospital kitchen where he could have the sugar containers filled. Hospital Security Officer Flennary had stopped him. Sgt. Scott vouched for Mr. Cox and accompanied him to the kitchen. Sgt. Scott states that he counseled Mr. Cox that he should have been quiet when Officer Simmons dealt with him and just let Officer Simmons do his thing. Sgt. Scott told Mr. Cox that if he hadn't been verbal at first Officer Simmons would have just let him go on his way. Mr. Cox kept referring to having been hit and Sgt. Scott agreed that there was no cause to hit him.

Sgt. Scott states that later that morning, as he was doing his rounds, Officer Flennary spoke with him. They discussed the incident. Officer Flennary told Sgt. Scott that he had been out on the ramp the whole time and saw everything. Officer Flennary told Sgt. Scott what he had seen, as Sgt. Scott is his supervisor. In referring to Officer Simmons he said "Yeah, he hit him. He whipped his butt." Officer Flennary did not tell Sgt. Scott how many times Officer Simmons hit Mr. Cox.

Sgt. Scott later spoke with Officer Simmons. Sgt. Scott states that Officer Simmons admitted "he blew it, he lost his cool and that's when he called him a nigger." Officer Simmons further said that he had to talk to the female officer and apologize to her also. Officer Simmons did not make any mention of having hit Mr. Cox however.

B. Statement of Chester Flennary

Mr. Flennary states as follows:

He is a security guard at Alta Bates Hospital. He was on duty the night that Kevin Cox was stopped and detained by Officer Simmons.

The first knowledge which he had of the incident was seeing Sgt. Scott coming through the Emergency Ward where Mr. Flennary's duty station was. Mr. Flennary followed Sgt. Scott outside and watched the scene from just outside the hospital. The police car was parked approximately one and one-half blocks away. The blocks are very short there however, and the officer was standing under a street light, so Mr. Flennary could see well.

Mr. Flennary states that he saw all the people talking and then Sgt. Scott got into the second police

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PRC Complaint No. 557
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officer's car and left. Officer Simmons and Mr. Cox were left there together. Mr. Flennary stood outside and smoked a cigarette and watched the incident.

He states that Officer Simmons and Mr. Cox just stood there talking. They were facing each other at about arm's length. They were standing sideways to Mr. Flennary, and he was able to see each of their faces. He could see they were talking but he couldn't hear what they were saying. Mr. Flennary states that after a couple of minutes he saw Officer Simmons "grab him and put him up on the hood of the car and hit him in the mouth." When Mr. Flennary was asked to explain more clearly, he stated that Officer Simmons "threw a punch." Mr. Flennary stated that Officer Simmons "grabbed him by the coat collars and pushed him up on the car." He states that Mr. Cox was pushed backwards against the front of the car. Mr. Flennary states "when he pushed him up there, you know, grabbed him by the collar there, he let go of one collar and hit him like that."

Mr. Flennary could not tell how hard the blow was from where he was standing. Officer Simmons then let Mr. Cox go and stepped back. Mr. Cox moved away from the car and began to talk loudly. Mr. Flennary could hear what Mr. Cox was saying at this time. Mr. Cox said, "I'm going to report you. You shouldn't have done that. I work here, I'm an employee of Alta Bates and you had no business stopping me."

Mr. Flennary states that he never heard Mr. Cox insult Officer Simmons nor call him any names. He further states that at no time did he see Mr. Cox touch or attempt to hit Officer Simmons. Mr. Cox threw up his hands and said "that's all right, you're a policeman." He said, "I'm going to get you cause I'm going to report you." He also stated "I'm going to file charges."

For the next couple of minutes Mr. Cox kept talking loudly about the incident. He could not hear any of Officer Simmons' responses. Then Sgt. Scott and the second BPD officer returned. After a short period Mr. Cox left the group and walked toward the hospital.

Mr. Cox came through the entrance where Mr. Flennary was stationed and spoke to him. Mr. Cox told Mr. Flennary "I'm going to get him for hitting me." Mr. Flennary did not notice any injury to Mr. Cox's face at that time. Mr. Cox also told Mr. Flennary that Officer Simmons had "called him a nigger and hit him."

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PRC Complaint No. 557
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Mr. Flennary states that he knows Officer Simmons and has had frequent conversations with him over the six months he has worked at Alta Bates Hospital. He had never met Mr. Cox before the night of the incident. Mr. Flennary has been off on disability since the week after the incident and has not seen Officer Simmons nor Mr. Cox since then.

C. Statement of Officer Cooper

She was assigned as a cover officer to the pedestrian stop of Kevin Cox. She arrived at the scene within two minutes of her assignment by Dispatch.

When she arrived Officer Simmons had Mr. Cox stopped. Officer Cooper remained in her car observing what was happening. Officer Cooper remained in the car for approximately five minutes. During that time Mr. Cox was asking why he had been stopped and what was going on. Officer Cooper states "he did get a little loud but not to the point of abusiveness. You know but like his main concern was why are you stopping me, what have I done?" Officer Cooper cannot remember exactly what Officer Simmons was saying to Mr. Cox. She states however "More or less it seems like I remember him telling something that it was his right to stop, you know, someone if he thought something wasn't quite right, something that looked suspicious."

Officer Cooper states that she saw Officer Simmons search Mr. Cox. She remembers that Mr. Cox said, "You've already searched me one time, why are you searching me again?" Officer Cooper states that she had not seen Officer Simmons search Mr. Cox before this. Officer Cooper states that Mr. Cox objected "verbally" to being searched but "he didn't physically."

The security guard arrived and Officer Cooper drove him over to another building in order to verify Mr. Cox's story. At this other building they spoke with a woman who confirmed that she had sent Mr. Cox over to fill some sugar containers. They then returned directly to the stop. Officer Cooper believes that they had been gone "ten minutes at the most."

When they drove up and stopped, Officer Cooper states, "My eyes kind of bugged, because the young man sort of ran over toward my car and begged me not to leave him alone with the other officer, so I was kind of bewildered, I didn't know what was going on." Mr. Cox told Officer Cooper "As soon as we left the other officer had hit him in the mouth and called him a nigger."

Officer Cooper states that she can't say for sure that Mr. Cox's mouth was injured. When she first arrived at the scene she had remained in her car and had not

Report of Investigation
PRC Complaint No. 557
Page 8

been able to see Mr. Cox's face closely. She states that when she returned from speaking with his supervisor "his bottom lip, to me, appeared to be a little, somewhat swollen, but I don't know if it was like that from word go or not." Mr. Cox was more upset than he had been when they left and he was crying.

Officer Simmons denied having hit Mr. Cox in the mouth but admitted that he had called Mr. Cox a nigger. Officer Simmons said he had done it because Mr. Cox had upset him.

The stop lasted for approximately another ten or fifteen minutes. During that time Mr. Cox asked Officer Cooper what he could do against Officer Simmons. Officer Cooper told Mr. Cox "that if, in fact, Simmons had hit him and called him out of his name, and he felt that Officer Simmons was wrong, that he could file a personnel complaint, but, you know, other than that, you know, that was about the only suggestion I could give him."

Officer Cooper states that at no time did she see Mr. Cox make any aggressive or threatening movements toward Officer Simmons. She doesn't remember hearing Mr. Cox call Officer Simmons any names. She states that Mr. Cox was upset but not hostile.

Officer Cooper did not speak to Officer Simmons about the incident until later that night. At that time Officer Simmons told her "that Cox was apparently getting out of hand, or something, and that he (Officer Simmons) pushed him against the car because he kept moving around and wouldn't stay still, but that he didn't hit him. And he also said that he did call him a nigger because he was upsetting him, or something to that effect, and he was explaining, you know, trying to explain to me you know, what happened."

Submitted.

cc: Complainant
Subject Officer
Chief of Police

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

January 18, 1982

To: Board of Inquiry, PRC Complaint No. 557
From: Eileen Luna-Gordinier, Associate Investigator
Police Review Commission
Re: Supplementary Report of Investigation, PRC Complaint No. 557

Police Reports and Records

There were no police reports generated by Officer Simmons as a result of this stop. The only record supplied to us by the BPD is a copy of the Telecommunications log for that day.

The Telecommunications log for November 13, 1981 shows a call in by Officer #98 (Simmons). The entry shows Kevin Cox's name and birth date. There is no indication of what checks were run on Mr. Cox. There is no time listed for this call. The next call on the list is at 5:27 a.m.

Communication Center Tape Summary

The clock on the tape machine was out of sync on this day. The stop of Kevin Cox was made at approximately 4:00 a.m. Sgt. Scott remembers being contacted by BPD at approximately 4:15 a.m. The time of the initial contact by Officer Simmons is recorded on the tape as 20:05. Both approximate real time and clock time will be listed.

20:05 4:15 a.m. (approx)	Officer Simmons (#98) contacts Dispatch and requests that they call Alta Bates and have a hospital security guard sent to the scene of his pedestrian stop.
20:05 4:15 a.m.	Dispatch calls Alta Bates Hospital. She speaks with Sgt. Scott and asks him to meet Officer Simmons in the South Parking Lot. Sgt. Scott agrees to do so.
20:06 4:16 a.m.	Dispatch contacts Officer Simmons and tells him that Sgt. Scott is "en route." Officer Simmons then tells Dispatch that he's made an "11-94 (Pedestrian Stop) at South Hospital and Colby, an employee of the hospital here, it might be a 484 (Theft) suspect or something. I'll check with the Security Guard on it.
20:07 4:17 a.m.	Officer Cooper (22) is assigned to cover Officer Simmons.
20:09 4:19 a.m.	Officer Cooper radios that she's arrived at the scene.

Supplementary Report of Investigation
PRC Complaint No. 557
Page 2

20:15 Officer Cooper calls and asks Officer Simmons to talk
4:25 a.m. to her on Channel 2. She then cancels the request.

20:23 Officer Simmons calls in and says he's "clean" of the
4:32 a.m. stop.

cc: Complainant
Subject Officer
Chief of Police

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

January 29, 1982

To: Board of Inquiry, PRC Complaint No. 557
From: Peter N. Hagberg, Investigator
Police Review Commission
Re: Partial Transcript of Interview with Mr. Flennary

.

ELG Now, can you tell me -- I know it's going to be hard because it was a while ago, but can you tell me in terms of, you know, what happened: What did you -- what did they first do when Mr. Scott and the other officer left? I mean were they --

FLENNARY They were just standing there talking. He was facing him, you know, he was

ELG -- he was facing him?

F Mr. Cox had his back to the front of the car -- the police car.

ELG O.K.

F O.K., and the officer was standing in front of him.

ELG Uh-huh.

F They was talking -- I guess they was talking.

ELG Now, which -- which of them was facing you?

F Neither one. They were to the side. I had a side view of them -- between them. That's why I said he was talking to him. I could see their lips moving.

ELG O.K.

F He put his hand up and the other put his hand up and whatever.

ELG Uh-huh.

F And, I guess about a couple minutes there, I seen Officer Cox grab him and put him up on the

Partial Transcript of Interview with Mr. Flennary
PRC Complaint No. 557
Page 2

ELG Officer Simmons?

F Officer Simmons, rather, put him up on the hood of the car and hit him in the mouth -- that was it.

ELG He put him up on the hood of the and hit him on the mouth?

F Yeah. Well, he threw a punch -- I don't know whether --

ELG O.K. Can you tell me -- before that happened, did they seem angry?

F Yeah.

ELG Which of them seemed angry?

F Both.

ELG O.K. Was -- so it seemed to be like a mutual kind of --

F Right. Both of them were hassling each other.

ELG Were they close at that point? Or were they --?

F Close.

ELG Within a couple of feet?

F He was closer than that. He was about arms length when they were talking in the first place.

ELG Did you see Mr. Cox at any point touch or attempt to hit at Officer Simmons before Officer Simmons acted?

F Not to my eyesight.

ELG O.K. When Officer Simmons put him up on the car -- what do you mean by that?

F He grabbed him in the _____ (gesture)

ELG Grabbed him by the --?

F By the coat, by the collar, and pushed him up on the car like that.

ELG Pushed him up backwards against the front of the car?

F Yeah.

ELG O.K. And then was it a split second later that he hit him?

Partial Transcript of Interview with Mr. Flennary
PRC Complaint No. 557
Page 3

F Well, when he pushed him up there, you know, grabbed him on the collar there, and let go of one collar and hit him like that. I don't know whether he hit him on the mouth, or whatever.

ELG Did he still have hold of him with the other hand?

F One, yeah.

ELG He did?

F Yes.

ELG How hard did the blow look? Could you tell?

F No, I couldn't.

ELG What was -- what happened immediately after the officer hit Mr. Cox?

F He let him go.

ELG He let the other hand go?

F Yeah. He let Cox go and stepped back.

ELG And stepped back. And what happened then? What did Mr. Cox do?

F He got off the car and went to talking loud. And then I could hear him.

ELG You could hear him saying something -- what was he saying?

F He says: I'm going to report you. And: You shouldn't have done that. I work here. I am an employee at Alta Bates. You had no business stopping me.

ELG Did he at any time -- did you hear him insulting Officer Simmons or calling him -- Officer Simmons -- names? When he was talking loud?

F No. He didn't call him any names.

ELG Did you hear anything Officer Simmons said after that?

F (apparently nods)

ELG No. He was fairly -- ?

F He was calm.

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REPORT OF FINDINGS
OF POLICE REVIEW COMMISSION BOARD OF INQUIRY HEARING
HELD MARCH 28, 1983

Complaint No. 657

Complainant: Brian Lamont Guinn

Subject of the Complaint: Officer D. L. Anderson

Incident Summary

Date of incident: November 29, 1982

Location of incident: Telegraph Avenue and Webster Street

After studying with two friends (Frank Mattox and Gregory McClain), at about 1:00 a.m., Mr. Guinn decided to accompany them out to get something to eat. He went to his car while the other two went to the car Mr. McClain was driving; that car belonged to a friend of Mr. McClain's. It was in McClain's possession for the weekend while his friend was out of town. When McClain and Mattox went to get into the borrowed car, they had some trouble making the key work in the door so that it took them a few minutes to enter the vehicle. Following that, they had a problem getting the car into reverse gear. It took some eight minutes for them to get into the car and underway. While that was going on, a neighbor observed them and concluded that they were trying to steal the car. That person called the BPD and reported a possible car theft in progress, described the car and gave a general description of Mattox and McClain.

As a result, Officer Thornton (backed up by Officers Anderson, Diaz, Lee and Nenneman) stopped the car driven by McClain. He described the situation to the other officers as a "high-risk vehicle stop." Guinn, who was driving behind McClain and Mattox, stopped also, behind a police car which was directly behind the car driven by McClain.

Thornton, using a bullhorn, directed McClain and Mattox as to what they should do. Mattox had gotten out of the car on the passenger side; Thornton ordered him to re-enter the car. He complied. Thornton told the two men to put their hands on the dashboard. They complied. He instructed McClain to drop the car keys out of the window. McClain complied. He told McClain to leave the car. McClain complied. He had McClain walk toward the rear of the car, then lie face down on the wet street. McClain complied. Thornton then directed Mattox to slide across the seat and exit on the driver's side. Mattox complied. He then had Mattox lie down on the street also. Mattox complied. Both men were handcuffed while in that position. Officers then assisted them to their feet and placed them in different squad cars. During all of this activity the officers had their guns drawn. One officer stood off to the side with a shotgun pointed at Mattox and McClain.

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Guinn, in his stopped car, glanced over at Officer Diaz and smiled. He did not note Diaz' response as he then directed his attention to what was going on with Mattox and McClain. About then, Officer Anderson noticed Guinn who, he reported, was "crouching" behind the open door of his car. (Guinn testified that he opened his car door and, about 15 seconds later, got directly out and stood up. He denied that he was "crouching.") Anderson asked Guinn what he was doing there. Guinn replied that he had stopped because he was with Mattox and McClain. At that point, Anderson approached him, gun drawn, and told him to turn around. Guinn complied and was handcuffed. He attempted to speak to Anderson two times but was told to "shut up" both times. A short time later he managed to tell Anderson his name and volunteered the information that he had ID in his pocket. He also pointed out that his father is a Berkeley police sergeant. Anderson took the ID and went over to converse with one of the other officers. A short time later he returned and released Guinn. Mattox and McClain were being released at about the same time. Guinn stated that he was never told why he was detained and handcuffed until after the incident was over.

Summary of Testimony

In general, the testimony of Guinn, Mattox, Thornton and Lee described the incident about as set forth above. In addition, Thornton described at length his previous experiences in similar situations and the concerns he had for the safety of other officers, bystanders and himself; it was those concerns, he testified, along with "who the suspects were" that motivated him to treat the stop as a high-risk vehicle stop requiring the display by officers of their weapons. In response to a question, he stated that nothing the suspects had done contributed to that decision.

Sgt. Mulligan testified that he arrived after the three men were handcuffed. He spoke separately to McClain and Mattox, then to Guinn. On the basis of the fact that their stories corresponded exactly, he concluded that the vehicle was not, in fact, stolen and directed that the three men be released. In addition, he spoke to the various officers at the scene. He stated that on the next day Diaz told him that he had seen Guinn get out of his car and that he had not been crouching behind the door.

Additional Information

According to the BPD High-risk Car Stop Training Outline, such procedure should be used in "termination of a hot chase, the brandishing of a firearm or other recognized dangerous weapon, or the discharge of a firearm within the city limits."

All witnesses testified that none of the persons detained made any suspicious, unusual or sudden moves which might be considered threatening in any way.

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Findings

Allegation 1. Excessive force - improper display of weapon. Sustained by a vote of 3-0.

The panel felt that Guinn at no time represented a threat to the officers. The fact that he stopped voluntarily, nodded at Diaz, who did not respond to him as if he were a threat, volunteered the information that Mattox and McClain were his friends led the Board to conclude that the gun display was unnecessary. That conclusion was strengthened by the testimony that the only witness, Diaz, did not observe Guinn to be crouching behind the door of his vehicle.

Allegation 2. Discourtesy. Sustained by a vote of 3-0.

Twice, Guinn attempted to explain to Anderson who he was and what he and his friends were doing. Twice, Anderson told him to shut up. The Board felt that, if Anderson had simply listened to what Guinn was saying, the whole matter might have been cleared up more quickly and the guns could have been put away.

Comments

The panel suspects that many of the problem aspects of this incident as in many similar incidents, spring from officer stereotypes of the people they are dealing with. While the desire to maximize officer and bystander safety are understandable, the Board felt that the broadcast description of the "suspects" as "black males" may have had an effect on the decision to bring the guns into play. Officer Thornton's comments did nothing to dispel that suspicion.

Mattox testified that, as he was lying on the street, arms outstretched, he looked up and saw a shotgun pointed at his head. The panel questions the necessity of such a life-threatening action in a situation where suspects, while not under "control," as police officers understand the word -- i.e., not completely in custody after searches of their person and their vehicle -- are, nonetheless, essentially helpless and representing no threat to officers or anybody else. The consequences of the firing of a weapon, accidentally or otherwise, are so great that to continue to aim weapons at individuals when it isn't necessary represents an unnecessarily high risk. Officers can have their weapons at the ready without actually pointing them in such a way that a mistake could be fatal.

STEPHANIE ALLAN
 JOAN ALSOP
 BRUCE HALDANE
 Board of Inquiry Members
 for Complaint No. 657

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

March 14, 1983

TO: Dorothy Morris, Secretary PRC
FROM: Peter N. Hagberg, Investigator PRC
Eileen Luna-Gordinier, Associate Investigator PRC
RE: Police Review Commission Complaint No. 657

- I. Allegations: Excessive Force - Improper Display of Weapon
Discourtesy

Complainant: Brian Lamont Guinn

Subject of the Complaint: Officer Anderson

Date and Time of Initial Incident: November 29, 1982

Location of Initial Incident: Telegraph Avenue and Webster

Date Complaint Filed: December 13, 1982

- II. Resume of Complaint

The complaint states as follows:

He and two friends were studying in the friend's apartment on Dwight Way. They finished at approximately 1:00 a.m. and decided to drive down Telegraph Avenue to get something to eat. He drove his car around the corner to meet them where their car, a VW, was parked. They were having trouble getting the car in reverse, but finally did so and they left with Mr. Guinn following in his car.

He noticed a police car in his rear view mirror which passed him and began to follow the VW. After following the VW for 3 or 4 blocks, the police car pulled his friends over to the side of the road. At this point, they were between Webster and Prince on Telegraph. Two or more police cars arrived as the VW was being stopped, cutting Mr. Guinn's car off at Webster.

Mr. Guinn states that he was curious about what was happening to his friends. He pulled his car over to the side "to wait for the outcome". He states that he saw an officer to his left and smiled at him. He then noticed the police officers in front of him had their guns pointed at the VW and got out of his car, standing in the open door. An officer, later identified as Officer Anderson, looked at him and then backed towards a parking lot to Mr. Guinn's right.

Mr. Guinn states that as soon as Officer Anderson was straight across from him, he pointed his gun at Mr. Guinn and told him to put his hands up. Mr. Guinn complied and Officer Anderson approached him. When Officer Anderson was approximately 10 to 15 feet away, he asked Mr. Guinn what he was doing. Mr. Guinn states that he told Officer Anderson that he was following his friends and that they were all members of the University of California Basketball team. Mr. Guinn states that he started to say something else, but Officer Anderson told him to "shut up" which he did.

Mr. Guinn states that he was then checked for weapons, handcuffed and then leaned against his car. He states that he attempted to speak to Officer Anderson again, but was told again to "shut up" which he did. Finally, he again tried to speak and was allowed to. He states that he told Officer Anderson that his father was a Berkeley Police Officer, and asked him to verify his identification. Officer Anderson took his identification out of his pocket and then spoke to the other officers. Mr. Guinn states that one of the officers recognized him.

Mr. Guinn states that Officer Anderson took the handcuffs off of him and then spoke with him about the situation. A few minutes later, Mr. Guinn and his friends were released. He states that the police officers told him that "they were sorry for the trouble" and let them leave.

Report of Investigation

A. Police Reports and Records

The face card in this case shows a call was received by Berkeley Police Department on November 28, 1982 at 1:27 a.m., no victim is listed. The reporting party is listed as Yossef Nieman. The location of the occurrence is noted as Parker, West of Telegraph. The card notes a "Poss 10851" (Theft and Unlawful Driving or Taking of a Vehicle). The car is identified as a Blue VW Bug with two NM's (negro males) in their mid twenties. One is noted as wearing a baseball cap with a white visor and a light jacket. The second is noted as wearing a flannel jacket. The call was broadcast at 1:28 a.m., with Officer #108 (Thornton) assigned. No cover officer is listed.

The Offense Report was completed by Officer Thornton on November 28, 1982 at 2:30 a.m. In it, he reports the stop of Gregory McClain for suspicious circumstances. The victim is listed as Yossef Nieman. No reporting party is listed.

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In the report, it is noted that the suspect used "stealth; possible use of keys to steal vehicle". Additional suspects are listed as Frank Lawrence Mattox and Brian Lamont Guinn. The scene is described as "quiet residential street, just west of the busy Telegraph Avenue commercial district".

Officer Thornton reports that a call came into Berkeley Police Department reporting a possible vehicle theft of a Blue VW Sedan in progress. The suspects were described and said to be driving west on Blake. He states that he responded to the call and observed a matching vehicle in front of him on Telegraph. The driver reportedly also matched the description given.

Officer Thornton reports that he broadcast his position and began to follow the vehicle. After cover officers arrived and moved into position, they made a felony car stop on the VW. Officer Thornton reports that the men were taken out of the VW "in the prescribed manner for such a stop". He reports that Mr. Guinn pulled his car up behind "the primary police vehicle", then "stepped from his vehicle and crouched behind the driver's door."

Officer Thornton reports that a perimeter cover officer "made contact" with Mr. Guinn as his presence and actions appeared to compromise the safety of the officers. Officer Thornton states that when Mr. Guinn announced that he was a friend of the other two men, he was placed in handcuffs and taken away.

Officer Thornton states that after the two men were taken out of the car, he contacted the reporting party who told him that he had seen two NM's approach the car and attempt to open it with some keys. He reportedly stated that they took 3-4 minutes to open the door and then took several minutes longer to locate the ignition and get the car operating. The reporting party reportedly stated the passenger stood on the sidewalk while the driver was attempting to start the car and "appeared nervous and also uncomfortable". Officer Thornton reports that the reporting party stated "the above observations and the suspicious behavior of the suspects had convinced him the vehicle was likely being stolen".

Officer Thornton reports that Mr. McClain told him that his girlfriend had loaned her car to him while she was visiting her family. The DMV records were checked and found to correlate with the information given by Mr. McClain. Mr. McClain, Mr. Mattox and Mr. Guinn were all cleared through corpus and NCIC (Non-Criminal Information Cards). They were then released.

We received copies of two Non-Criminal Information Cards. One was completed on Gregory McClain and one on Frank Mattox. There is no record of a card having been completed on Mr. Guinn. On each card the circumstances indicated a possible 10851 Vehicle Stolen just prior "proves okay".

The Telecommunications Log for November 28, 1982 indicates that checks were run on Gregory McClain by Officer Nenneman and on Frank Mattox by Officer D. Lee. Two checks were run on the vehicle license plate, one by Officer Anderson and one by Officer Thornton.

C. Statement of Gregory McClain

Mr. McClain states as follows:

He and Mr. Mattox first noticed the police were behind them when they noticed lights shining through the back window of the car Mr. McClain was driving. He pulled the car over and then heard a loudspeaker telling him, the driver, to step out of the car first. He did, keeping his hands in the air as instructed. He states that he was told to walk forward and was met by a police officer who told him to lie down on the ground with his arms and legs spread. He was searched while in this position. He was then handcuffed and placed in a police car.

Mr. McClain states that Mr. Mattox was then taken out of the car in a similar fashion. He was placed in a police car behind the one Mr. McClain had been put into. After a few minutes an officer came to the police car and took some information from Mr. McClain including the name of the owner of the car. After a few minutes more, he and Mr. Mattox were released.

He states that he noticed that Brian Guinn's car was parked behind the police cars when he first got out of his car, but was unable to see Mr. Guinn. He did not see Mr. Guinn until after he and Mr. Mattox had been released from the handcuffs.

He states that he first noticed that the officers were holding them at gunpoint when he got out of the Volkswagon. He states "when I stepped out of the car and I turned back to face the police officers that were behind us, there was a bright light shining directly at me. Just to the right of the light, I could see an officer behind his door and he had a gun pointed at me. Then as I walked forward, after they told me to walk forward, I noticed that the officer coming towards me also had a gun out and pointed at me".

He states that he asked the officers what was going on. He states "He told me to shut up, not to say any thing". He states that when he was lying on the ground, he asked an Asian Officer what was happening. He states "he was very polite. He said 'okay, don't worry about it, we have to do this, but we'll give you time to explain later, but I found you know, that when I was in the car handcuffed, that the officer wouldn't listen to me. That all he was interested in was taking down my name and some other, I guess, pertinent information."

After he and Mr. Mattox were released, they stood talking with Mr. Guinn. Mr. Guinn asked why they had been stopped, but they didn't know. An officer then approached them and explained what had happened, which was the first explanation he or Mr. Mattox had.

D. Statement of Frank Mattox

Mr. Mattox states as follows:

He and Mr. McClain were driving Mr. McClain's friend's Volkswagon down Telegraph Avenue followed by Brian Guinn. All of a sudden, they noticed flashing lights and Mr. McClain pulled the car over. Mr. Mattox states that he opened the passenger door and put one foot out. He was then told by an officer on a loudspeaker to get back into the car and put his hands on the dashboard. He followed these instructions. Mr. McClain was then told to open the car door, drop out the car keys and get out of the car slowly. Mr. Mattox states that as Mr. McClain was getting out he leaned over to watch but was told to face forward so he did. He was then told to slide out also and leave the car via the driver's door.

Mr. Mattox was told to lie down on the ground with his face down. He 'peered up and states 'there was a guy with a shotgun, he was open, the door was open and he had his shotgun laying on the border of the window, aimed at my head'. And he said 'keep your head down' and someone else yelled 'people in the back get your heads, get out of the line of fire'.

Mr. Mattox states that he was taken handcuffed and placed in a police car. He asked why they were being held and was told "suspicion of a stolen car". He states that he was astonished at this point. The officer then went and questioned Mr. McClain. Later the officer came back and asked Mr. Mattox if he knew the friend's name who had loaned Mr. McClain the car. He told the officer the woman's name.

After approximately fifteen minutes, they were released. Mr. Mattox walked to where Mr. McClain and Mr. Guinn were standing. He states that he had not seen Mr. Guinn at any point once the police stopped the Volkswagon.

Mr. Mattox states that he asked why the police acted like they had during the stop. He states that he was angry as every time he had asked what was happening, he had been told "shut up, just shut up". He states that the officers yelled this at him. He further states that the officer who took him to the police car 'was pretty rough with me'. He states that he was "shoved" into the car when it wasn't necessary.

While he, Mr. McClain and Mr. Guinn were talking, Mr. Guinn told them that he also had been handcuffed. Mr. Mattox states that he didn't want to talk to Mr. McClain and Mr. Guinn about it as he was still upset about what had occurred.

E. Statement of Officer Nenneman

Officer Nenneman said he was the first officer to cover Officer Thornton on a car stop regarding a possible auto theft in progress. He refused on the advise of his attorney, William Sorter to answer any questions in regard to the stop of that vehicle (the Mattox vehicle). His attorney advised him not to respond because other complaints had been made to IAB in regard to the stop of that vehicle. The attorney did not consider information about the stop of the suspect vehicle to be relevant to the complaint of Mr. Guinn who was in the second vehicle which stopped behind the Mattox vehicle to find out what was happening in regard to his friends.

Officer Nenneman followed his attorney's advice and declined to answer questions in regard to events, observations and occurrences at the first stop. The PRC Investigator made it clear he felt such observations were relevant to the issue of whether or not it was reasonable for Officer Anderson to draw his weapon by setting forth the context of the situation in which Officer Anderson found himself. Officer Nenneman was advised that his refusal to answer could be sent to the City Manager for possible order to testify and/or disciplinary action.

Officer Nenneman said he observed Officer Anderson's vehicle behind him as he arrived. Officer Nenneman was not aware of a second vehicle being stopped. He did not see Officer Anderson talking with anyone and he was not aware of Brian Guinn's presence or of the fact that he was stopped and questioned.

Officer Nenneman said that he never had to look behind him because he knew Officer Anderson was behind him from prior observation and because Officer Anderson reported it over the radio. Officer Nenneman passed Officer Anderson's vehicle as they approached the stop. Officer Nenneman did not see Officer Anderson until Officer Nenneman was leaving the area. Officer Anderson was on the sidewalk talking so some people, one of whom could have been Sgt. Mulligan. Officer Nenneman heard no conversation.

Officer Nenneman recalled a burgundy colored Toyota Celica near Officer Anderson's car. He could not recall whether the Celica was parked behind or in front of Officer Anderson's car. Officer Nenneman estimated that his vehicle was approximately 35 feet behind the suspect vehicle and that Officer Anderson's vehicle might have been roughly 50 feet behind his. Officer Nenneman indicated that he could not be sure of the distance, but it was not a block or half of a block.

F. Statement of Officer Thornton

Officer Thornton made the stop of the vehicle containing the auto theft suspects. Cover officers arrived shortly after the stop; but he did not see Officer Anderson during the stop. He was unaware that

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Officer Anderson was involved in a connected stop until later. Officer Thornton had no indication from the radio broadcast that Mr. Guinn was covered. Officer Thornton, on advice of counsel, would not answer any questions regarding whether these were any observed facts during the course of the stop, which indicated that it was proper for weapons to be drawn. Officer Thornton stated that he drew his weapon but would not state the reasons on advice of counsel that this information was irrelevant.

Officer Thornton does not know Brian Guinn, although he learned his name subsequent to the stop. He did not see Officer Anderson stop anyone. Officer Thornton's report was not based upon his first hand observations. They were based upon statements made to Officer Thornton by Officer Anderson, after Officer Thornton had left to interview the reporting party and then returned to the scene of the stop. The suspects and their vehicle were still there when Officer Thornton returned. Officer Nenneman had gone. Officer Anderson's vehicle was still there as was Mr. Guinn's vehicle. Mr. Guinn's vehicle was in the parking lane. Officer Thornton talked to the supervising officer, (Sgt. Mulligan) and then to Officer Anderson. Officer Anderson said that while Officer Thornton was in the process of extracting the two primary suspects from their vehicle, he observed a vehicle to the rear of the stop and the suspect crouching behind his door. Officer Anderson thought this looked suspicious and threatened the integrity of the stop. Officer Anderson said he intercepted the individual and asked what he was doing in such close proximity to the stop. The individual said he was with the two individuals in the other car. Officer Anderson said he took the person into custody and to the rear of his vehicle. Officer Anderson did not indicate whether the individual had left his vehicle. Officer Anderson did not indicate to Officer Thornton whether he had drawn his weapon. Officer Anderson did indicate he handcuffed Mr. Guinn. Officer Thornton said Officer Anderson did not have to indicate the reasons because it was normal procedure under the circumstances. Officer Thornton learned of Mr. Guinn's presence when he returned to the scene of the stop and was told by Sgt. Mulligan that the individual was Sgt. J.J. Guinn's son and that he had been stopped in relation to the incident.

Officer Thornton had gone to the reporting party in order to check out what he knew in regard to the suspect's version. In talking to the reporting party, he learned facts which substantially changed the impression of the case given by the radio broadcast. The broadcast came out as a stolen auto in progress, but investigation showed circumstances were substantially different.

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COMMUNICATION CENTER TAPE

At 1:28 a.m. on November 28, 1982 a call comes in regarding someone stealing a car on the corner of Parker and Telegraph Avenue.

Dispatch: BERKELEY POLICE EMERGENCY.

Caller: "Yes, somebody is stealing a car right now, at the corner of Parker and Telegraph Avenue".

Dispatch: "WHAT DO YOU SEE THEM DOING?"

Caller: "My husband is out there, he sees them".

Dispatch: "OKAY, IS THIS ON PARKER STREET OR TELEGRAPH AVENUE?"

Caller: "On Parker Street."

Dispatch: "OKAY, IS IT EAST OR WEST OF TELEGRAPH?"

Caller: "It's west, near the corner of Tilton."

Dispatch: "PARKER WEST OF TELEGRAPH, OR BETWEEN TELEGRAPH AND CHILTON?"

Caller: "Yeah."

Dispatch: "DO YOU KNOW WHAT KIND OF CAR IT IS?"

Caller: "Volkswagon."

Dispatch: "IS IT A BUG OR BUS?"

Caller: "I believe it's a bug, but I'm not sure."

Dispatch: "DO YOU KNOW WHAT COLOR THE CAR IS?"

Caller: "Hold on just a second."

Dispatch: "MAM, CAN YOU . . ."

Caller: "Just a second."

Dispatch: "A DESCRIPTION OF THE PERSON DOING THIS?"

Caller: "Just a second, two negroes."

Dispatch: "OKAY, HOW OLD DO THEY LOOK?"

Caller: "Just a minute. It's a blue bug."

Dispatch: "CAN YOU GET ANY DESCRIPTION AT ALL OF THE PEOPLE? HOW OLD THEY ARE, OR HOW . . ."

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Caller: "Just a second".
 Dispatch: (Dispatch talking on radio): "ANY CARS SOUTH CAMPUS A REPORTED POSSIBLE 10851 IN PROGRESS ON PARKER BETWEEN TELEGRAPH AND CHILTON, V.W. BUG WITH TWO BLACK MALES MORE TO FOLLOW." "OKAY, MAH, I CAN'T HEAR YOU, I WAS ON THE RADIO, THEY HAVE GONE WHERE?"
 Caller: "In the direction of Shattuck."
 Dispatch: "DID YOU SEE THEM?"
 Caller: "My husband is standing outside, he saw them."
 Dispatch: "CAN YOU GET HIM IN TO GIVE ME SOME KIND OF DESCRIPTION? DID THEY GO ON FOOT OR IN ANOTHER CAR?"
 Caller: "They went in the car that they took."
 Dispatch: (Dispatch is now on the radio): "CARS RESPONDING, SUPPOSEDLY THEY HAVE TAKEN A VW BUG WESTBOUND ON PARKER STREET, TWO BLACK MALES."
 Caller: "Just a second, my husband said that they seemed young men."
 Dispatch: "OKAY, HOW OLD? COULD I SPEAK TO YOUR HUSBAND?"
 Caller: "Sure, just a second. Okay, here he is. Hello?"
 Dispatch: "HI, THE TWO MALES YOU SAW, HOW OLD DID THEY LOOK?"
 Caller: "Well, it's kind of dark, it's hard to say, they look like well-behaved guys."
 Dispatch: "SIR, HOW OLD DID THEY LOOK?"
 Caller: "How old? Hard to say, let's say about medium of the twenties".
 Dispatch: "COULD YOU TELL WHAT EITHER PERSON WAS WEARING?"
 Caller: "One of them was wearing a colorful baseball hat."
 Dispatch: "OKAY, WHAT COLOR WAS THAT?"
 Caller: "It was hard to see, it was dark."
 Dispatch: "OKAY, WAS IT A DARK OR LIGHT COLORED CAP?"
 Caller: "How do you call, the part that, the visor, I think it was white."
 Dispatch: "OKAY, DID YOU SEE THE LICENSE NUMBER ON THE CAR?"
 Caller: "No, because I didn't have time to, . . ."
 Dispatch: "OKAY, DID YOU SEE WHAT ELSE THE PERSON WAS WEARING? THE FIRST ONE? DO YOU HAVE ANY FURTHER DESCRIPTION ON HIM?"

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Caller: "One of them a light color jacket, one of them a heavy, kind of a heavy flannel . . ."

Dispatch: "WAS IT DARK OR LIGHT COLORED?"

Caller: "Not black, not brown, not dark."

Dispatch: "OKAY, WHAT ELSE WAS HE WEARING? DARK OR LIGHT PANTS?"

Caller: "Both of them had kind of dark colored pants."

Dispatch: "OKAY, JUST A MOMENT. HOLD ON JUST A SECOND OKAY?"

Caller: "Okay".

Dispatch: (Dispatcher talking on the radio): "ANY CAR MADE THAT STOP YET? !0/4 ARE YOU CLEAR FOR A CLOTHING, PARTIAL CLOTHING DESCRIPTION ON EITHER? WE HAVE # #1 IN A BASEBALL CAP UNKNOWN COLOR WITH A WHITE VISOR AND WHITE JACKET. #2 UNKNOWN COLOR FLANNEL JACKET BOTH DESCRIBED AS BLACK MALES MID TWENTIES, NO FURTHER. SIR, MAY I HAVE YOUR NAME?"

Caller: "My name is Yossef Nieman."

Dispatch: "OKAY, COULD YOU SPELL IT FOR ME?"

Caller: "Y-o-s-s-e-f last name N-i-e-m-a-n."

Dispatch: "MAY I HAVE YOUR ADDRESS?"

Caller: "2521 Chilton Way".

Dispatch: "OKAY, IS THIS A HOUSE OR AN APARTMENT?"

Caller: "This is a part of the house, a duplex house (Unintelligible)."

Dispatch: "YOU ARE NOT SURE WHAT?"

Caller: "I'm not sure, I'm not completely sure that they stole the car. I have a suspicion about it because they both, one of them was kind of, he pretended he was writing a note or something, but other things indicated he was watching."

Dispatch: "OKAY, SIR OUR OFFICERS HAVE STOPPED THE CAR OKAY? THEY DO HAVE THE CAR."

Caller: "Okay, everything is okay?"

Dispatch: "OKAY, IS THERE AN APARTMENT # WHERE YOU ARE?"

Caller: "This is the house number, the house number is #B that's all."

Dispatch: "B AS IN BOY?"

Caller: "Yes."

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Dispatch: "THANK YOU FOR CALLING, WE WILL HAVE AN OFFICER CONTACT YOU SHORTLY."
 Caller: "Okay, thank you."
 Dispatch: "OKAY".
 Caller: "Bye."
 Dispatch: "GOOD BYE".

At 1:29 while the previous phone call was going on the Desk Officer is in contact with officers on the street.

Dispatch: "ALL CARS SOUTH CAMPUS REPORTED A POSSIBLE 10851 IN PROGRESS ON PARKER BETWEEN TELEGRAPH AND TILTON, PARKER BETWEEN TELEGRAPH AND CHILTON, IT'S A BLUE VW BUG WITH TWO BLACK MALES, MORE TO FOLLOW."
 Off. Lee: "101 from Parker and Regent".
 Desk Off.: "101 check".
 Off. Anderson: "56 I copied also."
 Dispatch: "CARS RESPONDING SUPPOSEDLY THEY'VE TAKEN A VW BUG WESTBOUND ON PARKER, TWO BLACK MALES."
 Off. Thornton: "108 breaking stop".
 Desk Off.: "108 CHECK, 94 (DIAZ) WHY DON'T YOU SORT OF MOVE INTO THAT AREA?"
 Off. Diaz: "Check, moving that way".
 Off. Lee: "Parker looks clear."
 Off. Thornton: "108, I just had, what's the color of the VW?"
 Desk Off.: "BLUE".
 Off. Thornton: "I've got a light blue VW crossing Derby southbound on Telegraph and they may have gone around. Two NM occupants, I'm behind it now on Ward Street."
 Off. Anderson: "56, I'm at Telegraph and Ashby".
 Desk. Off.: "BERKELEY CARS, CODE 33 EMERGENCY".
 Off. Brennan: "I'll wait at Telegraph and Ashby also. . ."

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Off. Thornton: "108, the California plate is HE100. Wait to cross Ashby before I pull the stop".
 1:31 a.m. Officer Thornton calls in.

Off. Thornton: "We'll be just south of Webster. Officer 56 (Anderson) is with me".
 1:31 a.m.

Desk Officer: "20 (M. MEREDITH) STAND BY CODE 33 (EMERGENCY)
 1:32 a.m.

Dispatch: "108 (THORNTON)" (No response).

Dispatch: "ANY CAR?"

Sgt. Mulligan: "Go ahead, we've got a felony stop in process".

Dispatch: "10/4 YOU CLEAR FOR A CLOTHING, A PARTIAL CLOTHING DESCRIPTION ON EITHER".

Sgt. Mulligan: "Go ahead".

Dispatch: "NUMBER ONE IN A BASEBALL CAP UNKNOWN COLOR WITH A WHITE VISOR AND A LIGHT JACKET. NUMBER TWO IN AN UNKNOWN COLOR FLANNEL JACKET BOTH DESCRIBED AS BLACK MALES MID 20's NO FURTHER."

Sgt. Mulligan: "10/4, I think we've got them".
 1:36 a.m.

Officer Thornton: "Code 4 (No further assistance) two in custody."

Desk Officer: "10/4, DO YOU WANT A CODE 34? ("

Sgt. Mulligan: "Yeah you can lift the code 33."

Desk Officer: "THANK YOU S-3, CODE 34, 01:35 HOURS KSL359 01:36 HOURS."
 1:40 a.m.

Off. Thornton: "Could I have an RP please, name and number?"

Desk Officer: "YOU'RE 10/36? (CONFIDENTIAL INFORMATION)"

Off. Thornton: "That's affirmative, go ahead."

Desk Officer: "YOSSEF, Y-O-S-S-E-F NIEMAN, IS THAT FIRST NAME N-I-E-M-A-N, AT 2529 CHILTON WAY NUMBER B, BOY."

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1:45 a.m. Sgt. Mulligan calls Off. Thornton

ju. Mulligan: "Car 108, S-3, Have you made contact with the reporting party up there yet?"

ff. Thornton: "Yeah, check, a little language problem, I'm just getting the story now, I'll get back to you."

jt. Mulligan: "10/4".

1:47 a.m.

ff. Nenneman: "51, I'll be 10/8 (back in service) from the stop."

ask Officer: "51 CHECK".

ff. Nenneman: "101 (Off. D. Lee) give me your 10/20 (Location) and I'll give you your cuffs back".

1:51 a.m. Sgt. Mulligan calls Off. Thornton.

gt. Mulligan: "108, S-3, what's the story, what are you going to do?"

ff. Thornton: "S-3, 108, I'll be right there".

gt. Mulligan: "108, that's what they make radios for, let's go to channel 2".
 They switch to channel 2.

gt. Mulligan: "OKAY, 108, we can't stay on this stop much longer, what's going on?"

ff. Thornton: "10/4 why don't you cut them loose and we'll do the stop cards there?"

1:57 a.m.

ff. D. Lee: "101, I'm 10/8 (back in service).

ask Officer: "101 CHECK"

1:59 a.m.

iff. Anderson: "56 at Telegraph and Webster ring."

ask Officer: "56 10/4".

2:01 a.m.

off. Nenneman: "51, 108"

off Thornton: "Channel 2, 51, 108 you've got a stop card for this matter, could you roll by Webster and Telegraph and give them to me?"

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Desk Officer: "108 Case 60845 at 01:27 hours".

Off. Thornton: "10/4 10/8 (back in service) 10/19 briefly to pick up a printout (returning to station)."

Off. Nenneman: "108 51 Channel 2".

Off. Thornton: "51 go ahead."

Off. Nenneman: "Yeah, well I got a sus circ call at 2165 Ashby Avenue. You want to meet me there and I'll give you the information?"

Off. Thornton: "10/4."

Submitted:
cc: Complainant
Subject Officers
Chief of Police

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

March 14, 1983

TO: Dorothy Morris, PRC Secretary

FROM: Peter N. Hagberg, ^{pk} Investigator Police Review Commission
Eileen Luna-Gordinier, Associate Investigator Police Review Commission

RE: Supplemental Report of Investigation PRC Complaint #657

A copy of the lesson plan used in instructing officers in "high risk car stop" situations was provided to the PRC by the Department. The materials provided are attached. The section in which the criteria for determining if a high risk felony stop procedure should be used is entitled "High Risk Vehicle Stop" and is on page 9 of the attachment. The pertinent information reads as follows:

"High Risk Vehicle Stop."

The term "felony vehicle stop" is a misnomer because the procedure which follows may be employed for an offense not necessarily involved in a felony, such as the termination of a hot chase, the brandishing of a firearm or other recognized dangerous weapon, or the discharge of a firearm within the city limits; all of these examples of non-felony offenses where the procedure should be used. Conversely, the following procedure would not be used for such felony offenses as grand theft, purse snatch; pickpocket; or a forgery, for instance, unless there were factors present which would lead the officers to believe that the suspect(s) might be armed and pose a threat to their lives or the lives of innocent citizens.

Among the criteria that should be used to determine the use of this procedure, are to evaluate the seriousness and potential danger of the reported offense, to evaluate how closely the vehicle to be stopped and its occupants fit the description of the suspect auto which we seek, and to evaluate what other factors might be present which lead the officers to believe that the vehicle to be stopped is potentially a threat to their safety. Such factors, for instance, could include a suspect ducking down in the seat after he has been seen and after the stop has been made, his failure to reappear."

Attachment

COURSE OUTLINE

COURSE: HIGH RISK CAR STOPS

LENGTH: Four hours: 1-hour videotape presentation: CHP Newhall Report (45 minutes, LASO Officer Survival I (15 minutes)

1-hour instruction and discussion

2-hours initial practical field exercise

Within thirty days of the initial field exercise an additional two-hour field exercise shall be conducted; thereafter, for review and update of the procedure a two-hour field exercise should be held every four to six months.

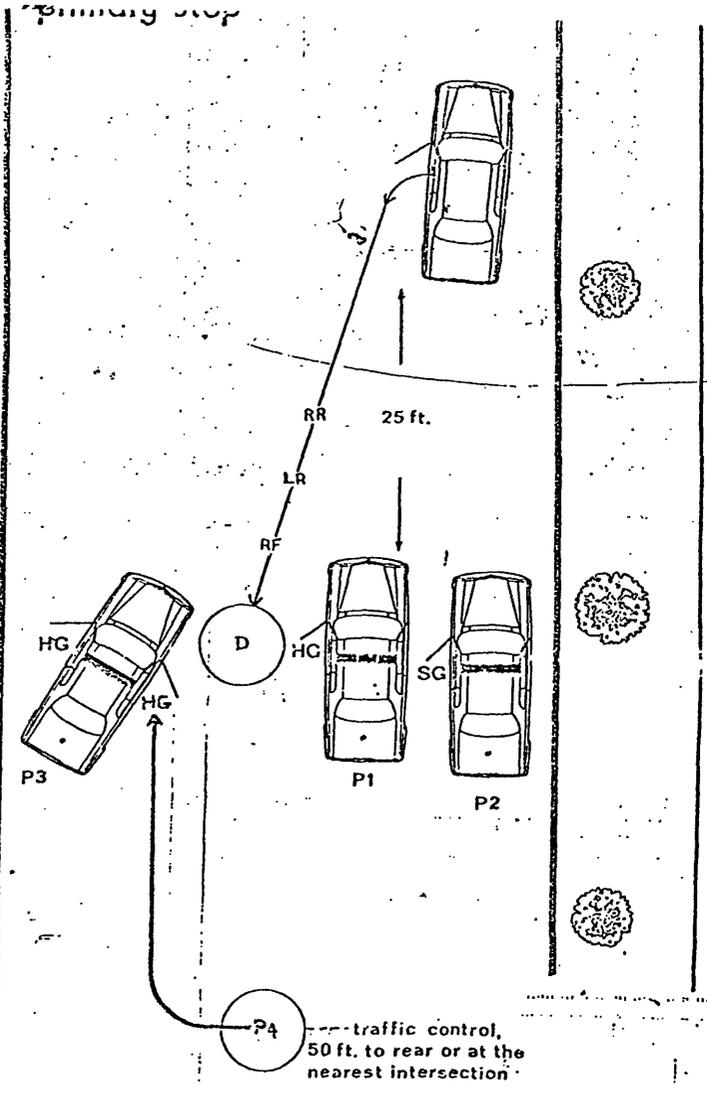
OBJECTIVE OF COURSE: To instruct officers in the safe resolution of a high risk car stop situation through an understanding of the basic minimum tactical concepts involved and by detailing a procedure to be used as a guideline for those situations. This will be accomplished through the use of a videotape presentation to make the officers fully aware of the possible fatal consequences of such a stop, coupled with an oral presentation and written material. Finally, application of those principles and procedures learned by the officers, in a practical field exercise.

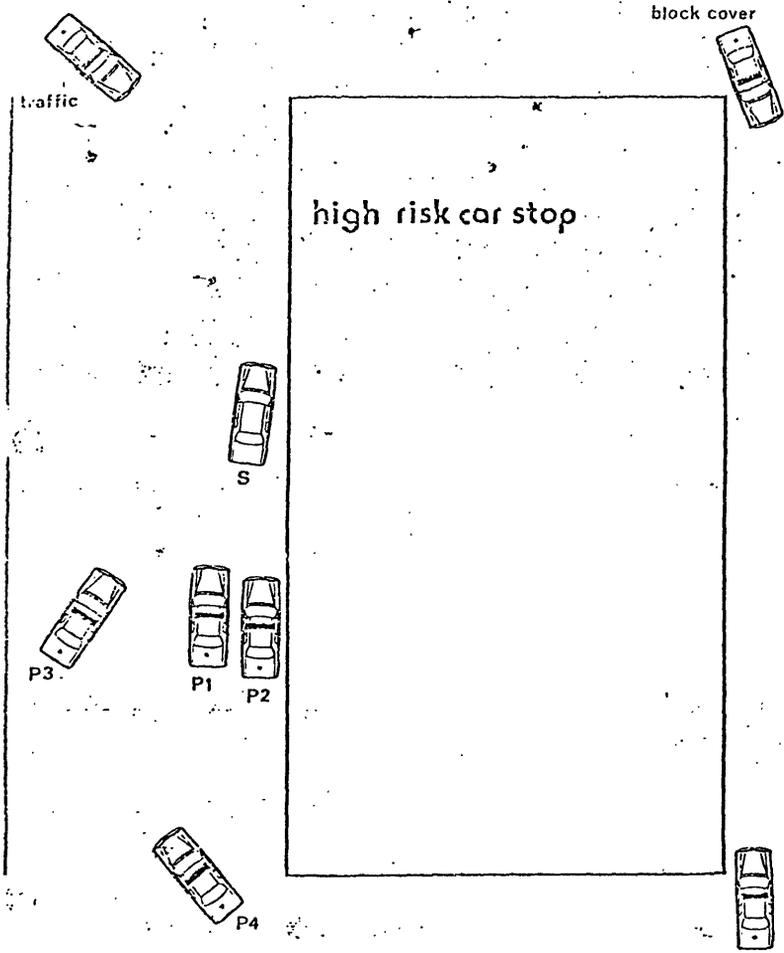
SCOPE:

1. Videotape presentation to make officers aware of the hazardous nature of a high risk car stop.
2. An oral presentation assisted by visual aids and written handout material instructing officers in the basic concepts of safely resolving such a situation and offering a detailed procedure for use as a guideline.
3. Via the initial and follow-up practical field exercises the officers demonstrate their understanding of the basic concepts and guidelines presented to them.
4. Periodically (every four to six months), a minimum of two hours additional practical field exercise to serve as a review and update of the concepts and procedure learned.

MATERIALS:

1. Full duty uniform for participating officers.
2. Course Outline and accompanying handouts for participants.
3. Easel board and flipchart.
4. (3) marked patrol units, fully equipped.
5. (1) unmarked patrol unit (preferably four-door without screen.)
6. As PROPS; (2) full size handguns, (2) hideaway size handguns, and





-2-

Blank cartridges (preferably, low order PRIMER CAPPED casings).

7. Instructor' critique forms / portable tape recorder and tape.

8. Time credit slips / class attendance cards.

S.A. Engler, Sergeant
Berkeley Police Department

S.K. Nakamura, Officer
Berkeley Police Department

First Platoon
Safety & Training Commit
Berkeley Police Department

INSTRUCTOR'S NOTES

REFERENCE MATERIAL: The previously cited videotapes; procedures taught to BPO officers in regional basic academies since 3/73; instructional manual, San Luis Obispo Officers Survival Course, dated 8/74.

The intent of the CMP Newhall tape is to acquaint the student officers with that entire particular event, from the background of the suspects involved, through the actual stop on the suspect vehicle, to the conclusion of that investigation. The intent of the LASO reenactment is to graphically portray the fatal consequences of the tactical errors made by the officers who were killed. These errors are:

1. The stop was actually initiated by the suspects who had made a plan to kill the officers in the first police unit. The officers aided this plan by attempting to confront known armed subjects, prior to the arrival of a backup unit.
2. Once the officers made that decision they left what little cover their patrol unit offered them to approach the suspect auto.

These critical errors should be pointed out to the officers attending the class. Because of these errors the first two officers were killed immediately and their backup officers were fired upon by the suspects prior to coming to a complete halt in their unit.

Once these points are made the instructor should proceed with the oral presentation assisted by the visual aids and handout material. This material should consist of a short outline which identifies the basic tactical requirements and highlights the recommended procedure. The instructor should also emphasize that the majority of live "street" situations will not be as clean as the accompanying diagrams and procedure might make them seem; actual situations will be much more stressful than the stress factors introduced during the field exercise.

FIELD EXERCISES: Optimum efficiency in the basic and follow-up exercises is achieved with a class of six officers who ride as three two-man units. In the exercise the officers should function as a one officer unit, except in the case of reserve officers who are required to ride with a regular sworn officer. The second officer rides solely as an observer. A minimum of three exercises can be conducted in two hours, with each of the three units participating as an initiating officer. Once the

exercise is completed, the driver and passenger officers in each unit change places for the succeeding exercise. For the third exercise the units change partners.

The exercises should encompass various positions: a right or left curb pullover, primary or alternate plan forms, to test the understanding of the procedure by the student officers. In addition there are various stress factors which should be added to simulate actual street conditions and to gauge the stop team's members reaction to such stress. The initial field exercise's objective is to test understanding of vehicle positioning and responsibilities within the stop team. These initial exercises should have relatively mild stress factors. The follow up field exercises should include not only the understanding of basic concepts but recognition of and performance in situations with high stress factors.

Mild stress: Involving one or more suspects visible and at least one hidden in the vehicle, or at least one "uninvolved citizen" coming into the stop scene; shots "fired" during pursuit of the suspect vehicle, or with an armed suspect firing from inside the car while still hidden; active and "aggressive" resistance by the suspect(s) by attempting to draw and / or fire a accessible weapon, or successfully eliminating a participating officer who has made a fatal error.

High Stress: Multiple "shots fired"; one or more suspects abandoning their auto and fleeing on foot; "hostage" situation or apparently one in the suspect vehicle once it is stopped; active-passive resistance (verbal or non-injurious physical resistance), as refusing to take or arising from a search position.

Prior to starting the basic field exercise the instructor must arrange for three patrol vehicles to be positioned on a "suspect" vehicle in both the primary and alternate plan forms, that the officers may "dry run" the stop and have a brief look at vehicle positioning. The responsibilities of each position should be reviewed by either the instructor or by the officers identifying them. This "dry run" will also allow for any last minute questions to be asked.

During the course of the instructors' presentation, questions should be answered as they arise.

To make the field exercise sessions effective, some ground rules must be established. These are:

1. The students will be expected to handle each field exercise scenario independent from the scenario which preceded or followed it, or one which they may previously have heard of.
2. The student will be expected to handle each scenario as he would in an actual stop situation and he will be responsible for such field performance from acquisition of the suspect vehicle and radio traffic following that event, through the searching, cuffing, and removal of the "suspects" from their search positions.
3. Students' weapons to be used during the course of the field exercise portion will be unloaded and inspected in the presence of the instructor conducting the exercise.
4. The field exercise problem will remain in progress but for a short pause which might be required for the instructor to make a judgement on the actions committed either by the members of the stop team or the "responsibles". The student should be told that he has the option to call for a supervisor or any other support personnel which he feels might be necessary if this were an actual "street" situation and that support will be the role of the instructor. This should not, however, be used by the student as a crutch in any given field exercise scenario.

At the conclusion of each field exercise scenario, a critique session by the "responsibles", the instructor(s), and members of the stop team is essential. The emphasis should be on positive criticism, with the theme being better to have committed errors and personal safety violations in a non-lethal environment of a field exercise than to carry such errors into an actual high risk situation. The critique should be structured with the "responsibles" giving their input, followed by the instructor(s)' input, and finally that of the stop team members. The instructor should, for convenience, either tape record his comments or utilize appropriate critique forms; and both of these methods should identify the initiating officer, the in-board officer and the out-board officer, as well as bear a quick notation summarizing the type of stop. In addition, the

instructor's attention and commentary should focus on radio traffic, patrol vehicle position, (if at night) illumination, commands and directions given by the initiating officer, observation and/or attention to responsibilities by the members of the stop team, control and cover of the suspects in a search position, the vehicle search, and searching and cuffing procedures. Problems in any of these areas should be brought out to the members of the stop team and their remedies discussed. The instructor should avoid duplication of problems previously brought out by the responsible.

It should be pointed out that some of the scenarios presented in the field exercise are based on actual occurrences on the street. In light of this, as an additional training aid, officers who are members of a stop team in actual "street" situations should be encouraged to document and critique the stop in which they were involved. Should they or their supervisor have recommendations regarding the high risk car stop procedure, these should be forwarded for inclusion in this article.

COMMON ERRORS ENCOUNTERED IN ACTUAL AND FIELD EXERCISE STOPS

Radio traffic-descriptive information about the suspect auto; its direction, no cars answering up once behind the initiating officer's vehicle; unnecessarily breaking code 33.

The Stop -- Distance Too Short

Not enough distance means less time for reaction on the part of the officer and implies that he is either following too closely or is still in the patrol vehicle when the suspect vehicle comes to a stop.

Too long a distance makes it hard for the car, and especially its trunk, to be effectively covered during the car search; the suspects are not placed near enough to the stop team for them to be effectively covered; lengthens the approach for the officer who must make the vehicle search.

Insufficient illumination at night -- spot lights or high beams not used or; the outboard officer's vehicle is not properly positioned:

Command and Control of the Suspects: The time lapse between the moment the suspect and patrol vehicles come to a stop and the initiating officer establishes verbal command and control of the suspects in the auto; failure to get the suspects hands in sight, the car's engine turned off, and at night, to demand the turning on of the suspect vehicle's interior lights; suspects are commanded out of the car on different sides, thus splitting coverage responsibilities; the suspect's are placed close to the suspect vehicle and thus create a potential for an officer's crossfire when the vehicle is being searched; failure to cover or command and control the suspects in a search position by the officer designated by procedure or by the initiating officer.

Auto Search: An approach which is too high; an approach which is "tipped off" by shadows or the lack of command and control of the suspects in their search position by the designated officer; improper trunk search.

Cuffing and Searching the Suspects: The officer designated to search the suspect vehicle fails to cover the suspects in the search position once the car search is completed; initiating officer fails in his responsibility to cuff, search, and remove; through whatever circumstances, a bad search resulting in a suspect leaving the scene with a weapon still hidden on him.

Communications: Failure of the initiating officer to inform the other stop team members of a decision to modify the known procedure; failure of stop team members to inform the others of a particular observation which they made or, once making that information known, failure to ask for an acknowledgement from the other stop team members that the information has been received.

HIGH RISK/FELONY VEHICLE STOP

Introduction

The following concepts and procedures were identified and developed subsequent to a study conducted among officers of the First Platoon whose experience level included officers sworn in as early as 1971. This informal study showed that of the twenty-odd officers on the watch through various basic academies, there had been nine methods taught for dealing with felony vehicle stops. Because no two of these plans were the same, and initial training may have left such a procedure as yet unclear in the officers' minds, and because most of the officers had never received any review or update training on whatever method they were taught, many problems arose when dealing with actual situations. The most common of these were: far too many officers responding to the scene of such a stop, surrounding a suspect vehicle and thus contributing to a massive potential for officers crossfire; more than one officer attempting to take charge of the stop, which led to a lot of confusion, uncertainty as to the procedure or responsibilities involved; and uncertainty as to the best method of resolving the situation while simultaneously safeguarding officers' lives, uninvolved citizens' lives, and those of the suspects'. All of these factors were looked upon as having a significant impact on officer safety, and hence a decision was made to develop a standardized procedure within the Platoon which would minimize the potential danger to everyone involved.

Subsequent to that decision, First Platoon officers were requested to diagram and briefly explain the method which they were taught to use in a felony vehicle stop. Nine various plans were submitted with diagrams and discussed. Plans which were felt not to fulfill minimizing the potential danger to everyone involved were discarded after review of the diagrams. The remaining plans were "dry run" and from these remaining, two plans were evolved. They were designated the primary plan and the alternate plan, the distinguishing factor being conditions at the curbside at the time of the stop. Once the plans were identified, basic tactical concepts involving such a stop were identified and these were combined with the common elements of the various procedures which had been taught up to that time.

Hence, the plans, tactical concepts, common elements of various procedures were then combined with the observations and experience of members of the platoon. Other sources, cited in the preceding pages, were also consulted

and changes and additions in the high risk car stop procedure were incorporated into it. These changes and additions came from actual field use experience by officers of the Platoon trained in the system.

High Risk Vehicle Stop

The term "felony vehicle stop" is a misnomer because the procedure which follows may be employed for an offense not necessarily involved in a felony, such as the termination of a hot chase, the brandishing of a firearm or other recognized dangerous weapon, or the discharge of a firearm within the city limits; all of these examples of non-felony offenses where the procedure should be used. Conversely, the following procedure would not be used for such felony offenses as grand theft, purse snatch; pickpocket; or a forgery, for instance, unless there were factors present which would lead the officers to believe that the suspect(s) might be armed and pose a threat to their lives or the lives of innocent citizens.

Among the criteria that should be used to determine the use of this procedure, are to evaluate the seriousness and potential danger of the reported offense, to evaluate how closely the vehicle to be stopped and its occupants fit the description of the suspect auto which we seek, and to evaluate what other factors might be present which lead the officers to believe that the vehicle to be stopped is potentially a threat to their safety. Such factors, for instance, could include a suspect ducking down in the seat after he has been seen and after the stop had been made, his failure to reappear.

In dealing with a known felon in a vehicle, it is a statistical fact that most officers killed as a result of a vehicle stop were killed by persons with prior felony arrests. Because many felonies are planned by the perpetrators, and in that plan the felon(s) has probably given some thought to what to do if stopped, a functional plan to deal with such a situation is indispensable to law enforcement officers.

Tactical Concepts

1. Time + Planning + Teamwork = OFFICER SAFETY
2. Teamwork = Knowing and Performing Responsibilities + Leadership + Communication + Improvisation

3. The suspect vehicle is contained by OBSERVATION and FIRE.
4. The suspects' movements are controlled, channeled, and limited. This means that all occupants of the car exit from the same side, and that in most situations they should be brought out of the car on the building line side.
5. The potential for danger to innocent civilians and for officers' crossfire is reduced.
6. General Rules
 - a. When the suspect vehicle stops, the patrol vehicles stop.
 - b. Always stay alert.
 - c. Always keep the suspects' hands in sight.
 - d. The following procedure is a precise guideline which is not meant to "lock in" the officers to each succeeding step. This procedure is not meant to limit the judgemental or physical improvisations or modifications which the officers of the stop team may choose to make.

What is essential is that, in order to safely resolve a high risk vehicle stop situation, officers must understand the above basic tactical concepts and especially the concepts of officer safety and teamwork.

Making the Stop: Time + Planning

The 'deal stop should be conducted with four police units; three units functioning as the stop team and a fourth unit functioning as a traffic post to clear follow traffic. The plans are flexible enough so the stop can be effected with only three units, however, if at all possible, a stop should not be made until the officer making the stop has at least two cover units behind him. The stop plans are also flexible enough to be used in any given situation; a left curb pullover, a right curb pullover, a stop in a parking lot, or in an underground garage. All of these scenarios require some slight modification and in the latter case the patrol units should not follow a suspect vehicle into an underground garage unless there is sufficient room for the first two units to be able to position themselves side by side. If conditions prevent this, then the first two units should stop at the entrance to the underground garage and attempt to direct the occupants of the suspect vehicle out so that they are in the officers' field of observation and fire.

Should a solo beat officer find him/herself confronted with the suspect vehicle stopping for no cause, the most that officer should do is to command everyone in the suspect vehicle to put their hands in plain sight, and next to immobilize the suspect vehicle by having the driver reach down, take the keys out of the ignition, and throw them out of the car. A lone patrol officer should not initiate any further activity until the arrival of the two cover officers. Once the car has stopped, its occupants have their hands in plain sight, and the vehicle is immobilized, there is no need to rush to resolve the situation unless there are exigent circumstances.

Once an officer makes visual contact with a vehicle wanted in connection with high risk circumstances, as detailed above, the desk should be immediately notified, cover requested, the direction of the suspect auto given, and a full description of the suspect vehicle, including its license plates and the number of occupants which can be seen at that time, should be relayed to the Communications Center. At that point the Communications Center should put out a code 33, giving that officer, known as the initiating officer, and identified as "P 1" in the accompanying diagrams, will have priority on the air. When possible, the initiating officer should hang back until cover units are behind or immediately available; unless forced to by the suspect auto pulling over, there is no need to immediately initiate a stop.

Cover cars responding to trail the initiating officer should use their emergency lights to get into the vicinity, but once they make visual contact with the suspect auto and initiating officer, their emergency lights should be shut down so the suspects will not react to the lights of the arriving backup units. The first, second, and third backup units arriving behind the initiating officer (identified as "P 2", "P 3", and "P 4") should be THE ONLY UNITS TO BREAK THE CODE 33, AND ONLY TO IDENTIFY THEMSELVES AS THE SECOND, THIRD OR FOURTH COVER CAR BEHIND THE INITIATING OFFICER. This procedure serves a dual purpose, in that it informs the initiating officer without him having to take his attention off the suspect vehicle that he has cover units behind him, and it also informs the Communications Center of the same fact.

PLAINING involves not only having a tactical plan, as detailed in this procedure, but picking your time and your place. The initiating officer must consider block position; the best place to have the suspect vehicle

pull to the curb is between 1/2 and 3/4 way in the block. Stopping in or near an intersection may involve innocent civilian cross-traffic, an enlarging field of movement for the suspects, and the potential for the suspects and the officers in gunfire from behind, substantial cover points. The officer also consider curbside background: the primary plan, which is the "perfect situation" and which the initiating officer should always be striving for, requires that there be no curbside obstructions, i.e., parked cars, dempse dumpsters, etcetera. When considering the curbside background, the officer must also take into account civilian traffic, possible cover points for the suspects, and the type of building frontage.

For instance, examples of poor locations to initiate the stop would be: 12:30 p.m. on a weekday on Shattuck Avenue at Kittredge Avenue; at 9:30 p.m. on a weeknight on Telegraph Avenue at Durant Avenue; at 11 p.m. on a Friday or Saturday night on San Pablo Avenue at University Avenue. Similar poor locations might be an occupied school yard during the daytime, in front of a theater at night time, or in front of a factory in the early morning hour when people are arriving for work.

Once the decision has been made to initiate the stop, the officers should use all the equipment available to them: the light bar, the PA, and at night their spot light and high beam headlights. The stop team should be prepared for the unexpected: a hot chase, a slow chase, a sudden stop and gunfight, or a sudden stop and abandonment. In this last case, fleeing occupants should not be cut chaseo east the suspect auto until that auto is covered off by observation and fire. The potential exists in that situation for an armed subject to be hiding in the vehicle waiting to ambush an officer who passes by.

Making the Stop: Planning

The primary stop plan is made possible by time and planning. In the primary plan, the position of "P 1" remains virtually the same, that is, behind and offset to the left of the suspect vehicle, similar to the standard car stop position, but with an increased distance between the suspect auto and the patrol vehicle. In addition, in the primary plan, the initiating officer must allow room to his vehicle's right for "P 2".

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The optimum distance for such a stop is 25 feet between the initiating officer and the suspect vehicle. A ready indicator to approximate this distance is the hood line and center line of the patrol vehicle. In the initiating officer's field of vision perspective, if he is able to see the rear tires of the suspect vehicle on the roadway, additional roadway space, and his hood line, there is an approximate distance of 25 feet. With suspect vehicles built closer to the ground, the distance is longer, with suspect vehicles built higher off of the ground, the distance is shorter. In addition, if the initiating officer places the center line of his hood off of the left rear corner of the suspect vehicle, again in his field of view perception, then there will be sufficient room to his right to allow "P 2" to take the inboard position. Initiating officers, however, should take special heed to the general rule which says when the suspect vehicle stops, the patrol vehicles stop. This is because an officer is less able to defend himself ~~from~~ the suspects while driving the patrol vehicle.

In both the primary and alternate plans, "P 2" is known as the decision-maker, in that he determines the shape of the stop, which form that it will take. If that officer sees that there are no curbside obstructions, then he has no decision to make, but automatically takes the curbside of the suspect vehicle. In the primary plan, "P 2" drives up to the right of, parallel to, and slightly behind "P 1". At that point, the suspect vehicle is immediately contained to the left, rear, and right sides, and by being slightly behind "P 1", the inboard officer increases his field of observation. If taking this position means that the "P 2" has to give up onto the sidewalk, then that is what is done.

In the alternate plan, where curbside obstructions are present, officer "P 2" should immediately recognize that the quickest way to bring the suspect vehicle under full observation and cover by fire is to take the outboard position. Therefore, "P 2" now takes a position to the left of and slightly behind "P 1", with his patrol vehicle angled in toward the suspect auto. At night, the essential element of the outboard position is to focus the patrol vehicle high beam headlights and spotlight into the passenger half of the suspect vehicle. With "P 2" thus in place, the rear and outboard sides of the suspect vehicle are covered off.

In the primary plan, "P 3" takes the outboard position as outlined above. In the primary plan, this adds to the field of observation into the suspect auto, and enforces channeling and limits their movements. In the alternate plan, with the rear and outboard sides of the suspect auto covered off, "P 3" recognizes that only the inboard side of the suspect auto remains to be brought under a field of observation and fire. Because of the curbside obstructions, this was not immediately practical for "P 2". Therefore, "P 3" rolls in approximately 15 feet behind and as far to the right as possible of "P 1". At night it is important that "P 3" turns off all his lights so as not to backlight "P 1" or "P 2". Once stopped, that officer should take his shotgun, turn off his vehicle's engine, and take the keys with him, and take a cover position on the inboard side of the suspect auto which will allow him to carry out the inside officer's responsibilities. This cover position may be at the building line, at a sidewalk position behind a telephone pole or low wall, at the right rear corner of the curbside obstruction, or at the worst, at the right rear corner of "P 1's" vehicle. If it is known to the officer of "P 3" that "P 1" keeps the right door of his patrol vehicle unlocked, then that would be an appropriate cover point. If that fact is not known, however, then "P 3" should seek one of the previously identified alternatives.

With the three vehicles of the stop team in place, the suspect vehicle now is contained by observation and fire. Officers in the stop team who find themselves improperly positioned within police vehicles should not take the time required to properly position them. Again, an officer is less able to defend himself while driving, therefore, improperly positioned vehicles must be dealt with as they are (improvisation).

Once the officer's patrol vehicles come to a stop, the officers should be immediately out of their vehicles and down behind the open driver's side door with that door window down. Lethal firearms shall be exhibited and utilized per General Orders Nos. 322 and 323. The initiating officer need draw only his handgun, and should have the patrol vehicle's PA system readily available. An officer manning the inboard position should bring with him his shotgun to fulfill the inboard position's role. An officer manning the outboard position should draw his handgun for possible use. The patrol vehicle's open door offers minimal protection, however, it allows more freedom of movement should a fire fight ensue, than would sitting in the patrol vehicle's seats. The initiating officer should remember to stay down

low to his door as the patrol vehicle's public address system will not function properly with the officer standing fully.

In both the primary and alternate plans, "P 4's" vehicle position remains the same. The officer is to intercept and halt following traffic 50 feet to the rear of or at the intersection nearest the rear of the stop. This will eliminate potential for civilian cross-traffic. This traffic post officer should keep his emergency lights activated, take the keys from his vehicle and with his handgun take cover outside of and behind his patrol vehicle. The officer must remain constantly aware of the status of the stop, as his assistance may be immediately necessary.

Making the Stop: Planning + Teamwork

Now that the stop has been effected, the responsibilities of each member of the stop team are as follows:

"P 1", the Initiating Officer

1. Plans and makes the stop.
2. Directs the occupants out of the suspect vehicle, one at a time, and into a search position. During that time, his cover responsibility is the subject whom he is directing.
3. Covers the suspect auto during its search by the outboard officer or the officer designated by "P 1".
4. Handcuffs, searches, and removes the occupants from a search position once the car has been searched and secured, and neutralized as a potential threat by the searching officer.

"P 2", the Inboard Officer (Armed with a shotgun)

1. Contains and covers the curbside of the suspect auto. This responsibility includes keeping uninvolved citizens clear of the immediate danger zone.
2. Once the suspect auto's occupants are directed out and placed into a search position, unless otherwise modified by "P 1", "P 2" is responsible for command, control and cover of the occupants in a search position.

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3. Once the suspect vehicle has been secured, "P 2" covers "P 1" during the cuffing and searching of each of the suspect vehicle's occupants, one at a time. When officer "P 1" removes a cuffed and searched subject from the search position, "P 2" covers the remaining occupants with "P 3".

"P 3" Outboard Officer (Armed with a handgun)

1. Contains the street side of the suspect auto, and is responsible for covering by observation and fire the suspects while they are still in the suspect auto, awaiting removal.
2. Searches and secures the suspect auto when it is thought to be vacant.
3. After the suspect vehicle has been searched and secured, covers the suspects in their search positions while "P 1" and "P 2" prepare and next effect the cuffing and searching of each of the suspects.

"P 4", Traffic Post (With a handgun)

1. Traffic control for following traffic.
2. Prisoner security.
3. To assist "P 1" with the stop as necessary; and to assist the officer designated to do the vehicle search and securing of a camper or van.

ADDITIONAL COVER OFFICERS have the following responsibilities:

1. Traffic control for the opposite lane of traffic.
2. Posted as block cover units.
3. Prisoner security.

Command/Control/Cover of the Suspects

Once the suspect vehicle has been stopped and the stop team and traffic posts are in place, there is no need to rush this situation's resolution unless there are exigent circumstances. The initiating officer should remember that the directions he gives should be clear and simple to offset the possibility of a misunderstanding in view of the stress involved. When possible, the initiating officer should utilize the patrol vehicle's public address system to give his commands.

The first command given should be for the occupants to raise their hands in the air when they can be seen. They should next be directed to place their hands behind their heads and interlace their fingers. This increases the likelihood that any movements by the suspects' hands will be detected. Once that is done, a "social contract" should be verbally established with the occupants of the suspect vehicle ("Everyone in the car do everything I tell you to do, exactly as I tell you to do it, when I tell you to do it, or you risk being shot!") This in effect lays the ground rules and the possible consequences for failing to adhere to them. The driver should next be directed to turn the car's engine off, take the keys out of the ignition and then throw them out of the left window of the car. The initiating officer will have to pay attention to make sure that the vehicle is, in fact, turned off and that the suspect vehicle's window is down so that the disposal of the keys can be accomplished. At night, the driver should also be directed to turn on the suspect vehicle's interior lights, which will assist the designated vehicle's search officer when that phase of the operation commences. Once these things have been done, the driver should be directed to turn his hands to the back of his head and to interlace his fingers.

At this point, it should be noted that any hand movements required of the suspects while they are in the car should be conducted as follows: activity on the left hand side of the car should be done with the left hand and activity on the right hand side of the car should be conducted with the right hand of the suspect under direction. This procedure makes it more likely to detect the suspect reaching for a weapon and trying to get a shot off from inside the suspect vehicle. These movements should be carried out slowly, and close attention paid to them by the initiating officer and the outboard officer.

When it is decided to remove the occupants of the suspect auto from it, they should be taken out one at a time, from the same side of the suspect auto, and where circumstances permit, on the building line side of the suspect auto. This is to ensure that their movements are channeled either toward the stop team or away from it and toward officers posted at the opposite end for traffic or in a block cover position. When taking suspects out of the street side of the suspect auto, the problem arises that should a gun fight ensue, members of the stop team will have to fire in the direction of an open area, increasing the likelihood of innocent casualties, as well as the likelihood of officers on the opposite traffic post coming under friendly fire.

If the driver of the suspect auto is the only one that can be seen at the time of the stop, then it might be expedient to have him exit via his left front door, however, a factor to consider would be: sliding the driver out of the right front door may afford the stop team the opportunity to detect a subject hidden down in the right front seat of the suspect auto. If that situation is detected, the driver should be told to stop and then the passenger who was hiding directed to sit up with his hands in plain view.

If the driver is the sole seen occupant, and it is decided to exit him from the left side, he should be commanded to: open the door with his left hand, push it open very slowly, and then step out. Once the subject steps out, his natural reaction might be to turn and face the stop team. If not, he should be commanded to do this. At no time should any suspect be allowed to turn his back on the stop team officers. Once the suspect does this, the potential exists for him bringing to bear a weapon, which cannot be immediately seen until the suspect opens fire. With his hands in sight, or interlaced behind his head, the suspect should then be commanded to: "Kick the door closed, walk back toward me!" When the driver reaches a point approximately six feet in front of the initiating officer's vehicle, he should be told to stop, and then commanded to sidestep to the left to place him in a search position which will be "in the gunsight" of the inboard officer.

During this phase of the procedure, when occupants are being directed one by one out of the suspect auto, communication and teamwork become critical. The inboard officer (or other officer designated to cover the occupants while they are in a search position) must anticipate where the occupants of the suspect auto will be placed in the search position. If they are placed such that the inboard officer is not able to constantly keep their hands in sight then he is unable to fulfill his responsibilities. He must, therefore, communicate this in clear and simple terms to the initiating officer, and then assist "P 1" in placing the occupants in a position more advantageous to the inboard officer.

During this phase of the operation, too, the stop team officers must maintain the responsibilities that are inherent to their positions on the team. The initiating officer must direct and cover the single subject to whom he is speaking; the inboard officer must keep his attention focused on the

inboard side of the vehicle until occupants are placed in search positions, and once that is done, he must then focus specifically on the occupants; the outboard officer should not be paying attention to the subject under direction nor the subject already in the search position, unless emergency circumstances arise. The outboard officers sole responsibility up to this point is to maintain a field of observation and fire into the suspect auto. If there is movement or activity within the suspect vehicle, this should be communicated to the initiating officer.

When the initiating officer is ^{made} aware of activity either in the vehicle or on the curbside with the occupants in their search positions, he should immediately stop the subject he is directing, keep him under cover, and give verbal commands to freeze any other activity that may be occurring. Command and control of the occupants in a search position is the responsibility of the inboard officer. If the officer detects movement or talking, he should command the suspect to cease the activity. The responsibilities of each member of the stop team are specific and an officer who fails to properly carry out his responsibilities endangers the members of the stop team and creates a potential danger for innocent citizens.

In the case of multiple occupants of the vehicle, they should all be taken out the same side of the suspect auto and on the building line side, so that their movement can be limited and channeled. Their alternatives, once exiting the car, will be to advance toward the stop team, retreat from it into the cordon formed by opposite traffic and block cover units, or if physical barriers do not prevent it, to flee into a block which has already been cordoned off by additional cover units.

Once the initiating officer has had the driver dispose of his keys, turn on the dome light, and return his hands interlaced behind his head, the initiating officer should next focus his attention on the right front passenger. That subject should be directed to, with his right hand, reach down, open the door and push it open slowly, return his hands and interlace his fingers behind his head. He should then be commanded to step out, face the stop team, walk toward the team, and at a point eight to ten feet in front of the inboard officer, he should be commanded to stop. He should next be directed into a location within the field of observation and fire of the inboard officer for placement in a search position. Once that occurs, he becomes the responsibility of the inboard officer, and the initiating officer then returns his attention

the car and directs the driver of the vehicle to slide out across the front seat and to exit the open door. Once placed in a search position, the initiating officer then directs the right rear passenger, and after his placement, the left rear passenger out of the suspect vehicle.

In cases of multiple occupancy, the first subject exiting the vehicle should be placed farthest away, with additional occupants filling in behind him when placed into a search position. At no time should any of the occupants be directed to pass in front of an occupant already in a search position because for that instant the subject in the search position may not be able to be seen by the inboard officer.

Search Positions

There are three possible search positions in which occupants from a high risk vehicle stop may be placed. Generally, the criteria used to effect this type of stop should govern the decision as to which search position should be used. Other factors, such as physical conditions of the roadway, physical condition of the occupants, etcetera, might also be gauged.

Felony Prone (Modified) is probably the safest search position to use. It is easy to ~~obtain~~^{maintain} observation and control over the subjects and generally the public expects that procedure to be used. The disadvantages to the procedure are that it requires a lot of room to put down multiple subjects and public relations could become a factor. If this position is utilized, the following modifications should be made: the subject should be placed with his face down on the surface, ankles crossed, and the initiating officer and inboard officer must ensure that multiple subjects hands do not touch each others hands, waistbands, or ankles. One technique would be to have the subjects lie face down with their hands interlaced behind their heads and elbows touching the sidewalk surface. This latter modification, however, might lead to some difficulty when preparing to cuff and search the subject

Kneeling Position (Modified: Hands on head, facing the stop team.) uses less room and is more public relations inclined. Its disadvantages are that generally the subjects are harder to control, for they might have a weapon secreted behind their neck and it would be an easy task to slip their hands from the top of their head down onto their necks. Other disadvantages are that the position allows the subject relative freedom to look around and

take in possible escape routes, possible uninvolved citizens who might be as hostages, and to observe the approach of the officer responsible for searching the suspect vehicle. Another critical disadvantage occurs during the cuff and search of the suspects in this position. If the subjects are placed too close together, since they must be searched and cuffed from both sides, this places additional occupants at the back of the initiating officer and cover officer. Therefore, the officer who has completed the car search must pay closer attention to the activities of any additional subjects in this position who are behind the cuff/search team.

Walk Back, Hands Up, To Standing Modified Search Behind "P 1's" Vehicle:

This is the last search alternative which should be considered. Its chief advantages are that it is more public relations inclined, and it might be effective in dealing with an uncooperative subject. In order to utilize this position, however, it requires that the traffic control officer ("P 4" assist at the stop scene. Its major flaws are that it may detract from the full attention which must be paid in containing the suspect vehicle and any other occupants already in a search position; it places a hostile or possibly armed subject in the middle of the stop team and should he neutralize the officers assigned to cover him, the subject could destroy the stop team. In addition, this tactic may unnecessarily expose the initiating officer and his cover officers to the uncertainty of a "rushed" search.

If this last alternative is to be used, the initiating officer should first try to convince the uncooperative subject of the reason why he should cooperate, i.e., for his own personal safety. If that fails, the initiating officer should have "P 4" come to the stop on foot, and once he is behind "P 1's" vehicle, the initiating officer should close his vehicle's door and backup along its side, with his weapon trained on the subject. The subject should then be directed to slowly walk back toward the rear of the vehicle of "P 1", and once there under the gun of the initiating officer, the subject is searched, cuffed, and removed by officer "P 4".

Generally, unless there are exigent circumstances, all of the occupants from the suspect auto should be placed in the same search position.

Suspect Vehicle Search

Once all of the seen occupants of the suspect auto have been directed out and placed into the search position, the car now must be searched and secured a potential threat. This phase of the operation commences with a bluff by officer "P 1", who should call into the vehicle at least twice: "You in the car, sit up where we can see you and put your hands in the air!". The comm. should be repeated, and if there is no response, the initiating officer should signal with his X unit or via hand signal for the outboard officer (or other designated officer) to commence the approach and search. If a hidden subject in the car falls for the bluff, sits up, and places his hands on his head, he should then be directed out the same side which the other occupants exited and then placed in a search position within the inboard officer's field of observation and fire, and behind occupants already taken out.

If there is not response to the bluff, once "P 1" gives his signal it will be up to officer "P 3" to evaluate the circumstances of the stop to that point, before making an approach. If the outboard officer feels something is amiss, he should communicate that to the officer "P 1", and perhaps have the initiating officer call into the suspect vehicle once more. Also, if officer "P 1" forgets to call in, officer "P 3" should remind him.

The vehicle search is the most hazardous phase of the high risk stop operation. Again, it becomes critical that each of the officers be aware of their responsibilities, especially the initiating officer, who will be charged with covering the suspect vehicle while officer "P 3" approaches and makes the complete search. Officer "P 1" has no other responsibility but to cover the suspect vehicle by fire and observation. His total attention should be focused upon that.

In deciding how to approach the suspect vehicle, officer "P 3" might take into account whether he is able to work his way up to the car utilizing some form of available cover; another option might be to locate a point of cover from which he can look into the suspect auto to detect any further activity. If there are any factors which are present which might lead the stop team officers to believe that a subject is still hidden in the suspect auto, these factors should be discussed between the initiating officer and the officer designated to do the vehicle search, and perhaps the request for a supervisor or additional support personnel or equipment be made. In the end,

there is ^{No} alternative to an eventual search of the suspect auto for additional subjects.

Once the officer "P 3" has decided to make the search, the approach should be via the shortest route: from his left front door to the left rear corner of the suspect vehicle. At night, because this officer may have to cross in front of his patrol vehicle's lights to make the approach, he might elect to approach from between his vehicle and patrol vehicle "P 1". The approach may be made quickly or slowly, but the officer should have his weapon drawn.

If, during the approach, suspects in their search position call out, command and control should be instituted by the inboard officer, and at the same time officer "P 1" and the approach officer "P 3" should be aware that those calls might be alerting a subject hidden inside the car. During the night, the key to approaching the suspect vehicle is to keep approaching officer's shadow from appearing in the rear windshield of the suspect auto. Again, at night, if the left door has been left standing open, the closer the officer "P 3" gets to the suspect auto, his shadow may show up on the inside surface of that door and tip off a hidden subject of his approach.

Once the search officer arrives at the left corner of the suspect vehicle, two immediate tasks must be carried out. First, to push down on the rear trunk lid to see that it is locked in place and no one is holding it closed, waiting to spring an ambush. Approaching officers should be aware that there are vehicles which can be opened from inside the trunk. The second task is to conduct a preliminary trunk check.

This second task can be done in two ways: first, a light touch on the rear bumper should be able to detect any movement within the car. However, if there is no movement, it will not be felt. The second method is to push down on the rear bumper of the car to check for substantial weight. However, once this is done, it tips off any hidden occupants of the officer's presence at the car.

Once those preliminary tasks are done, the potential danger in this phase increases significantly because the passenger cab must now be checked. At night, it becomes important that the dome light was left on by the suspect leaving the auto because in checking the passenger cab, with even the illumination provided by street lights and the stop teams' vehicles lights,

the back seat and back floor of the suspect vehicle remain very dark. Added to that is the fact that the officer must divide his attention between activity in the back seat and the potential for danger from the front seat.

The searching officer should then take a position at the left rear quarter panel of the suspect vehicle and listen for a moment to detect movement or sounds from within. Once that occurs, he must now ready himself for the actual search and choose a position from which to come up. There are only two likely which afford what minimal protection there might be. The first is at the left rear quarter panel, just behind the lower left corner of the rear windshield. The second position is below the lower rear corner of the left rear window of the suspect vehicle. Again, it is the initiating officer's responsibility to provide cover fire for the searching officer should it become necessary.

Once the approaching officer has selected his site, he then should utilize a diversion in the form of his keys or handcuffs. One of these items should be thrown over the car to hit at the exact opposite point on the car from the one at which he intends to rise up at. Once the diversion strikes and causes the noise, the searching officer must be quick to rise at his site, gun first, followed by him. Another possible diversion, if the vehicle interior is extremely dark, would be to use a flashlight, however a flashlight can only serve to identify the location at which you intend to rise, or very near it.

The intent of the diversion is to distract the suspect's attention from the site which the search officer has chosen. If there is a subject hidden inside the car, or armed and under stress, when he hears the noise caused by diversion, for a split second his attention will turn from what he is doing to focus on where he had heard the noise. Or, he could conceivably accidentally discharge a round. In the former case, the suspect's attention is distracted for but a moment, which the search officer must use to look into the car. In the latter case, by exposing himself to as minimal danger as possible, the search officer and his initiating officer now know that a subject is present in the vehicle and is armed. At that point, it would become a judgmental matter as to how to deal with that suspect. Because the effects of a diversion are momentary, it must be used for its immediate effect.

When the search officer rises at his site, his shadow will then be cast inside the car. If this officer finds someone inside the car, it will be a judgemental matter whether to drop back down, retreat and inform his cover officer of the suspect; or to command the suspect to freeze, put his hands in plain view, and sit upright, at which point the officer "P 1" would direct the subject out; or other appropriate action by the search officer. Once the passenger cab of the suspect vehicle is "clear and secure", the trunk must next be checked. Officer "P 3" should avoid shouting out that the passenger cab is clear, lest he tip off a suspect possibly still in the vehicle's trunk.

Due to several known instances where criminals have hidden themselves armed or unarmed within the trunk of a vehicle, it is necessary to check the trunk. The searching officer should obtain the discarded keys, go to the left rear corner of the suspect auto to get an idea of the location of the trunk's keyhole and whether there is a key lock in it, and the officer also might take a moment to listen into the trunk to detect any movement.

The safest method to search a trunk is for the search officer to holster his weapon, crawl under the rear end of the car on his back, reach up with his left hand, and insert the key or opening tool into the trunk lock, and then open the trunk and push its lid up. Once he has done this, the officer should roll forward toward the rear wheels. It then becomes officer "P 1's" responsibility to visually check the trunk and that officer is responsible for challenging anyone who might be hidden in it. If the initiating officer is unable to clearly see inside the trunk, he should communicate this via X unit to the searching officer, who must then back out, roll forward, and check the trunk visually himself. Once the entire vehicle has been secured in the above manner, its occupants can then be approached for cuffing, searching and removal.

Cuffing, Searching, and Removal of the Occupants

Once a suspect vehicle is secure, the searching officer then takes a position at the rear of it, which will allow him to cover all of the occupants who are in a search position. This will allow officers "P 1" and "P 2" to leave the cover safely, to approach the suspects and take them into physical custody. If, during the course of his search of the suspect vehicle, officer "P 3" finds weapons or contraband inside or on the roadway next to it, he should

-26-

leave these items alone, however post himself in a position in which he will be able to keep the suspects under cover and also keep visual surveillance of whatever evidence he might have found. Additionally, officer "P 2" might decide to discard his shotgun, in which case it should be locked in the shotgun lock of his patrol vehicle. A shotgun is unwieldy when dealing with a close quarters cover.

Officers "P 1" and "P 2" then approach the suspects, and one by one, starting with the suspect closest to them, each is cuffed and thoroughly searched. It is officer "P 1's" responsibility to cuff and search and recover any weapons or contraband. It is officer "P 2's" responsibility to simply cover the suspect who is being cuffed and searched, and if necessary, take over weapons or contraband found by officer "P 1".

Once each subject has been cuffed and thoroughly searched, officer "P 1" should remove that subject from the immediate scene of the stop and place him in the custody of a prisoner security officer, either officer "P 4" or additional cover officers on the scene. While this is being done, officer "P 2" assists officer "P 3" in covering the remaining suspects. Upon officer "P 1's" return, the process is started again, until each of the suspects has been searched, cuffed and removed. The responsibility of officers receiving prisoners in the prisoner security role is to immediately search the suspect again, then remove him from the scene of the stop, i.e., the corner behind the stop team or to a vehicle very close by.

Role of the Two-Officer Patrol Unit

Once officers are trained in the basic concepts and procedures associated with the above guidelines, a two-officer unit can easily fulfill the responsibilities of whatever position they draw. It should be the decision of the driver officer what role he will assign to his passenger officer. Once their patrol unit takes a position, then the two officers can determine how to best divide the responsibilities of that position.

High Risk Vehicle Stops Involving Vans and Campers

The large number of these types of recreational vehicles, their accessibility to criminals, and their large physical size require modifications of the above procedure. Those modifications are as follows:

1. When the vehicle is immobilized, the driver should not be instructed to throw the keys out of the vehicle.
2. The first subjects to be commanded to exit, whether they can be seen or not, should be passengers in the camper shell or rear cabin of the recreational vehicle. They should be directed to very slowly open a access door into that rear area, and to step out with their hands in plain sight, one at a time. Once an occupant is out, he should be directed into one of the search positions. After the last known rear cabin passenger is commanded out, then the "bluff" call-in to that area should be made.

After that, the right front passenger should be directed out, and the last subject out of the van or camper should be the driver. He should be told to bring his keys, which should be held high in his left hand.

3. Once the driver has exited, it becomes a necessity to open the remaining access door into the recreational vehicle. In a van, this might be the back doors if they are not already open, as well as the back door to a camper shell. There are two methods of handling this situation, and they are:

First, to direct the driver to the rear of his vehicle or to the access door which must be opened and to have him, with his left hand, insert the key into the lock and to push the door open very slowly. Caution must be taken in that when the door opens, the suspect driver is not afforded a position of cover or concealment.

The second method of dealing with access doors is to have the driver directed back to the initiating officer's position, where the driver is handled similar to an unruly subject as discussed earlier. He is brought to the rear of patrol vehicle "P 1", where he is thoroughly searched and then his strong hand is handcuffed to his pants belt, a modification of his pants, or some method to ensure that the hand is immobilized. He is then directed back to the access door, which must be opened with his key in hand. Once there, he is directed to open the access door(s) with his off hand, and once that is done, he is placed into a search position. Again, in using this method, extreme caution should be exercised, as a possibly hostile and armed element is being brought into the center of the stop team. Officers utilizing this method might also find that once cuffed and searched, the driver may refuse to return to the suspect vehi

Additionally, enroute to returning to the vehicle, he may decide to flee although he will be seriously hampered by being cuffed and if he escapes into the block, we can be certain that he left without being armed.

Y. The final modification involves the use of a two-officer search team for the vehicle, the outboard officer "P 3" joined by the traffic officer "P 4".

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

March 15, 1983

TO: Board of Inquiry Police Review Commission
FROM: Peter N. Hagberg, Investigator Police Review Commission
RE: SUPPLEMENTAL REPORT OF INVESTIGATION PRC COMPLAINT NO. 657

Summary of Statement of Officer Lee

Officer Lee was a cover officer at the stop. When he arrived at the stop, Officers Thornton and Anderson were already there. Officer Anderson was somewhat to the rear of Officer Thornton.

Officer Anderson was outside his car, as Officer Thornton recalled. William Sorter objected to Officer Lee answering whether or not officers other than Officer Anderson had their guns drawn when Officer Lee arrived. Officer Lee declined to answer the question on his attorney's advice.

Officer Lee observed a brown or maroon Toyota, as he arrived. The Toyota was behind the suspect vehicle. There was no one inside the Toyota but there was someone beside the vehicle.

Officer Lee could not describe the person but he assumed it was the person who was later identified as Brian Guinn. This person "was standing somewhere outside the vehicle". Officer Lee could not be sure exactly where, as his attention focused on Officer Thornton. Officer Lee could not say whether there was anything suspicious about Mr. Guinn's conduct or appearance as Officer Lee only glanced briefly at him before focusing his attention on Officer Thornton and his stop.

Officer Anderson was "standing somewhere close to" Brian Guinn. They were in close proximity. Officer Lee didn't observe whether Officer Anderson had his gun out. Mr. Guinn was standing straight at the time Officer Lee went by. Officer Lee arrived, he estimated, within "a few seconds" of Officer Thornton's stop.

Officer Lee stopped his vehicle approximately "one to two car lengths" past Officer Anderson and the individual he was with. Officer Lee refused to answer whether he drew his weapon. He stated that he believed the occupants of the suspect vehicle were still inside their car when Officer Lee got out of his car.

Officer Lee was not sure how long he was involved with covering the stop of the occupants of the suspect vehicle. During that time, he did not see or hear Officer Anderson or Mr. Guinn. Officer Lee was not aware that Mr. Guinn had been taken into custody.

After the suspect stop no longer demanded Officer Lee's attention, Officer Lee was standing by a patrol car and saw Brian Guinn standing a little to the rear of Officer Lee's car. Mr. Guinn did not appear to be in custody then.

Officer Lee subsequently talked to Officer Anderson. Officer Anderson indicated to Officer Lee at that time that he had drawn his weapon on Mr. Guinn and that he had done so because he felt it was "a high risk stop situation" and "he thought that the second car, the Toyota, was involved with the first one". His weapon was drawn "for his own safety and the safety of the other officers". Officer Anderson also said that he observed "the person crouched beside his car" or something to that effect. Officer Lee had not observed this in his brief glimpse in that direction. Officer Lee first learned that a third person who was Sgt. J.J. Guinn's son, had been stopped after the first two suspects were in custody.

Submitted:

cc: Complainant
Subject Officer
Chief of Police

PNE:jm

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
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March 28, 1983

To: Board of Inquiry
From: Peter N. Hagberg, Investigator
Eileen Luna-Gordinier, Associate Investigator
Re: PRC Complaint No. 657

Attached is correspondence regarding the scope of witness officer testimony on this complaint. This correspondence includes

Memorandum from Peter Hagberg to the Chief of Police dated February 16, 1983

Memorandum from the Chief of Police to Peter Hagberg dated March 9, 1983

Letter from William H. Sortor (attorney for the Witness Officers) to Peter Hagberg dated March 24, 1983

Attachments

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

February 16, 1983

TO: Ronald D. Nelson, Chief of Police
FROM: Peter N. Hagberg, Investigator PRC
RE: BRIAN GUINN, PRC COMPLAINT #657

As you know, we were unable to interview Officer Diaz from the Berkeley Police Department in regard to this case. (By the way, no one here remembers receiving your memo in regard to him). Also, we are sending you a memo in regard to our problem scheduling a time to speak with Sgt. Mulligan.

We have now interviewed Officers Nennemen, Thornton and Lee. Each of them has declined on the advice of counsel William Sorter, to provide information in regard to the stop (of auto theft suspects), which was the genesis of the incident about which Mr. Guinn complains. The "suspects" were friends of Mr. Guinn and he was following them in a second car, when he stopped to find out what was going on. Officer Anderson allegedly drew his weapon, pointed it at Guinn and handcuffed him. Guinn was released when it was determined that there was no auto theft. It is my belief that all information as to the first stop, including officer-suspect actions during the stop, the reasons for any display of weapons, and the cooperative or non-cooperative nature

of the "suspects" is relevant to an inquiry as to whether Officer Anderson could reasonably believe, under the circumstances) that a display of his weapon was appropriate. For comparative purposes, I am sure if you review the IAB materials in the case,) you will be able to determine if the Berkeley Police Department felt this information was relevant.

I am requesting that you give a specific instruction to those officers that they are to answer questions of the PRC Investigator and at the Board of Inquiry regarding their observations and actions during the initial stop of "suspects". If not, I would request a specific finding from you that the actions of the officers and suspects during this initial stop are irrelevant to the issue of whether or not Officer Anderson acted reasonably in drawing his weapon on Mr. Guinn covering the officers who were involved in that stop.

Thank you for your attention to this matter.

cc: City Manager

PNH:jm

City Of Berkeley

POLICE DEPARTMENT



2171 McKinley Avenue, Berkeley, California 94703 • Telephone: (415) 644-6743

March 9, 1983

RECEIVED

MAR 16 1983

POLICE REVIEW COMMISSION

TO: P. N. HAGBERG, PRC
FROM: RONALD D. NELSON, Chief of Police
SUBJECT: BRIAN GUINN, PRC COMPLAINT NO. 657

Upon receipt of notification of times and dates of interviews, Officers Lee, Nenneman, and Thornton will be re-directed to respond as witness officers in this matter.

These officers will, of course, be immune from any adverse finding by any Police Review Commission Trial Board as to the propriety of their actions herein.


RONALD D. NELSON
Chief of Police

cc: Assistant City Manager, Public Safety
City Manager

CARROLL, BURDICK & McDONOUGH
COUNSELORS AND ATTORNEYS AT LAW
ONE ECKER BUILDING, SUITE 400
ECKER & STEVENSON STREETS
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE (415) 495-0500

March 24, 1983

RECEIVED

MAR 28, 1983

POLICE REVIEW COMMISSION

Peter N. Hagberg, Investigator
Police Review Commission
City of Berkeley
2121 McKinley Avenue
Berkeley, CA. 94704

Re: PRC Complaint No. 657; Brian Guinn v.
Officer David L. Anderson.

Dear Mr. Hagberg:

It is my understanding that my clients, Officers Daniel Lee, Eric Nenneman, and William Thornton, all of whom are "witness" officers in connection with the above complaint, have been advised by the Chief of Police that they should respond to any additional interview requests made by you concerning the above complaint.

You will recall that in each of their interviews my clients responded fully and completely to all questions asked of them concerning what, if anything, they observed with regard to the alleged transaction involving Officer Anderson and Mr. Guinn. You will also recall that they declined to answer other questions not related to or otherwise beyond the scope of Mr. Guinn's complaint.

If you or any other representatives of the Police Review Commission wish to question my clients further about Mr. Guinn's complaint my clients will, given adequate notice and no other insurmountable conflicts, attend such interviews as are scheduled. However, it is not their intention to answer any questions previously objected to unless said questions are set forth with clarity and specificity and they are ordered to answer the questions by the Chief of Police, City Manager or other competent superior officer.

It is my present understanding that you have not as yet secured from the Chief of Police or City Manager anything in the

CARROLL, BURDICK & McDONOUGH

Peter N. Hagberg
March 24, 1983
Page 2

way of a directive to my clients to respond to specific questions which they previously declined to answer. If you intend to secure such an order I would suggest you not wait until the last minute. According to my lunar calendar you have had seven weeks to obtain authorization from the Chief of Police and/or City Manager to compel my clients to answer the questions in dispute.

Please let me know if you wish to re-interview my clients in order that we might schedule such an interview at a mutually acceptable time.

Thank you.

Very truly yours,

CARROLL, BURDICK & McDONOUGH



William H. Sortor

WHS/ss

cc: Daniel Lee
Eric Nenneman
William Thornton
Ronald D. Nelson, Chief of Police

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March 24, 1983

RECEIVED

MAR 28, 1983

POLICE REVIEW COMMISSION

Peter N. Hagberg, Investigator
 Police Review Commission
 City of Berkeley
 2121 McKinley Avenue
 Berkeley, CA. 94704

Re: PRC Complaint No. 657; Brian Guinn v.
 Officer David L. Anderson.

Dear Mr. Hagberg:

It is my understanding that my clients, Officers Daniel Lee, Eric Nenneman, and William Thornton, all of whom are "witness" officers in connection with the above complaint, have been advised by the Chief of Police that they should respond to any additional interview requests made by you concerning the above complaint.

You will recall that in each of their interviews my clients responded fully and completely to all questions asked of them concerning what, if anything, they observed with regard to the alleged transaction involving Officer Anderson and Mr. Guinn. You will also recall that they declined to answer other questions not related to or otherwise beyond the scope of Mr. Guinn's complaint.

If you or any other representatives of the Police Review Commission wish to question my clients further about Mr. Guinn's complaint my clients will, given adequate notice and no other insurmountable conflicts, attend such interviews as are scheduled. However, it is not their intention to answer any questions previously objected to unless said questions are set forth with clarity and specificity and they are ordered to answer the questions by the Chief of Police, City Manager or other competent superior officer.

It is my present understanding that you have not as yet secured from the Chief of Police or City Manager anything in the

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way of a directive to my clients to respond to specific questions which they previously declined to answer. If you intend to secure such an order I would suggest you not wait until the last minute. According to my lunar calendar you have had seven weeks to obtain authorization from the Chief of Police and/or City Manager to compel my clients to answer the questions in dispute.

Please let me know if you wish to re-interview my clients in order that we might schedule such an interview at a mutually acceptable time.

Thank you.

Very truly yours,

CARROLL, BURDICK & McDONOUGH



William H. Sortor

WHS/as

cc: Daniel Lee
Eric Nenneman
William Thornton
Ronald D. Nelson, Chief of Police

Mr. CONYERS. Our next witness is an Urban League panel led by the vice president of the Washington Operations, Ms. Maudine Cooper.

Welcome, Ms. Cooper and our friends from Urban League. We're delighted to see Dr. Garry Mendez, Jerome Page, the executive director of the Chattanooga Area Urban League. Dr. Mendez has been handling several criminal justice areas including minority officer recruitment, prison conditions, and examining the root causes of crime.

You bring here individually and collectively a very, very important segment of the black experience, and also some very important findings from your work collectively with the Urban League, and I'm very delighted that you're here and have given this matter the kind of attention over the years that it deserves.

We will incorporate your testimony, and you may begin.

TESTIMONY OF MAUDINE COOPER, VICE PRESIDENT FOR WASHINGTON OPERATIONS, NATIONAL URBAN LEAGUE, ACCOMPANIED BY DR. GARRY A. MENDEZ, JR., NATIONAL URBAN LEAGUE, NEW YORK CITY; AND JEROME PAGE, EXECUTIVE DIRECTOR OF THE CHATTANOOGA AREA URBAN LEAGUE

Ms. COOPER. I will try to be brief so that there will be ample time for questions and response.

I think it's important to note that throughout our Urban League network of over 100 Urban League affiliates that the issue of not only police use of deadly force but indeed black-on-black crime is something that we are attending to on a daily matter as part of our survival.

Over the course of the past 20 years, there has been a growing interest and concern about the—"line of duty"—homicides committed by police officers. I believe our testimony will be far harsher than the previous witness because it is based on our own interaction with these concerns.

We very much share your concerns, and the study that Dr. Garry Mendez will speak to later on will show where the data support our concern.

We share again, and commend you for holding these hearings as a sole and almost lone voice on the issue, because this is not a very popular issue in many of our communities.

In the discussion, you mentioned earlier in your statement about the problems in Philadelphia in terms of the numbers. Our testimony includes additional information about other major metropolitan centers: New York, Chicago, and Memphis. The issues, the concerns, the problems are all the same: How many blacks are being killed by police, and are they in fact representative of the overall police use of deadly force within those communities?

Before proceeding, let me say for the record that the National Urban League views crime as a very, very serious problem, and we're not about to shunt it under the rug. In fact, the National Urban League president John Jacob last year declared that crime is one of the four problem areas that we in the black community will be focusing upon. We will use all of our energies and all of our resources to help ameliorate and indeed address these concerns.

The bottom line of all of this is that blacks are much more likely than whites to be victims of violent crime. The leading cause of death for young black males between the ages of 18 and 34 remains homicide, not medical causes but homicide; yet we do not believe that the police in doing their jobs must use inordinate deadly force.

In saying this we talk not merely from the research of others but again from the study that Dr. Mendez did back in 1980. That was indeed a study on police use of deadly force. The study, administered under a contract with the Department of Justice, focused upon the issue of race in an effort to contribute to the understanding of the role that race plays in police use of deadly force.

Dr. Mendez's study, which is almost complete, looked at 54 of the Nation's 59 cities with populations over 250,000. Highlights of those preliminary findings are as follows:

No. 1, there is a real diversity in the rates of deadly force uses against black citizens and the rates of uses against white citizens.

No. 2, examination of the reported crime rates for each of the seven index crimes studied indicated that they are not related to the deadly force rate nor the differences between races.

No. 3, the assault rate upon police and the line-of-duty death rate of police officers is not related to the deadly force rate of either black or white police use of deadly force victims.

Overall, the most important thing that these findings say is that the best predictor of deadly force usage is race. That is something that we have to focus in on realistically in the hearings.

The implications of this fact are far-reaching when you realize that police use of deadly force not only affects the person who is the target but may have resounding repercussions for the entire community. The use of deadly force by a police officer, when viewed as excessive, can weaken the police department's credibility, standing, and general relationships with the community. Often in the black community the relationship may already have been tenuous at best because of negative stereotypes held by both parties, the police and those community residents.

Documentation shows that police use of deadly force incidents have focused concern, resentment and suspicion of racial bias in police practices generally and perhaps beyond that, in society at large.

For the police, the racial patterns of police use of deadly force have come to be a major issue. These patterns, and the arguments and analyses they provoke, have forced the police to defend themselves against charges of pervasive racism.

Deadly force incidents have become the sparks for major disturbances as well as occasion for sharp deterioration in the relationship between police departments and the minority communities they serve.

In view of the concerns I have outlined, the National Urban League is particularly disappointed that to date much of the work directed toward clarifying the role of racial dynamics in the frequency of police use of deadly force has generated more heat than light, more charges than insights, and more arguments than resolution.

Toward improving this situation, we offer the following recommendations in the hope that they will contribute to concerted ef-

forts to address the problem. In addition, we hope that these recommendations will respond to the question, Mr. Chairman, that you raised, and that is, What is it that this subcommittee and particularly the CBC can do in response to this concern?

The first recommendation is:

A national uniform shooting policy should be established, requiring that police officers only use deadly force when the officer's life or someone else's life is in imminent danger.

No. 2, the national uniform shooting policy should be rigidly enforced in all parts of the country and at every level of law enforcement.

No. 3, police departments should structure police activities so that black communities benefit from a fair proportion of police community services.

We might add that right now that police generally are more visible in the black community as apprehenders and almost never as helpers in the black community.

No. 4, all political jurisdictions should carry out affirmative action in the field of criminal justice. And, of course, at a time when affirmative action is under assault, this is particularly critical.

Mr. CONYERS. That's a very important point. Until we have fair hiring and promotion policies in the law enforcement agencies themselves, it is almost simplistic to believe that they are going to be fair in anything else they do.

If they can't come together and organize with at least the minimum requirements of racial fairness, which is all we ask through our affirmative action law, there is no way that we can then ask a group that has perpetuated the segregation of the past to now go out and operate fairly among the black and Hispanic and other minority elements in the community.

What, it seems to me, Maudine, happens is that they then become caught in trying to perpetuate the racism of the past; they're the perpetrators not only in their conduct but in the way they are inherently organized.

So it seems to me that the civil rights organizations have to continue to focus on the hiring and promotion practices within police departments because that's one of the threshold questions.

Ms. COOPER. I think that is why most of the civil rights community has—We've been very adamant about the Detroit, Boston, and, indeed, New Orleans cases and hope that—

Mr. CONYERS. Which all involve police departments.

Ms. COOPER. Right.

We are very concerned about that at a time when fiscal necessity mandates that there are indeed layoffs. We are concerned about the last-hired and first-fired concepts which once again we believe will make these police departments, fire departments, and other municipal entities bastions of white males.

If I might, the last recommendation in the conclusion of my testimony suggests that police officers should be trained to function in and cooperate with the total community. That is really what you are talking about in terms of police participation and police access to, and the role that they are perceived in by those that live in those communities.

If I might, Jerome Page, the president of the Chattanooga Urban League, had some experiences when he was the president of the Seattle Urban League that I'd like for him to relate to you in reference to police use of deadly force and subsequent community action.

Mr. CONYERS. Welcome, Mr. Page. Glad to have you here.

Mr. PAGE. Thank you very much.

My experience in Seattle spanned the years from the late 1960's, about 1967, into 1979. I must say candidly that my understanding is that since I left Seattle in 1979 there have been no instances of dramatic, excessive police use of deadly force. And I hope it isn't because I'm no longer there, but because some other things occurred as a result of the actions of the Urban League and other groups.

We felt that periodically, every 1½ to 2 years, there was someone getting shot by a policeman, and there were always questionable circumstances. In one instance, a young man had robbed a store, he was legitimately doing something wrong, he had a handgun; so in all accounts of use of deadly force at that time he should have been killed because he was fleeing with the deadly weapon.

But he fled across the street into a blackberry bush. And if you know anything about blackberry bushes, once you get in, in fright, it's very hard to get out when you calm down.

So they had him totally surrounded. They had police helicopters, the whole bit. And finally after waiting a while and trying to decide what to do, they cut their way into the blackberry bush to get him out and he ended up dead. They found out they weren't sure whether he spoke English or not. He was of Latin American or Spanish descent. He was obviously very scared. To my knowledge, there was no indication that he was at that time threatening to shoot them with the weapon.

We felt there were all sorts of alternatives they could use, even waiting. Anything. They had time and everything on their side. The man did not need to be killed at that time. The law justified that because he was a fleeing felon.

The point is that the community, the black community and Spanish-American community, were up in arms and there was a tremendous upheaval in the community over this issue. And this is just an example of several.

The last one was a young man who was proven to be having some mental difficulties. It was questionable just whether he really knew what he was doing. He was in a community he shouldn't have been in, going into homes, wasn't dressed like a worker, and several people saw him and called the police. One person confronted him in the house, and he said, "I'm here to cut your lawn," obviously not where he was supposed to be, but they questioned just how dangerous he was, because they told him to get out and he left. The police surrounded the area. They were trying to run after him, chasing him. And finally he climbed a fence and a policeman who was overweight, too heavy to climb the fence and go after him, then leveled his revolver in the pickets of the fence and shot the man in the back and blew him away. If he would have rounded the corner he would have been picked up because the police were all over the place.

Again, the community got very upset. And the point is that the policeman then was relieved of responsibility, for the shooting because the young man was a fleeing suspect.

So in most cases the person is doing something wrong: there's no argument about that. But do the circumstances justify taking a life?

I think as a result of what occurred in the 1970's—some dramatic things followed.

One, I'm pleased to see September and Associates, who are here and going to testify. They were based in Seattle and they took the whole police department through a training series of shoot/no-shoot, a tremendous training opportunity for the police.

Two, the political elections. A mayor was elected and he was elected on the basis of a variety of dissident groups: the Gray Panthers, the gay community, the black community, the Latino community, all sorts of groups who were tired of this kind of activity.

On that same ballot was an issue—we had worked through the city council to get a very strong police use of deadly force on a fleeing felon where a life is in danger. That passed the city council, but the police guild then organized and put something on the ballot to have that city council resolution eliminated. So we were back to the issue of a broad open policy because of a very good political effort on the part of the guild, the police guild.

But then the mayor, in selecting his police chief, did a very unusual thing. For the last 10 years they always had a blue ribbon committee to select the police chief. It was the, if you will, white male club of the business establishment.

This mayor put together a blue ribbon committee but they were people of all walks of life, people of all of the groups that I mentioned, gays, Gray Panthers, blacks, Latinos, Asian-Americans, people with specific vested interests. And this was his blue ribbon committee.

He said we would present three candidates to him, and he would select one. He made a very strong statement to us about you don't have to be that concerned about the fleeing felon issue because I want a police chief, and I will demand that the police chief be very strong and very strict in policy internal to the police system on the fleeing felon and use of deadly force.

We interviewed all the candidates, and I must admit that it was a fantastic experience seeing the kinds of candidates that came before us and the background, the training they had. But we insisted that in that group, the final 10 that we interviewed—the staff had to do the preliminary work—we wanted to see both female candidates and minority candidates, and to make sure that whatever the best of the female and the best of the minorities came to the view of the panel.

We ended up selecting Police Chief FitzSimmons, who came out of the New York Police Department; a tremendous training background, a tremendous background in involvement in the black community in New York, and having respect from the black community. And part of our process was going—all of our unique groups went to our fellow organizations in the cities where these candidates came from and got their opinion of the person.

He started in late 1978, early 1979, and since that time there has been—there is one instance that I know of in which two policemen, drunk, driving down the street in the black community were shooting in the air at random. Those two police officers went through the process—and I checked this out with Mr. Sperrill White, who is the current executive director of the Seattle Urban League, and Mr. Roger Soder, who is the staff research person for the Urban League—and then the police chief fired them. And his position is a very strong position on justice and right and use of deadly force.

I'm not sure where the guild is, that powerful political group that was against everything we were trying to promote. But we were concerned about the safety of the police officers, the community relations between police and the community, particularly the black community. And I think that the record in Seattle will show that since 1978, when he took office, he has held a strong position, and to my knowledge there have been no instances of this kind.

Last year he received the Municipal League award as the city government employee of the year, and I think that was a dramatic statement of a total reversal of what had happened 15 or 20 years prior to his coming.

Mr. CONYERS. How important are the increasing numbers of lawsuits against policemen for which the cities are now becoming liable? You know, some citizens are beginning to add up these multimillion dollar figures that careless cops are costing taxpayers, and that's beginning to create another area of sensitivity, because in many of these suits, the facts are almost indefensible. And so it is just a matter of, in a civil case, the defense attorney getting as large a damage award as he can.

It seems to me that that may be a new dimension in this area.

Ms. COOPER. Part of it is probably based on the fact that those in charge, the police review commissions, the police chiefs themselves, and others are viewed as coconspirators in this whole action. They know—should have known, did nothing about it, were in fact hiding or helping to hide the evidence, and so on. So that individuals are beginning to say, "Well, I cannot get justice through the process that is here in my community; therefore, the only recourse that I have now is the court system."

Mr. CONYERS. Yes.

Dr. Garry Mendez, welcome to our hearings. We would like to hear from you now.

Dr. MENDEZ. OK. Let me tell you a little about what we've been doing, and let me preface it with a remark that says we have never questioned the police right to use force; that has not been our issue, "our" being the National Urban League and other black folks. Our issue has been how they use it, and when they use it.

We undertook a study to take a look at the race issue because we had been told all along, there is no race issue here. The studies you can look at. One study after another says certainly blacks are shot more often, but you must understand that they commit crimes, therefore they need to be shot.

The research technically that's been done is more or less comparing arrest rates and shooting rates, and if you can get them pretty close to each other you say that's it, that explains the race issue;

you don't have a race issue. We said that maybe there is a race issue, and we should take a look at it.

What we did is look at the arrest rate issue. But first, before we did that we established the fact, something that has been assumed, that there's a different shooting rate of black and white citizens. People just think there's a shooting rate and it kind of affects everybody, but it doesn't. And there's a wide difference between the rate of shootings of blacks and the rate of shootings of whites.

Now many other researchers will tell you well, we knew that all along. You don't see that in the literature, if they knew it all along, and they haven't been operating with recommendations that deal with that either, if they knew that all along.

Once we established that, what we did was take shooting rates and run those against total arrest rates. They say total arrests is the issue. We did a statistical analysis of that, a statistical test, as opposed to just eyeballing it like it has been done in the past, and we found that there was no relationship between the arrest rate and the shooting rate of black or white citizens.

So we said, Well, that's probably because we've got them all together. Let's start to split them out, let's take the violent arrest rate and let's take the property arrest rate. Well, if you take them in total like that and do violent against shooting rates, there is no relationship. If you take property and do it against shooting rates, there is no relationship. And none of them explain anything that's going on between the difference between black and white citizens being shot.

Then what we said, Well, maybe it's a specific crime. When you do it that way, we went within the index rates and started looking at each specific crime, and then running that against shooting rates. We do get a relationship there between robbery and shooting rates of blacks, so that does explain some of the difference between black and white, not all of it, but it does explain some of the difference, robbery.

We did a relationship between larceny, but that comes out negative and we don't know what that means, because if you follow that through, that means if you can reduce your larceny rate you'll up your shooting rate of black citizens. And we don't know why that would work, so we're not suggesting we do that.

The other crime that seems somehow related is the burglary rate, not so much the arrests, the burglary rate in your community.

Now the interesting thing about the whole thing is that you have all these different crimes that are committed, and we're only able to come up with maybe some relationship between robbery and police shootings of citizens, and it doesn't really explain the differences between the two.

So we say even after you get finished with that, which we've been told is fact, we don't get the kind of relationships people were talking about.

Then we said, Well, maybe it's a matter of the arrest rates don't tell the true story because everybody doesn't get arrested who commits a crime. So we say let's look at just the crime rates in the communities. And we did this, incidentally, in 54 cities over a 10-

year period, so we had every year for 10 years for 54 cities, which means we have a lot of data on this.

And no one else, incidentally, has done this. Most studies that have been done on police use of deadly force in the past would take a city, maybe a couple of cities, 1 year, 2 years, 3 years, but none has been a 10-year period, 54 cities. And we did the 54 largest.

We said perhaps the crime rates, clearance rates, those things, we ran them against our shooting rates. None of those proved that they're related.

Finally we got down to how about assaults on police officers, whether they're hurt or not, and whether they're killed or not. None of those things are predictive of the shooting rate of black or white citizens, incidentally. Death of police officers comes the closest, but it is not statistically significant.

Now why this is all important is, in the end we find the most—the best predictor of police shooting is race. Now that leads us to—some people say, well, you mean the police are racist, and I don't like to say that. What I like to say is that there's a decisionmaking process that people go through, and one of the things that is in the equation is the race of the individual.

Mr. CONYERS. Have you ever done a study of why, when we come up with these questions involving race, the media interrogator always wants to ask you "Then does it follow that this person is a racist?" [Laughter.]

I was just doing an interview last night and we were talking about the head of the Civil Rights Division of the Justice Department and the incredible reversals going on. So the first question that Reverend Fauntroy and I had to handle was "Is it true that the Assistant Attorney General for Civil Rights is a racist?"

Everybody always wants you to define a person as being a racist. That, in itself, should be a subject of study if you ever get around to it, Dr. Mendez.

Dr. MENDEZ. No; we haven't studied that. But we do—that's how we try to look at it, because one of the things we've found is that people say, well, black police officers will shoot black citizens, and I would argue, that doesn't eliminate the race issue, that shows you how deep the race issue is in this country.

I don't know; those are the kinds of things we found out. Do you have some questions about them?

Mr. CONYERS. Yes; I do have some general questions.

Now where do we go from here? I mean I'm glad that you are scientifically attacking this theory because it only came to my attention rather recently that there are now criminal justice theorists who are saying that you can explain away, on a nonracial basis, why there are so many more blacks in prison, why so many more blacks get shot, why so many more blacks get subjected to police abuse, why so many more blacks get convicted for crimes. The theorists' position boils down to:

Well, they're doing more criminal activity, they're in more confrontational events with police, so therefore, it turns out—Congressman, don't get excited—that more of them end up in jail, more of them get shot, more of them get arrested, more of them get convicted.

I perceive this as a very pernicious effort to deny what the mainstream of blacks in America know to be their experience in the criminal justice system.

I want to thank you and the league for dealing with this. If we aren't careful we'll end up with a whole field of study in which these approaches that we're trying to take in the real world will be dismissed because scientific studies find otherwise. The civil rights groups will be in total conflict with the academic world.

So we need to be working in the libraries as well as out in the street.

Ms. COOPER. I just want to add as a kind of a final comment, I remember in a course in criminal law that I took some years ago, we had a young black police officer come in and conduct a symposium for us. And we asked him this very serious question about, you know, your shooting of blacks. In the District, the issue of racism is still an issue that we've got to deal with.

His comment, however, was one that I think still permeates the thinking of many police officers. He said that he would rather be tried by 12 than carried by 9. And I think that as long as that mentality is out there——

Mr. CONYERS. What did he mean? What was the——

Ms. COOPER. He would rather be tried by 12 individuals for having shot someone, the use of deadly force, than carried by 9 individuals as a corpse, the pallbearers.

Mr. CONYERS. Than to get shot himself. In other words, shoot first, ask questions later.

Ms. COOPER. That's right. And that was his comment to us. I think that that mentality probably permeates a lot of police officers today, and that's unfortunate.

Mr. CONYERS. I just got a call yesterday from Rev. Calvin Butts at Abyssinian Church in Harlem, who is asking us to bring the hearings there. Reverend Nettles called from Alabama. I get the impression that this problem is far from being—moving toward resolution, that it almost seems to flare up, or that police violence sometimes seems to incite other police violence.

Do you have any comments on that?

Mr. PAGE. Not in general, since I've moved to Chattanooga, I've only been there 2 months now, and we're looking at this issue in Chattanooga.

An attorney came to our office just a month ago, right after I came, and had a client who was a janitor or a maintenance person in an apartment next to a grocery store. And in Chattanooga, the unemployment is very high; things are very tight in terms of the blue-collar workers.

A young man came out of the grocery store with two big pieces of meat under his arm that he had stolen. There was a policeman there and they started chasing the man. The man went right by the maintenance man and into the bushes. The policeman came, and at that time he was leveling his pistol, ready to shoot.

The maintenance man said, "Stop, don't do it."

Then the policeman ran after the man, caught him, brought him back, and it was a very easy chase to catch him, brought him back, and then chastized the maintenance man for interfering with jus-

tice. And the maintenance man came to his attorney for fear of what could occur for his interfering with justice.

But he feels very strongly that had he not been there witnessing that, that another black man could have been another fatality.

Mr. CONYERS. Well, we're very glad to have you all here, and your testimony will be carefully examined. And I hope that you will follow our activity in the subcommittee.

Thank you all for coming.

[Prepared statement of Maudine R. Copper follows:]



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Office of the Vice President
For Washington Operations

TESTIMONY

OF

MAUDINE R. COOPER

VICE PRESIDENT FOR WASHINGTON OPERATIONS

NATIONAL URBAN LEAGUE, INC.

before the

SUBCOMMITTEE ON CRIMINAL JUSTICE

of the

HOUSE COMMITTEE ON THE JUDICIARY

on

POLICE USE OF DEADLY FORCE

Room 2226
Rayburn House Office Building

Thursday, June 16, 1983
10: A.M.

Testimony of

MAUDINE R. COOPER
Vice President for Washington Operations

NATIONAL URBAN LEAGUE, INC.

Before the
Subcommittee on Criminal Justice

of the
House Committee on the Judiciary

on
Police Use of Deadly Force

Room 2226
Rayburn House Office Building

Thursday, June 16, 1983

Mr. Chairman and members of the Subcommittee, I am Maudine R. Cooper, Vice President for Washington Operations of the National Urban League, Inc.

The National Urban League is a nonprofit community service organization with over 100 affiliates in 36 states and the District of Columbia.

Throughout our 73-year history, we have sought for minorities and the poor full participation in all sectors of American life and equal treatment under the law.

Over the course of the past 20 years, there has been a growing interest in and concern about "line of duty" homicides committed by police officers. We very much share that concern because study after study shows that there is an overrepresentation of blacks among the fatalities from police use of deadly force. We share that concern because we cannot accept solely the most common reason given for this

phenomenon—that reason being that the black community has a higher crime rate and therefore the police have to use force more often.

For in all the discussion, the point we cannot get around is that racial disparities exist in the number of blacks who die at the hands of the police. The facts speak for themselves in city after city, over the years.

Philadelphia: In a study of 32 fatal shootings by police from 1950 to 1960, 28 or 88 percent were black.

New York: From 1971 to 1975, opponents in shooting incidents (including nonfatalities) were black in about 60 percent of the cases.

Chicago: Between 1974 and 1978, 70 percent of the civilians shot at by the Chicago Police Department were blacks as were 64 percent of those fatally shot.

Memphis: Data from shootings from 1969-71 and 1973-76 reveal that blacks were about five and one-half times as likely as whites to be killed in Memphis, and about 10 times as likely to be shot at, on a population basis.

These statistics are documented in a following section of this testimony.

One of the worst case scenarios of police use of deadly force happened back in March when a Stanton, CA police officer fatally shot a 5-year-old black boy when he mistook the child's toy gun for a real one.

Before proceeding, let me say for the record that the National Urban League views crime as a serious problem. In fact, National Urban League President John E. Jacob last year designated crime as one of four problem areas in the black community to which the League will address its resources and energy. Blacks are much more likely than whites to be victims of violent crime. The leading cause of death for young black males between the ages of 18 and 34 is homicide.

Yet, we do not believe that the police in doing their jobs must use inordinate deadly force. In saying this, we talk not merely from the research of others, but from our own experiences in this area. In 1980, our Administration of Justice Cluster under the direction of Dr. Garry Mendez, who is here with me today, began a study on police use of deadly force. The study, administered under a contract from the Justice Department, focused upon the issue of race in an effort to contribute to the understanding of the role that race plays in police use of deadly force.

Our study, which is almost completed, looks at 54 of the nation's 59 cities with populations of 250,000 or more. Highlights of its preliminary findings show:

- * There is a real disparity in the rates of deadly force usage against black citizens and the rates of usage against white citizens.
- * The examination of the reported crime rates for each of the seven index crimes studied indicated that they are not related to the deadly force rate nor the difference between races.

- * The assault rate upon police and the line-of-duty death rate of police officers is not related to the deadly force rate of either black or white police use of deadly force victims.

Overall, the most important thing that these findings say is that the best predictor of deadly force usage is race.

The implications of this fact are far reaching when you realize that police use of deadly force not only affects the person who is its target but may have resounding repercussions for the entire community. Deadly force by a police officer, when viewed as excessive, can weaken the police department's credibility, standing and general relationships with the community. Often in the black community, the relationship may have already been tenuous because of negative stereotypes held by both parties.

Documentation shows that police use of deadly force incidents have focused concern, resentment, and suspicion of racial bias in police practices generally, and perhaps, beyond that, in the society at large.

For the police, the racial patterns of police use of deadly force have come to be a major issue also. These patterns, and the arguments and analyses they provoke, have forced the police to defend themselves against charges of pervasive racism. Deadly force incidents have become the sparks for major disturbances, as well as occasion for sharp deterioration in the relationship between police departments and the minority communities they serve.

Mr. Page, President of the Chattanooga Area (TN) Urban League, will talk more about the implications of police use of deadly force for the community, based on his experiences in Seattle, WA.

In view of the concerns I have outlined, the National Urban League is particularly disappointed that, to date, much of the work directed to clarifying the role of racial dynamics in the frequency of police use of deadly force has generated more heat than light, more charges than insights, and more argument than resolution.

Toward improving this situation, we offer the following recommendations in the hope that they will contribute to concerted efforts to address the problem. Foremost, we seek a climate in which the minority community and the police can develop mutual efforts to address and resolve the controversy around the role of race in police use of deadly force.

RECOMMENDATIONS

1. A national uniform shooting policy should be established, requiring that police officers only use deadly force when the officer's life or someone else's life is in imminent danger. This would eliminate the use of deadly force against fleeing felons which affords police officers too much discretion; virtually giving the officer the authority to sentence suspects to be shot without a trial. This life-death responsibility, in the absence of a threat of imminent mortal danger, should not be placed with police officers.

2. The national uniform shooting policy should be rigidly enforced in all parts of the country and at every level of law enforcement. Because weak or lax enforcement can be quantified in terms of unnecessary deaths and serious bodily injuries, strict and effective enforcement must be the key element of any uniform policy.

3. Police departments should structure police activities so that black communities benefit from a fair proportion of police community services. We know that in general police spend about 80% of their time in community service work, i.e. directing traffic, volunteer youth programs, and 20% of their time apprehending criminals. In black communities the proportion of time spent on these police activities is viewed to be almost the reverse. Police are almost always visible as the apprehenders and almost never as the helpers. A different approach to police activities in the black community would significantly reduce the strained relationship that traditionally accompanies the black community's perception of law enforcement.

4. All political jurisdictions should carry out affirmative action in the field of criminal justice. The programs should be two-fold in nature. First, a sincere effort should be made to recruit minorities at entry level positions in law enforcement, corrections, and the courts. If law enforcement officers are more representative of the communities they serve, there will be more trust and cooperation from that community. Second, methods should be developed that will assure the involvement of minorities in all the decision-making processes of the criminal justice system.

5. Police officers should be trained to function in and cooperate with the total community. Training policies should be rethought in order to promote knowledge and appreciation of race issues. An examination of problems that affect minority communities in particular is the first step toward eliciting cooperation from the community to be served; it is an effort to put crime prevention on par with apprehending criminals.

DISCUSSION AND FINDINGS OF NUL DEADLY FORCE STUDY

The NUL in 1980 began conducting a study on the police use of deadly force that focused upon the issue of race, in an effort to contribute to the understanding of the role race plays in police killings.

Samples

In the study, 54 of the nation's 59 cities with a population of 250,000 or more were included in the samples. This represented a reasonable sample for our data needs, because Police Use of Deadly Force (PUDF) appears to be concentrated in urban mass areas, as the larger cities have such larger numbers of minority citizens. Furthermore, our special interest is the applicability for our results to the minority communities of Urban America.

- Dependent Variable - The dependent variable for this study was the shooting rate in each of the cities for each of the ten years. Separate shooting rates were established for both the black and white population.
- Independent Variables - Two different types of data were collected which served as independent variables. There are as follows:

- a. Traditional Predictors
 1. Arrests
 2. Violent Crime Arrests
 3. Property Crime Arrests
 4. Reported Crime
 5. Clearance Rates
 6. Police Experience

Those variables constitute factors which many have argued are related to deadly force usage, hence the traditional predictor label.

b. Non-Traditional Predictors

1. Black Elected Officials
2. Minority Owned Businesses
3. Black, Social, Economic, Political Participation
4. Black Participation
5. Community Attitudes Towards Police.

These variables constitute the broad category of black participation variables which we believe might be related to the shooting rate of black citizens in specific cities.

We were interested in both sets of variables and the predictive powers of each in obtaining the police use of deadly force rates and the differences by race.

Findings

1. Our data indicate that there is a real disparity in the rates of deadly force usage against black citizens and the rates of usage against white citizens. Furthermore, they suggest that although the gap remains wide it may be lessening. It should be noted that this appears to be as a result of a reduced usage against black citizens as opposed to an increase in usage against whites.
2. Our analysis did not indicate a relationship between the non-traditional (black participation) and the shooting rates of either race group or the differences between the two. However,

it should be explained that our analysis was very limited due to the excessive amount of missing data. We were unable, due to resource and time limitations, to collect the black participation data that we expected; therefore the true effects of these variables on shooting rates are still open to question. We would suggest that this line of inquiry not be abandoned at this point. However, to pursue this will require adequate time and resources.

3. Neither the total arrest rate, nor its categorization into Index and other arrests, contributes to our understanding of deadly force, to the racial disparities over time.

By analyzing each crime separately there is a relationship between robbery and larceny arrest and PUDF. Robbery has a positive relationship and larceny has a negative relationship.

4. The examination of the reported crime rates for each of the seven Index crimes indicated that they are not related to the deadly force rate nor the difference between races. The burglarly rate had the most nearly reliable effects.

5. The aggregate clearance rates for reported crime is not related to the rate of deadly force usage against either black or white victims of PUDF.

6. The assault rate upon police and the line-of-duty death rate of police officers is not related to the deadly force rate of either black or white PUDF victims. Nor are the assault and death rates of police officers related to the differential in deadly force rates between blacks and whites.

In sum then, of all the traditional predictors, our study indicated that a positive statistical relationship existed between only robbery and burglary and a negative statistical relationship between larceny and the police use of deadly force. These serve to help us to some degree in our understanding of deadly force usage, but they do not help us to understand the differential use of deadly force against black and white citizens.

Furthermore, our study indicates that the best predictor of deadly force usage is race.

POLICE USE OF DEADLY FORCE: DATA AND LITERATURE REVIEW

This review of literature will describe the patterns of disparity in the incidence of police use of deadly force against various racial and ethnic groups. Our major focus is to evaluate what factors or circumstances might account for observed racial disparities.

The police use of deadly force is a complex phenomenon, and can be (and has been) fruitfully examined from a variety of specific perspectives reflecting a broad range of concerns. These examinations have produced substantial literature including empirical studies, philosophical debates, policy analyses, and polemical arguments. Because of the breadth of this literature and our specific concern, we have focused our review upon two specific issues in the literature. First, what evidence do we have on the disparity in the incidence of police use of deadly force against citizens of various racial and ethnic groups? Second, what factors or circumstances are offered to explain or to account for such disparities, if they exist?

A. Racial Disparities in Police Use of Deadly Force

At this point in time, probably no one who has even partially reviewed the literature on police use of deadly force has any doubt that there are variations in the rates of usage of deadly force against members of different racial/ethnic groups in our society. The agreement of the empirical results in this area is quite impressive in its basic consistency. As one would expect, minorities suffer higher rates of deadly force than do whites, or are overrepresented among

decedents due to police use of force compared to the proportion of the population they constitute. However, upon closer examination, this broad generalization covers wide variations in the reported extent of the disparities by race or ethnicity, as well as variation in exactly what the patterns may be.

- Pattern by Race

What, then, is the evidence that the black and white populations experience differing incidence rates of police use of deadly force? Here the evidence is overwhelming, although the possibility of erroneous race coding still exists, and the data bases and samples utilized in prior research reveal considerable variation in the estimated degree of difference.

Robin (1963) studies 32 fatal shootings by police in Philadelphia from 1950 to 1960. Twenty-eight, or 87.5% of these involved blacks, in a population estimated to be about 22% black. The proportion of those killed who were black, then, exceeded population-based expectation by 65.5%. Robin also reports that the population-based rate of deadly force for blacks in Philadelphia was about 22 times that of whites. Results of a mail survey for seven other cities indicate a range from six to nearly thirty times the white rate for blacks.

Takagi (1974) draws upon data from the VITAL STATISTICS, and reports that 48.7% of the decedents due to police use of deadly force nationwide were black in 1960 through 1968. He estimates that 10% of the population at that time was black, yielding a higher than expected black representation among deadly force decedents of 38.7%. He further describes these data as revealing that while deadly force rates

for both blacks and whites increased over these years, the rate for blacks was always at least nine times as high for blacks as it was for whites.

Kobler (1975) drew upon newspaper reports collected by a clipping service to describe 911 cases of citizens killed by police in the line of duty. Of the 600 cases for which racial identification was possible, 42% involved blacks. If the black population was 10-12% of the nation, the blacks are over represented among deadly force deaths by 30-32%. This is probably conservative, since Kobler reports a sampling bias in his data such that the Pacific area is overrepresented while the South Atlantic area is underrepresented.

The Police Foundation published a report on police use of deadly force based upon departmental reports from seven cities. With regard to race, this study found that in 1973-1974, 79% of shooting victims, and 78% of fatalities were black. The 1973 estimated population of these seven cities was 39% black, yielding a black overrepresentation among fatalities of 39%. (Milton, 1977).

Fyfe (1978) reports that opponents in shooting incidents (including nonfatalities) of the New York Police Department from 1971-1975 were black in about 60% of the cases, although the population was about 21% black, yielding an overrepresentation of 39%. Fyfe further examined rate, and found that blacks were about six times as likely to be shot at as whites and Hispanics on a population basis (about 24 per 10,000 vs about 4 per 10,000).

Harding and Fahey (1973) report that 75% of the civilians killed by the Chicago Police Department in 1969 and 1970 were black. The black population of Chicago was estimated to be 33% of the total, yielding an overrepresentation by 42% of blacks among fatalities.

Meyer (1980) reports that prior to 1974-1978, blacks comprised 55% of the civilians shot at by the Los Angeles Police, 53% of those hit, and 50% of those who died as a result of the shooting. The 1977 population of Los Angeles is estimated to be 18% black, yielding an overrepresentation of 32% of blacks among fatalities compared to the population.

Geller and Karales (1981) report that 70% of civilians shot at by the Chicago Police Department in 1974-1978 were black as were 64% of those fatally shot. In 1970, the city population was reported to be 33% black, and this is estimated to have risen to 41% by 1980. If we take the mid-point (37%) as our population estimate, then blacks are overrepresented by 27% among fatalities due to police use of deadly force. If we take the mid-point of their population estimate, their table 12 indicates that blacks are about five times as likely to be shot (not necessarily fatally) as whites. On a population basis - a rate of about 6 per 100,000 population compared to about 1.2 per 100,000 population.

Finally, Fyfe (1982) draws upon data from the Memphis Police Department covering some shootings from 1969-1971, and 1973-1976. These data were originally secured as part of a lawsuit, and data for all but two weeks of 1972 were absent. Whether we consider all persons killed (Table 5) or only those killed in connection with property crimes (Table 4), blacks constitute 76.5% of those who die due to deadly force. The population of Memphis appears to have been 38.9% black (recovered from rates and numbers of shootings in Table 5), so overrepresentation of blacks among decedents due to deadly force was 37.6%. Black overrepresentation among those property crime suspects shot at was even

higher—47.5%. For all deaths due to deadly force, blacks experienced a rate some five and one-half times the white rate (10.7% or 2.1 per 100,000).

● Summary

The studies which have examined black and white incidences of deadly force do reveal a clear pattern; blacks experience a larger proportion of police use of deadly force incidents (or incidents of being shot, or shot at) than we would expect based upon the proportion of the total population they represent. Where specific comparisons are, or can be made, they are reported to be at least nine times as likely to be killed as whites nationally (Takagi, 1974), about five times as likely to be shot at as whites and Hispanics in New York City (Fyfe, 1978), and from about six to 30 times as likely across eight cities studied by Robin (1963). Fyfe (1982) further found that blacks were about five and one-half times as likely as whites to be killed in Memphis, and about ten times as likely to be shot at, on a population basis.

By whatever measure we choose to focus upon, these studies reveal wide variation in the extent to which blacks and whites have different experiences of deadly force. The overrepresentation measure varies from 27% to 65.5% more of these deaths experienced by blacks than would be expected if these deaths were allocated proportionally to population. The ratio of the two rates shows blacks experiencing deadly force at a rate of anywhere from about four to thirty times the white rate. The difference of the two rates indicates that blacks experience from three to twenty-two excess deaths due to deadly force per million population, compared to white deaths. So, while all studies indicate some substantial level of greater black experience of deadly force, the extent of

the difference between blacks and whites is highly variable.

These reports are quite different in a number of dimensions. There are differences in the time period covered, in the sources of data, geographical sampling bases, and in the actual police behavior examined. The many differences among these studies make it difficult to come to any firm conclusion about the magnitude of racial differences in the incidence of police use of deadly force. While the evidence consistently suggests that such differences exist, the measures relied upon do not permit precise comparisons of their magnitude. The varying sample bases, especially the understandable focus of many of these reports upon one or a few larger cities, make it difficult to assess the generality of the differences observed.

The evidence all suggests, however, that blacks are a greater proportion of those killed through police use of deadly force than one would expect from their proportion of this population. While the extent of this overrepresentation of blacks (or underrepresentation of whites) varies over the studies, all indicate that it is not trivial. Similarly, the studies which report rates indicate that the rate at which blacks die from police use of deadly force, or are shot at by police, is considerably higher than the rate for whites (or the white rate is considerably lower than the black rate).

B. Factors Accounting for Racial Disparities in Police Use of Deadly Force

● General Hypotheses

Two general hypotheses have been advanced to account for the greater than expected frequency with which black citizens have experienced deadly force. We shall first review each of these broad hypotheses, and

some of their major variants, and then focus more specifically upon the particular form, arguments, and data of the various reports we have considered.

The first broad hypothesis suggests that racial disparity in deadly force rates reflects differences in the behavior of police officers towards citizens of different races. For any of variety of reasons, police are more likely to resort to deadly force when the citizen involved in an encounter is black than when the citizen is white. The key point for this hypothesis is that the police officer varies his or her behavior depending upon the race of the citizen.

A number of reasons why this might occur have been suggested. Takagi (1974) seems to suggest two possible sources. He directly addresses and discusses the argument that police are an agency of social control, relied upon by elites to monitor and oppress class opponents, a category into which a disproportionate number of blacks in our society fall. This argument attributes racial disproportionate representation of blacks among the lower socio-economic groups of our society. Earlier in his paper, however, his use of terms such as "racism," "bias," and "genocide" suggest a direct racial component beyond simply its class related distribution. He seems to suggest, and (has often been so interpreted,) that racial prejudice on the part of the police officers is also a critical factor in the deadly force equation. This second mechanism is certainly the one that Takagi's critics have focused upon (see, for example, Binder and Scharf, 1982).

The basic notion that blacks are more involved in deadly force events because of their overrepresentation among the poor, or the lower classes, is also reflected in Blauner (1972) and Jacobs and Britt

(1979). This follows a general tradition in social science of attributing differential experiences by race to underlying class differences, and is predicated on the well documented differences in social class positions of the black and white populations.

That police officers may have high levels of prejudice against blacks is well-documented in other work (for example, Niederhoffer, 1967 and Alex, 1976). Fyfe (1982) appears to find this explanation persuasive in his argument that it is in the most discretionary shootings that black-white differences in deadly force experience in Memphis are largest.

Jacobs and Britt (1979) suggest yet a third possible source of variation in police officer behavior in response to race. Blacks, according to this argument have less influence than whites, and thus may be less effective in protecting themselves from police use of deadly force. Since influence is largely a status resource, this argument also relates the observed racial difference to what may be an effective class difference. This is an interesting argument, if only because it in some sense turns the question around. The question this hypothesis stresses is why are whites killed less often than blacks, and the posited answer is that whites are better able to politically and socially protect themselves.

So the broad hypothesis to account for racial differences through a mechanism which leads the police to behave differently towards black and white citizens has three significant variations in the identified mechanism. The class argument views the police as acting as social control agents oppressing the class opponents of the elite, many of whom are black. The racial prejudice argument portrays police officers as relying on deadly force more in encounters with black citizens

because of the officers' negative attitudes towards, feelings about, and perceptions of blacks. Finally, the status resource argument views police as using deadly force more against black citizens because these citizens are less politically or socially able to defend themselves against such incidents than are white citizens.

The second broad hypothesis links the differences in deadly force rates between black and white citizens to differences in the behavior of the citizens, by race, rather than to any racially linked responses on the part of the police. In this argument, the police are portrayed as responding to the specific behavior of citizens without regard to the citizen's race. Since the behavior of citizens of different races differs, however, the observed police response (deadly force) appears to differ by race. Again, different specific variations in behavior have been identified as mechanisms resulting in observed racial differences in police use of deadly force.

The first such mechanism is the difference between the races in the extent to which they are involved in arrests, either generally, or for subsets of more violent or more serious crimes. Milton (1977), Fyfe (1978) Geller and Karales (1981), Meyer (1980), and Binder and Schmarf (1982) all propose this explanation, although with varying degrees of certainty. The argument is quite straight-forward. Blacks are more likely to be arrested for criminal acts, and the arrest situation is one with an elevated risk of occurrence of a deadly force encounter. Since blacks are more often exposed to higher-risk situations, they are more likely to become victims of police use of deadly force, without any race linked response difference on the part of police.

The second mechanism goes beyond the simple occurrence of an arrest situation and suggests that the behavior of blacks in such a situation

is in fact more likely to be dangerous or threatening, and thus blacks are more likely to become victims of deadly force than whites. Reported weapon possession, weapon use, and assaultive behavior are the situational behaviors posited as accounting for observed deadly force differentials. While many authors examine this possibility, Binder and Scharf (1982) present the strongest argument for the importance of this factor.

Finally, the general level of violence in the community is seen as shaping the response of police officers, due to their perceptions of what is an appropriate and necessary level of violence in their response to a community. Since the black community is characterized by higher level of violence (e.g. homicide rates), police officers select responses, including deadly force, which are characterized by higher levels of violence when responding to the black community. Kania and Mackey (1977) make the general argument linking violence in a community with level of violence in police response, while Binder and Scharf (1982) tie it directly to racial difference in deadly force.

We recognize that this argument linking community violence to police violence could just as easily be categorized with our first broad hypothesis that variations in police behavior are productive of difference in police use of deadly force. This argument really says there are variations in the behavior of citizens and police, and hence is an intermediate case. We include it with those explanations of deadly force which posit differential behavior by black and white citizens because the tone of the argument is one which suggests that this is an expected covariation of police response to citizens' behavior. That is, the emphasis is that the difference in citizen behavior naturally elicits differentials in police behavior; thus variations in citizen behavior are the more

problematic, and more in need of change.

Within the broad hypothesis that differences in the behavior of black and white citizens lead to differences in the rate at which they experience deadly force, different mechanisms are suggested. First, simple difference in exposure to encounters which have some possibility of resulting in deadly force, as indicated by arrest rates, might account for observed differentials in deadly force. Second, the behavior of blacks and whites in situations with potential the odds are very high that it has multiple sources or causes. Deadly force represents a statistically rare behavior, thought to be a product of unusual and extreme circumstances. The argument that such behavior has only one source or cause seems more tenuous to us than the alternative that has multiple, or even highly particularistic sources.

A second tendency among discussants of deadly force is probably related to this preference for monocausal explanations of racial variations in deadly force. This is the tendency for proponents of one or another explanation to pose their preferred explanation as competing with others, in the sense that if theirs is accurate, the other cannot be, and vice versa. In many instances, explanations are so treated when in fact there is no logical reason that they must be competing. In our opinion, many of these explanations may, in fact, be quite complementary, and each may represent a source of racial variation in deadly force rates, and thus a partial explanation.

The deadly force literature, probably because it does involve an emotionally charged issue about which people hold quite different and firm opinions and beliefs, appears to have more than its share of rhetoric and selective reliance on evidence. At least some of the literature

is aptly described as an argument, rather than debate or objective inquiry. Some authors seem to appeal to special interest audience (e.g., the minority community or the police), select language better suited to inflame than inform, and present evidence supportive of a particular position while ignoring evidence contrary to that position.

All three of these problems are reflected in at least some discussions of our two hypotheses. These two hypotheses, for example, are often treated as competitive, in the sense that one and only one can be true. The first holds that blacks are disproportionately represented among decedents due to police use of deadly force because of racially-linked police treatment. The second holds that blacks are over represented because of racially-linked citizen behavior, such that the situational and/or criminal behavior of black citizens differentially exposes them to such encounters.

It may well be that both explanations have some truth to them; it certainly is not the case that if one is true, the other cannot be, unless we assume that deadly force can only have one source or cause. Yet some authors treat them as directly incompatible explanations. Moreover, the treatment of these hypotheses by some authors involves improper inference, selective review of evidence, and rhetorical flights which serve to muddy rather than clarify the role of these factors in police use of deadly force.

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INTRODUCTIONChapter 1

That the police use violence is of no concern to citizens and on the other hand, it is a central concern. That is, the central question is not whether police should be violent, because indeed everyone, including the police, seems unwilling to even conceive of the alternative. The question is to whom, when, and to what degree, they should be violent. (Manning, 1980, p. 137)

Over the course of the past fifteen or so years, there has been a growing interest in and concern about "line of duty" homicides committed by police officers. The attention directed towards "Police Use of Deadly Force," as the incidents are typically labelled, reflects a variety of perspectives, conceptualizations, issues, and proposed remedies. This variety, in turn, reflects the differing constituencies and interest groups which have addressed themselves to the problems of Police Use of Deadly Force (PUDF hereafter).

Social scientists have addressed PUDF at a number of levels of analysis. As a general problem of society, PUDF has been treated as the extreme example of the state's exercise of its self-asserted monopoly on the use of legitimate force or violence. In such a conceptualization, the proper exercise of this authority is critical, and the problem on controlling such an exercise is paramount. On the other hand, some social scientists see the restrictive use of force as a control mechanism imposed by those with power upon those without power. In this conceptualization, the police are control agents for the powerful elements of society, and PUDF simply represents the exercise of control in its most stark and brutal form.

Policy operationalist and administrative scientists take a quite different approach to this problem. The questions of why PUDF exists or whether it should exist is more or less bypassed, and the question of when PUDF should be exercised becomes dominant. The primary concern for this group is to ensure that PUDF is exercised properly and appropriately. The role of mechanisms such as laws, shooting policies, training practices, review procedures and methods of selecting and promoting appropriate personnel are the major issues here.

The functioning police officer probably focuses less on broader issues of justification or proper exercises of PUDF. But these can become very real concerns for the officer when a particular incident of PUDF occurs. The police department's credibility, standing, and general relationships with the service community may well be affected.

The citizens of a particular community, or some constituent group thereof, typically react to a specific incident of PUDF as much as to the police themselves. The typical community reaction is probably based upon a number of dimensions, including the characteristics of the individual killed and the circumstances of the killing. Some general evaluation of the necessity, reasonableness, appropriateness and, perhaps most importantly, correctness of the action probably underlies the community's reaction to specific incident of PUDF.

During this period, there has been increasing attention paid to the involvement and role of racial dynamics in PUDF. For some, this interest reflects the opportunity to examine theories and hypotheses for which racial data provides either convenient measurements or appropriate tests. For others, this interest reflects the use of racial data as an evaluation of general police adherence to appropriate standards of PUDF.

For the minority community, the racial aspects of PUDF have come to be a very real and immediate concern. PUDF incidents have focused concern, resentment, and suspicion of racial bias in police practices generally, and perhaps, beyond that, in the society at large. For the minority community, the general frequencies and racial patterns of PUDF form the general background against which specific incidents loom large.

For the police, the racial patterns of PUDF have come to be a major issue also. These patterns, and the arguments and analyses they provoke, have forced the police to defend themselves against charges of pervasive racism. They have also resulted in specific incidents of PUDF becoming sparks for major disturbances, as well as occasions for sharp deterioration in the relationship between police departments and the minority communities they serve.

There are common threads to most of these perspectives and concerns. There is concern with establishing some definition of what constitutes appropriate use of deadly force by the police. There is concern that the police act within this definition, and practical concern with how to monitor and enforce proper exercise of this function.

The National Urban League, Inc. shares these concerns, both in general, and with specific regard to the minority and poor communities. In view of this concern, we are particularly disappointed that, to date, much of the work directed to clarifying the role of racial dynamics in the frequency and patterns of PUDF has generated more heat than light, more charges than insights, and more argument than resolution. Consequently, we were happy to respond to LEAA's announcement of awards for research of PUDF, especially in light of the initiative of this topic undertaken by LEAA's National Minority Advisory Council.

We hope our work in this area will help to clarify some issues, resolve some questions, and contribute to concerted efforts to address this problem. In particular, we hope to contribute to a climate in which the minority community and the police can develop mutual efforts to address and resolve the controversy around the role of racial dynamics in PUDF. We hope that ultimately a situation will develop in which the role of racial dynamics in PUDF is eliminated in our society.

Literature Review and HypothesesChapter II:A. Overview

The National Institute of Justice funded a number of simultaneous studies of the police use of deadly force in 1979. These studies were conducted by a number of different organizations, representing a variety of "interested parties." The specific concern of the National Urban League, Inc. as part of this multiple effort is the role of race or ethnicity in the incidence of police use of deadly force. Our preliminary interest is to describe the patterns of disparity in the incidence of police use of deadly force against various racial and ethnic groups. Our major focus is to evaluate what factors or circumstances might account for observed racial disparities.

The police use of deadly force is a complex phenomenon, and can be (and has been) fruitfully examined from a variety of specific perspectives reflecting a broad range of concerns. These examinations have produced a substantial literature including empirical studies, philosophical debates, policy analyses, and polemical arguments. Because of the breadth of this literature, our specific concern, and our limited resources, we shall focus our review upon two specific issues in the literature. First, what evidence do we have on the disparity in the incidence of police use of deadly force against citizens of various racial and ethnic groups? Second, what factors or circumstances are offered to explain or to account for such disparities, if they exist? This review, in turn, will yield the hypotheses which guide this study.

B. Racial and Ethnic Disparities in Police Use of Deadly Force

At this point in time, probably no one who has even partially reviewed the literature on police use of deadly force has any doubt that there are

variations in the rates of usage of deadly force against members of different racial/ethnic groups in our society. The agreement of the empirical results in this area is quite impressive in its basic consistency. As one would expect, minorities suffer higher rates of deadly force than do whites, or are over-represented among decedents due to police use of force compared to the proportion of the population they constitute. However, upon closer examination, this broad generalization covers wide variations in the reported extent of the disparities by race or ethnicity, as well as variation in exactly what the patterns may be.

1. Patterns by Ethnicity

The United States is a multi-racial and multi-ethnic society. There are numerous groups of citizens who, from time to time, or in specific circumstances define themselves by their ethnicity, and consider themselves members of an identifiable "minority group." In certain occupations, for example, Polish-, Irish-, and Italian-Americans all may feel that they are every bit as much an identified, and discriminated against group as those we more typically label minority - for data collection purposes at any rate - Blacks, Orientals, Hispanics, Native Americans, and, in some cases, Pacific Islanders. Because of the vagueness, on the one hand, and generality, on the other hand, with which the term "minority" is used in our society we need to be precise in describing the racial and ethnic patterns of deadly force usage by police.

The bulk of the evidence presented to date on racial/ethnic patterns in police use of deadly force has compared the experience of "black" and "white" citizens. The racial terms are placed in quotations because it is simply not clear in most instances how accurately these categories are coded, entered into the data base, and analytically treated. We suspect that in

some cases the comparisons may be more accurately labelled "black" and "all other," while in other cases "white" and "all other" may be more appropriate.

The situation of citizens of hispanic ancestry is particularly problematic in this regard. There are many reasons to believe that Hispanics are undercounted in everything from the U.S. Census to deadly force incidents (La Raza, 1982). Only three empirical studies which we have found address the question of whether Hispanics are proportionately represented among those who are shot at by police or die as a result of police use of deadly force. This presents a problem, since all the arguments as to why blacks are over represented among decedents due to police use of deadly force would seem to apply, in greater or lesser degree, to Hispanics.

Fyfe (1978) examined data from New York City for 1971-1979, and found that Hispanics were somewhat more likely to be opponents in incidents in which police fired shots at civilians than would be expected from their representation in the population (22.3% of those shot, 15.4% of population). Meyer, on the other hand, found that the Los Angeles police from 1974-1978 shot at Hispanics about in line with their estimated 1977 population (22% of citizens shot at, and 24% of the population). Of those who were shot fatally during this period, 16% were Hispanic. While the percentage of citizens shot at who were Hispanic elevated to 32% in 1979, this might reflect some population growth in simple year-to-year variation. Geller and Karales (1981, Chapter 6) found that Hispanics were involved in 10% of the police shootings in Chicago from 1974-1978. Similarly, Hispanics accounted for about 12% of those killed by police use of deadly force during 1974-1978. The Census indicated that Hispanics constituted 7.5% of Chicago's 1970 population. This may have risen to 12% by 1980, or even as high as at least 15% according to one Hispanic leader (Geller and Karales, p. 116, ftnt.2).

Fyfe finds Hispanics somewhat more often than expected opponents of police in shooting incidents, and Meyer and Geller and Karales find their representation among those shot or killed by the police to be roughly in line with their representation in the population. Many factors could account for the discrepancies in these studies: differences in the reporting practices of the three departments; the quality of departmental records in the three cities; the earlier period covered by Fyfe; real differences among New York, Chicago, and Los Angeles; and many others. The point is that there is not evidence that Hispanics are consistently overrepresented among those who die by police use of deadly force.

We shall discuss in more detail in a later section some of the "coding" problems which might account for this, and the problems it raises for making "black" and "white" racial comparisons with existing data. For now, however, we will turn to examining the evidence on the differential incidence of police use of deadly force in the black and white populations, and focus upon racial rather than ethnic differences. This does not mean we accept the lack of evidence of disproportional Hispanic deaths due to police use of deadly force as proof that they do not occur. Rather, we recognize the limits previous results and our own data impose on us, and will focus upon comparisons which previous results address and substantiate, and which our data allow us to examine.

2. Patterns by Race

What, then, is the evidence that the black and white populations experience differing incidence rates of police use of deadly force? Here the evidence is overwhelming, although the possibility of erroneous race coding still exists, and the data bases and samples utilized in prior research reveal considerable variation in the estimated degree of difference.

Robin (1963) studied 32 fatal shootings by police in Philadelphia from 1950 to 1960. Twenty-eight, or 87.5%, of these involved blacks, in a population estimated to be about 22% black. The proportion of those killed who were black, then, exceeded population-based expectation by 65.5%. Robin also reports that the population-based rate of deadly force for blacks in Philadelphia was about 22 times that of whites. Results of a mail survey for seven other cities indicate a range from six to nearly thirty times the white rate for blacks.

Takagi (1974) draws upon data from the VITAL STATISTICS, and reports that 48.7% of the decedents due to police use of deadly force nationwide were black in 1960 through 1968. He estimates that 10% of the population at that time was black, yielding a higher than expected black representation among deadly force decedents of 38.7%. He further describes these data as revealing that while deadly force rates for both blacks and whites increased over these years, the rate for blacks was always at least nine times as high for blacks as it was for whites.

Kobler (1975) drew upon newspaper reports collected by a clipping service to describe 911 cases of citizens killed by police in the line of duty. Of the 600 cases for which racial identification was possible, 42% involved blacks. If the black population was 10-12% of the nation, the blacks are over represented among deadly force deaths by 30-32%. This is probably conservative, since Kobler reports a sampling bias in his data such that the Pacific area is over represented, while the South Atlantic area is under-represented.

The Police Foundation published a report on police use of deadly force based upon departmental reports from seven cities. With regard to race, this study found that in 1973-1974, 79% of shooting victims, and 78%

of fatalities were black. The 1973 estimated population of these seven cities was 39% black, yielding a black over representation among fatalities of 39%. (Milton, 1977).

Fyfe (1978) reports that opponents in shooting incidents (including nonfatalities) of the New York Police Department from 1971-1975 were black in about 60% of the cases, although the population was about 21% black, yielding an overrepresentation of 39%. Fyfe further examined rates, and found that blacks were about six times as likely to be shot at as whites and Hispanics on a population basis (about 24 per 10,000 vs about 4 per 10,000).

Harding and Fahey (1973) report that 75% of the civilians killed by the Chicago Police Department in 1969 and 1970 were black. The black population of Chicago was estimated to be 33% of the total, yielding an overrepresentation by 42% of blacks among fatalities.

Meyer (1980) reports that prior to 1974 - 1978, black comprised 55% of the civilians shot at by the Los Angeles Police, 53% of those hit, and 50% of those who died as a result of the shooting. The 1977 population of Los Angeles is estimated to be 18% black, yielding an overrepresentation of 32% of blacks among fatalities compared to the population.

Geller and Karales (1981) report that 70% of civilians shot at by the Chicago Police Department in 1974-1978 were black as were 64% of those fatally shot. In 1970, the city population was reported to be 33% black, and this is estimated to have risen to 41% by 1980. If we take the midpoint (37%) as our population estimate, then blacks are overrepresented by 27% among fatalities due to police use of deadly force. If we take the midpoint of the their population estimate, their table 12 indicates that blacks are about five times as likely to be shot (not necessarily fatally) as whites. On a population basis - a rate of about 6 per 100,000 population compared

to about 1.2 per 100,000 population.

Finally, Pyfe (1982) draws upon data from the Memphis Police Department covering some shootings from 1969-1971, and 1973-1976. These data were originally secured as part of a law suit, and data for all but two weeks of 1972 were absent. Whether we consider all persons killed (Table 5) or only those killed in connection with property crimes (Table 4), blacks constitute 76.5% of those who die due to deadly force. The population of Memphis appears to have been 38.9% black (recovered from rates and number of shootings in Table 5), so overrepresentation of blacks among decedents due to deadly force was 37.6%. Black overrepresentation among those property crime suspects shot at was even higher - 47.5%. For all deaths due to deadly force, blacks experienced a rate some five and one-half times the white rate (10.7% or 2.1 per 100,000).

3. A Note on Measurement of Racial Disparities in Deadly Force

The measure which is presented in each of these disparities or readily recoverable from most of them, is one which can be labelled the comparative representation measure. This measure simply compares the proportion of the affected class (here, those who die as a result of police use of deadly force) who are members of a particular group with the proportion of the population who belong to that group. The comparison is made by subtracting the latter from the former. The assumption is that all groups are represented among the affected class in accordance with their proportional representation in the population, all things being equal (i.e., no difference among groups). This would result in scores of zeroes for all groups. To the extent that a group's score is positive, that group is overrepresented - it has a proportionally higher representation among the affected class than in the population. To the extent that group's score is negative, that group

is underrepresented, and has proportionally lower representation in the affected class than in the population.

Since the comparative representation measure is based upon percentages, the sum of the scores for all groups will equal zero, within rounding error. Therefore, when we examine only two groups, one group's overrepresentation score will exactly equal the underrepresentation score of the other group. With more than two groups, the overrepresentation score of a group will exactly equal the total underrepresentation score of all other groups, even though some of these may themselves be overrepresented. When the data compare blacks and whites only, then, we use the term "the overrepresentation of blacks" among decedents due to police use of deadly force we could equally use the term "the underrepresentation of whites". This alternative wording is not simply a quibble. It offers an alternative statement of the problem of police use of deadly force which, as we shall see, has bearing upon the alternative explanations offered to account for racial disparities in its incidence.

The eight studies (excluding Pyfe, 1978) reviewed reveal an average overrepresentation (again, compared to population proportions) of blacks among decedents due to police use of deadly force of about 39%. That is, blacks experience an excess of about 39% of the deaths due to police use of deadly force then the percentage we would expect based upon their proportion of the population. For these studies, then, the sum of all other groups are underrepresented by about 39% compared to their population proportion. This overall average, while approximated by three of the studies (38%, 39%, 42%), masks three studies with lower overrepresentation scores (27%, 31%, 32%) and one study with a much higher score (about 66%). Since this exceptionally high score (Robin, 1963) is based upon the oldest data (1950-1960), some

might argue that it should be excluded. This still leaves an average of about 35% overrepresentation of blacks among those who die by police use of deadly force.

An alternative measure of disparate experience of deadly force presented in some of these studies makes use of the population-based rates of blacks and whites, formed into a ratio. Here we compare the number of blacks who die due to police use of force with the number of whites, standardized to a population size - per million or per hundred thousand. (The comparison of these two rates, we feel, is more appropriately made by subtracting them, and using the difference as the measure of disparity. This difference of rates measure reflects the excess black deaths over white deaths, and hence reveals the adverse impact upon the black population of police use of deadly force. Comparing these rates as a ratio of black rate to white rate is less desirable.) First, it does not reveal the actual level of adverse impact of the varying rates upon the black population. Second, deadly force incidents are statistically infrequent events, and hence we frequently are dealing with very small numbers, especially in the case of white deadly force rates. Since the ratio takes the white deadly force rate as the denominator, it is subject to relatively large shifts due to small year to year fluctuations in the data. Third, cities with identical differences between the black and white deadly force rates may well have quite different ratios, and the larger ratio will characterize the city with the lower absolute rates. This may well, we feel, lead to an incorrect comparative assessment of the problem level of the two cities.

Appendix I discusses the comparative representation and difference in rates and measures and the relationship between them more fully. For now, the important point is to recognize that the comparative representation score,

formed by subtracting the percent of population which is black of those killed which is black, and the ratio of the black and white deadly force rates are not the same measure. They tell us about different aspects of the same data, and we cannot move directly from one to the other, without taking into account the total deadly force rate and the particular ethnic composition of the population.

We stress the noncomparability of these two measures because there appears to be some misunderstanding on this point. Binder and Scharf (1982), for example, treat as inconsistent results which are not necessarily inconsistent at all, but simply reflect selection of the comparative representation measure versus the ratio of the rates. After presenting the results of a number of studies using the comparative representative measure, they summarize the results by describing them as indicating that blacks appear to experience deadly force at a rate two to four times what would expect based upon their population proportion. Note that they convert the comparative representation measure to a ratio of the proportion of those killed to the proportion of those in the population, rather than the difference between these. The observation is then made that while this is a substantial disparity, it is not the ratio reported by Takagi - blacks killed at a rate of nine to ten times the white rate. (Binder and Scharf, 1982: 18-19)

They are correct; it is not the ratio reported by Takagi, but since it is a different measure, the probative value of the observation is questionable. Consider a city of 5,000,000, with 20% black population, 12 blacks deaths and five white deaths. This yields a comparative representation score of 50.6% ($70.6\% - 20\%$), or in Binder and Scharf's terms, blacks' experiencing about three and one-half times the deadly force proportion as their proportion of the population. Since the rates of deadly force in this example

are .000012 and .00000125, (or 12 and 1.25 per million) respectively, the ratio of the black to white rates is 9.6:1.

There is no necessary inconsistency in Takagi's results and the studies Binder and Scharf cite, just as there is no inconsistency between Fyfe's report of 60% of shots fired at blacks, 21% black population (or about 3:1 in Binder and Scharf's terms) and Fyfe's own report of a 6:1 ratio of the shooting at rates of blacks compared to whites and Hispanics. The measures are different, they tell us different things, and they cannot be directly compared and form a basis of inference as to consistency of results.

Unfortunately, we cannot construct a measure of difference of rates (or for that matter the ratio of the rates) for all of these studies. This is because a number of the sample report the ethnic composition of the populations studies, but not the population size. Therefore we cannot construct rates without imposing our own estimate of the population size upon the studies.

It is worth noting, however, that the one study which reports population-based rates across a number of cities, Robin (1963), illustrates nicely the difference between the rates. Robin's Table 2 presents the black and white deadly force rates for eight cities, and summarizes them as a ratio. The four cities with the lowest ratios of black to white deadly force rates are the four cities with the highest differences between their rates. We prefer the later measure because it reveals the adverse impact upon the black population.

4. Summary

The evidence reviewed fails to clearly indicate that Hispanics generally experience death due to police use of deadly force out of line with their proportion of the population. This does not mean that they do not, since

the results are mixed, but the three studies which examine this issue do not indicate a clear pattern of differences.

The studies which have examined black and white incidence of deadly force do reveal a clear pattern; blacks experience a larger proportion of police use of deadly force incidents (or incidents of being shot, or shot at) than we would expect based upon the proportion of the total population they represent. Where specific comparisons are, or can be made, they are reported to be at least nine times as likely to be killed as whites nationally (Takagi, 1974), about five times as likely to be shot at as whites and Hispanics in New York City (Fyfe, 1978). and from about six to 30 times as likely across eight cities studied by Robin (1963). Fyfe (1982) further found that blacks were about five and one-half times as likely as whites to be killed in Memphis, and about ten times as likely to be shot at, on a population basis.

By whatever measure we choose to focus upon, these studies reveal wide variation in the extent to which black and whites have different experiences of deadly force. The overrepresentation measure varies from 27% to 65.5% more of these deaths experienced by blacks than would be expected if these deaths were allocated proportionally to population. The ratio of the two rates shows blacks experiencing deadly force at a rate of anywhere from about four to thirty times the white rate. The difference of the two rates indicates that blacks experience from three to twenty-two excess deaths due to deadly force per million population, compared to white deaths. So, while all studies indicate some substantial level of greater black experience of deadly force, the extent of the difference between blacks and whites is highly variable.

These reports are quite different in a number of dimensions. There are differences in the time period covered, in the sources of data,

geographical sampling bases, and in the actual police behavior examined. The many differences among these studies make it difficult to come to any firm conclusion about the magnitude of racial differences in the incidence of police use of deadly force. While the evidence consistently suggests that such differences exist, the measures relied upon do not permit precise comparisons of their magnitude. The varying sample bases, especially the understandable focus of many of these reports upon one or a few larger cities, make it difficult to assess the generality of the differences observed.

The evidence all suggests, however, that blacks are a greater proportion of those killed through police use of deadly force than one would expect from their proportion of this population. While the extent of this overrepresentation of blacks (or underrepresentation of whites) varies over the studies, all indicate that it is non trivial. Similarly, the studies which report rates indicate that the rate at which blacks die from police use of deadly force, or are shot at by police, is considerably higher than the rate for whites (or the white rate is considerably lower than the black rate).

C. Factors Accounting for Racial Disparities in Police Use of Deadly Force

1. General Hypotheses

Two general hypotheses have been advanced to account for the greater than expected frequency with which black citizens have experienced deadly force. We shall first review each of these broad hypotheses and some of their major variants, and then focus more specifically upon the particular form, arguments, and data of the various reports we have considered.

The first broad hypothesis suggests that racial disparity in deadly force rates reflects differences in the behavior of police officers towards citizens of different races. For any of a variety of reasons, police are more likely to resort to deadly force when the citizen involved in an encounter

is black than when the citizen is white. The key point for this hypothesis is that the police officer varies his or her behavior depending upon the race of the citizen.

A number of reasons why this might occur have been suggested. Takagi (1974) seems to suggest two possible sources. He directly addresses and discusses the argument that police are an agency of social control, relied upon by elites to monitor and oppress class opponents, a category into which a disproportionate number of blacks in our society fall. This argument attributes racial disproportionate representation of blacks among the lower socio-economic groups of our society. Earlier in his paper, however, his use of terms such as "racism", "bias", and "genocide" suggest a direct racial component beyond simply its class related distribution. He seems to suggest, and has often been so interpreted, that racial prejudice on the part of the police officers is also a critical factor in the deadly force equation. This second mechanism is certainly the one that Takagi's critics have focused upon (see, for example, Binder and Scharf, 1982).

The basic notion that blacks are more involved in deadly force events because of their overrepresentation among the poor, or the lower classes, is also reflected in Blauner (1972) and Jacobs and Britt (1979). This follows a general tradition in social science of attributing differential experiences by race to underlying class differences, and is predicated on the well documented differences in social class position of the black and white populations.

That police officers may have high levels of prejudice against blacks is well-documented in other work (for example, Niederhoffer, 1967 and Alex, 1976). Fyfe (1982) appears to find this explanation persuasive in his argument that it is in the most discretionary shootings that black-white differences in deadly force experience in Memphis are largest.

Jacobs and Britt (1979) suggest yet a third possible source of variation in police officer behavior in response to race. Blacks, according to this argument have less influence than whites, and thus may be less effective in protecting themselves from police use of deadly force. Since influence is largely a status resource, this argument also relates the observed racial difference to what may be an effective class difference. This is an interesting argument, if only because it in some sense turns the question around. The question this hypothesis stresses is why are whites killed less often than blacks, and the posited answer is that whites are better able to politically and socially protect themselves.

So the broad hypothesis to account for racial differences through a mechanism which leads the police to behave differently towards black and white citizens has three significant variations in the identified mechanism. The class argument views the police as acting as social control agents oppressing the class opponents of the elite, many of whom are black. The racial prejudice argument portrays police officers as relying on deadly force more in encounters with black citizens because of the officers' negative attitudes towards, feelings about, and perceptions of blacks. Finally, the status resource argument views police as using deadly force more against black citizens because these citizens are less politically or socially able to defend themselves against such incidents than are white citizens.

The second broad hypothesis links the differences in deadly force rates between black and white citizens to differences in the behavior of the citizens, by race, rather than to any racial linked responses on the part of the police. In this argument, the police are portrayed as responding to the specific behavior of citizens without regard to the citizen's race. Since the behavior of citizens of different races differs, however, the observed police response

(deadly force) appears to differ by race. Again, different specific variations in behavior have been identified as mechanisms resulting in observed racial differences in police use of deadly force.

The first such mechanism is the difference between the races in the extent to which they are involved in arrests, either generally, or for subsets of more violent or more serious crimes. Milton (1977), Pyfe (1978) Geller and Karales (1981), Meyer (1980), and Binder and Schmarf (1982) all purpose this explanation, although with varying degrees of certainty. The argument is quite straight-forward. Blacks are more likely to be arrested for criminal acts, and the arrest situation is one with an elevated risk of occurrence of a deadly force encounter. Since blacks are more often exposed to higher-risk situations, they are more likely to become victims of police use of deadly force, without any race-linked response difference on the part of police.

The second mechanism goes beyond the simple occurrence of an arrest situation and suggests that the behavior of blacks in such a situation is in fact more likely to be dangerous or threatening, and thus blacks are more likely to become victims of deadly force than whites. Reported weapon possession, weapon use, and assaultive behavior are the situational behaviors posited as accounting for observed deadly force differentials. While many authors examine this possibility, Binder and Scharf (1982) present the strongest argument for the importance of this factor.

Finally the general level of violence in the community is seen as shaping the response of police officers, due to their perceptions of what is an appropriate and necessary level of violence in their response to a community. Since the black community is characterized by higher levels of violence (e.g. homicide rates), police officers select responses, including

deadly force, which are characterized by higher levels of violence when responding to the black community. Kania and Mackey (1977) make the general argument linking violence in a community with level of violence in police response, while Binder and Scharf (1982) tie it directly to racial difference in deadly force.

We recognize that this argument linking community violence to police violence could just as easily be categorized with our first broad hypothesis that variations in police behavior are productive of differences in police use of deadly force. This argument really says there are variations in the behavior of citizens and of police, and hence is an intermediate case. We include it with those explanations of deadly force which posit differential behavior by black and white citizens because the tone of the argument is one which suggests that this is an expected covariation of police response to citizens behavior. That is, the emphasis is that the difference in citizen behavior naturally elicits differentials in police behavior, and thus variations in citizen behavior are the more problematic, and more in need of change.

Within the broad hypothesis that differences in the behavior of black and white citizens lead to differences in the rates at which they experience deadly force, different mechanisms are suggested. First, simple differences in exposure to encounters which have some possibility of resulting in deadly force, as indicated by arrest rates, might account for observed differentials in deadly force. Second, the behavior of blacks and whites in situations with potential for deadly force may vary in ways which make deadly force a more likely outcome for blacks than for whites. Finally, the general level of violence in the community is linked to the violence level of police response such that the more violent black community elicits a more violent level of police response, including higher use of deadly force.

Neither of these broad hypothesis, nor their specific reflections, are necessarily independent of each other. One might choose to argue that higher black arrest rates produce higher black deadly force rates because arrests provide the opportunity for police to exercise their control functions for the elite or their personal antagonism rather than because such situations are risky and naturally productive of some level of deadly force incidents. Nor are these hypotheses exhaustive although we feel they "cover" other more specific hypotheses. Thus police personality, police culture, or stress theories of force and deadly force need only add one of these racially differentiating mechanisms to be incorporated into accounts of racial differences.

It should be recognized that our categorization of hypotheses about racial differences in police use of deadly force parallels, but is not identical to Goldkamp's two belief perspectives. He emphasizes the extent to which the differentials are attributable to factors internal or external to police organizations. Because the second category has a flavor of justification to it, we would prefer to focus on this issue a bit differently. That is why we have opted to categorize the hypotheses as to whether they focus on differential police behavior to citizens of different races, or upon differential behavior by citizens of different races. This partially reflects our interest in emphasizing (with Geller and Karales, 1981 and Fyfe 1982) the necessity or avoidability of deadly force incidents over issues of legal or moral justification. To that extent, even if police use of deadly force solely reflected factors external to police departments we would argue that police departments need to address such factors and attempt to ameliorate their effects to the best of their capabilities.

Before reviewing the evidence on these hypotheses, we should like to comment on three aspects of the deadly force literature which we find some-

what disturbing. The first is the tendency for contributors to this debate to prefer monocausal explanations of deadly force. The second is for participants to pose as alternatives, explanations which to our way of thinking may well be complementary. The third is the excessive rhetoric and selective review of evidence which characterizes some of this literature, although fortunately not all of it.

With regard to the tendency for authors to prefer monocausal explanations, we can conceive of no persuasive reasons why variations in a phenomenon as complex as police use of deadly force should be assumed to have only one source or cause. One might well argue on the contrary, that the odds are very high that it has multiple sources or causes. Deadly force represents a statistically rare behavior, thought to be a product of unusual and extreme circumstances. The argument that such behavior has only one source or cause seems more tenuous to us than the alternative that has multiple, or even highly particularistic sources.

A second tendency among discussants of deadly force is probably related to this preference for monocausal explanations of racial variations in deadly force. This is the tendency for proponents of one or another explanation to pose their preferred explanation as competing with others, in the sense that if theirs is accurate, the other cannot be, and vice versa. In many instances explanations are so treated when in fact there is no logical reason that they must be competing. In our opinion, many of these explanations may, in fact, be quite complementary, and each may represent a source of racial variation in deadly force rates, and thus a partial explanation.

The deadly force literature, probably because it does involve an emotionally charged issue about which people hold quite different and firm opinions and beliefs, appears to have more than its share of rhetoric and

selective reliance on evidence. At least some of the literature is aptly described as an argument, rather than debate or objective inquiry. Some authors seem to appeal to special interest audiences (e.g., the minority community or the police), select language better suited to inflame than inform, and present evidence supportive of a particular position while ignoring evidence contrary to that position.

All three of these problems are reflected in at least some discussions of our first two hypotheses. These two hypotheses, for example, are often treated as competitive, in the sense that one and only one can be true. The first holds that blacks are disproportionately represented among decedents due to police use of deadly force because of racially-linked police treatment. The second holds that blacks are over represented because of racially-linked citizen behavior, such that the situational and/or criminal behavior of black citizens differentially exposes them to such encounters.

It may well be that both explanations have some truth to them; it certainly is not the case that if one is true, the other cannot be, unless we assume that deadly force can only have one source or cause. Yet some authors treat them as directly incompatible explanations. Moreover, the treatment of these hypotheses by some authors involves improper inference, selective review of evidence, and rhetorical flights which serve to muddy rather than clarify the role of these factors in police use of deadly force.

2. Quality of Evidence On These Hypotheses

Before reviewing specific findings relevant to the two board hypotheses offered to account for racial differences in the incidence of deadly force, some general comments about the quality of the evidence available for either hypotheses are in order.

We want to test whether variations in the behavior of citizens of different races, or variations in the response of officers to citizens of different races, or some combination of these factors accounts for racial disparities in deadly force. That makes it absolutely critical that we have detailed data and evidence on the behavior of citizens, the behavior of the officer, and all the attendant circumstances which might influence the officer's perception of the behavior of the citizen.

A major problem with the analysis of deadly force is that it is rarely, if ever, that we have clear and unambiguous evidence on any of these three factors, let alone all three. Kobler (1975), for example, reports that independent witnesses were present in only 20% of the cases he reviews. That means that we must rely on the testimony of "interested" parties - the officer-shooters, their associates or friends and associates of the decedent. Even independent witnesses to an event as heated, calamitous and rapid as most deadly force incidents, might understandably be unreliable. Of course, the evidence of one key participant - the decedent - is not available to us. Certainly witnesses with a stake in the evaluation of the appropriateness of the event are subject to distorting biases, conscious or unconscious, which raise questions as to their basic ability, if not their desire, to be accurate. Kobler, for example, found that 50% of incidents were precipitated by a misdemeanor at most, when independent witnesses were present, but only 25% of those witnessed only by officers.

To properly assess the impact of opponents' race upon the decision to use deadly force we need comparative information on events which are similar in all other essential details but do not result in deadly force. This would allow the comparison of the racial distributions of opponents in potential deadly force events and in actual deadly force events, and we could then assess whether the transitional probabilities from "potential events" to "actual events" differ for black and white oppo-

nents. For a variety of reasons, the universe of "potential deadly force events" is difficult to define and practically, impossible to sample.

The attempt to construct a sample of such events is reflected in the work of authors who redefine deadly force rates with some subset of arrests as the denominator. We have discussed elsewhere the technical problems with using such a ratio (see pp -). However, this strategy represents an interesting attempt to address the problem of the lack of comparable non-deadly force events for comparison. The major problem that faces these analyses is that care has to be taken to define the deadly force events and the potential deadly force events in the same way. Thus, looking at rates of all deadly force events per felony arrest is inappropriate because we know that many precipitating events do not involve felony arrest (e.g. Kobler, 1975; Milton, 1977, et. al.). The same problem, of course, faces those who rely on comparing racial proportions of some arrest population with racial proportions of decedents due to deadly force (most notably, Binder and Scharf's (1982) "review" of such comparison's). Even proper definition of these ratios runs the risk that arrests and deadly force events reflect simultaneous biases in treatment for black and white citizens.

Lacking data on comparable non-deadly force events, researchers frequently fall back to a strategy of analyzing variations in the circumstances surrounding deadly force events for black and white opponents. That is, they conduct an internal analysis of events which have ended in the use of deadly force. This of course, does not allow us to examine the behavior of either opponents or police officers in encounters which might have, but did not, result in deadly force or shots fired. We need to be very careful in drawing inferences, based upon the distribution of circumstances, about how variations in citizen behavior by race or variations in officer behavior to citizens of different races contributes to racial disparities in deadly force incidence.

Assume that a given analysis of deadly force encounters reveals that 25% of black opponents and 25% of white opponents ultimately are determined to have been unarmed, and that the black deadly force rate is three times the white deadly force rate. What allows us to treat this as

evidence that officers do not vary their behavior with regard to unarmed opponents depending on the opponents race? We have to assume that the percentage of unarmed opponents among those who were involved in "identical" incidents which might have, but did not, result in deadly force are also equal. This allows us to infer, then, that the police did not follow different decision rules for blacks or whites in using deadly force, and that the difference in rates between the races reflects difference in their becoming involved in encounters which might result in deadly force.

So the equal percentage of black and white decedents is used simultaneously to argue that higher black rates reflects behavior different from whites, and that differences in police behavior by race are not a factor.

The problem is that we lack data on the armed -- unarmed status of opponents in incidents which might have become deadly force encounters, but didn't. Therefore we assume that the percentage and rate characteristic of encounters which did not result in deadly force are the same as those that did. Therefore, there is no evidence of racially linked differences in police response. So we must assume for the absent data what we are trying to show from the available data.

Assume, on the other hand, that we find in our analysis that 25% of black opponents, but only 10% of white opponents are ultimately determined to be unarmed. The "obvious" conclusion is that police do make different decisions to use deadly force against blacks and whites. But that is only the case if we assume that blacks and whites, among opponents in incidents which did not result in deadly force, are equally likely to be armed, and that the police used different rules to produce the imbalance in black and white decedents who were armed. Again, we assume for the absent data what we are trying to prove from the available data.

The evidence we must rely upon for these internal comparisons or deadly force events is, in all probability subject to much distortion and after-the-fact reconstruction, as discussed above. One does not have to assume calculated dishonesty on the part of officer-shooters or witness to deadly force events to be concerned about the quality of the data and testimony they may provide.

A final comment is in order on one other type of data investigators

have examined in attempting to decipher the role of opponent race in deadly force events. This is to include analyses based upon the race of the officer-shooter, and to ask the question whether or not there are differences in the racial distribution of opponents of officers of different races. The assumption is that if such differences are absent--that is, we find little or no difference in the racial distributions of opponents for black and white officers--then we can either reject, or at least do not need to add, racism on the part of white officers to account for racial disparities in deadly force. Again, of course, we must assume that the racial distribution of opponents in potential, but not actual, deadly force events is the same as we find in the actual events, and hence must rely on the assumption we are trying to prove, be it no differences or differences.

There is, perhaps, a more fundamental problem with this analysis strategy. It makes two very key assumptions about the nature of racism in our society. The first is the apparent conceptualization of racism as an attitude or attribute of an individual, a negative predisposition towards people of particular races. The second is the assumption that racism is only possible across races, that black officers are ipso facto immune from racist attitudes towards other blacks.

We prefer to view racial disparities in our society as racist whether they are intended or unintended, whether they result from discrete major actions, or are the final outcome of many minor actions. To label an outcome "racist" in our view says nothing at all about the individual attitudes or motives of people whose actions may contribute to such racial disparities. Such behavior may in fact be negatively motivated, but they may also be motivated without any regard to race, or, for that matter, be motivated by a wish to lessen or ameliorate such disparities. In that sense a problem may be very much racial in nature, but its causes may have nothing to do with the racial components of individual's motives, attitudes or perceptions.

It seems to us that much of the debate about the role of racism in police use of deadly force is misdirected. It limits the role of racism to the negative attitudes--the dislike, even hatred, the disdain--of white officers towards black citizens. We have little doubt that such white officers exist. We also are convinced that some black officers are

similarly affiliated. But we firmly believe black "racial problems" between police departments and their service communities reflect more fundamental problems, and cannot be accounted for solely by the presence of these officers. Nor do we believe that racial disparities in deadly force can be accounted for by assuming that these kinds of officers are solely responsible for the higher rate of shooting of blacks.

To the extent that individual officer's attitudes, emotions, beliefs, and opinions are involved in racial disparities in deadly force we believe they are a more complex than simple virulent hatred of blacks. We think they have much more to do with fear, apprehension, and belief about the relative danger to the officer presented by black and white opponents. We're not at all sure that this is particularly strong in some officers, and that officers are very aware of it. Nor are we convinced that black officers are immune to it. They too participate in police culture--they are black, but they are also blue, to paraphrase Alex (1969).

For us, their racial disparities in deadly force are a problem of race. To that extent, to explain these disparities by differential class distribution or by differential involvement in crime simply shifts the source of, but does not alter the nature of the problem. Data on black and white officer shooter has little probative value for us in assessing the actual role of the police department in either its causation or its potential amelioration. Just as shootings of black citizens by white officers are not necessarily racist in our usage, so too shootings of black citizens by black officers are not necessarily non-racist, in our usage.

3. Evidence on Variation in Officer Behavior

Jacobs and Britt (1979) argue that rates of police use of deadly force reflect levels of economic inequality because the police are control agents for the elite, and must rely on extreme force when economic inequality is most pronounced. Using Kania and Mackey's (1977) state-level data, they find that a measure of economic inequality does predict deadly force rates. They control for the Violent Index crime rate, which also predicts deadly force, and for black percentage of the population, which does not predict deadly force rates.

A number of investigations have examined the reported circumstances

surrounding the use of deadly force against black and white citizens. A circumstance of particular interest in examining variation in officer behavior is that of the fleeing suspect. This is of interest because the assumption that someone fleeing an officer represents little threat to the officer, and therefore the shooting is more of an elective decision.

Kobler (1975) does not directly use the term "fleeing," but he does report that whites constitute a smaller percentage (39%) of those shot in the back than they do of those shot otherwise (46%). The inference is that a higher proportion of decedent blacks were fleeing than of decedent whites. Geller and Karales (1981) report that 19% of blacks shot (not necessarily fatally) were fleeing while 12% of whites fell into this category. Blacks fleeing from suspected forcible felonies were about one and a half times as likely to be shot as whites fleeing from the same felonies, based upon (1981) arrest rates.

Myers reports that 15% of blacks shot by Los Angeles police were fleeing, while 9% of the shot whites were fleeing.

Another area is actual use of weapon. The issue here is whether police shoot at armed blacks more readily than armed whites. Kobler (1975) reports that 85% of armed white decedents actually used their weapons, while 77% of armed blacks decedents did so. Meyer (1981) indicates that 66% of blacks and 76% of whites shot in Los Angeles actually used their weapons. Whether or not black and white opponents are more or less likely to actually be armed is less clear. Meyer (1981) finds in Los Angeles that 28% of blacks shot were unarmed, while 20% of whites were unarmed. Pyfe (1981 a) reports that 7.8% black were unarmed in New York, but 15.5% of whites. In Memphis, however, (Pyfe, 1982) 62.5% of whites, but 26.9% of blacks who were killed by police in connection with property crimes were armed with a gun. Geller and Karales (1981) report that 69% of blacks and 59% of whites possessed some type of deadly weapons; but if we examine gun use or threat, we find 55% of blacks shot in this category, and 37% of whites. Clearly, the evidence is mixed on whether police are more or less likely to shoot unarmed blacks than whites, and may very well depend on jurisdiction.

Finally, Myer (1981) presents data which indicate that the review process for shootings may have different outcomes depending upon the race of the opponent. Shootings of unarmed blacks resulted in an out-of-policy

ruling or administrative sanction in 55% of the cases; such findings occurred in 84% of such cases involving whites.

The use of percent blacks in the population to assess the impact of race, as used by Jacobs and Britt, is weak. States with higher percentage black population are likely to have a more rural black population, and deadly force tends to be an urban phenomenon. The effects of percent black upon the total deadly force rate may be quite different in aggregate analysis than variations in black and white deadly force rates.

The reconstruction of circumstances from deadly force events, and the internal analysis of racial disparities is problematic, as we have discussed earlier. To take the difference in the percent of blacks shot while fleeing and the percent of whites shot fleeing, for example, as evidence of differences in officer behavior requires us to assume that blacks and whites are equally likely to flee--which may or may not be the case. The review data presented by Myers similarly requires us to assume that the black and white incidents had no differentiating factors, other than race, before we can infer differential evaluation based on opponent race.

In sum, then the evidence of differential behavior of officers to black and white opponents is at best equivocal. This reflects primarily inherent weaknesses in the data.

4. Evidence on Variations in Citizen Behavior

Investigators have utilized black and white arrest data to address the question of whether or not racial disparities in the incidence of deadly force might simply reflect racial disparities in behavior. The arrest data has been used in two different analytical fashions. The first is to compare racial proportions of arrestee with racial proportion's of decedent or opponents. The second is to form deadly force rates with arrests as the denominator, and examine whether they differ by race.

If we examine the percentage of those killed who are black with the percent of those arrested who are black we see a consistent decrease in the difference from the earlier reported population--based overrepresentation scores. This reflects the fact that black citizens are arrested at a higher rate than white citizens, and they constitute a larger percentage of arrestees than of population.

Robin (1963) found that blacks were 87.5% of deadly force decedents,

and 30.6% of total arrestees. Takagi (1974) reports that in 1964 blacks were 51% of decedents and 28% of total arrestees. Milton (1977) reports that for seven cities, blacks averaged 79% of shooting victims and 78% of decedents, while averaging 76% of arrestees for Index or Part I crimes. Pyfe (1981) reports that about 60% of opponents shot at by New York officers were black, and estimate that blacks constitute about 62% of arrestees for felonies against the person based upon a limited consecutive sample. Meyer (1981) finds that blacks were 55% of citizens shot at, 50% of fatalities, 36% of total and 46% of Index arrests for Los Angeles.

Celler and Karales (1981) find that whites are shot at a higher rate than blacks, when forcible felony arrests are the denominator, although at lower rates when total arrests are the denominator. They also report for an earlier period, that blacks are very slightly more likely to be shot at than whites when total arrest are the denominator. They also report for an earlier period, that blacks are very slightly more likely to be shot at than whites when forcible felony arrests are the denominator, although substantially more likely to be shot at when total arrests are the denominator.

Clearly these results suggest less overrepresentation if the "population-at-risk" is defined by arrest experience. At the same time, they reveal considerable variation in the extent to which black-white differences appear. This may depend upon whether decedents, citizens shot, or shot at, are considered, as well as whether total arrests or some subset thereof are used as the population-at-risk. Moreover, they may reflect variation over time or differences among cities.

In addition to the analytic objections we have discussed elsewhere (see pp -), there are substantive reasons to criticize these results and the meaning attached to them. One can certainly raise questions about the definition of the decedent population and the at risk population in most of these studies. The basic problem is that they are so often defined differently. Thus, if we compare the ratio of deaths to an arrest rate, we ought to restrict the deaths we consider to the same circumstances as the arrests which indicate the probability of being at risk. To include all deaths, and to use all arrests or any subset thereof as the appropriate indicator of the at-risk population ignores the fact that many deadly force

incidents occur in situations which might well have never involved an arrest. Of course, the more restrictive the subset of arrests used to indicate population at risk becomes (i.e. moving from all arrests to Index arrests to Violent Index arrest to forcible felony arrests) the greater the disjunction with all deaths as the denominator of a ratio of the appropriate comparison.

It is interesting to note that the two reports which properly restrict both the deaths and the arrests used as indicators of at risk status to the same legal violation find discrepancies between blacks and whites much higher than the more broadly defined analyses. Thus Geller and Karales (1981) find that blacks are about one and a half times as likely to be shot when fleeing a forcible felony than are whites. At the same time, the difference in odds is dependent upon which forcible felony one examines. Pyfe (1982) found that blacks had even more discrepant odds of being shot at by the police when suspected of a property crime when compared to whites. These two reports suggest that the interpretation of the general results of the analysis of deaths and arrests as suggesting that black overrepresentation among the former is accounted for by black overrepresentation among the latter (see Binder and Scharf, 1982 for example) is questionable at best, and simply erroneous at worst.

5. Summary of Evidence in Main Hypotheses

The evidence in the two competing explanations to account for racial disparities in deadly force is less than compelling. It certainly is inadequate for choosing between them if one feels such a choice must be made.

Some of the weakness of the evidence reflects analytic decisions by researchers as to how to define variables, or as to what the proper

comparison statistic might be. More troublesome, and more pervasive, is the problem that the available data simply does not allow clear and unambiguous assessment of these hypotheses. The available data is subject to possibly severe distortion. Data for appropriate comparison of deadly force incidents with incidents not culminating in deadly force is simply unavailable. The surrogate data used for such comparisons are flawed, and these flaws are intensified in most cases by the analytic assumptions involved. Finally, the nature of the available data virtually always forces an analyst to assume what he is attempting to prove.

METHODChapter III

This section of the report discusses details of our sample, measurements, data sources, and an overall analytic procedure.

A. Sample

The 1970 census identified 59 cities in the United States whose population exceeded 250,000. These cities were thus classified as "Population Category 1" by the UCR. As such, they represent a useful "sample" for our data needs.

PUDF appears to be concentrated in urban areas. (A review of newspaper clippings on PUDF from 1965-1969, the period immediately preceding the initial year of the years analyzed here, reports that 75% of the incidents occurred in metropolitan districts with populations in excess of 50,000; Kobler, p. 187). We felt justified in restricting our sample to even larger population cities for a number of reasons. First, larger cities had larger increases in minority population from 1970 to 1980 (Kasarda, 1982).

Our special interest is in the applicability of our results to the minority communities of Urban America; this renders this restriction on size tolerable. Second, we assumed that this restriction would still yield well over half of the reported incidents of deadly force in the nation each year (an assumption we will examine shortly). Third, and most realistically, the inclusion of cities between 50,000 and 250,000 would require data collection and analysis resources far beyond those available to us. While the NJL has affiliates in 53 of these 59 largest cities, the majority of those in the 50,000 - 250,000 population range do not have affiliates. Hence, our Affiliate Questionnaire would have to be

modified for use by other agencies, or data critical to our analysis ignored.

These factors, then, resulted in our selecting the 59 cities with 1970 population in excess of 250,000 as our "sample". We recognize that these cities represent some sort of a universe, rather than a sample in any technical sense. Since, however, they do represent a very critical universe for our purposes, we are willing to forego the buttressed assumption of generalizability a scientific sample would afford.

Originally, our intention was to collect and analyze data for the decade spanning 1968 to 1977. This reflected an understanding that these years were the most recent for which the FBI could provide UCR data on justifiable homicides, arrests, crimes, and police department characteristics. The FBI, however, actually provided us with data for 1970 through 1979, and so our time "sample" became the decade of the seventies, although our affiliate questionnaire covered 1968-1977.

The critical point is that we wished to collect data over a ten year span, rather than any particular ten year span. For our purposes, the more recent the data, the better.

1. Data Reduction - Sample Loss

Five cities were dropped from our analytic sample, bringing our actual number of cities to 54. These cities were Albuquerque, Baton Rouge, Charlotte, Indianapolis and St. Paul. All these cities had reported data on deadly force for less than five years in the decade of the seventies. Additionally, each of them had large amounts of missing data on arrests during this period. Moreover, the years for which the data were missing was highly variable. To keep them in the sample might introduce an unacceptable level of year-to-year variability simply depending on the presence or absence of some of these cities.

In view of the level and pattern of missing data, it was decided to drop them from the sample.

2. Data Evaluation

The reports received by the FBI from local police agencies include racial identification of victims of justifiable homicide. Unfortunately, the categories available do not include Hispanics. This is particularly problematic because there is ample evidence that Hispanics are victims of PUDF (see Meyer, 1980 p. 102 and Geller and Karales, 1981) for department-based reports on Los Angeles and Chicago. Moreover, there is reason to believe that Hispanics are overrepresented among the victims of PUDF (Geller and Karales, p. 121; La Raza, 1981).

It is immediately clear that Hispanics are not simply reported in the "other" category in the FBI reports, since this category accounts for 22 deaths from 1970 to 1979. Chicago records reveal 16 Hispanic deaths from 1974-1978, while Los Angeles recorded 21 Hispanic deaths for the same period. (Geller and Karales, p. 213; Meyer, Table 10).

We clearly cannot recover Hispanic deaths from our data source. Nor can we be sure whether those deaths are being reported as black or white, or simply not being reported at all. This presents us with two immediate problems.

The first problem is whether to treat race as a two-category (black-white) or three - category (black - white - other) variable. The three category variable is more strongly associated with deadly force ($R^2 = .224$ vs $.176$) but this reflects the artifactually low rate for the "other" category. We say artifactual because the "other" category includes an often substantial Hispanic population, but appears to exclude many Hispanic deaths. In view of this, we elect to fall back to the two - category treatment of race as black and white.

This still leaves a problem - should the Hispanic population be added to

either the black or the white population, or somehow prorated between them to balance out the effects of Hispanic deaths which may be added to these categories? Unfortunately there are no clear guidelines as to how to resolve this.

Meyer's department-based data for 1974-1978 shows 128 deaths. Our data revealed 113, or about 12% missing data. Deaths in Los Angeles for that period are reported to be 50% black by Meyer, while our data indicate 52% black. It might seem safe to conclude that Hispanics are being assigned to the white category, except we cannot tell the race of the 15 cases missing from our data. The similarity of percent black in the two sets is useful for analytic purposes, but it might reflect blacks actually missing from our data, but replaced by Hispanics coded as black.

Geller and Karales report 130 PUDF incidents in 1974-1978 by Chicago, while our data indicate 123, or about 5% fewer. Again, there is remarkable similarity between the two data sets in percentage black - 63.8% for Geller and Karales, 63.4% for the FBI data. Again, however, we cannot assume that this means that Hispanics are reported as white, because we simply do not know the race of the cases missing from the FBI data.

Perhaps the most conservative approach is to simply analyze the FBI data as reported, and use the reported population as the basis. If this introduces a bias, it appears from the above that we are most likely over-estimating the white DFR, since it may include Hispanic deaths, but excludes the Hispanic population. This would lessen the difference between the black and the white DFR's. In that sense, it is conservative.

For our analysis, we shall examine EDFR and WDFR, each constructed by using the FBI reports as the numerator, and the population estimate as the denominator. This may lead to an underestimate of the difference in the rates,

although we cannot be certain of that.

B. Measures

1. Dependent Variables

a. Deadly Force Rates

Traditional measures of total deadly force use have simply divided the number of police-caused deaths by the size of the relevant population, a measure we will call the TDF (Total Deadly Force) rate. We constructed rates, analogous to the TDF, separately for the use of deadly force against blacks (the BDF rate), against whites, (WDF rate), and against others, (ODF). This final category, unfortunately, includes Indians, Chinese, Japanese and "other" but fails to specifically include those of Hispanic extraction, as we have discussed.

The primary purpose for utilizing these rates as our dependent variables is because we are directly interested in the differing incidence of deadly force for these various racial/ethnic groups. Because the populations differ in size over cities and years, the comparison of absolute numbers of incidents would reflect, to an extent, simple differences in the size of the population. Since absolute size is not of concern here, we have chosen to control differences on this factor by standardizing our deadly force variable on population size.

The alternative method of controlling variation in population size would require us to treat population size as a factor in each analysis. This is a cumbersome approach, in view of our low interest in size itself as a variable. Hence we elect to utilize rates.

Other denominators for these rates have been suggested - number of police officers, and the violent crime index, for example. These alter-

natives propose that the proper conceptual base for the rate is not the available supply of targets (or victims) but rather some other aspect - the available supply of users, or the frequency of situations more likely to be productive of deadly force encounters, for example.

We have, however, not elected to pursue these alternatively constructed denominators. Quite simply, the differing incidence of deadly force among the constituent groups of our society is the problem we and other authors are attempting to explain. Our attempts to explain this problem should preserve the measurement which best approximates the problem of interest. This is the population based rates.

When we turn to consider the various factors which might partially account for the differing incidence of PUDF for the different groups in our society, we should preserve a measurement which reflects their status as explanatory variables, and allows careful analytic assessment of their explanatory power. This means preserving their independence from the dependent variable and examining their relationships to that dependent variable.

The use of a posited explanatory variable as the denominator in a rate of occurrence of the dependent variable involves three basic problems. First, we have changed the very nature of the variable - through our change of measurement we have altered the problem we are addressing. For example, we are no longer examining the different incidences of PUDF among these ethnic groups, but the different incidences of PUDF in relation to another factor's incidence among these groups.

Second, we are unable to clearly assess statistically the impact of the explanatory variable upon the differing incidence rates. For example, if our new denominator is "arrests", we cannot identify the extent to which arrest variations and differences among the groups actually account for

PUDF variations and differences among the groups.

Third, inappropriate interpretations of the meaning of the comparison of these PUDF rates with "new denominators" across various groups are very seductive, and judging from the literature, virtually inescapable. For example, finding similar rates of PUDF in relation to arrests across different groups simply does not mean that arrests account for or explain the population-based differences in the incidence of deadly force. What it means is that, whether arrests explain much or little of the variation in deadly force, arrests do not differ in their power to account for deadly force depending upon which group we examine.

Technically, this is a situation of "no interaction" - the influence of arrests upon deadly force does not depend upon which group we are considering. This is important and valuable information and should be pursued. However, whether differences in arrests account for differences in deadly force is also important and needs to be asked of the data directly. The inappropriate inferences drawn from the interaction question have not only been misleading on this question, but have also blurred what we might learn about the interaction effect itself.

We will explore this issue further when we compare the results of our analyses with those of prior research. Lest we sound too harsh, we freely admit that we also spent some time considering and pursuing the possible use of "new denominators" for those analyses. The very straightforward appearance of this approach is what makes it so attractive, and requires such caution in its utilization.

b. Population

Total population for each city was constructed by extrapolating the intervening years from three measured points: 1970 census, 1975 mid-decade

estimate, and 1980 census. The use of the mid-year estimate allowed for a non-linear extrapolation, although empirically this extrapolation turned out to be quite close to linear for most cities.

The racial population estimates were developed by linear extrapolation of the percentage of black, white, and other ethnicity from the 1970 and 1980 censuses. These percentages were then multiplied times the totals, as developed above, to yield year by year, city by city estimates of the relevant population sizes.

2. Independent Variables

a. Traditional Predictors

i. Arrests

The number of persons arrested each year as reported to the FBI for the compilation of the annual Uniform Crime Report. These data were converted to rates by dividing the number of arrests by the appropriate racial population.

It is acknowledged that definitions of arrests, record-keeping practices and reporting practices vary among different law enforcement jurisdictions and agencies. However, policies regarding serious crime, e.g. robbery or burglary, are likely to be more consistent and uniform throughout all jurisdictions. Furthermore, only one arrest is counted for each individual arrested, regardless of the number of charges lodged against him.

ii. Violent Crime Arrests

The total number of arrests per year for each of the index crimes considered violent as defined by the Uniform Crime Report: murder, forcible rape, robbery and aggravated assault. These are treated separately because of the seriousness with which they are viewed. These numbers were also converted to rates for each racial group.

iii. Property Crime Arrests

The total number of persons arrested per year for each of the index crimes considered non-violent as defined by the Uniform Crime Report: burglary, larceny-theft and motor vehicle theft. These crimes were treated separately to preserve their distinction from the violent index crimes and to provide analysis of the influence of such "property" offenses. These data were also converted to rates for each racial group.

iv. Reported Crime

The total number of reported incidents for each of the seven crimes contained in the Index. These were converted to total rates, since no racial distinctions can be made. As with arrests, reported crimes can be analyzed separately, or aggregated into the Violent, Property, and Total Index.

v. Police Experience

The number of police officers exposed to differing levels of assault and reported to the FBI. The level of assault distinguished in these data involve first, those without injury; second, those involving an injury to the officer; and third, those involving the death of an officer. These distinctions were preserved in the data, and rates per 1,000 employed officers (also drawn from FBI reports) calculated. A variety of combinations of these rates are utilized in the analysis.

vi. Clearance Rates

Dividing the total number of arrests for each of the seven index crimes, the various indices constructed from these, and total arrests by the appropriate number of reported crimes in each category yields a clearance rate. Since arrests are counted only once, these rates underestimate the actual crime clearance rate to the extent that the average arrestee is

charged with more than one crime. If police agencies report the arrest of a multiple offender under the most serious charge, as we think is likely, then these clearance rates are likely to progressively more seriously underestimate the actual clearance rate of progressively less serious crime.

Because our interest in clearance rates is an indicator of possible stress and pressure upon the police rather than directly in themselves, we do not judge this problem to be too serious.

B. Nontraditional Predictors

i. Black Elected Officials

The number of black judges and city council (or its equivalent) members, as well as whether or not the mayor was black for each city-year were taken from the annual report issued by the Joint Center for Political Studies. Whether the mayor was black was coded 1 or 0, and the other two variables were formed into rates. The bases of these rates were the census reports of 1976 of the total number of judges and city council members. Although there may have been changes in these numbers from 1970-1979 in certain instances, we feel the probability of major or many changes is low, and hence are comfortable in using the 1976 data as the rate basis.

ii. Minority-Owned Businesses

The number of black-owned businesses for 1977 and of minority-owned businesses for 1972 were available for each sample city from the Census Bureau. These were formed into rates by dividing by the appropriate black population.

These measures present two immediate problems. First, these cities probably differ in their overall rates of business ownership. Larger cities may have a higher average number of employees in the business sector, for example. We do not have base-line data for white business ownerships against

which to compare these data. Hence, we cannot tell whether these data provide a meaningful indicator of differing levels of black participation in business ownerships levels (regardless of race) across these cities. This is a serious handicap.

Second, the generally low participation of blacks in business-ownership may make this a less adequate measure of general economic integration than one which addresses other institutional sectors of the economy - the professions, public employment, corporate management, etc.

We address the second problem by restricting our discussions to business participation, recognizing its limitations. In view of the initial stages of this research, we are comfortable proceeding with our measure although we recognize that its interpretation is somewhat ambiguous and may require further research to resolve.

iii. Black Social, Economic, and Political Participation

In view of the difficulty we encountered in securing complete and timely returns of our mail questionnaires, we conducted a brief phone survey of NUL affiliate directors for these cities. We asked them to rate the participation of blacks in their cities in the social, economic, and political life of the city. The responses were given on a seven point scale ranging from 1 (poor) to 7 (excellent).

We recognize the inherent weakness of these measures. First, they are likely to reflect the period immediately preceding 1982, when the responses were collected. This is two years after the last deadly force data, and the situation may have changed over time. Second, they understandably reflect the individual experiences, expectations, and biases of the respondents - we cannot be certain that a comparison of two cities does not reflect differences in the respondents rather than differences in the cities.

Third, since we are interested in how these dimensions of participation relate to deadly force, we must recognize that these responses may relate to deadly force because a city's recent deadly force itself affects the respondent's perception of black participation along these dimensions. That is, rather than measuring underlying conditions which influence deadly force, these perceptions might themselves be directly influenced by levels and patterns of deadly force.

We proceeded to collect these data in spite of these concerns, and will analyze them. However, again we must recognize that any results we obtain may well raise more questions than they resolve.

iv. Black Participation

Black participation along a larger number of social/economic/political dimensions were measured by scales in our mail out questionnaire. Since the return rate and scattering of missing data prohibits analysis of these data, we shall not discuss these measures. Their operationalization and domains covered are self-evident for the questionnaire in Appendix II.

v. Community Attitudes Towards the Police Department

Our mail questionnaires contained two perceptual items which produced sufficient data for analysis. These involved the perceived relationship between the community and the police department, and the perceived relationship between the black community and the police department. Again, these are perceptual, and consequently open to many interpretations. They differ, however, from other perceptual data reported in this area because they are collected from blacks in defined positions of community leadership. As such, they are of interest in themselves.

C. Data Sources

1. PUDF

The incidents of deadly force were taken from a UCR supplementary Homicide Report tape provided by the FBI. These tapes identify a subset of reported homicides as justifiable, and identify whether the actor was a police officer or civilian. All justifiable homicides identified as being committed by a police officer were recovered for sampled cities from 1970-1979.

2. Arrest

The data on arrests were recovered from a UCR tape reporting arrests for specific crimes by the age, sex, and race of the arrestee.

3. Crime Data

The data on crimes were added to the analysis framework after we had secured tapes from the FBI on two separate occasions. Because of this factor, and because of time pressure, we coded the information on crimes from published volumes of UCR data. This enabled us to recover crimes for the seven Index Crimes.

4. Police Employee Data

The FBI supplied us with a data tape containing information on police employees. This provided us with information on the number of sworn officers for each department, the number of male and female officers (except for 1970), as well as the incidence of police killed, police assaulted and injured, and police assaulted without injury.

5. Black Participation Data

The data on black participation was drawn from a variety of sources. For our design, the major source was meant to be the Affiliate Questionnaire. This requested information on a wide range of topics and aspects of black participation in these cities. Items on rates and types of employment

(including the police department) education, homeownership, public housing residence, income, business ownership, political participation, and various aspects of social participation were included.

A subsequently added telephone survey of MJL affiliates targeted upon the perceptions of the Executive Directors of the general level of black participation in the social, economic, and political arenas. In addition, general ratings of police-community relationships were obtained for cities in cases where these data were missing from the Affiliate Questionnaire.

6. Black Elected Officials

The Joint Center for Political Studies compiles a listing of black elected officials for every state, county, and city government through out the United States. This source was used to determine the number of black elected officials in each city. The officials included mayors, councilmen, aldermen, judges, etc. The total number of such officials of all races was taken from cards supplied by the Census Bureau which enumerated the total number of such office holders as of 1976. This variable, unlike the political participation variable described above is very specific and is an actual count of elected officials.

7. Black Education

Data on minority and black (when available) enrollment in post-secondary educational institutions located in the 59 sample cities were available for even numbered years from 1972 through 1978. These data were secured from tapes provided by the Department of Education, and reflect enrollment in various types of degree programs.

8. Unemployment Data

Unemployment rates for most of these 59 cities were available for 1974-1979 from the Department of Labor. Unfortunately, the exact area

Covered by these figures is not identical to the city boundaries of police jurisdictions.

9. Population Data

Population data for these 59 cities were available for the 1970 and 1980 census. These provided both total populations, as well as racial and ethnic sub-population. In addition, the 1975 census estimate of mid-decade total population for these cities was utilized.

D. Analysis Strategy and Procedures Overview

The analysis strategy we shall follow in examining police use of deadly force is dictated by our concern with understanding the role of race in this phenomenon. We are not attempting an immediate full explanation of all the variations in the use of deadly force across cities or time. Rather, we are specifically interested in describing and delineating the role of race in influencing these variations.

To be sure, a full explanation of the role of race in the police use of deadly force will eventually require a complete explication of the role of all factors. Any factors we do not consider - such as variations in policy and procedure, or the training experiences and traditions of local departments - might modify or alter our final conclusions about the role of race. We recognize this. On the other hand, our initial examination of deadly force simply cannot encompass all the factors which are likely to influence the rate of deadly force use. In light of our concerns, we have initially selected variables for analysis which are most likely to modify or alter our conclusions about the role of race in the use of deadly force. We have not followed the approach of selecting variables based upon the likelihood that they influence overall variations in the general rate of

deadly force usage.

Our problem, then, is not to attempt the best overall explanation of variations in rates of deadly force usage, but rather to begin to understand the direct and indirect influences of race upon these patterns.

Multiple regression is the statistical method chosen for evaluating these data. This technique allows us to evaluate and compare how well different "models" are simply different sets or combinations of explanatory factors. Our questions are first, do these factors "predict" deadly force rates, and second, how well do they "predict" them. These "predictions" are not predictions about future events. Rather, prediction is used here in a statistical sense: are the variations in deadly force sufficiently associated with variations in the factors contained in our models that knowledge of the model factors lessens the error of our estimates of the deadly force rate across years and cities compared to a simple estimate of the average deadly force rate?

There are a number of reasons for the choice of multiple regression. First, this technique allows the simultaneous evaluation and comparison of the explanatory power of different factors which might be involved in racial disparities in PUDF. This is a critical strength because much of the discussion of the role of race in the occurrence of deadly force involves arguments that race is only apparently related to deadly force due to its relationship with some other factor which is itself related to deadly force. The argument that the overrepresentation of blacks among those arrested for criminal violations accounts for their overrepresentation among decedents due to deadly force takes this form. The simultaneous evaluation of factors afforded by multiple regression permits the examination of this question.

Second, when properly utilized, multiple regression allows the execution

of a series of analysis which provide all the information produced by a nonorthogonal analysis of variance (see Applebaum, 1976). This is particularly important for our analysis, since so many of our hypotheses require the testing of interaction effects - asking whether the relationship between two variables is the same for different categories of a third variable, or whether the combined effects of two variables is in the direction and at about the level we would expect from simply adding their separate impacts.

Because our central concern is the role of race in deadly force, we are naturally interested in whether the role of other factors in the production of deadly force is different, depending upon whether we are examining the use of deadly force against whites or blacks. The very real possibility that this is the case means that we specifically need to examine these combinatorial, or interaction effects.

For example, we might find that robbery arrest rates are mildly related to deadly force use such that higher robbery arrests rates are associated with higher rates of deadly force. Similarly, the police per population rate might be positively related to the deadly force rate. It is possible, however, that cities with both high robbery arrest rates and high police per population rates have much higher rates of deadly force than we would expect - perhaps because these two factors, while separately weak, reinforce each other to produce a powerful effect upon the deadly force rate.

Since multiple regression is more typically used in a fashion which ignores interaction, this presents a procedural problem.

A fairly typical solution to this problem is to perform a regression analysis for each category of race. We might suspect, for example, that variations in arrest rates will predict variations in the use of deadly

force against whites much more strongly than they will the use of deadly force against blacks. We could regress arrest rates against the white deadly force rate, and separately against the black deadly force rate. Unfortunately, the decision about whether or not there is a difference in the strength of prediction tends to be made erroneously with this procedure. Analysts look at the strengths of the effect of arrests rates for the two deadly force rates and make judgements about whether they are different. However, even if the effect is significant for the white deadly force rate and non-significant for the black deadly force rate it is not necessarily the case that the effects are significantly different from each other.

We have opted to follow an alternative regression procedure, adopted from Applebaum (1976). This procedure allows us to include interaction terms in our models, and to statistically test their contribution to prediction. Because we do not have equal numbers of observations for all combinations of factors in our model, this procedure requires analysis of specified components of each model in various combinations to produce a "clear" analysis of each model. This make the procedures costly and cumbersome. On the other hand, given the centrality of these questions to our concerns, we feel that they are too important to treat as matters of judgement and interpretation rather than as empirical tests.

The third reason for opting for a multiple regression analysis is that the available multivariate analysis of variance programs do not have the capacity to analyze a data set of this size. Since, however, those programs operate on a multiple regression algorithm, we were able to use regression to duplicate the necessary aspects of multivariate analysis of variance.

Our procedures can be described quite readily. Having established a baseline racial effect upon PUDF rates, we proceed to add other variables

to the basic model and analyze their effects. The questions we ask of each variable before including it in the developing model are three in number. The first is whether the variable adds to the overall explanatory power of the model in regards to PUDF. The second is whether the variable decreases the variance associated with race; that is, does the variable account for some portion of the initially observed racial difference. The third is whether the variable's influence upon PUDF is different in the cases of whites and blacks - the interaction question.

In summary, we will use multiple regression analysis, and modify our procedures to allow the examination of interaction terms. This will allow us to assess the impact of race itself upon rates of police use of deadly force, as well as assess the unique effects of other factors upon deadly force and their impact in modifying or altering the observed relationship between race and deadly force.

RESULTSChapter IVA. Basic Data

Tables I and II present information on the deadly force rates for our 54 cities over the decade of the seventies. Their presentation here serves two purposes. First, throughout our analysis we will be using and reporting data which have been statistically adjusted to reflect the influence of particular explanatory factors. This is necessary and proper if we are to trace out the complex relationship of factors which underlie and influence the rate of occurrence of deadly force. At the same time, this kind of statistical procedure may be less familiar to some important segments of our audience than it is for those trained in social science. We hope that this presentation of "real" data will persuade these readers that our subsequent analyses do not distort or misrepresent the underlying reality of the data. Second, these data do themselves reveal some interesting information about the patterns and incidence of police use of deadly force over the decade of the seventies.

The data in Table I present the population-based rates of deadly force usage for the total population, the black population, and the white population for these cities from 1970 to 1979. The total deadly force rate averaged just under one person per 100,000 population killed for each year of the decade (.7 to be precise). There was, of course, year to year variation, although the basic rate appears to fairly stable, ranging from .5 to .9. At the same time, there is some suggestion that the rate may have dropped a bit. The first five years average .8, while the second five years average about .6 incidents of deadly force per 100,000 population.

These total death rates conceal real differences, however, in the experience of black and white citizens. For whites, the rate of police use of deadly force is indeed reasonable stable: six of the ten years are characterized by the same low rate of .4, the average for the decade. The first five years average .38 and the second five, .44. For blacks, the average is substantially higher at 1.8 persons killed per 100,000 population. Moreover, there is higher variability across the years, with a range from 1.0 to 2.8. The first half of the decade averaged 2.1 incidents of deadly force per 100,000 black population, while the second half of the decade produced a yearly average of 1.5.

The total rate, then, appears to have been fairly stable, with perhaps some decrease over the decade. The white rate is quite stable, with perhaps just a hint of an increase over the decade. The black rate is less stable, with a possible decrease over the decade.

Table II summarizes the data from Table I with two comparative measures frequently used in discussions of deadly force, as well as other areas of possible ethnic differences (for example, hiring rates, promotion rates, etc). These are simply the ratio of the population-based incidences for blacks and whites, and difference of these population-based incidences experience.

If we examine the ratios, we find that over the decade blacks, on a population basis, were anywhere from 2.5 times as likely to experience deadly force as whites to seven times as likely. For the decade, blacks were just over four times as likely to be victims of deadly force as were whites. Again we find the intriguing pattern that the ratio of the odds that a black experienced deadly force compared to a white may have decreased. The average ratio of the odds for the first five years was just about 5.1, but drops to 3.4:1 for the second half.

If we turn to the difference scores, we find that black citizens

TABLE I

Total and Racial Rates of Police Use of Deadly
Force Over the Decade of the Seventies for
54 Major Cities

	<u>YEAR</u>										Mean for 1970's
	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	
TOTAL	.7	.9	.8	.8	.8	.9	.7	.5	.5	.7	.7
BLACK	1.7	2.8	1.9	2.1	2.2	2.1	1.8	1.1	1.0	1.4	1.8
WHITE	.3	.4	.4	.4	.4	.6	.4	.3	.4	.5	.4

Source: 11/11/81: 1

TABLE II

Ratios of and Differences in Black and White Deadly
Force Rates Over the Decade of the Seventies

	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	Mean for 1970's
Ratio (B-W)	5.7	7.0	3.8	4.2	4.5	3.5	4.5	3.7	2.5	2.8	4.2
Difference (B-W)	1.4	2.4	1.5	1.7	1.8	1.5	1.4	.8	.6	.9	1.4

Source: Table 1

averaged 1.4 more deaths due to deadly force than white citizens for the years of the seventies. The first half of the decade shows an average of about 1.8 more black deaths per 100,000 population than white deaths. This difference fell to just about 1.0 for the second half of the decade.

The data from Table I and the summary measures from Table II suggest that there is a real disparity in the rates of deadly force usage against black citizens and the rates of usage against white citizens. Further, they suggest the intriguing possibility that these differences may be lessening, however large the remaining gap may be. If the gap is lessening, it is important to note that it appears to be more a product of decline in the rate of deadly force usage against black citizens, rather than an increase in the rate of usage against white citizens. Finally, the apparent stability of the total deadly force rate conceals the underlying dynamics and shifts in the rates of deadly force against blacks and whites. An increase in black population for many of these cities, and hence a higher total population rate, is compensated for by what may be a decrease in the rate of usage of deadly force against blacks.

These data, then, dictate four crucial questions for analysis. First, are these differences between the black and white deadly force rates simply chance fluctuations, or do they represent real and systematic differences? Second, if these differences are systematic, how do we account for them? Third, is the apparent lessening of the difference in these rates over time itself a real or systematic pattern, or does it simply represent chance fluctuations in the data? Fourth, if this decrease in the difference between the black and white rate is real, how do we account for this change?

B. Basic Model

Our basic, or initial model, allows us to answer our questions about the

systematic or random nature of the difference between the deadly force rates for black and white citizens, as well as whether this difference in fact has declined over the decade of the seventies.

The regression model enters three factors: race, time, and the interaction, or joint effect, of race and time. We are simply asking whether knowing the race, the year, and the combination of the race and year will increase the accuracy of our "predictions" of deadly force rates for a given year. The statistical tests associated with the regression analysis will provide the answer to these questions. The level of significance for these tests tells us the likelihood that our data might still be the product of random rather than systematic events.

Table III displays the results of this analysis. The R^2 of .192 at the bottom of the table indicates that about 19% of the total variation in deadly force rates for these 10 years across our 54 cities can be associated with (or explained by) variations in race, time and the joint variation of race and time. The F statistic associated with this model, and its level of significance, suggest that we would find this strong a result far less often than one time in a thousand, if in fact there is no relationship between these factors and deadly force rates in the real world. (This last assertion must be interpreted somewhat cautiously because in theory it rests on a sample procedure which we in fact have not followed. Nonetheless, the robustness of the F test in the face of violations of sampling assumptions, as well as our consistency with generally accepted social science standards of interpretation, leave us comfortable with our statement). In sum, our basic model provides us with "predictions" which provide a reasonable fit to the data.

The information contained in the middle of the table provides information about specific elements of our model. The coefficient for the "1970 mean for

TABLE III

Race and Time Effects on the Rate of Police of Deadly Force

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.37	.38	1.99
1979	1.28	.44	.84

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.376	2.766	.006
Race (0-white,1-black)	1.994	10.360	.000
Time (years)	.007	0.290	.772
Race x Time	-.129	-3.531	.001

R² for Model = .192

Degrees of Freedom = 3,878

F for Model = 69.63

N = 882

Significance Level for this Model = < .000

Source: 9/6/82: 1

whites," .376 is the adjusted mean for whites. This is the deadly force rate for whites in 1970 we would expect to find under our model. The associated test statistic tells us that we can tentatively reject the notion that this coefficient is not different from zero. The significance level cautions us that this large (or larger) a coefficient will be found about six times in a thousand random samples from a universe in which the real coefficient is zero.

The coefficient for race tells us that we must add 1.994 to the white coefficient in each year for our prediction of that year's black deadly force rate. The associated test statistic and significance level tell us that we can reject the hypothesis that there are only random differences in these data between the black and white deadly force rates.

The coefficient for time tells us that we must add .007 to the white coefficient for each year which passes after 1970. The associated tests, however, tell us that this value is too small for us to reject the possibility that it is really zero. The significance level tells us that chance alone would produce this large or larger a coefficient in roughly 77% of the samples we would draw from a universe in which the real value of the coefficient was zero.

The race by time coefficient tells us that we must subtract (add, but the sign is negative) .129 from our estimate of the black deadly force rate as each year passes. The associated tests suggest that we can reject the hypothesis that this coefficient is "really" zero. This coefficient describes the decrease in the difference between black and white deadly force rates from 1.99 in 1970 to .84 in 1979.

In sum, then, the analysis tells us that there is a significant difference between black and white deadly force rates, and that this difference decreases from 1970 to 1979. Moreover, the decline in the black white difference is produced by the decrease over time in the rate of deadly force usage against

blacks, rather than an increased usage against whites.

Two basic questions are now answered, within limitations of the data set. There is a real race effect: black citizens experience a higher rate of deadly force than do their white fellow citizens. While the importance of race is undeniable, there is an associated weakening of its impact over the decade of the seventies (that is, the differences by race do diminish).

The first question - is there really a difference - has been answered in accordance with conventional wisdom and previous research results. Few people, if any, who have studied the problems of police use of deadly force would have expected any other result. Nonetheless, this result is a useful addition to the research literature because of the size and basis of our data set.

The critical issue about the difference in the rates of police use of deadly force against black and white citizens is not whether they exist, but what accounts for them. Demonstrating that they exist, then, is only a logically necessary preliminary step to the more complex issue of why they exist. The insights gained in addressing this set of issues, it is to be hoped, will provide useful guidance to efforts to alleviate the problem of differentials in the police use of deadly force against white and black citizens.

The second question - has the differences between black and white deadly force rates changed over time - produces an answer which is perhaps a bit more surprising. Not many people have raised this issue, and the conventional wisdom probably is that the differences have likely been stable at best, or perhaps increasing, at worst. Understanding this decrease in the difference may provide important clues on how to approach further reduction in these differences.

The crisis-like atmosphere surrounding deadly force discussions and investigations itself probably has contributed to the lack of notice paid to

the partial amelioriation of the situation. The delay in the collection, analysis and dissemination of relevant data probably contribute to a time-lag in our perceptions and understanding of the dynamics of this problem. The relative recency of "official" recognition of this problem (and hence limited funding for research) has undoubtedly contributed to the proliferation of case studies of one or a few cities, usually of limited time perspective, and usually associated with a recognized problem situation or particularly disturbing incident of deadly force. All of these may seriously distort our understanding of the magnitude and dimension of the problem we wish to address.

The decrease in the difference between black and white deadly force rates does not make us terribly optimistic that this problem is self-correcting. Rather, we think it is important information, and people working in this area need to be aware of it. Perhaps some case studies, or limited sample studies of cities whose discrepancies in rates have decreased would provide useful information in addressing and further resolving this large remaining difference in racial rates of deadly force usage.

C. Models Incorporating Arrest Data

1. Total Arrest Rate

Arrests are used as an indicator of encounters which might be productive of deadly force incidents. Table IV presents the results of adding the total arrest rate to our basic model. The addition of this rate does not add to the explanatory power of our basic model, as revealed by the failure of its coefficient to attain significance ($t = 0.79, p < .430$). That is, knowing the total arrest rate does not improve our prediction of the deadly force rate, given that we already know race and year.

At the same time, the addition of this term has little impact upon the

coefficients of the terms in our basic model, which suggests it has little explanatory power for these effects. That is, we cannot account for racial disparities in deadly force through racial disparities in total arrest rates, even if the total arrest factor had been significant.

We emphasize that our procedures for testing the additional explanatory power of variables added to our basic model does involve testing all the interactions. Unfortunately, our testing procedures require us to conduct a number of different regressions to develop a clear test of each model. This testing procedure is necessary because the data are nonorthogonal. Space constraints simply prohibit displaying all these interaction results. Consequently, we shall display these results only when positive, or marginally reliable but interesting. We shall however discuss them as occasion requires.

The triple interaction of race, time, and total arrest rates ($t < 1$) suggests that the race by time interaction does not depend upon the level of the total arrest rate. The interaction of race and total arrest rate ($t = -1.19, p < .233$) provides no support for the hypothesis that the total arrest rate impacts upon deadly force role in different ways for blacks and whites.

The reader should be aware that the interpretation of the coefficients in this model differs from the interpretation in our basic model. This is because each coefficient reflects the value of the variable if all other variables were set at zero. So, for our basic model, the "1970 mean for whites" is the value predicted by the model for whites in 1970 (or zero year). When we add the total arrest term to the model, this coefficient becomes the value predicted by the model for whites in 1970 (year zero) if there were no white arrests (arrests zero).

Since the total arrests model fails to add significantly to our basic model, we reject it, and fall back to our basic model. When we find models which improve

TABLE IV

Impact of Addition of Arrest Rate for all Crimes to Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.21	.31	1.90
1979	1.14	.38	.76

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 Adj. mean for whites	.309	1.92	.055
Race (0-white, 1-black)	1.899	8.36	.000
Time (years)	.008	.31	.759
Race x Time	-.126	-3.45	.001
Arrest Rate for All Crimes	.000013	.79	.430

R² for Model = .193

Degrees of Freedom = 4,877

F for Model = 52.35

N = 882

Significance Level for this Model = < .000

Source: 1/12/82: 3

predictability, we shall need to examine closely the behavior or the constituent coefficients.

In sum, knowledge of the total arrest rate does not improve our prediction of deadly force rates, nor does it alter the impact of race and the race by time interaction upon these rates, nor help to explain them.

Total arrest rate, of course, reflects the incidence of arrests for alleged crimes of many different kinds. It may well be that only some arrests are related to deadly force, and that their effect is masked by the inclusion of various irrelevant arrests. We shall explore the possibility by examining in progressively finer detail the impacts of arrest rates for different types of crimes.

2. Arrest Rates for "Other" and "Index" Crimes

The first categorization of Arrest Rate we shall explore is the distinction between Index Crimes and all other Crimes. Index Crimes consist of murder, rape, robbery, aggravated assault, burglary, larceny, and auto theft. This composes a set of more serious crimes, as well as a set of crimes thought to be more uniformly reported, both definitionally and practically. As such it is a useful subset for analysis. "Other" arrests, then, simply constitute all non-index crimes for which arrests are reported.

Table V presents the results of the analysis of "other" arrests. Adding the arrest rate for other crimes does not improve the predictive power of our basic model. None of the interactions associated with this term influence the deadly force rate, nor modify our understanding of the impacts of the race and time terms.

For a number of reasons, this is not surprising. First, even though we know that arrests for these less serious crimes do indeed produce incidents of deadly force, we would hope and expect that these are more random than systematic

TABLE V

Impact of Addition of Arrest Rate for "Other" Crimes to Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.24	.31	1.93
1979	1.18	.39	.79

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.314	1.91	.056
Race (0-white, 1-black)	1.929	9.00	.000
Time (years)	.008	.33	.743
Race x Time	-.126	-3.45	.001
Arrest Rate for "Other" Crimes	.000014	.69	.492

R² for Model = .193

Degrees of Freedom = 4,877

F for Model = 52.31

N = 882

Significance Level for this Model = < .000

Source: 1/12/82: 3

outcomes. Second, these are by far the most numerous types of arrests, and hence they probably contribute overwhelmingly to the already discussed impacts of the arrest rate for all crimes. (The reader may note the close similarity of these results to those in Table IV). We conducted and report this analysis more from a desire for completeness than for any insight it would be likely to provide.

The results of the addition of arrests for Index crimes is displayed in Table VI. Again we find no additional explanatory power for a model which adds the Index arrest rate to our basic model of race and time. Moreover, as with our previous arrest rate variable, its interaction with race, with time, and with the race by time interaction yield test statistics which fall far short of reliability (for these interactions all t's are less than one).

The addition of index arrest rates for blacks and whites, then, does not help us understand the rate of deadly force usage against them, nor does it help us understand the difference in the rates of deadly force usage against them, nor does it help explain the declining difference in these rates over time.

While we have never expected differences in any kind of arrest rate to account for more than a small portion of the difference between black and white deadly force rates, we are frankly surprised that the index arrest rate so totally fails to shed any light on this question. We are even more surprised that variation in the Index arrest rate fails to bear any relationship to the overall rate of deadly force against either whites or blacks. We certainly agree that there are situations which are more likely to be productive of deadly force than others, and we further agree that some of those situations are likely to be arrests for, Index crimes. The particular incidents of deadly force themselves may not be reflected in the arrest statistics, although undoubtedly many are reported as "cleared". But there is certainly inherent

TABLE VI
Impact of Addition of Index Arrest Rate to Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.25	.35	1.90
1979	1.15	.41	.74

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 Adj. mean for whites	.350	2.48	.013
Race (0-white, 1-black)	1.897	8.04	.000
Time (years)	.006	.24	.811
Race x Time	-.128	-3.51	.001
Arrest Rate for Index Crimes	.000035	.71	.480

R^2 for Model = .193 Degrees of Freedom = 4,877

F for Model = 52.32 N = 882

Significance Level for this Model = < .000

Source: 1/9/82: 1

plausibility in the argument that these arrests are rough indicators of differences in frequencies of events which are more or less likely to precipitate deadly force events.

We recognize that there are statute, policy, and administrative practices which vary over our 54 cities, and undoubtedly some variation in these within some cities over the decade of the seventies. Nonetheless we are surprised that variations in the Index crime arrest rate bear no relationship to variation in deadly force usage. It is somewhat alarming to think that variations in encounters which might necessitate the use of deadly force are unrelated to use of deadly force, and that deadly force variations are more a matter of "local custom".

The Index Crimes, of course, are not all the same in seriousness, nor are they all of the same type. Few would equate rape and auto theft as to seriousness, and clearly murder and larceny differ in whether the crime involves a person or property "at risk". Nor, for that matter, are they all similar in likelihood of producing encounters which might result in deadly force usage, given differences in detection and police response. It seems reasonable, then, to explore these Index arrests further before abandoning them.

3. Arrest Rates for Violent and Property Index Crimes

A fairly common distinction is made among Index crimes. One set - typically called the Violent Index - consists of murder, rape, robbery, and aggravated assault. The other set - commonly referred to as the Property Index Crimes - contains burglary, larceny, and auto theft. Since one might argue that an officer is likely to be more at risk, or simply more likely to use deadly force against a fleeing felon when the felony is a violent one it seems worthwhile to examine whether the distinction between violent and property arrests sheds any light on our deadly force questions.

Table VII presents the major results of the analysis of the addition to our basic model of the arrest rate for Violent Index Crimes. The term for Violent Index arrest rate is reliable, the R^2 for this model rises to .199, and therefore Violent Index arrests may be added to the basic model.

None of the interaction terms involving the Violent Index arrest rate were themselves significant. One of them, however, did complicate our basic model. Our race by time interaction term is not significant in models which contain the interaction term for Violent Index arrest rate by time. This Violent Index arrest rate by time interaction term itself is not significant in models which contain the interaction term for race by time, however.

This leaves us in a bit of quandry. Technically, either interaction can be included in the model if we ignore, or do not control, the other. If we control for either, the other one fails to be reliable. The quandry is that the model is improved by including one of these interactions, but not both, and the analysis leaves the choice of which interaction term to include indeterminate.

What the data do tell us is that the decreasing difference between the deadly force rate of blacks and whites has something to do with a decreasing impact of Violent Index arrest rates upon the deadly force rate ($t = -2.96$, $p < .004$ in models ignoring the race by time interaction). These two effects are correlated. Over time, the disparity between the black and white deadly force rates is diminishing. Associated with this phenomenon, there is a decreasing impact of the violent arrest rate upon the deadly force rate for both blacks and whites. There is no evidence that the decline in the relationship between Violent Index arrest rate and deadly force is different for blacks and whites - the triple interaction term has a t less than one, and its associated probability level is .99.

We suspect that this weakening correlation between Violent Index arrests

TABLE VII

Impact of Addition of Violent Index Arrest Rate to Basic Model

Adjusted Deadly Force Rate per 100,000 Population

<u>Year</u>	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	1.97	.33	1.64
1979	.85	.35	.50

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 Adj. mean for whites	.332	2.43	.015
Race (0-white,1-black)	1.640	7.11	.000
Time (years)	.003	.10	.921
Race x Time	-.127	-3.49	.001
Arrest Rate for Violent Index Crimes	.00042	2.75	.006

R² for Model = .199

Degrees of Freedom = 4,877

F for Model = 54.51

N = 882

Significance Level for this Model = < .000

Source: 1/2/82: 2, 4
1/7/82: 1A, 2

and the deadly force rate is accounted for, in part, by some fairly substantial revisions in policies and procedures in some major department over the decade of the seventies. New York and Detroit, for example, both show decreases in the use of deadly force. If enough of these cities are high in Violent Index arrests, then the decrease in deadly force rate over the decade would weaken the relationship.

Throughout this analysis we sporadically encounter this problem of indeterminate choices between the race by time interaction and the interaction of some other variable with time. We have adopted the model which includes the race by time interaction because of its consistent appearance in our results. Parsimony dictates using the same term throughout rather than introducing alternatives which are specific to an analysis. The reader needs to be aware, however, that this choice is based on parsimony, and not on an unambiguous statistical analysis. In cases, such as this one, for which the statistical analysis tells us to choose race by time or another interaction, but cannot tell us which one to choose, we shall so inform the reader.

If we turn to examine the coefficients in this model which adds Violent Index arrest rates to our basic model, some interesting observations can be made. The coefficient for the race term is somewhat reduced from 1.994 in the basic model is 1.640 in this expanded model. While it would be inappropriate to use these figures as exact point estimates, this does indicate some reduction in the impact of race when we introduce a term for Violent Index arrests. At the same time, the race coefficient in the expanded model continues to be large and highly statistically significant. The coefficient for the race by time interaction is virtually identical to that of the basic model (when we ignore the Violent Index arrest by time interaction). The coefficient for whites in 1970 is lowered somewhat, about the same relative amount as the coefficient

for the difference between blacks and whites.

In sum, then, the Violent Index arrest rate does contribute to our understanding of deadly force variations. It also accounts for a small portion of the difference in the rates of usage against whites and blacks, although controlling for it leaves a much larger black/white difference unexplained. Race is still our single best predictor of deadly force variations. To the extent that Violent Index arrests rate accounts for a portion of the black/white difference, it does so because of the differing levels of Violent Index arrests by race, rather than any difference by race in how they are related to deadly force. Finally, the coefficient for white, 1970 and its associated tests tells us that whites would experience a deadly force rate reliably different from zero even if they experienced no Violent Index arrests.

Before we permanently add Violent Index arrests rates to our basic model, we shall explore the addition of Property Index arrest rate to the basic model. This is so that parallel information for both these categories of the Index is available. Then we shall resolve issues about which variables or terms to add to the basic model before leaving the topic of arrest rates.

Table VIII displays the results of the addition of the Property Index arrest rate to our basic model, not the model including the Violent Index arrest rate.

The addition of the Property Index arrests does not add any predictive power to our basic model, nor does it alter the basic picture revealed in the basic model as to the importance of race, time, and race by time. All of the interaction tests involving the Property Index terms are not reliable (all t 's less than one), nor do they influence the reliability of race by time interaction.

TABLE VIII

Impact of Addition of Property Index Arrests to Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.41	.39	2.03
1979	1.33	.46	.87

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 Adj. mean for whites	.387	2.72	.007
Race (0-white, 1-black)	2.026	8.84	.000
Time (years)	.008	.31	.760
Race x Time	-.129	-3.53	.000
Property Index Arrest Rate	-.000017	-.26	.796

R² for Model = .192

Degrees of Freedom = 4,877

F for Model = 52.18

N = 882

Significance Level for this Model = < .000

Source: 1/7/82: 1

4. Arrest Rate for Component Crimes of Violent and Property Indexes

Before moving on to other variables we shall present more detailed analysis of these two components of Index arrests. As shall be seen, this further analysis will reveal some interesting aspects of the behavior of arrest rates with regard to deadly force.

Table IX displays the impact of adding the three component crimes of the Property Index separately instead of summed into an index. Auto theft has virtually no association whatsoever with deadly force rates, but both burglary and larceny do influence the deadly force rate. What is perhaps most intriguing is that they work in directly opposite fashions - the higher the burglary rate, the higher the deadly force rate, but the higher the larceny rate, the lower the deadly force rate.

The addition of these component arrest of the Property Index raises the R^2 to .201 from .192 for the basic model. They do not, however, have much impact upon the race coefficient. They add to our understanding of deadly force, but have little, if anything, to do with observed race differences in deadly force usage.

The Property Index, then contains two useful predictors of deadly force rates when added to the basic model, but since they operate in contradictory fashions, the earlier summation of them into index variable masked their effects.

Table X presents the results of adding the individual components of the Violent Index arrest rate to the basic model. Again we see two components of about equal strengths (although not reaching conventional standards of reliability), but with opposite relationships to deadly force. Murder is positively related to deadly force, and rape is negatively related to deadly force. Robbery, however, is the sole reliable component of the Index, and it is positively related to deadly force. Robbery, in view of the cancelling

TABLE IX

The Impact of the Addition of Component Crimes of the
Property Index Arrest Rate to the Basic Model

Adjusted Deadly Force Rate per 100,000 Population

<u>Year</u>	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.33	.38	1.95
1979	1.45	.45	1.00

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.382	2.687	.008
Race (0-white, 1-black)	1.953	8.485	.000
Time	.008	.320	.749
Race x Time	-.120	-3.240	.002
Burglary	.000735	2.593	.010
Larceny	-.000343	-2.769	.006
Auto Theft	-.000039	-.090	.928

R² for Model = .201

Degrees of Freedom = 6,875

F for Model = 36.73

N = 882

Significance Level for this Model = < .000

Source: 1/14/82: 1

TABLE X

The Impact of the Addition of the Component Crimes
of the Violent Index Arrest Rate to the Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	1.78	.33	1.45
1979	.91	.38	.53

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.329	2.343	.017
Race (0-white,1-black)	1.450	5.645	.000
Time	.006	.236	.814
Race x Time	-.103	-2.753	.000
Murder	.005040	1.500	.134
Rape	-.003628	-1.484	.139
Robbery	.001027	2.577	.010
Aggravated Assault	.000016	.045	.965

R^2 for Model = .205

Degrees of Freedom = 7,874

F for Model = 32.27

N = 882

Significance Level for this Model = < .000

Source: 1/14/82: 1

effect of murder and rape, and the trivial impact of aggravated assault, probably drives the whole Violent Index effect we found earlier.

The addition of the arrest rates for component crimes of the Violent Index also influence the coefficient for whites - 1970 and the term for blacks (race coefficient). Both of these coefficients show a decrease compared to our basic model. The white - 1970 coefficient decreases .047, and the race coefficient a more substantial .554. This indicates that the component arrest rates of the Violent Index do contribute to our understanding of the black white difference in deadly force usage. At the same time, we need to note that the white-1970 coefficient is still reliably different from zero; that is, if whites experienced no arrests for Violent Index crimes, they would still experience a non-zero deadly force rate. The rate coefficient is still 1.45, which indicates that if blacks experienced no arrests for Violent Index crimes, they would still experience an estimated 1.45 more events of deadly force (per 100,000 population) than the non-zero white experience.

Table XI presents the results of adding all seven component index crimes to the basic model. We conducted this analysis because of the mixture of positive and negative effects found within the Violent Index and the Property Index.

This analysis suggests that robbery and larceny are the only two component crimes of the Index whose arrest rates are associated with deadly force. Note that burglary, which had been reliable when only the components of the Property Index were entered, no longer is related to deadly force rate. This reflects its high correlation with robbery (.74 for black arrests rates, .71 for white arrest rates). When robbery is entered into the model, knowing the burglary rates provides no additional information. Robbery arrest rates, on the

TABLE XI

The Impact of the Addition of the Component Crimes of
the Total Index Arrest Rate to the Basic Model

Year	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	Black	White	Difference
1970	2.08	.45	1.63
1979	1.14	.51	.63

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.451	3.114	.002
Race (0-white,1-black)	1.634	6.142	.000
Time	.007	.261	.794
Race x Time	-.112	-2.953	.004
Murder	.004010	1.158	.247
Rape	-.002578	-1.031	.303
Robbery	.001462	3.103	.002
Aggravated Assault	.000122	.325	.746
Burglary	.000180	.373	.710
Larceny	-.000287	-2.248	.025
Auto	-.000662	-1.423	.156

R^2 for Model = .213

Degrees of Freedom = 10.871

F for Model = 23.58

N = 882

Significance Level for this Model = < .000

Source: 1/14/82

other hand, continue to be associated with deadly force rates even when burglary arrest rates are controlled, or their effect eliminated.

The white-1970 coefficient is marginally higher in this model than in our basic model (.45 vs .38), while the race coefficient is 1.63, intermediate between that coefficient in the basic model (1.99) and in the model in which only the components of the Violent Index arrests are included (1.45). Even with all seven component-arrest rates of the Index Arrest rate separately added, we still find a non-zero white deadly force rate and a substantially higher black deadly force rate if there were no arrests for any Index crimes. Clearly the components of the Index are not adequate to fully explain deadly force rates, nor the difference between the black and white rates. At the same time, two component arrests, robbery and larceny do contribute to our understanding of both of these issues. The race by time coefficient in the model (-.112) is somewhat lower than it was in our basic model (-.129). It nevertheless reveals a drop in the difference between the white and the black rates from 1.63 to .63 from 1970 to 1979.

The last three models we have discussed are somewhat problematic. All three of these component analyses (Index, Violence Index, and Property Index) contain individual arrest terms which are not themselves reliably related to deadly force. The inclusion of these kinds of terms can influence the exact estimates of coefficients and hence need to be eliminated. They are necessary intermediate steps in testing, but do not represent final models for adoption.

5. Arrest Rates for Robbery and Larceny

Tables XII and XIII present the individual analysis of the contribution of robbery larceny, respectively, to our basic model of race, time, and the race by time interaction.

Table XII reveals the by now familiar pattern. Zero robbery arrests

TABLE XII

The Impact of the Addition of the Robbery
Arrest Rate to the Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	1.93	.34	1.59
1979	.87	.38	.49

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.340	2.50	.013
Race (0-white,1-black)	1.588	6.93	.000
Time (years)	.005	.19	.849
Race x Time	-.122	-3.37	.001
Robbery Arrest Rate	.000934	3.22	.001

R^2 for Model = .202

Degrees of Freedom = 4,877

F for Model = 55.37

N = 882

Significance Level for this Model = < .000

Source: 1/14/82: 1

TABLE XIII

The Impact of the Addition of the Larceny Arrest
Rate to the Basic Model

Adjusted Deadly Force Rate per 100,000 Population

<u>Year</u>	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.55	.42	2.13
1979	1.50	.51	.99

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.424	3.01	.003
Race (0-white, 1-black)	2.129	9.72	.000
Time	.010	.38	.701
Race x Time	-.127	-3.49	.001
Larceny	-.000127	-1.29	.198

R² for Model = .194

Degrees of Freedom = 4,877

F for Model = 52.68

N = 882

Significance Level for this Model = < .000

Source: 1/16/82: 1

leaves a non-zero white deadly force rate, and a statistically significantly higher black deadly force rate. The difference between the black and whites rates declines from 1.59 to .49 from 1970 to 1979. Robbery arrests contribute to our understanding of deadly force ($R^2 = .202$ vs $.192$ in basic model). They explain part of the higher deadly force rate for blacks because of higher black robbery arrest rates (1.59 vs 1.99 in basic model). The lack of interactions (not displayed) suggest that robbery arrests rates do not have different relationships to black and white deadly force rates. (Here again, as we saw with the Violent Index arrests earlier, the race by time and the time by robbery arrests interaction are such that the choices are indeterminate as to which one is included in the model, but one may by).

Table XIII shows that larceny arrests, considered without controlling for other arrests, bear a non-reliable relationship to deadly force. Since we have seen that larceny is reliably related when other arrest rates are included in the model, its effect is suppressed by the uncontrolled variation in these other rates. This is not surprising, since robbery, for example, is positively related to deadly force, while larceny is negatively related.

Table XIV presents the analysis of the simultaneous effects of robbery and larceny upon the deadly force rate. This model improves our overall understanding of deadly force ($R^2 = .210$) compared to our basic model ($R^2 = .192$) and compared to our earlier model of Violent Index arrests ($R^2 = .194$). While the R^2 is slightly lower than the R^2 of the model containing the seven individual components of the Index arrest rates ($R^2 = .213$), it attains this level with five fewer predictor variables, and hence is much more parsimonious.

Perhaps the most noticeable aspect of this table is that one of the arrest variables, robbery, behaves as one would expect, while the other, larceny, does not. Robbery is a serious crime, involving violence, and is one in which the

TABLE XIV

The Impact of the Simultaneous Addition of Robbery
and Larceny Arrest Rates to the Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.19	.44	1.75
1979	1.24	.53	.71

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.445	3.18	.002
Race	1.753	7.46	.000
Time (years)	.010	.39	.697
Race x Time	-.116	-3.20	.001
Robbery Arrest Rate	.00134	4.19	.000
Larceny Arrest Rate	-.000319	-2.96	.003

R^2 for Model = .210

Degrees of Freedom = 5,876

F for Model = 46.44

N = 882

Significance Level for this Model = < .000

Source: 1/14/82: 1

apprehension of the alleged offender, especially during or directly after the commission of the crime, may involve some risk to the officer. As such, it is an arrest situation which might well be productive of incidents of deadly force. So the positive relationship between robbery arrest rate and deadly force rates is not surprising, even though we recognize that many incidents of deadly force arise from other precipitating events.

Larceny, while a serious crime, does not involve violence, nor is it a crime for which the arrest situation is particularly dangerous. Yet it is related to deadly force. The fact that its relationship is negative - higher rates of larceny associated with lower rates of police use of deadly force - only compounds the surprise.

It might be tempting to argue that the negative relationship between larceny and deadly force reflects a reversal of the usual relationship we have assumed to this point. One might argue, for example, that deadly force drives the larceny rate, rather than the reverse. This argument would imply that high deadly force rates keep larceny down and low deadly force rates allow larceny to flourish. However, tempting this might be to some crime prevention theorists, it would be difficult to maintain this position without similiarly arguing a causal reversal for robbery arrest rates. This would leave us in the position of arguing that a higher rate of deadly force suppresses larceny, but promotes robberies.

We are at a loss to account for this negative relationship between arrest rates for larceny and the deadly force rate. We can construct some third factor arguments involving characteristics of police departments which lead them to have high deadly force rates and low larceny arrest rates. There may be characteristics of communities which produce this result. But we frankly think these are too speculative to merit serious discussion without

some empirical support. For the present, we shall simply accept the empirical relationship; however puzzling it might be.

If we turn our attention to the differences in the black and white deadly force rates, we again find that the black deadly force rate is statistically significantly higher than the non-zero white rate, taking the effects of robbery and larceny arrests into account. The coefficient for the race term here is 1.753, a bit lower than the 1.994 of our basic model. The reader will recall that the race coefficient for the (non reliable) model with larceny arrests only was 2.129, while for the (reliable) model with robbery arrests only it was 1.588. This suggests that the decrease in the coefficient for the two arrest models is primarily to robbery arrests; in fact larceny arrests might increase the expected difference.

The interaction between race and time is again reliable, with a coefficient of $-.116$. This produces a predicted decrease in the difference between the black and white deadly force rates from 1.75 to .71 over the decade of the seventies.

The model containing both robbery and larceny arrests produced another situation of indeterminate choice among interactions. The quadruple and triple interactions for this model were not reliable, nor were any of the two way interactions when all were entered. When the interactions of race and time ($t = -1.83, p < .07$), robbery and time ($t = -1.85, p < .07$) and larceny by time ($t = 1.91, p < .06$) were included in the model, but all other two-way interactions excluded, a curious pattern emerged. The race by time interaction continues to suggest a decrease over time in the difference between black and white deadly force rates. The robbery by time interaction suggests a weakening in the relationship between robbery and deadly force over time, as we saw earlier. The larceny by time interaction, however, suggests an

increasing relationship between larceny arrest rates and deadly force rates as we move through the decade of the seventies.

These interactions, it must be stressed, do not survive all the appropriate controls, which is why the choice of which one to include in the model is indeterminate. We could offer a model containing all three, but this would horrendously complicate our subsequent analyses because of the multiplication of tests it would require. Financial and time constraints did not allow the division of the data set into two five year blocks and full replication of the analysis on each block. We suspect, based upon the opposite effects of the robbery by time and larceny by time interactions, that this might be a useful inquiry. It might reveal some very real differences in the patterns of deadly force rates and their relationship to other variables.

In line with our earlier discussion, we shall continue to present the model containing the race by time interaction.

6. Arrest Rates for Violent and Property Crimes, Simultaneously Added

Table XV displays the results of adding both the Violent Index arrests and Property Index arrests to our basic model. The results of this analysis remarkably parallel the results of our just completed analysis of the effects of robbery and larceny arrests. This is not surprising, since our earlier detailed analysis suggested that robbery is the main force in the Violent Index, and larceny plays the same role in the Property Index.

The coefficients shift a bit, but in general this analysis suggest that the arrests for Violent Index and Property Index crimes add to the explanation of deadly force. There is non-zero white deadly force rate and a significantly higher black deadly force rate when there are zero arrests for Violent and Property Index crimes. The difference between blacks and whites is quite similar to the difference in the model containing robbery and larceny arrests,

TABLE XV

The Impact of the Addition of Violent Index
and Property Index Arrests to the Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.22	.44	1.78
1979	1.11	.48	.63

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 Adj. mean for whites	.439	3.09	.002
Race (0-white,1-black)	1.783	7.54	.000
Time (years)	.004	.17	.866
Race x Time	-.128	-3.53	.000
Violent Index Arrest Rate	.00074	3.80	.000
Peoperty Index Arrest Rate	-.00022	-2.63	.009

R^2 for Model = .205

Degrees of Freedom = 5,876

F for Model = 45.28

N = 882

Significance Level for this Model = < .000

Source: 1/12/82: 4

and this difference similarly declines from 1970 to 1979. As with robbery and larceny, this decline is somewhat blurred by the alternative possibilities that the Violent Index's relationship to the deadly force rate weakened over time, while the relationships of the Property Index to deadly force strengthened over time.

Robbery arrests are highly correlated with the Violence Index. If we examine the ten year average across cities, the correlation of the robbery arrest rate with the Violence Index arrest rates is .91 for whites and .92 for blacks. The same analysis yield a correlation of .95 for whites and .93 for blacks between larceny arrests and Property Index arrests. Our preference is to focus upon the specific crimes for which the rates of arrest are associated with deadly force. We present the results of the analysis using the Violent and Property Indices primarily to show the parallelism. Readers who are more comfortable thinking of these results in terms of the Violent and Property Indices are cautioned to keep in mind the nonsignificant (and even opposite sign for burglary and rape) relationships of the other component arrest of these Indices to deadly force.

7. Summary of Arrest Rates

We began with a basic model predicting deadly force as a function of race, year and the interaction between them. This model accounted for 19.2% of the variance in deadly force, indicating a substantially higher (1.994 deaths per 100,000 population in 1970) death rate for blacks, but with this difference declining a net of .122 a year to .84 by 1979.

We find that neither total arrest rate, nor its categorization into Index and Other arrests contributed to our understanding of deadly force, to the racial disparities in deadly force, nor to the decline in racial disparities over time. The Violent Index does contribute to the explana-

tion of deadly force, and accounts somewhat but by no means fully for the racial disparities. There is at least a suggestion that the weakening correlation between Violence Index arrest rates and deadly force rates is associated with the declining racial difference over time. The Property Index arrest rate, on the other hand, contributes nothing to our understanding of deadly force rates.

Analysis of the components of these two Indices shed further light on deadly force rates. Among the crimes contained in the Violent Index, arrests for robbery is the major actor. This accounts for the positive relationship between the Violent Index and deadly force in spite of the negative relationship between the Violent Index and deadly force in spite of the negative relationship between one of its components (rape) and deadly force. The Property Index, on closer examination, appears to have been self-suppressing, because of the significant, but opposite signed relationship of two of its components to deadly force burglary (positive) and larceny (negative). When all seven components of the Total Index are entered, robbery (positive) and larceny (negative) emerge as the significant factors with regard to deadly force.

Robbery arrests and larceny arrests contribute to understanding deadly force (R^2 increases to .210). They also account for some of the black-white differences in deadly force rates (coefficient reduces from 1.99 to 1.75). The decrease in the difference between the black and white deadly force rate may be associated with the weakening relationship between robbery arrest and deadly force rates over time, and the strengthening of the association between larceny arrests rates and deadly force rates over time. There is a greater discrepancy between black and white arrest rates for robbery than for larceny.

Finally, while models incorporating either the Violent Index and Property

Index arrests or robbery arrests and larceny arrests produce very similar results, we opt for the later model. This is because of the more precise information it conveys and the likelihood that the former model will result in erroneous understanding of the relationship of arrest rates for other components of the Violent and Property Indices to deadly force.

D. Models Incorporating Reported Crime Rates

Two arguments have been made for the inclusion of reported crime rates, as opposed to actual arrest rates, in the analysis of deadly force. The first takes the form of the culture of violence argument, and holds that police will reflect the level of violence of the community they serve. A community which sanctions high levels of violence, as indicated by its crime rate is likely to be treated with high levels of violence by the police. The police reflect the level of violence of the community they serve.

The second argument suggests that high levels of community violence require higher levels of violence on the part of the police in controlling community violence. The first argument, then, stresses police violence as reflecting the level of violence normative to the service community, while the second suggests that police violence is a necessary response to the level of violence in the service community.

We feel that the second argument is more appropriately tested with arrest data; since these are better indicators of the frequency of police contact with incidents with higher likelihood of violence. On the other hand, if crime rates are related to deadly force, after arrest rates have operated, this would seem to be persuasive evidence of the first argument.

We would add a third argument as to why crime rates might be related to deadly force rates. We would argue that crime rates might operate through

a more psychological mechanism. Cities, or community, characterized by high crime rates are cities in which the police face a high level of job pressure, regardless of the actual arrest rates. Moreover, these cities are ones in which the police are likely to have higher levels of fear and apprehension for their personal safety. High crime rates increase perceived pressure, fear and apprehension. These psychological stresses in turn increase the likelihood that an officer will resort to deadly force. If fear and apprehension are more often responses to black citizens, or if they are perceived to be less able to protect themselves from police violence, the racial differences in the impact of crime rates might well be observed.

It must be stressed that the simple explanation of whether crime rates are related to deadly force will not allow the separation of which of these explanations of that relationship are more or less accurate. All propose to explain the relationship, and if the relationship exists, the reader will be left with choosing among them based on their persuasiveness, rather than by any empirical findings,

1. Models Adding Crime Rates to the Basic Model.

Table XVI presents the results of adding the reported rates of each of the seven Index Crimes to the basic model (race and time effects). The R^2 of this model is .207 higher than the .192 for the basic model. Of the seven components of the Index, only the reported crime rate for burglary approaches significance, and it just misses the conventional level of statistical significance ($t = 1.956, p < .051$).

The coefficients for race, time and the race by time interaction are little altered by the addition of the crime rate variables. The coefficient for white, however is dramatically altered. The addition of the crime rate variables yields a model which predicts a deadly force rate for whites which

TABLE XVI

Impact of Addition of Reported Rates of Seven
Index Crimes to Basic ModelAdjusted Deadly Force Rate Per 100,000 Population

<u>Year</u>	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.03	-.01	2.04
1979	.82	.00	.82

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	-.010	-.042	.963
Race (0=white, 1=black)	2.037	10.993	.000
Time	.001	.039	.969
Race x Time	-.135	-3.865	.001
Homicide Rate	.000820	.431	.667
Rape Rate	-.000609	-.191	.849
Robbery Rate	-.000037	-.723	.471
Aggravated Assault Rate	-.000042	-.236	.814
Burglary Rate	.000199	1.956	.051
Larceny Rate	-.000011	-.225	.822
Auto Theft Rate	.000058	.570	.569

R² for Model = .207

Degrees of Freedom = 10,929

F for Model = 24.22

N = 940

Significance Level for Model = < .000

Source : 1/27/82: 4

is not reliably different from zero, if all crime rates were zero.

Analyzing each of these crime rates, and the Property, Violence, and Total Index added to the basic model one at a time does not alter this picture. Only burglary ($t = 2.637, p < .009$) and the Property Index ($t = 2.085, p < .038$) are significant even without controlling for the effects of other crime rates.

2. Crime Rates Added to Expanded Model

Table XVII displays the results of adding the burglary crime rate to our expanded model of race, time, robbery arrests, and larceny arrests. The burglary crime rate survives controls for the two arrest rates, and the R^2 for the model is .218, compared to .210 for the expanded model without burglary crime rate. This suggests that we need to add it to our model. It does contribute to our explanation of deadly force, above and beyond that portion accounted for by race, race by time, and the arrest rates for robbery and larceny.

The addition of the burglary crime term to the expanded model alters the value of some of the coefficients compared to the model without this term. Both the coefficient for whites and the one for blacks change, and there is some change in the coefficient for the larceny arrest term.

First, the coefficient for the burglary crime rate is itself reliable and positive. That is, the higher the rate of reported burglaries in a city year, the higher the deadly force rates. This is the case after controlling for the robbery arrest rate which, we saw earlier, is highly correlated with the burglary arrest rate. So simply knowing the reported burglary crime rate tells us something about the deadly force rate even through we have controlled for arrest rates which serve as an indicator of actual encounters.

Second, the model now predicts a deadly fact rate for whites which is not

TABLE XVII
 Impact of Addition of Reported Burglary Crime Rate to
 Expanded Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	1.87	.02	1.85
1979	.82	.00	.82

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.024	.126	.900
Race (0=white, 1=black)	1.853	7.855	.000
Time	-.003	-.1105	.912
Race x Time	-.115	-3.187	.002
Robbery Arrest Rate	.001326	4.174	.000
Larceny Arrest Rate	-.000409	-3.684	.001
Burglary Crime Rate	.000229	3.121	.002

R² for Model = .218 Degrees of Freedom = 6,875
 F for Model = 40.71 N = 882
 Significance Level for Model = < .000

Source: 1/27/82: 4

reliably different from zero when the two arrest rates and the burglary crime rate are set at zero. The coefficient for blacks increases marginally, from 1.75 to 1.85. This term, indicates the difference between the white and black predicted rate. Since the white coefficient in this model is .024, as compared to .445 in the expanded model without reported burglaries, however, the predicted level of the black deadly force rate in 1970 drops from 2.19 to 1.87.

Third, the coefficient for the larceny arrest rate term is larger than in the expanded model without the reported burglary crime rate (-.000409 vs. -.000319). The control for burglary crime rate, then strengthens the negative relationship between the larceny arrest rate and the deadly force rate.

The introduction of the burglary term has little impact upon the time, race by time, or robbery arrest rate terms. The model still indicates that the deadly force rate for blacks declines over the decade, and more strongly than the rate for whites. The robbery arrest rate continues to have a strong, positive impact upon the deadly force rate.

3. A Model Incorporating Interaction Between Crime Rate and Race.

Table XVIII presents the analysis of the expanded model with the interaction of the burglary crime rate and race included. That is, this model separates the effects of the burglary crime rate upon the white deadly force rate from its effect upon the black deadly force rate. While the interaction term does not quite attain the conventional level of reliability ($t = 1.779$, $p < .076$), it is close enough in our judgement to merit discussion.

The coefficients for the burglary term (i.e. its impact upon the white deadly force rate) and for the burglary rate by race interaction term (i.e. the difference in its impact upon black versus white deadly force rates) reveal an interesting possibility. The data suggest that there may be a difference

TABLE XVIII

Impact of Addition of Burglary Crime Rate and Its Interaction
with Race to Expanded Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	1.66	.27	1.39
1979	.48	.225	.256

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.274	1.148	.252
Race (0=white, 1=black)	1.387	3.937	.001
Time	.005	.206	.838
Race x Time	-.131	-3.525	.001
Robbery	.001310	4.126	.001
Larceny	-.000436	-3.899	.001
Burglary Crime Rate	.000109	1.090	.276
Burglary Crime Rate x Race	.000253	1.779	.076

R^2 for Model = .221

Degrees of Freedom = 7,874

F for Model = 35.44

N = .887

Significance Level for Model = < .000

Source: 6/28/82: 1

in the impact of burglary crime rate upon the deadly force rates for whites and blacks. While technically these tests tell us that the impact of burglary rate upon the white deadly force rate is itself reliable ($t = 1.090$, $p < .276$), the difference of the impact for blacks from the impact for whites is quite close to reliability. This suggests that blacks may pay a penalty for reported burglaries in the form of a higher deadly force rate, but there is no suggestion that whites pay such a penalty. When we ignore race, as in Table XVII, we see that there is a relationship between deadly force and reported burglaries. At the very least, if there is a race difference, it is because blacks pay a penalty whites do not.

If we trust this model as acceptable, there are some interesting observations to make. First, this model has the smallest race term (i.e. difference between white and black rates in 1970) we have seen - 1.387. Secondly, the predicted difference for 1979 is also the smallest produced by any of these models - 0.256. This is because the race by burglary term is accounting for or explaining some of the racial difference in deadly force rates.

Recall that our race term describes the difference between black and white deadly force rates when all other components of the model have been controlled or eliminated. It turns out that if we allow the burglary crime rate to operate separately on black and white deadly force rates, we find that its impact is much larger on the black deadly force rate. The burglary crime rate by race term, which describes its impact upon black deadly force, has a coefficient about two and one-half times that of the burglary crime rate coefficient, which describes its impact on the white deadly force rate (.000253 vs. .000109). Setting the burglary crime rate at zero, then, lowers the race coefficient (the difference between black and white rates) more than it lowers the white rate itself.

In this sense, then, the difference in the effect of burglary crime rate upon the black and the white deadly force rate explains or accounts for some of the originally observed differences between these rates. If we adopt this model then we can account for some of the racial differences in deadly force incidence through the difference in the effect of the burglary crime rate upon the two rates. Blacks pay a higher penalty (in terms of deadly force rates) for increases in the rate of reported burglaries than do whites.

Why this should be, is a difficult question to answer. Some people view burglary as a violent crime, and for those observers any of the three proposed explanations may be persuasive. If we view burglary as a property offense, without a significant violent dimension, then probably the third explanation a variety of stresses upon the police, and fear and apprehension attached more strongly to blacks involved in incidents than to whites - is probably more persuasive.

We find this nearly significant interaction of race and the reported burglary crime rate intriguing, and its potential for accounting for some of our initially observed racial differences promising. Nevertheless, we must recognize that this model fails to meet conventional levels of significance. Consequently, we will tentatively adopt the model in Table XVII, which enters the reported burglary crime rate without the interaction term. Unfortunately time and resources do not allow us to perform all subsequent analyses on both the models in Table XVII and the one in Table XVIII, which incorporates the interaction term.

4. Summary of reported crime rates

Examination of the separated crime rates for the seven Index crimes (by which data were available) indicates that the reported crime rate for burglary has the most nearly reliable effect. Addition of this term to an

expanded model reliably increases the variance explained.

The interaction of reported crime rate and race suggests that blacks may pay a higher penalty from white for increases in the burglary crime rate. This result, however, falls just short of conventional standards of reliability, and so we shall pursue an expanded model which adds the burglary crime rate, but not its interaction with race, to our model of race, time, race by time, robbery arrests, and larceny arrests.

E. An Examination of Clearance Rates

We have found that the arrest rate for robbery is positively associated with the deadly force rate in our sample of 54 cities over the decade of the seventies. We have also found that larceny arrest rates are negatively associated with deadly force rates, and that the reported burglary crime rate is positively related to deadly force.

Earlier, we accepted the standard interpretation of the relationship between robbery arrest rates and deadly force rates. This interpretation treats an arrest for robbery as a situation of elevated risk of a deadly force encounter because suspects involved in such situations are more likely to be armed and dangerous. The negative relationship of arrests for larceny and the deadly force rate clearly does not admit of this interpretation and we tentatively treated it as an empirical finding with no ready explanation. The positive relationship between the burglary crime rate and the deadly force rate allows three possible interpretations: first, the police replicate the normative level of violence characteristic of the service community; second, the police must necessarily escalate the violence of their response to control a more violent service community; a third the police experience high levels of stress in communities with high crime rates, and stressed police officers more often and more rapidly resort to force, including deadly force.

At this point we would introduce the argument that the level of stress experienced by police officers, either generally or situationally is likely to be related to the type of crime in question. Thus robberies may be situationally stressful, and high numbers of reported burglaries generally stressful. Larcenies, on the other hand, may not be particularly stressful in either case. We should note that ultimately

the general stress associated with a crime is probably a reflection of the concern and outrage it elicits from the community, whether directly or indirectly through the mass media.

This argument suggest that general stress might well be better indicated by the clearance rate for reported crime, rather than the crime rate itself, or by the arrest rate for a particular crime. Given a particular level of reported crime, the arrest rate per reported crime may tell us something about the general hue and cry the community directs at the police department and hence something about the general stress experienced by the police. Hence, we would expect clearance rates to be negatively related to deadly force rates.

1. Models Adding Clearance Rates to the Basic Model and Expanded Models

Table XIX displays the results of adding the clearance rates for the seven index crimes to our basic model. The clearance rate is defined by the number of reported arrests for crime, divided by the number of reported instances of that crime.

At the broadest level, we note that none of these clearance rates obtain conventional levels of significance. Moreover, of the four we might most expect to elicit community concern, and hence be sources of stress, two (homicide and robbery) are positively while two (rape and burglary) are negatively related to deadly force. All four yield values of t less than one.

Clearance rates for auto theft and for larceny are both in the predicted direction, and come closest to attaining conventional significance. This is small comfort for our stress hypothesis, however, since these are the two of the seven index crime whose clearance rates might be expected to bear the weakest relationships to community reaction, and hence to police stress.

When we add these clearance rates to our expanded model, either as a group or in subsets, there are no effects which approach significance. We present the effects of clearance rates added to the basic model in Table XIX simply for informational purposes.

2. Models Incorporating Interaction Between Clearance Rates and Race

Table XX presents the final results of a series of analyses examining

TABLE XIX

Impact of the Addition of Clearance Rate for Seven Index Crimes to the Basic Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.00	.56	2.00
1979	1.52	.68	.84

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.563	2.106	.036
Race (0=white, 1=black)	2.002	10.363	.000
Time	.013	.485	.628
Race x Time	-.129	-3.537	.001
Clearance Rate - Homicide	.082968	.385	.701
Clearance Rate - Rape	-.023226	-.076	.940
Clearance Rate - Robbery	.17649	.365	.716
Clearance Rate - Aggravated Assault	.26020	1.006	.315
Clearance Rate - Burglary	-.63904	-.593	.554
Clearance Rate - Larceny	-1.3649	-1.405	.161
Clearance Rate - Auto Theft	-14.168	-1.749	.081

R² for Model = .199

Degrees of Freedom = 10,865

F for Model = 21.49

N = 876

Significance Level for Model = < .000

Source: 2/2/82: 1

the effects of different models allowing for interaction between clearance rate and race. The results of these analyses were quite consistent in identifying the interaction of the larceny clearance rate and race as the only significant predictor of deadly force when added to the basic model. However, when the interaction of race and the larceny clearance rate is added to the expanded model, it just falls short of conventional significance levels ($t = 1.862$, $p < .07$, Table XX)

Since the interaction of race and the larceny clearance rate may shed some light on the possible racial dynamics of deadly force, it merits discussion even though we shall not add it to our expanded model. The situation with this interaction is the same as we previously encountered with the interaction of the burglary crime rate and race. The effect just misses the .05 level of significance, and thus conservatively we exclude it from our model. At the same time, it might contribute to our understanding of racial difference in deadly force experience. Consequently, we do not want to apply too rigidly a somewhat arbitrary statistical standard, and ignore the possible explanatory utility of the interaction.

The effect of the larceny clearance rate upon deadly force for whites is positive, but not reliable (t less than one). The effect for blacks, on the other hand, is nearly reliable, and moreover is negative. That is the higher the larceny clearance rate, the lower the deadly force rate for blacks. Alternatively, the lower the larceny clearance rate, the higher the deadly force rate for blacks.

The coefficient for the model presented in Table XX illustrate the impact of the interaction of larceny crime rate and race. Recall that the predicted rates displayed in the top portion of the table present the effects of race and year with all other variables in the model (robbery arrests, larceny arrests, burglary crimes, and the two components of the larceny clearance rate) set at zero. If we compare these predicted rates with those displayed in Table XVII, we see that the effect of adding the interaction of race and larceny clearance rates is an increase in the predicted rates for blacks, and a decrease in the predicted rates of whites. This results in an increase in the difference between the rates for blacks and whites. This is true even if we treat the empirically impossible, but statistically predicted, negative rates for whites as zero.

TABLE XX

The Impact of the Addition of the Larceny Clearance Rate and its Interaction with Race to the Expanded Model

Adjusted Deadly Force Rate per 100,000 Population

<u>Year</u>	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.24	-.24	2.48
1979	1.16	-.27	1.43

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	-.237	-.736	.462
Race (white = 0, black = 1)	2.474	6.119	.000
Time	-.003	-.104	.917
Race x Time	-.117	-3.240	.002
Robbery Arrest Rate	.001292	4.015	.001
Larceny Arrest Rate	-.000381	-3.258	.002
Burglary Crime Rate	.000232	2.980	.003
Larceny Clearance Rate	1.245	.995	.320
Larceny Clearance Rate x Race	-3.266	-1.862	.063

R^2 for Model = .222

F for Model = 31.01

Significance Level for Model = < .000

Degrees of Freedom = 8,867

N = 876

Source: 6/28/82: 2

This increase in the difference between blacks and whites occurs because we set the larceny clearance rate at zero. Since the white rate is positively, though weakly and unreliably, related to the larceny clearance rate, it is predicted to be lower than we observed it to be in Table XVII. For blacks, on the other hand, the stronger and nearly reliable effect of the larceny clearance rate is negative. Therefore, when we set the larceny clearance rate at zero for blacks, we see an increase in the predicted deadly force rate compared to the model in Table XVII, which does not include these terms.

It is worth commenting that the values of coefficients other than the race coefficients are little effected by the inclusion of the larceny clearance and race interaction. Our understanding of the impact of time, the interaction of race and time, arrest rates for robbery and larceny and the burglary crime rate upon deadly force are little influenced by the addition of the interaction of the larceny clearance rate and race to our model. The shifts in these coefficients may safely be described as trivial.

The reader must be careful not to infer that we have detracted from our understanding of racial differences in deadly force because the difference in the coefficients for whites and blacks have increased. In earlier discussions, our use of smaller differences in these coefficients as indicative of increased understanding, was predicated upon the terms having the same relationship to deadly force for blacks and whites. Here, the fact that the larceny clearance rate is positively related for blacks forces these coefficients in opposite directions, and hence produced a larger difference, even though our understanding of the racial difference in deadly force is enhanced.

We earlier saw that blacks possibly pay a higher penalty in deadly force rates than do whites when the rates of reported burglaries rises. Here we see that blacks possibly pay a higher penalty in deadly force rates than do whites when the larceny clearance rate is low. Conversely, blacks might benefit more, in terms of deadly force, than whites if the burglary crime rate drops and the larceny clearance rate increases. Since

blacks in either case still experience higher levels of deadly force than whites do, our emphasis would be on first way of describing these results.

3. Summary of Clearance Rates

When we ignore interaction of clearance rates with race, clearance rates for larceny and auto theft are most likely to be associated with deadly force rates, although both fail to add reliably to the explanatory power of either our basic or expanded model. When interaction with race are considered, the interaction of the larceny clearance rate with race adds reliably to our basic model, but just fails to add significantly to our expanded model. This nearly reliable interaction suggests that larceny clearance rates are positively and weakly related to deadly force for whites, and negatively more strongly related to deadly force for blacks.

Our interest in clearance rates is rooted in their utility as stress indicators. Even if we ignore the general failure of these rates to predict deadly force, the pattern of relationships between the clearance rates and deadly force is somewhat counter intuitive to our expectation under a stress hypothesis. The interaction of the larceny clearance with race however, suggest that the larceny clearance rate is negatively related to deadly force for blacks. While this is the expected direction, the fact that it is the larceny clearance rate, rather than the robbery or burglary clearance rate, which is related to deadly force leaves open the questions of whether it really represents support for the stress hypothesis.

F. Models Incorporating Data on Police Experience

Virtually any hypothesis suggesting that the police respond to stress, apprehension, or concern for their own safety would lead us to expect that the level of assaults experienced by the police might, relate to levels of deadly force usage. Hypotheses which suggest that the police model the behavior of the service community, or must adjust the violence of their own behavior to match that of the service community would also lead us to expect that violence directed at the police would lead to violence by the police. Moreover, in this case it has been argued that the reverse causal direction may play a role. That is, the level of police violence elicits violence

from the service community. All these arguments suggest that there is a positive relationship between the violence experienced by the police and the violence of their own actions and/or responses.

We also examine here the influence of size of police force relative to population. We do this to examine the possibility that relative availability of potential users of deadly force is itself related to deadly force. Our expectation here is not strong, simply because we have no way to control for organizational characteristics, such as command/patrol ratios, or deployment policies, which we suspect are more important in examining this relationship than the simple rates of police to population.

1. Addition of Police Experience to Basic Model

The addition of officer experience variable to the basic model adds nothing to our understanding of deadly force. The R^2 for this model is .194, compared to .192 for the basic model without police experience variables (Table XXI). For that matter there is little if any change in the coefficients for the white, black, time or black time terms compared to the basic model. The predicted 1970 mean for whites is no longer reliably different from zero, which reflects the larger standard error of the estimate more from the actual change in the coefficient (drops from .376 to .310 with addition of police experience variables).

2. Addition of Police Experience Variable to Expanded Model

Addition of all police experience variables to the expanded model does not increase the variance explained. However, when we selectively drop out police experience variables, we do find that the officer death rates, added to the basic model approaches significance as long as other police experience variables are not controlled, this result is displayed in Table XXII.

Here again we face the quandry of a nearly reliable finding of some interest. As before, we shall discuss the observed effect, but not add it to our expanded model.

The addition of the nearly reliable term for officer death rate has virtually no impact at all upon the coefficients in our expanded model (Table XXII), nor upon our predicted black and white deadly force rates for 1970 and 1979. To the extent that it relates to deadly force, it does not alter our earlier results. The effect as expected under any argument is

TABLE XXI

Impact of the Addition of Officer Experience Rates to the Basic Model

Adjusted Deadly Force Rate per 100,000 Population

<u>Year</u>	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	2.31	.31	2.00
1979	1.13	.33	.80

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.310	1.393	.164
Race (0 = white, 1 = black)	2.000	9.613	.000
Time	.002	.057	.955
Race x Time	-.133	-3.498	.001
Sworn Officers (per 100,000 pop.)	.000348	.677	.499
Officers Killed	.008228	.306	.760
Officer Assaulted and injured	-.000673	-.757	.449
Officers Assaulted, not injured	.000456	1.175	.241

R² for Model = .194

F for Model = 27.411

Significance Level of Model = < .000

Degrees of Freedom = 7,748

N = 806

TABLE XXII

Impact of Addition of Officer Death Rate to Expanded Model

<u>Year</u>	<u>Adjusted Deadly Force Rate per 100,000 Population</u>		
	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	1.85	-.01	1.86
1979	.79	-.04	.83

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	-.008	-.041	.968
Race (0 = white, 1 = black)	1.858	7.851	.000
Time	-.004	-.1448	.885
Race x Time	-.114	-3.169	.002
Robbery Arrest Rate	.001344	4.227	.000
Larceny Arrest Rate	-.000421	3.286	.001
Burglary Crime Rate	.000234	3.188	.002
Officer Death Rate	.68970	1.774	.077

R² for Model = .220

F for Model = 35.235

Significance Level for Model = < .000

Degrees of Freedom = 1,872

N = 880

Source: 1/27/82: 3

positive: the higher the rate of police deaths, the higher the rate of deadly force usage.

3. Models Incorporating Interaction Between Police Experience and Race

When we turn to examine interaction effects, we find no interaction between race and these police experience variables. This is the case whether entered multiply or singularly, to the basic or to the expanded model. So knowing the police experience for our cities during the decade of the seventies does not help us understand differences in racial experience of deadly force, while earlier evidence suggested that blacks might pay a higher penalty in terms of deadly force for reported burglaries or a low larceny clearance rate, there is no evidence that such a differential exists for police ratio, assaults upon police whether involving injury or not, or for police line-of-duty deaths.

4. Summary of Police Experience

Knowledge of the ratio of police to community size, the assault rate upon police, or the line-of-duty death rate of officers does not help us understand either the overall level of deadly force usage nor the differentials in deadly force experience between blacks and whites. This is somewhat surprising in view of the multiplicity of reason for expecting at least the first relationship to exist.

The officer death rate, it should be emphasized, just misses conventional levels of statistical significance, and is in the expected direction. Unfortunately, our data does not really allow sorting out the reasons for this relationship, even were we to treat it as a reliable result.

G. Summary of Traditional Predictors

We have now presented the results of analysis of arrest rates, reported crime rates, clearance rates, and officer experience for our 54 cities over the decade of the seventies. A number of results of this analysis bear upon our understanding of deadly force.

Our expanded model incorporates, in addition to the race and time effects of our basic model, terms for the robbery arrest rate positive,

the larceny arrest rate (negative) and the burglary reported crime rate positive. The R^2 for this model is .218, compared to an R^2 of .192 for basic model.

At this point our model predicts a zero deadly force rate for whites when these factors are held at zero, but a substantial non zero rate for blacks. At the same time, these terms do not alter our expectation under the basic model that black, white differences in deadly force experience lessened over the decade of the seventies. None of these terms interact with race, and therefore there is no suggestion that they differentially explain the experiences of blacks and whites. So while they contribute to our overall understanding of deadly force, they have little impact in explaining or helping us understand racial difference in deadly force.

A fourth factor-- the line-of-duty death rate of police officers --just misses conventional reliability levels. This factor may contribute to our understanding of deadly force rates, but it offers no insight into racial disparities.

Two other factors--the interaction of race with reported burglaries and also with the clearance rate for larcenies--falls just short of statistical significance at conventional levels. The interaction of race and reported burglaries suggests that blacks may pay a higher penalty in terms of deadly force for reported burglaries than do whites. Consequently, a decrease in reported burglaries decreases the predicted racial difference in deadly force. So, too, the interaction of race with the larceny clearance rate suggests blacks may pay a deadly force penalty while whites do not for low clearance rate for larcenies. Consequently, increases in larceny clearance rates decreases the predicted racial differences.

In sum, then, the traditional predictors of deadly force yield much more specific and less frequent relationships to deadly force rates than expected. Not all arrests, not even all arrests for either Index or Violent crimes, predict deadly force. Moreover, one of the two arrest variables which does predict deadly force is negatively related to it. Further, the reported level of crime adds to our prediction of deadly force, even though the actual rate of arrest for the crime does not. These factors have little utility for helping us to understand racial

differences in deadly force, although they do help us somewhat in understanding the overall deadly force rate for both blacks and whites. An alternative construction and examination of these factors is presented in Appendix III for the interested reader.

The two nearly reliable interactions suggest blacks pay a penalty in terms of deadly force rates for both reported burglaries and larceny clearance rates, over and above any part of the differential arrest for by other terms in the model. Most importantly, differential arrest rates bear little relationship to racial differentials in deadly force experience.

H. Non-Traditional Predictors of Deadly Force

1. Introduction

The particular thrust of work by the National Urban League, Inc. on the issue of deadly force is the exploration of why there is such a large difference in the rates of deadly force experienced by black and white citizens. The first part of our analysis, the examination of what we have called traditional predictors, has shown that these traditional predictors do little to explain racial difference in rates of deadly force. Their role in predicting deadly force in general is also weaker than previous analyses have suggested or assumed.

This leave an obvious question--if differences in involvement in crime or in particular crimes, and the resultant arrest encounters do not explain racial differences, what does? We have argued that blacks are more likely to die from police use of deadly force for a variety of reasons. A police officer is more likely to be apprehensive in an arrest encounter with a black, and more likely to fear that the black citizen is armed and dangerous. The community characteristics of areas of our cities which are predominately black are likely to reinforce these feelings, as well as providing continuing sources of pressure and strain upon the officers. We have further argued that these feelings are less likely to exist, or at least less likely to convert to action, in cities in which blacks more fully participate in the general life and activities of the community. Whether this results from less prejudiced attitudes on the part of officers, less actual threat to officers, or simply because blacks in such communities have the influence to lessen the frequency with which

such feeling are converted to action is debatable. Moreover, it probably varies from one community to the next, and may well reflect the length of time blacks have had access to such political, economic, and social participation.

We turn now to examining these hypotheses, again cautioning the reader that some of the data utilized here reflect scattered years, exhibit high rates of missing data, and are occasionally perceptual in nature.

2. The Influence of Political Participation

We have four measures of the political participation of blacks in the community. The first is whether the mayor of a city was black or white in a given year. The second is the rate of election of black judicial officials, and the third, the rate of election of black city council members. The fourth is a perceptual measure--the rating of the political participation of blacks in the city, on a scale from one to seven, anchored by "poor" and "excellent". These perceptions were collected from the local directors of Urban League affiliates in early 1982. Thus they are some what removed from the relevant time period, in that they are anchored in a specific time, rather than spanning the years.

Our expectation is that political participation or influence in the city, either generally or in the area of law enforcement, will lessen the rate of police use of deadly force against blacks, and thus reduce racial disparities in its incidence.

None of these four predictors reveal a reliable relationship to total deadly force rates, nor do they exhibit an interaction with the black and white deadly force rates. The perceptual measure and the rate of black participation in the judiciary display positive, but highly unreliable, associations to both the overall level of deadly force and the black rate of deadly force. The election of a black mayor and the rate of black participation show negative, but again quite unreliable relationships to both total and black deadly force rates.

The closest any of these variable came to significance is the election of a black mayor, which shows a very weak negative relationship with total deadly force ($t = -1.351$, $p < .179$), when both it and the rate of black judiciary are added to the expanded model. These results are

not presented because they are weak, and moreover, the number of city-years available for the black judiciary rate numbers but 170.

The reader may rest assured that we examined these data in every-imaginable way. We compared the perceptual measure to the 10 year average for deadly force, the two five year averages, and to each year separately. We formed numerous subsets of the data for every control we could reasonably expect to mask a basic relationship. In sum, as best we can judge, black political participation, as far as it is revealed in these measures, has no discernible impact upon deadly force rates or the differences between them. We recognize the limits of these measures--either because of their nature or because of the high rate of missing data they imposed upon analysis--and hence are not ready to recommend abandonment of this line of inquiry.

At the same time, we stress that the addition of these variables, either singularly or in differing combinations, does not alter the basic relationships displayed in the expanded model (Table XVII). They did not clarify our understanding of deadly force, but neither did they obscure nor alter an understanding of the relationship of traditional predictors to deadly force.

3. The Influence of Economic Participation

The failure of our survey to produce adequate data for analysis was perhaps most detrimental to our analyses in the area of economic participation. This left us with three measures of economic participation--the unemployment rate, the perceptual rating of black economic participation by our affiliate directors, and the rate of black-owned business for one year.

The unemployment rate simply washed out. It shows no reliable relationship to total or race-differentiated deadly force rates, whether added to the basic or expanded models. Nor does it show any evidence of interaction with race. Our unemployment data covered only a subset of years and cities, so the available number of cases fell to 530.

The perceptual measure of black economic participation shows a weak but unreliable tendency to interact with race in influencing deadly force when added to our basic model. The t value for the interaction with race $t = 1.537$ ($p < .13$). However, this effect is clearly not needed when added to the expanded model. Moreover, since it is a perceptual measure, it

is unclear whether black economic participation, as perceived, influences deadly force, or if deadly force influences the perception of economic participation.

Our resources for analysis unfortunately were exhausted before we could complete analysis of the data on black owned business.

We would recommend against abandonment of this line of research at this point. Our data and measures in this area were notably weak, and to interpret them as indicating no effects of economic participation would be hasty in our view.

4. The influence of Social Participation

The perceptual rating of social participation by our affiliate Directors is the only measure of social, or more broadly, institutional participation available to us. Measures of participation in areas such as housing, education, and so forth, were unavailable, either because of insufficient data on our questionnaire, or because of insufficient resources for thorough analysis.

The rating of social participation shows the expected negative relationship, to deadly force when added to our expanded model, but it is not reliable ($t = -1.369$, $p < .172$). So, too, the interaction with race suggests a stronger negative impact for blacks, but fails to approach significance.

5. Summary of Nontraditional Predictors

Our analysis of nontraditional predictors neither adds to nor alters the results of our expanded model displayed in Table XVII. At the same time, the weaknesses of the data, their incomplete analysis, and the pattern of the nonreliable results suggest that this topic merits further inquiring.

I. Overall Summary of Results

Our final model for explaining deadly force rates, includes a term for race, time, the interaction of race and time, the arrest rate for larceny, the arrest rate for robbery, and the rate of reported burglaries. Terms which approached statistical significance, but failed to attain it, included the interaction of race with reported burglaries and with larceny clearance rates, and the officer death rate.

These results were evaluated with the time term allowed to assume a non-linear form, with cities entered as individual factors, and with the elimination of possible outliers which might distort the overall relationships. Cities were also entered so as to allow for examination of regional influence upon these results. The results are quite robust, and are not substantively altered by any of these operations.

In terms of substantive significance, the discovery that only two arrest rates are related to deadly force, and that one arrest rate (robbery) is positively, and one (larceny), negatively related to deadly force is quite important. So, too, the "negative" result that differences in arrest rates for blacks and whites bear little relationship to differences in deadly force rates is important in view of the assumptions prevalent in the extant literature.

The result that a level of reported crime, for burglary, is related to deadly force, even when controlling for arrest encounters, is noteworthy. It does suggest that police may react to more than merely the circumstances of the moment in exercising deadly force.

Perhaps most importantly, we have found that there is an enduring racial difference in deadly force rates, that this difference appears to have lessened, although by no means disappeared, over the decade of the seventies, and that it is not accounted for by either the traditional or non-traditional factors we examined.

The two nearly reliable interactions suggest that blacks may pay a higher penalty in terms of deadly force than do whites for reported burglaries and for the larceny clearance rate. These variables suggest that perhaps the behavior of the police officer is more at issue than most recent reviews of deadly force suggest is the case. So, too the results of our examination of larceny and robbery arrests in contributor-

ial fashion (see Appendix III), suggest that blacks pay a higher deadly force penalty than do whites for the same behavior.

The relationship of officer death rate to deadly force is not surprising. But it raises again the issues of which comes first; are police officers more likely to be killed in cities with high deadly force rates, or are they more likely to kill in cities in which they are more likely to be killed themselves?

The failure of our non-traditional predictors to show a relationship to deadly force is disappointing. We would stress again, however, the relatively weak measures and large amounts of missing data associated with these analyses.

In sum, our analyses identify two arrest rates which are indeed related to deadly force, although in opposite directions. These offer no evidence that they account for racial differences in deadly force, however. We identified one crime rate, which independently of its associated arrest rate, also predicts deadly force rates, though not racial differences therein. Overall, we attain a fair level of prediction with these three terms, added to the race and race by time interaction. We made little headway, however, in accounting for the observed racial differences in deadly force rates.

1

Chapter V

FINDINGS AND RECOMMENDATIONS

In the previous chapter we presented the results of the analysis of arrest rates, reported crime rates, clearance rates and officer experience for our 54 cities over the decade of the seventies.

The following is a list of the findings and recommendations.

FINDINGS

1. There is a significant differences between black and white deadly force rates, and the difference has decreased from 1970 to 1979. The decline in the black, white difference is produced by the decrease over time in the rate of deadly force usage against blacks, rather than an increased usage against whites.

2. The total arrest rate does not predict the deadly force rates, nor does it alter the impact of race and the race by time interaction upon these rates, nor help to explain them. In other words total arrest rates do not seem related to deadly force rates for either black or white citizens nor do they explain the race difference.

3. The Index crime arrest rates for blacks and whites are not predictive of deadly force rates, nor does it help to explain the difference in the rates of deadly force between blacks and whites. It also does not help to explain the declining difference over time.

Although we never expected difference in any kind of arrest rate to account for more than a small portion of the difference between black and white deadly force rates, we are surprised that the Index arrest rate so totally fails to shed any light on this question.

4. The Violent Index arrest rate does contribute to our understanding of deadly force variations. It also accounts for a small portion of the difference in the rate of usage against whites and blacks, although controlling for it leaves a much larger black/white difference unexplained and race is still our single best predictor of deadly force variations.

5. The Property Index arrest rate is not predictive of deadly force rates, nor does it alter the importance of race, time and races by time.

6. Within the Violent Index arrest rates robbery is the component that accounts for the positive relationship between the Violent Index and deadly force rate.

7. The examination of the reported crime rate for each of the seven Index crimes indicated that they was not related to the deadly force rate. The burglary rate had the most nearly reliable effect.

The interaction of the reported crime rate and race suggests that blacks may pay a higher penalty from whites for increases in the burglary crime rate; however this result falls short of conventional standards of reliability.

8. The aggregate clearance rates for reported crime is not related to the rate of deadly force usage against either black or white victims of police use of deadly force. However, the nearly reliable interaction suggests that larceny clearance rates are positively and weakly related to deadly force for whites and negatively and strongly related to deadly force for blacks.

9. The assault rate upon police and the line-of-duty death rate of police officers is not related to the deadly force rate of either black or white deadly force victims. Nor are the assault and death rates of police officers related to the differential in deadly force rates between blacks and whites.

10. Our expanded model indicates a positive relationship between robbery and burglary and deadly force usage and a negative relationship between larceny and police use of deadly force which helps us in our understanding of deadly force usage, but they do not help us understand the differential use of deadly force against black and white citizens.

11. The number of sworn police officers (potential deadly force users) was found not to be related to the police use of deadly force.

RECOMMENDATIONS

1. The decrease in the difference between black and white deadly force rates does not make us terribly optimistic that this problem is self-correcting. Rather, we think it is important information, and people working in the area need to be aware of it. Perhaps some case studies, or limited sample studies of cities whose discrepancies in rates have decreased would provide useful information in addressing and further resolving this large remaining difference in racial rates of deadly force usage.

2. The police use of deadly force ultimately is an issue of police community relations; therefore we would recommend that the police focus more attention on this aspect of their profession not only in training but in their daily activities with the black community.

Police community relations must go beyond citizen merely cooperating with the police in crime related situations.

It has been estimated that approximately 80% of police work is service in nature and 20% is related to criminal investigation and apprehension. The police should assure that their activities reflect a work distribution breakdown that is similar to these percentages.

By providing more service in the community we believe that the police/community relationship will be altered and strengthened.

3. Training programs for police should have a heavy emphasis upon service work in the community, because as mentioned previously it is such a time consuming and important aspect of the officers responsibility. By expanding the training aspects of service by the police we believe it would improve the overall performance of the individual officers and his ability to handle police/community relations.

4. Despite the limited success of Human Relations training in the past we believe that training in this area needs to be re-thought and constructed in a manner which is related to the safety of both the police and the community.

Furthermore the importance of the training should be emphasized by both the police administration and local police union.

Appendix I

Relationship Among Various Measures of
Racial Disparities in Police Use of Deadly Force

A note on measures and their meaning:

These studies provide the information to report a comparative representation measure. This measure is based upon percentages, and therefore controls or eliminates variations among the different data bases in their actual rates or absolute numbers of deadly force incidents. This measure then, summarizes how differential the experience of the two racial groups are but explicitly eliminates the actual frequency of police use of deadly force against members of each racial group.

An alternative measure, which compares the rates of police use of deadly force against the member of each racial group, directly reveals the level of police use of deadly force against each racial group. This measure, the simple difference in the black and white rates of deadly force use, controls the variations in population size (because the denominators of the rates use the population of each group). But it directly reflects differences among cities, or other units of analysis, in the comparative level of deadly force usage. In this sense, it is a measure of adverse impact - it assesses the excess deaths (on a per population basis) one race experiences compared to the other.

If we have a city with 500,000 population, 20% of which is black, with 10 black and 5 white deaths due to police use of deadly force, the comparative representation measure tells us that the city is characterized by an over-representation score of + 46.7% (66.7% of deaths less 20% of population). The difference in rates measure tells us that blacks experience 10 deaths, and whites 1.25 deaths, per 100,000 population, yielding a difference of 8.75%.

Blacks, that is experience an excess 8.75 deaths per 100,000 population compared to whites. If that same city had reported 20 black and 10 white deaths, the representation score would remain the same (66.7% - 20%), but the differences score would increase to 17.5 excess black deaths (20 black and 2.5 white deaths per 100,000 population).

Both measures are useful. One, the comparative representation, allows comparisons uninfluenced by levels of actual usage, and hence reveals differentials in usage regardless of absolute level of usage. The other, the difference in rates, reveals the adverse impact upon the affected group of the level of use of police deadly usage, but also total level of usage.

A third measure is sometimes used in these kinds of comparisons and often in the deadly force literature. This is the ratio of the rates for each group. This expresses the ratio in the odds that a given number of each group will experience police use of deadly force. For a number of reasons, we find this the least attractive comparative measure. The first reason is that these deadly force events are statistically "rare events". We are dealing with very small numbers which tend to fluctuate on a year to year basis. A given city with the same number of black deaths in two successive years, and an increase from one to two white deaths will, by this measure, have reduced its deadly force problem - in fact, if population number and ethnic composition remain constant, it will have cut the ratio of black to white deaths in half. Since fluctuations of such magnitude are frequent, large shifts in this measure can be expected.

The second reason for objecting to this measure is first it eliminates the differing level of the two deadly force rates from the comparison, just as the comparative representation measure does. This does not make it "wrong", but in our judgement, it makes it a measure of differential application of

deadly force in the two groups, and thus reflects the difference in, as well as the absolute level of the two rates.

The third reason is that for two cities with the identical difference between the black and white deadly force rates, and therefore the same adverse impact, this measure will assign the city with the lower rates the higher ratio of black to white deadly force rates. Again, this is not "wrong", but we feel it is quite subject to various misunderstanding and misinterpretation. Consider two cities of 600,000 population, 50% black and 50% white in ethnic make-up. One city records 18 black and 3 white deaths due to police use of deadly force, while the other one records 30 black and 15 white deaths. The first city has a black death rate of six black deaths and one white death per hundred thousand population, the second city has 10 black and five white deaths per hundred thousand. In each city, the black population experiences an excess five deaths per hundred thousand population, and the difference in rates measure would assign the same value to each. The ratio of the rates, however, would assign a ratio of 6:1 to the first, but 2:1 to the second which has higher absolute rates. Again, both measures are "right", but they tell us different aspects of the situation. As a general measure, we prefer the one which indicates overall adverse impact as the primary measure.

Finally, because of the intense emotions surrounding the issue of police use of deadly force, we feel a measure which tends to produce high absolute ratios because of the small numbers involved serves to influence rather than inform. Moreover, we feel it may lead to a misidentification of cities or units as to their relative level of the problem. The eight cities whose ratios are presented by Robin (1963:p.229) and reproduced by Takagi (1974:p.30) yield a much different ran-ordering of the degree of seriousness of the problem if we examine difference scores. Boston, with 3.1 excess black deaths per million

population, is reported to have a ratio of 25.2: 1 (sic), while Kansas City, with 14.8 excess black deaths is reported to have a ratio of rates of 7.5: 1 (sic). We would identify Kansas City as having the more serious problem,

This discussion of the alternative measures available for assessing differing experiences of black and white populations with respect to deadly force may appear to be a quibble, but it is not. It is important to recognize that all three measures - the comparative representation, the difference in rates, and the ratio of the rates - reveal different aspects of the problem. They are not the same, and only under very restrictive circumstance can we even expect the first two to yield the same score. That means we need to be careful in reviewing separate studies which report different measures lest we treat differences in these measures as necessarily reflecting real differences.

The following analysis traces the relationship between the comparative representation and difference in rates measures.

Relationship Between the Comparative Representation
Measure and the Difference in Rates Measures of
Ethnic Differences of Deadly Force

Given:

Experience

Number

	Deadly force events	Population on Arrestees
Black	<u> a </u>	<u> b </u>
White	<u> c </u>	<u> d </u>
Total	a+c	b+d

Then the difference in rates is given by:

$$D = \frac{a}{b} - \frac{c}{d}$$

(1)

The comparative representation measure is given by:

$$C = \frac{a}{a+c} - \frac{b}{b+d}$$

$$= \frac{ad - bc}{bd}$$

(2)

$$= \frac{a(b+d) - b(a+c)}{(a+c)(b+d)}$$

$$= \frac{ad - bc}{bd}$$

(3)

$$= \frac{ad - bc}{(a+c)(b+d)}$$

Since the numerators of the expressions in (3) above are the same, the expressions can be made equivalent by multiplying either one by the appropriate ratio of the two denominators [bd , $(a+c)(b+d)$]. Thus

$$(4) \quad \frac{ad - bc}{bd} \times \frac{bd}{(a+c)(b+d)} = \frac{ad - bc}{(a+c)(b+d)}$$

$$\frac{ad - bc}{(a+c)(b+d)} \times \frac{(a+c)(b+d)}{bd} = \frac{ad - bc}{bd}$$

Equation 4, in words, says that the derived form (3) of the difference in rates, multiplied by the ratio of its denominator to the denominator of the derived form of the comparative representation measure (3), yields the derived form of the comparative representation measure.

Equation 5, in words, says that the derived form (3) of the comparative representation measure, multiplied by the ratio of its denominator to the denominator of the derived form of the difference in rates (3), yields the derived form of the difference in rates measure.

Understanding the differences between these two measures requires us to examine more closely the ratios of their denominators, since this expression converts one measure to the other. The expression bd is simply the size of the black population (b) times the size of the white population (d). The expression $(a+c)(b+d)$ is the total number of deadly force events times the total population. So the relationship between the difference in rates measure and the comparative representation measure has something to do with the relationship between the size of the population, its ethnic composition, and the frequency of deadly force events.

Before we explore the meaning of this further, let us note that either ratio of the two denominators of our derived measures has two shortcomings. First, they involve somewhat cumbersome quantities for calculation. Second, the numbers themselves are not intuitively appealing. We all have some sense of what a number like $\frac{a}{(a+c)}$ means: it is simply the proportion of all deadly force events experienced by black citizens. Multiplying the total number of deadly force events ($a+c$) times the total population ($b+d$) does not have this clear a meaning substantively.

This ratio, however, is equivalent to another ratio which is both easier to calculate and provides some substantive meaning:

$$(5) \frac{bd}{(a+d)(b+d)} = \frac{\frac{b}{b+d} \cdot \frac{d}{b+d}}{\frac{a+d}{b+d}}$$

$$(6) = \frac{bd}{(b+d)^2} \cdot \frac{b+d}{a+d}$$

$$(7) = \frac{bd}{(b+d)^2} \cdot \frac{b+d}{a+d}$$

$$(8) = \frac{bd}{b+d} \cdot \frac{1}{a+d}$$

$$(9) = \frac{bd}{(a+d)(b+d)}$$

If we examine the term

$$(10) \frac{\frac{b}{b+d} \cdot \frac{d}{b+d}}{\frac{a+d}{b+d}}$$

we see that the numerator is the proportion of total population ($b+d$) which black citizens (b) comprise times the proportion of population which white citizens (d) comprise. The denominator is the total deadly force rate: the total number of deadly force events ($a+d$) divided by the total population ($b+d$). We will call proportion black times the proportion white, or the "ethnic composition score" for a city "pbpw." We will call the total deadly force rate "TDFR"

This derived form of the ratio has a number of nice properties. First, it makes clear that the relationship between the difference in rates measures and the comparative representation measure is not influenced by the size of population, which appeared to be the case in equations (4) and (5) above.

Here we see that both terms of the ratio are divided by the total population of the city or other district. Hence, they are standardized, just as a proportion and percent are. We can compare cities or other districts of any size without the relationship between the measures being affected by differences in size. Second, the ethnic composition score--treating black and white populations as proportions of total population-- is intuitively clearer than multiplying the actual numbers of citizens of each group. Third, the deadly force rate, the division of deadly force events by population, is a much more familiar concept than the multiplication of events and population, as in (4) and (5) above.

What should be clear now is that the relationship between the difference in rates measure and the comparative representation measure is a combined function of the city or district ethnic composition and its total deadly force rate. Therefore, if we compare cities or districts which differ in either their ethnic composition or their deadly force rate, the amount of difference we observe will partially reflect our choice of measures. While this may appear to be undesirable, it is not. It simply requires us to keep in mind that the measures assess different aspects of the same problem, that these aspects are related, and that now we have a better understanding of exactly how they are related.

Since the relationship between the difference in rate measure and the comparative representation measure depends upon the ethnic composition score and the total deadly force rate, we can note some necessary properties of the relationship between the measures.

(A) *When $pbpw = TDFR$, then $C = D$.*

This follows from the fact that if $pbpw = TDFR$, then either form of the ratio will reduce to 1. Hence, $D = 1 = C$; $C = 1 = D$. This is not likely to

happen. If a city's ethnic composition is 50% black and 50% white, and the total rate is .25, then $O = D$. This is because $.5 \times .5 = .25$, hence the ratio of *pbpw* to *TDFR* ($.25 / .25$) is 1. Here, the level of disparate application of deadly force is the same as its total negative impact. Since *pbpw* will almost always be greater than *TDFR*, this equality is highly unlikely.

(B) *When pbpw > TDFR, then, to the same degree, C > D.*

Thus, a city with a total deadly force rate of .08 and a typical ethnic composition score (20% black, yielding *pbpw* = .16), will have a larger value of the comparative representation measure than of the difference in rates measure. This reflects the fact that whatever the level of disparate application of suspension may be, its total negative impact is comparatively lower. This in turn reflects the relatively low usage of deadly force in the city. Since deadly force rates usually contain at least four or five decimal places, this situation is especially likely.

(C) *When pbpw < TDFR, then, to the same degree, C < D.*

If we happen to examine a city with a fairly typical ethnic composition score (30% black, yielding *pbpw* = .21) but with a high total deadly force rate (*TDFR* = .53), we will find a lower level of disparate application of deadly force than we will find the total negative impact of deadly force to be. Here, the high usage of deadly force makes for greater negative impact with a lower level of disparate application. These situations of course, will hardly ever occur with deadly force.

(D) *Since the maximum ethnic composition score (pbpw) is .25, any time the TDFR exceeds .25, then the difference of rates measure will yield a larger numeric value than the disparity measure.*

It turns out that a city with 50% black and 50% white enrollment yields

a score of .25 ($.5 \times .5 = .25$). To the extent that these proportions depart from .5, the ethnic composition score will be lower. For example, if a city is 40% black (or white) and 60% white (or black), the ethnic composition score is .24 ($.4 \times .6 = .24$). This is just a special case of (C) above. Any time a city's deadly force rate exceeds .25, expect the difference of rates measure to yield a larger value. Again, this reflects the fact that a high deadly force rate requires a lower level of disparate application to produce a higher adverse impact. Again, we assume $TDFR = .25$ will never be found.

- (B) *If either the difference of rates measure or the comparative representation measure is numerically 0, then so must the other one be 0.*

This reflects the fact that the ratios of $pbpw$ and $TDFR$ multiplied by 0 will yield 0. This is a nice property, in the sense that we would expect there to be no disparate application when there is no adverse impact, and vice versa.

Has the quality of this relationship shifted in the past two years?

Yes _____ No _____ If yes, in what direction?

Check One:

From negative (poor or very poor) to positive (adequate, good or excellent) _____

From positive (adequate, good or excellent) to negative (poor or very poor) _____

Beyond your own knowledge and experience, on what basis do you make this observation about black relationships with police?

(Check where appropriate)

For positive-directed relationships

- _____ More black officer participation
- _____ Greater police visibility
- _____ Changes in police leadership
- _____ Changes in firearms or review policy
- _____ Changes or decreases in crime
- _____ Increases in manpower
- _____ Other (specify)

For negative-directed relationships

- _____ Changes in media coverage
- _____ Lack of police response
- _____ Police Attitudes
- _____ Changes in police leadership

BLACK PARTICIPATION QUESTIONS

1. I consider black participation in the political structure of my city as:

(Please circle the appropriate number)

<u>Extremely Poor</u>	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Very Good</u>	<u>Excellent</u>	<u>Not Sure</u>
1	2	3	4	5	6	7

2. I consider black participation in the economic structure of my city as:

(Please circle the appropriate number)

<u>Extremely Poor</u>	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Very Good</u>	<u>Excellent</u>	<u>Not Sure</u>
1	2	3	4	5	6	7

3. I consider black participation in the social structure of my city as:

(Please circle the appropriate number)

<u>Extremely Poor</u>	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Very Good</u>	<u>Excellent</u>	<u>Not Sure</u>
1	2	3	4	5	6	7

I - OVERVIEW

The attached package contains three (3) parts requesting information on black participation. Because we are seeking information for the period between 1968 and 1977, we ask you to confine your responses to this ten-year period. Further, please make certain that each respective year is matched exactly to the information and knowledge available for that year. In those cases where no information is available and/or no estimate can be made, we ask that you indicate this by writing N/A (not available) in the appropriate space for the year in question. Before you attempt to fill out these forms, please review the brief guidelines provided below.

II - GUIDELINES

1. Please remember that the reporting period is for 1968 to 1977 only. (Limit reporting to that period.)
2. Contact with and use of county, local and/or municipal data sources is imperative to reporting information.
3. Where actual data cannot be obtained from "official sources" we ask you to 1) ask them for a "best estimate" or 2) provide an Urban League "best estimate" since we recognize that, in some cases, actual data may NOT BE AVAILABLE OR ACCESSIBLE. When estimating, please INDICATE that the information is a BEST ESTIMATE.

*A suggested "best estimate" technique, to be used by the Urban League Affiliate, in the absence of both "official data" and "official best estimates," is to poll other local social welfare and civil rights agencies and attempt to obtain a "consensus best estimate."

4. The use of the BEST ESTIMATE technique should only be used when available data sources prove useless or incomplete.
5. All information reported should reflect only the geographic boundaries which constitute your city: when transferring information from local data sources, only include that which pertains to city boundaries and populations. "SMSA" and/or "central city" data may include more than one city - please be certain that data applies only to your city.
6. Please review each of the SUGGESTED DATA RESOURCES listed on the right side of the forms, as they may prove helpful when local agencies cannot provide information.
7. When assigning staff to complete this task or when attempting to provide a "best estimate" figure, it may be desirable to select or question an individual(s) with a working knowledge of the period in question (1968-1977) or someone who has collected information from city agencies in the past. For example, Urban League Guild members may be very helpful in this regard, or, as volunteers to acquire the information.
8. Please match appropriate year with appropriate data request.
9. Where indicated, please provide your own "best estimate" if you believe official statistics appear to over or underestimate black representation.
10. Where data is not available, please indicate with the notation N/A (not available).
11. Please indicate name of city on each form.
12. Please indicate date forms are received by the Affiliate, and the date forms are returned to NUL, where appropriate.
13. Should you have any problems or questions, please contact:

Mr. Joseph Aponte, Principal Investigator, NUL tele: 212/644-1294-1295.

*SMSA - Standard Metropolitan Statistical Area (as defined by Census Bureau)

14. Upon completion, please forward the entire package to:

Mr. Joseph Aponte, Principal Investigator
Police Use of Deadly Force Project
National Urban League, Inc.,
500 E. 62nd Street, 8th Fl.
New York, N.Y. 10021

"NOTE - PLEASE RETAIN A COPY OF ALL PAGES OF THIS QUESTIONNAIRE FOR YOUR RECORDS, AND TO FACILITATE ANY FOLLOW UP THAT MIGHT BE REQUIRED."

CITY Metropolis, Co. POPULATION STATISTICS

NAME & TITLE OF PERSON COMPLETING FORM:

NAME Walter Rose
 TITLE Assistant Director, Urban League of Metropolis County

PART II

PLEASE PROVIDE INFORMATION TO EACH POPULATION QUESTION LISTED BELOW.

BEGIN HERE

1. What was the total population for your city during the following year?

2. What % of Column 1 were black during the following year?

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
 (PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

	COLUMN 1	COLUMN 2
PLEASE RECORD SEPARATELY FOR EACH YEAR	<u>250,000</u>	<u>25%</u>
	1767	768
	<u>260,000</u>	<u>26%</u>
	1767	765
	<u>265,000</u>	<u>26%</u>
	1770	777
	<u>280,000</u>	<u>27%</u>
	1771	777
	<u>300,000</u>	<u>35%</u>
	1772	772
	<u>304,000</u>	<u>36%</u>
	1773	773
	<u>301,000</u>	<u>38%</u>
	1774	777
	<u>290,000</u>	<u>40%</u>
	1775	775
	<u>283,000</u>	<u>42%</u>
	1776	776
	<u>280,000</u>	<u>45%</u>
	1777	777

- SOURCE(S) USED
- 1) Local/City Planning Agency
 - 2) Regional Planning Agency
 - 3) State Planning Agency
 - 4) Local/State Health Agencies
 - 5) School Records
 - 6) University Research Dept. or Report/Study

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

- DATA ARE ACCEPTABLE
- DATA SOURCES ARE UNDERREPORTING
- DATA SOURCES ARE OVERREPORTING

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

SAMPLE

CITY _____ POPULATION STATISTICS

NAME & TITLE OF PERSON COMPLETING FORM:

NAME _____

TITLE _____

DATE RECEIVED _____ DATE RETURNED _____

PART II

PLEASE PROVIDE INFORMATION TO EACH POPULATION QUESTION LISTED BELOW.

BEGIN
HERE


1. What was the total population for your city during the following years?

2. What % of Column 1 were black during the following years?

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
(PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

PLEASE
RECORD
SEPARATELY
FOR EACH
YEAR

COLUMN 1

COLUMN 2

1968

1968

1969

1969

1970

1970

1971

1971

1972

1972

1973

1973

1974

1974

1975

1975

1976

1976

1977

1977

- 1) Local/city Planning Agency _____
- 2) Regional Planning Agency _____
- 3) State Planning Agency _____
- 4) Local/State Health Agencies _____
- 5) School Boards _____
- 6) University Research Dept. or Repositories. _____

SOURCE(S) USED

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

- _____ DATA ARE ACCEPTABLE
- _____ DATA SOURCES ARE UNDERREPORTING
- _____ DATA SOURCES ARE OVERREPORTING

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

CITY _____

EMPLOYMENT AND UNION PARTICIPATION

PLEASE PROVIDE INFORMATION TO EACH EMPLOYMENT AND UNION PARTICIPATION VARIABLE LISTED BELOW.

NAME & TITLE OF PERSON COMPLETING FORM:
 NAME _____
 TITLE _____

BEGIN
 HERE 

	1. Total number of persons unemployed during the following years?	2. What % of Column 1 were black during the following years?	3. Total number of workers (part/full time) reported as union members during the following years?	4. What % of Column 3 were black during the following years?
	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
PLEASE RECORD SEPARATELY FOR EACH YEAR	1968	142	1162	1968
	1969	145	1145	1969
	1970	150	1170	1970
	1971	150	1170	1971
	1972	172	1172	1972
	1973	113	1173	1973
	1974	174	1174	1974
	1975	175	1175	1975
	1976	176	1176	1976
	1977	177	1177	1977

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA. (PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

Employment

- * 1) Local/State Employment Office
- 2) Local/State Dept. of Planning
- 3) Census Reports (Public Library)
- 4) Federal Civilian Workforce Statistics
- 5) Equal Employment Opportunity Statistics
- 6) U. S. Office of Personnel Management
- 7) Anti-racismism program summaries
- 8) Office of Revenue Sharing
- 9) Work Experience and Earnings by State and area (U.S. Bur. of Labor Statistics)

SOURCES USED

Union Representation

- 1) AFL/CIO or Other Large Union(s) in city
- 2) Local Gov't contract negotiation units
- 3) Local labor industry council(s)

*When contacting labor departments, inquire about reports that may have been prepared for Affirmative Action Program Compliance, etc.

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO 1104 WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

- _____ DATA ARE ACCEPTABLE
- _____ DATA SOURCES ARE UNDERREPORTING
- _____ DATA SOURCES ARE OVERREPORTING

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCES(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

CITY _____

OCCUPATIONAL PARTICIPATION (PART 1)

NAME & TITLE OF PERSON COMPLETING FORM:

NAME _____

TITLE _____

PLEASE PROVIDE INFORMATION TO EACH OCCUPATIONAL PARTICIPATION VARIABLE LISTED BELOW.

BEGIN
HERE

	1. Total number of persons employed full time during the following years?	2. What % of Column 1 were black during the following years?	3. Total number of persons employed in professional, managerial, or technical roles during the following years?	4. What % of Column 3 were black during the following years?
	COLUPN 1	COLUPN 2	COLUPN 3	COLUPN 4
1968	1968	44	1968	44
1969	1969	46	1969	44
1970	1970	47	1970	47
1971	1971	47	1971	47
1972	1972	47	1972	47
1973	1973	47	1973	47
1974	1974	47	1974	47
1975	1975	47	1975	47
1976	1976	47	1976	47
1977	1977	47	1977	47

PLEASE
RECORD
SEPA-
RATELY
FOR EACH
YEAR

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
(PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

- 1) Local/State Employment Office
- 2) Local University Research Dept. (Sociology, Business, etc.)
- 3) Census - current population reports (Public Library)
- 4) Equal Employment Opportunity Reports

SOURCE(S) USED

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

____ DATA ARE ACCEPTABLE

____ DATA SOURCES ARE UNDERREPORTING

____ DATA SOURCES ARE OVERREPORTING

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

302

CITY _____ OCCUPATIONAL PARTICIPATION (PART 2)

NAME & TITLE OF PERSON COMPLETING FORM:
 NAME _____
 TITLE _____

PLEASE PROVIDE INFORMATION TO EACH OCCUPATIONAL PARTICIPATION VARIABLE LISTED BELOW.

BEGIN
 HERE

PLEASE
 RECORD
 SEPARATELY
 FOR EACH
 YEAR

5. Total number of persons employed in blue-collar occupations during the following years?	6. What % of Column 5 were black during the following years?	7. Total number of persons reported as part-time, seasonal or per diem workers (non-full time) during the following years?	8. What % of Column 7 were black during the following years?
COLUMN	COLUMN	COLUMN	COLUMN
1968	168	1968	1968
1969	1969	1969	1969
1970	1970	1970	1970
1971	1971	1971	1971
1972	1972	1972	1972
1973	1973	1973	1973
1974	1974	1974	1974
1975	1975	1975	1975
1976	1976	1976	1976
1977	1977	1977	1977

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
 (PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

- 1) Local/State Employment Office
- 2) Local University Research Depts. (Sociology, Business, etc.)
- 3) Census - current population reports (Public Library)
- 4) Equal Employment Opportunity Reports

SOURCE(S) USED

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

- _____ DATA ARE ACCEPTABLE
- _____ DATA SOURCES ARE UNDERREPORTING
- _____ DATA SOURCES ARE OVERREPORTING

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

CITY _____ BUSINESS/POLITICAL VARIABLES (PART I)

PLEASE PROVIDE INFORMATION TO EACH BUSINESS/
POLITICAL VARIABLE LISTED BELOW.

NAME & TITLE OF PERSON COMPLETING FORM:
NAME _____
TITLE _____

BEGIN
NOTE


PLEASE
RECORD
SEPA-
RATELY
FOR EACH
YEAR

1. What were the total number of businesses operating in your city during the following years?	2. What % of column 1 were black-owned during the following years?	3. What were the total number of businesses reported to be dissolved or bankrupt during the following years?	4. What % of Column 3 were black-owned during the following years?	5. How many persons were employed by municipal government in your city during the following years?	6. What % of Column 5 were black during the following years?
COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6
1968	168	1968	1968	1968	1968
1969	1969	1969	1969	1969	1969
1970	1970	1970	1970	1970	1970
1971	1971	1971	1971	1971	1971
1972	1972	1972	1972	1972	1972
1973	1973	1973	1973	1973	1973
1974	1974	1974	1974	1974	1974
1975	1975	1975	1975	1975	1975
1976	1976	1976	1976	1976	1976
1977	1977	1977	1977	1977	1977

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
(PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

- | | | |
|--|-------|----------------|
| 1) Local/city Planning Agency | _____ | SOURCE(S) USED |
| 2) State Planning Agency | _____ | |
| 3) Local Small Business Administration (Office of Minority Business Development) | _____ | |
| 4) Census Bureau Special Population Reports | _____ | |
| 5) Chamber of Commerce | _____ | |
| 6) Commercial Bank-Research Dept. or Community Development Dept. | _____ | |
| 7) Municipal Employees Union(s) | _____ | |

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED:

- DATA ARE ACCEPTABLE
- DATA SOURCES ARE UNDERREPORTING
- DATA SOURCES ARE OVERREPORTING

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

CITY _____ BUSINESS/POLITICAL VARIABLES (PART 2)

NAME & TITLE OF PERSON COMPLETING FORM:
 NAME _____
 TITLE _____

BEGIN
 HERE

PLEASE
 RECORD
 SEPA-
 RATELY
 FOR EACH
 YEAR

7. How many appointed non-civil-service assignments or positions were available in your city during the following year? COLUMN 7	8. that 7 of Column 7 were held by blacks during the following years? COLUMN 8	9. How many Rotary Club, Lions Club, Kiwanis Club members were in your city during the following years? COLUMN 9	10. that 7 of Column 9 were black during the following years? COLUMN 10	11. What was the total number of blacks belonging to black organizations i.e. Elks, NAACP, Urban League, Eastern Star, etc? COLUMN 11
1968	148	168	168	168
1969	165	165	166	165
1970	170	170	170	170
1971	171	171	171	171
1972	172	172	172	172
1973	173	173	173	173
1974	174	174	174	174
1975	175	175	175	175
1976	176	176	176	176
1977	177	177	177	177

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
 (PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

City Employment

- 1) Local gov't Agencies
- 2) Municipal Employees Union(s)

Fraternal Affiliations

- 1) Direct contact (a telephone call may be adequate)

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

DATA ARE ACCEPTABLE

DATA SOURCES ARE UNDERREPORTING

DATA SOURCES ARE OVERREPORTING

SOURCE(S) USED

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

CITY _____

HOUSING STATISTICS

NAME & TITLE OF PERSON COMPLETING FORM: _____

NAME _____

TITLE _____

PLEASE PROVIDE INFORMATION TO EACH HOUSING VARIABLE LISTED BELOW.

BEGIN
HERE
↓

PLEASE
RECORD
SEPA-
RATELY
FOR EACH
YEAR

	1. What were the total number of one/two family homes in your city during the following years?	2. What % of Column 1 were black-owned and occupied during the following years?	3. What was the total population living in public housing units in your city during the following years?	4. What % of Column 3 were black during the following years?
	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
1968	1968	1968	1968	1968
1969	1969	1969	1969	1969
1970	1970	1970	1970	1970
1971	1971	1971	1971	1971
1972	1972	1972	1972	1972
1973	1973	1973	1973	1973
1974	1974	1974	1974	1974
1975	1975	1975	1975	1975
1976	1976	1976	1976	1976
1977	1977	1977	1977	1977

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
(PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

- 1) City Planning Agency _____
- 2) Major lending institutions (banks, finance co., Savings & Loan Assoc., Credit Unions) _____
- 3) Census Bureau - current population reports (owner occupied units, etc.) _____
- 4) Local HUD office _____

SOURCE(S) USED

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

- ____ DATA ARE ACCEPTABLE _____
- ____ DATA SOURCES ARE UNDERREPORTING _____
- ____ DATA SOURCES ARE OVERREPORTING _____

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

CITY _____

INCOME STATISTICS

PLEASE PROVIDE INFORMATION TO INCOME STATISTICS VARIABLES LISTED BELOW.

NAME & TITLE OF PERSON COMPLETING FORM:

NAME _____

TITLE _____

BEGIN
HERE



- 1. Median family income during the following years?
- 2. Total number of families reporting income below median during the following years?
- 3. What % of Column 2 were black during the following years?

SUGGESTED DATA SOURCES

THE FOLLOWING INFORMATION SOURCES SHOULD BE CONSIDERED IN ATTEMPTING TO COLLECT DATA.
(PLEASE CHECK SOURCES WHICH ARE ACTUALLY USED.)

PLEASE RECORD SEPARATELY FOR EACH YEAR

COLUMN 1	COLUMN 2	COLUMN 3
1968	168	168
1969	165	165
1970	170	170
1971	170	170
1972	172	172
1973	173	173
1974	174	174
1975	175	175
1976	176	176
1977	177	177

- 1) City Planning Agency
- 2) Regional Planning Agency
- 3) State Planning Agency
- 4) Local/State Employment Office
- 5) Census Bureau - current population reports

SOURCE(S) USED

NOTE: PLEASE INDICATE BY PLACING A CHECK NEXT TO ITEM WHICH DESCRIBES QUALITY OF INFORMATION GATHERED.

- ____ DATA ARE ACCEPTABLE
- ____ DATA SOURCES ARE UNDERREPORTING
- ____ DATA SOURCES ARE OVERREPORTING

IF DATA ARE UNDER OR OVER REPORTED BY OFFICIAL SOURCE(S), PLEASE PROVIDE URBAN LEAGUE BEST ESTIMATE FOR THE YEARS IN QUESTION ON A SEPARATE SHEET.

CITY _____

REGARDING THE STRUCTURE AND COMPOSITION OF YOUR CITY'S
POLICE DEPARTMENT, PLEASE PROVIDE INFORMATION FOR QUESTIONS
LISTED BELOW.NAME & TITLE OF PERSON COMPLETING FORM:
NAME _____

TITLE _____

PART III

BEGIN
HERE

	1. What were the total number of sworn police officers in your police department during the following years?	2. What % of those sworn personnel were black during the following years?	3. What were the total number of police personnel at the rank of sergeant & above during the following years?	4. What % of Column 3 were black during the following years?	5. What were the total number of police personnel assigned to managerial/supervisory responsibilities during the following years?	6. What % of Column 5 were black during the following years?	7. What were the total number of police and civilian staff working in policy-making roles during the following years?	8. What % of Column 7 were black during the following years?	COLUMN 9	COLUMN 10
	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6	COLUMN 7	COLUMN 8	COLUMN 9	COLUMN 10
PLEASE RECORD SEPARATELY FOR EACH YEAR	1968	168	1968	1968	1968	1968	1968	1968	1968	1968
	1969	169	1969	1969	1969	1969	1969	1969	1969	1969
	1970	170	1970	1970	1970	1970	1970	1970	1970	1970
	1971	171	1971	1971	1971	1971	1971	1971	1971	1971
	1972	172	1972	1972	1972	1972	1972	1972	1972	1972
	1973	173	1973	1973	1973	1973	1973	1973	1973	1973
	1974	174	1974	1974	1974	1974	1974	1974	1974	1974
	1975	175	1975	1975	1975	1975	1975	1975	1975	1975
	1976	176	1976	1976	1976	1976	1976	1976	1976	1976
	1977	177	1977	1977	1977	1977	1977	1977	1977	1977

Does (city) _____ have a police, police-civilian or civilian complaint review mechanism, process or procedure? Yes No (If yes, check type and indicate year it began operating. More than one can be checked.)

A. Police complaint review (internal); year began _____

B. Police-civilian complaint review (internal); year began _____

C. Police-civilian complaint review (internal/external); year began _____

D. Civilian Complaint Review (external); year began _____

Describe the current complaint review process (i.e., who does investigations, what types of incidents are included and excluded, what actions can be taken (direct) or recommended (indirect), who is final authority, etc.)

Describe whether the above described process(es) have undergone extensive, significant change over the past ten years (1968-1977) or during the course of its existence. (Where available, please attach department guidelines concerning complaint review processes.)

Does this unit issue an Annual Report, or publish (i.e., make available to the public) statistics on complaint activity, particularly false arrest, excessive force, discourtesy, etc., and outcomes of the investigations?

Yes No

1. If your Department had or does operate a review process, how many police were assigned during the following years?	2. What % of Column 1 were black?
COLUMN 1	COLUMN 2
1968	1968
1969	1969
-	-
1970	1970
1971	1971
1972	1972
1973	1973
1974	1974
1975	1975
1976	1976
1977	1977

Does (city) _____ have a firearms discharge review mechanism, policy, process or procedure?

Yes _____ No _____

If yes, please describe and indicate the year it began operating: (Where possible, please attach copy of written guidelines governing firearms discharges)

Indicate if the above-described process has undergone extensive or significant change (and when) over the past ten years (1968-1977) or course of its existence.

If this unit has annual reports available, please ask for copies for the ten year period (1968-1977) and forward them to NUL in NYC.

1. If your Department operates a firearms discharge unit, how many staff were assigned during the following years?

2. What % of Column 1 were black during the following years?

1968

1968

1969

1969

1970

1970

1971

1971

1972

1972

1973

1973

1974

1974

1975

1975

1976

1976

APPENDIX III

An Alternative Construction of Arrests for Larceny and RobberyAn Alternative Construction of Arrest for Larceny and Robbery

We have seen that arrest rates for robbery and larceny help explain variation in rates of police use of deadly force across these large cities, although their relationships to PUDF are in opposite directions. So, too, arrests for violent and property index crimes are related to PUDF, although it is the case that robbery and larceny arrests are the major actors in the observed effects of these two indices.

It is neither surprising nor problematic that robbery arrest rates are positively associated with deadly force rates. If one argues that deadly force incidents are precipitated by an encounter between police and armed and dangerous suspects, then one would expect arrests for robbery to be more likely to produce such encounters than would arrests for auto theft, for example. This certainly agrees with anecdotal evidence from police experience, as well as with earlier research results. In fact, even if one argued that deadly force encounters were precipitated by the apprehensions and expectations of the police in a particular situation, rather than the actual behavior of the suspect, robbery arrest situations would still be among those most likely to result in deadly force. Whether we focus upon the actual behavior of the suspect, or the perceptions of the police, the higher the robbery arrest rate a city has, the higher the deadly force rate we would expect the city to experience. This is the case even though the observed relationship is not particularly strong, and of course, many incidents of deadly force occur in situations other than arrests for robbery.

It is, however, both surprising and problematic to find that larceny arrest rates are negatively related to deadly force rates. We certainly would not expect a strong positive relationship between larceny arrest rates and deadly force rates. Nothing in police lore or prior research would predict such a result. If we did find such a relationship, we would probably expect it to disappear when arrest rates for other crimes, which are correlated with those for larceny, were introduced as controls. Larceny arrests, then, are thought to fall into the category of arrest rates unrelated to deadly force rates.

On the otherhand, nothing in anecdotal evidence, prior research, or arguments relating arrest encounters to deadly force incidents because of either suspect behavior or officer perceptions would lead us to expect

any arrest rate to be negatively related to, or suppressing of, rates of deadly force. Were larceny arrest rates simply unrelated to deadly force, there would be no problem; that higher rates of arrest for larceny are related to lower rates of deadly force across these cities is puzzling.

One possibility is that some factor not included in our model is producing a spurious relationship between larceny arrest rates and deadly force rates. This is unappealing for two reasons. First, the immediate "family" of hypotheses which might provide such a third factor involve race. One might argue, for example that robbery is a "black" crime and larceny is a "white" crime, and since police are more likely to use deadly force against blacks than against whites, we observe a positive relationship between robbery arrests rate and deadly force, and a negative one between larceny arrest rate and deadly force rates as a function of the racial composition of these cities. These kinds of explanations are ruled out, however, by our use of population based rates. Moreover, we find no interaction between race and either of these arrest rates in acting upon the deadly force rate. So explanations based simply on race are rather persuasively ruled out.

Second, in view of this discussion, we find it difficult to imagine a third factor which would simultaneously account for the positive relationship of arrest rates for robbery and negative relationship of arrest rate for larceny to deadly force. We are not attracted by the option of treating the robbery arrest rate result as real, and rejecting the larceny arrest rate as spurious, unless theoretical considerations of empirical results persuasively argue that this is the actual situation. Lacking these, to affirm the results for robbery arrest rates, and to reject the results for larceny arrest rates suggests that data can only confirm our preconceptions.

Our analysis focuses upon comparative rates of arrests and deadly force across these cities. The fact that robbery arrests and larceny arrests rates are correlated (.431 for blacks, .324 for whites) is accounted for by the simultaneous entering of both rates in the analytic model. Yet there is another possible way in which the two arrest rates may be related.

Both robbery and larceny involve the taking of money or properties, although robbery involves a confrontation between the victim and the criminal. Since law enforcement officials and the community in general tend to be view

robbery as more serious in general, might not the relative frequency of these two crimes within a city have an impact upon the deadly force rate?

Since any given police officer is unlikely to make numerous arrests for either of these crimes, even in cities which have special units (such as robbery/homicide), it might be the case that the comparative frequencies between cities is less important than the composite of the arrests the individual officer is likely to make. It is noteworthy, for example, the Geller and Karales (1981, Table 1, p 89) find that the officers initial perception of the incident in which they shot civilians involved armed robbery 19.6% of the time, robbery 4% of the time, and no identified incidents of larceny. Given the greater frequency of arrests for larceny than for robbery in our sample (about 3:1 for blacks, about 10:1 for whites), it would not be surprising that a city's specific composition of such arrests would influence its deadly force rate.

This argument, then, suggests that whatever the arrest levels for these two crimes may be within a city, how they are distributed between robbery and larceny may be critical. Cities with a higher frequency of arrests for robbery relative to arrests for larceny are likely to have higher rates of deadly force, whether both arrest rates are low or high in comparison to other cities.

The mechanism we posit to account for this pattern, if it exists, is a psychological one. Whether or not the level of arrest activity is high or low compared to other cities is psychologically less "real" to the police than is the specific combination of arrests which confronts them. Whether an officer makes ten arrests or twenty may be less important than what percent of them are for crimes which he or she perceives are likely to involve a dangerous and or armed suspect.

Here we are arguing that the reality of the danger to the police - as represented by different rates of arrests - may be less important than their perceptions of danger based upon the composition of the arrests they make.

Table A in Appendix III display the results of this analysis. The variable we call "robbery percent" is simply the robbery arrest rate divided by the sum of the robbery arrest rate plus the larceny arrest rate. This effectively controls out both differences in absolute number and rate of arrests for each crime, and provides a measure of the proportion of robbery

and larceny arrests in a city which are due to robbery. The higher this proportion, the higher the deadly force rate, according to our argument.

The triple interaction of race, robbery percent, and time is not significant ($t = 1.253$, $p < .211$, analysis not shown) and hence is not retained in the model. Both two-way interactions involving robbery percent reach normal levels of statistical significance when controlling for each other, and hence both are retained in the model presented in Table A. The R^2 associated with this model is .213 only slightly elevated compared to the R^2 of .210 for the robbery arrests and larceny arrests model presented in Table XIV.

A number of aspects of these results merit comment. If we examine the coefficient for the deadly force rate against whites in 1970, adjusted to reflect the operation of factors in this model, we note that at .13 is considerably lower than it has been in any of an earlier models. In fact, for 1970, the introduction of robbery percent arrest and associated interactions reduce the coefficient for whites to a point that is not significantly different from zero. This indicates that our best-fitting model with robbery percent "predicts" a white deadly force rate within random variation limits of zero when robbery is a percent of robbery and larceny arrests is zero. The behavior of the coefficients for our time terms is altered in this model. While the size of the time coefficiently is not increased, it comes closer to being statistically reliable than in earlier models ($t = 1.686$ $p < .093$). The race by time term, on the other hand, is reduced by about half of its former size, and is no longer significant ($t = -1.422$, $p < .156$). The significant time term here is the interaction of time by robbery percent ($t = -2.110$, $p < .036$). The negative coefficient indicates that the relationship between the arrest variable, robbery percent, and deadly force is weakening over time. The time terms for whites and blacks continue to operate in opposite directions, with the white deadly force rate increasing and the black deadly force rate now remaining constant, but these terms only approach significance. Nonetheless the time term for white (.061) and the additional increment for blacks (-.062) now just about cancel out.

For whites, the relationship between robbery percent and deadly force

TABLE A

The Impact of the Addition of Robbery Arrests as a Percent of Robbery and Larceny Arrest to the Basic model.

Adjusted Deadly Force Rate per 100,000 Population

<u>Year</u>	<u>Black</u>	<u>White</u>	<u>Difference</u>
1970	1.15	.13	1.02
1979	1.15	.67	.48

<u>Variable</u>	<u>Coefficient</u>	<u>T-Statistic</u>	<u>Significance</u>
1970 mean for whites	.132	.613	.540
Race (0=white, 1=black)	1.022	3.338	.001
Time	.06	1.686	.092
Robbery Percent	2.222	1.425	.155
Race x Time	-.062	-1.422	.156
Race x Robbery Percent	2.800	1.984	.048
Time x Robbery Percent	-.472	-2.110	.036

R^2 for model = .213
 F for model = 39.54
 Significance level = < .000

Degrees of Freedom = 6,875
 N for test = 882

Source: 1/16/82: 1

approaches, but fails to achieve statistical significance ($t = 1.425$, $p < .155$). For blacks, on the other hand, the relationship is significant and significantly different from its relationship for whites ($t = 1.984$, $p < .048$). If we add the two coefficients, we find that the black deadly force rate increases by one death per hundred thousand population for every increase of about five in the percent of the combined arrests for robbery and larceny which are due to robbery.

The coefficient for the race term decreases substantially from 1.994 in our basic model, or 1.753 in our robbery plus larceny, model to 1.022 in this model. This term is still highly significant ($t = 3.338$, $p < .001$), indicating a recurring difference in the racial rates of deadly force not accounted for by terms in this model. At the same time, the differences associated with race are lower (1.02 in 1970, falling to .48 in 1979) than we have observed earlier.

The addition of the interactions associated with robbery arrests as a percent of robbery and larceny arrests then only marginally increases our understanding of the total problem of deadly force compared to a model which enters these two arrest rates separately ($R^2 = .213$ vs $.210$). It does, however, substantially reduce the variation in deadly force rates directly associated with race, as indicated by the sharp reduction in the race coefficient. The allocation of some of this variation to robbery percent indicates that some of the originally observed racial difference in deadly force rate is due to the different relationship of robbery percent to deadly force for blacks and whites. For blacks, increments in robbery percent are associated with increment in deadly force rates; for whites. They either are not, or at least, are less strongly and less reliably related than they are for blacks. (Since the t for whites is reliable at the .156 level, we wish to be cautious about asserting that it is in fact zero.) The originally observed decrease in racial differences over time are at least partially accounted for by the weakening relationship between robbery percent and deadly force over the decade of the seventies.

It is important that we emphasize the racial implications of this analysis. The weakening main effect of race, revealed by its lower coefficient here than in other models, is still highly significant. That

is, there are still large racial differences in deadly force unaccounted for by robbery percent. Moreover, to the extent that we have reduced the variation associated directly with race by introducing robbery percent, we have done so by identifying a factor which itself operates differently for blacks and whites. That is, the black deadly force rate is driven by robbery percent, while the white deadly force rate appears not to be. This means that the black population pays a penalty for the composition of black arrests for these two crimes, but the white population does not: that is itself a problematic racial difference. Simple difference in levels of robbery percent between blacks and whites do not account for differences in level of deadly force experienced, but rather there is a different relationship between robbery percent and deadly force rate for the two races. We are now faced with a choice between two models of about equal explanatory power for deadly force overall, which differ in their treatment of arrests for robbery and larceny. We opted to pursue the model which enters robbery and larceny arrests separately rather than robbery as a percent of both arrests. Since this later model seems to shed more light on the racial dynamics of deadly force some explanation is in order.

We feel that a model which treats the effects of robbery and larceny arrests separately, even with their opposite relationships to deadly force, is a more direct analysis and one which is more amendable to policy recommendations. The reformulation of these two arrest rates into a compound variable, while of analytic interest, rest on certain psychological assumptions which many members of our audience will find unpersuasive. So, for pragmatic reasons, we have elected to pursue the two variable, rather than the compound variable, model.

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Mr. CONYERS. Our next witness is Patrick Murphy, a former police chief in New York City and Detroit, Mich., the first administrator of the Law Enforcement Assistance Administration, and who now is the president of the Police Foundation and has been so for over a decade.

We have had him before our committee many times. He works with the Congressional Black Caucus' Criminal Justice Braintrust. He has many years of experience as a law enforcement officer; he started his career as a policeman on the beat. Among all the police chiefs that I have ever known, Patrick Murphy has worked harder to bring us all together to sit and examine these questions than anyone I've had the pleasure of working with.

We're glad to have you back, Chief Murphy, to talk to our committee this morning.

**TESTIMONY OF PATRICK MURPHY, PRESIDENT, POLICE
FOUNDATION, WASHINGTON, D.C.**

Mr. MURPHY. Thank you, Mr. Chairman. I very much appreciate those generous remarks.

It's a pleasure for me to be with your committee this morning because I've had the opportunity to change the use of force and use of deadly force policies in four police departments. I am especially proud of the work of the Police Foundation in making what I believe to have been breakthrough research when chiefs of seven police departments permitted us to examine for the first time their records and compare shooting rates in their cities.

I commend you for using this forum to bring to the Nation's attention the issues and problems surrounding police use of deadly force.

I have submitted a statement, Mr. Chairman. I would like to touch on a few of those major points.

In my testimony I propose to discuss, first, the use of force, then suggest ways by which the Federal Government can help to reduce the misuse of deadly force.

Society bestows on the police a unique authority to use force, including deadly force, so that the police can have measures of control in containing crime and maintaining order. But there is a compact involved. Society demands in return for this authority that the police use force only when absolutely necessary.

The most important duty of police chiefs is to honor that compact, to make certain their officers do not abuse the use of force. For if the compact is weakened and undermined through the indiscriminate use of force, so, too, are the ties which bind the police to the community they serve.

Where citizens are disaffected from the police, in cities where citizens don't trust the police, the source of citizen disaffection invariably is the misuse of force, particularly deadly force.

The effect of distrust and disaffection is to make the police job of controlling crime and maintaining order all the more difficult. This is because the police must have citizen information and cooperation to accomplish that job and citizens whom the police abuse with arbitrary or unnecessary force will withhold information and cooperation.

So the first rule for police chiefs and departments that want to curb crime and keep the peace is to honor the compact and restrain the use of force, notably deadly force, to a necessary minimum. Put another way, fighting crime begins with police restraint and a primary reliance on persuasion, not force.

In my opinion, the police have made significant progress during the past 15 years in restraining the use of force. There is far less curbstone justice and unnecessary police gunfire than when I became a police officer at the end of World War II. Police today are far less likely to use the lash of arbitrary force.

Mr. Chairman, you may recall that when I became commissioner in Detroit, in the first 6 months five police officers were killed. Under the distinguished chief there now, Chief Bill Hart, and Mayor Coleman Young, I have been amazed to learn that there were no police officer killings for a period of 6 years. And the other side of that coin is that there has been a dramatic reduction in the use of force against citizens.

Mr. CONYERS. Do you think that's true nationally, though?

Mr. MURPHY. Yes; it is. I believe so.

Mr. CONYERS. Is it? You know, in the early days, we weren't keeping very good records on how many people were getting wiped out by the police.

Mr. MURPHY. We're not keeping good records today, either, and that's where the Federal Government can help. I hope to address that issue.

Mr. CONYERS. We'd like to get to that.

Mr. MURPHY. Now police today are far less likely to use the lash of arbitrary force.

Why this improvement? Better training and education, more enlightened and restrictive policies governing the use of force, and tougher police management in enforcing those policies account for some of the change.

But a major reason has been the protests and court suits of citizens, particularly minority citizens, who have been disproportionately the victims of police abuse of force. To the degree that police chiefs and departments which in the past tolerated the use of force have changed, they have changed because black, Hispanic, and other minority citizens and women and their allies have demanded that abuses stop.

However, in some jurisdictions, the police still have a long way to go in controlling the use of deadly force. The good intentions of a mayor or police chief in hoping to restrain police gunfire have to be translated into training, policies, management steps, and persistence tied to reducing the use of deadly force.

To illustrate I'll cite, without naming them, the experience of two large American cities.

The cities resemble each other in demographic and racial makeup, population, and rates of violent crime. Yet researchers found that the police were 10 times as likely to use gunfire in one of the cities as in the other.

In the city where the use of deadly force was restrained, the chief set tough restrictive shooting policies, provided adequate training, and enforced his will that gunfire be held to a minimum necessary to protect the life of innocent citizens and police officers.

The other city has had for years a police department which was abusive and which had a reputation for being inattentive to minority citizens. Even with a new mayor who seeks to reduce police shootings, it may be years before that city's level of police gunfire subsides to the level of the other city.

What can the Federal Government do to reduce unnecessary police shootings and place the spotlight of public disapproval on the occasional rogue police department which permits repeated unjustified shootings?

First, the Department of Justice, perhaps through the Bureau of Justice Statistics, could collect, verify, and report annually by police agency the number of police shootings, not just deaths by police gunfire, but all police shootings.

With this information, citizens could compare their department's rate of shooting per capita with those of other cities. Elected officials, other policymakers, the news media, researchers, and citizens would know which police agencies seemed to be restrained in the use of force and which seemed to be shooting at excessive rates.

Such comparisons would be a strong inducement for cities and counties to rein in the abuse of deadly force where it existed. Communities like to think of themselves as enlightened, compassionate, all-American. A city or county which shows up as too frequently using police gunfire, to maintain order and curb crime does not fit those definitions.

I regret to say that although the Federal Government could provide such accurate, verifiable data, it does not. The National Center for Health Statistics reports annually what it is able to collect on the number of police shooting fatalities. It calls police fatalities "deaths by legal intervention— police."

Lawrence W. Sherman, the Police Foundation's director of research, and his colleague, Robert H. Langworthy, examined at length the National Center's system of reporting deaths through police deadly force and uncovered six major flaws.

According to Sherman and Langworthy, one of the flaws is that many coroners lack the awareness of, support for, and legal obligation to comply with the National Center's reporting codes and system. The researchers concluded that the National Center may underestimate by as much as one-half annually the number of police fatal shootings of citizens. So the only count the Federal Government makes available publicly fail to give a true dimension to the national rate of those fatal shootings.

It became apparent to everyone during the past year that when necessary, Government could trace across the country the location of packages of capsuled pain relievers. I believe the Federal Government has at least as great an obligation to be able to collect and report accurately the rates of police shootings which result in many hundreds of fatalities and injuries each year.

The Department of Justice is the appropriate agency to do the job because of its natural ties to law enforcement and its responsibility to monitor police shootings where there are suspicions of civil rights violations.

I would add here that one of the positive improvements in recent years, in my opinion, has been the increased activity of the Federal

Bureau of Investigation in looking into complaints of violations at the state and local level.

The Federal Government could make another contribution to lowering the rate of police shootings by increasing significantly its support of research into the police use of deadly force. The recent report of the Dade County, Fla., grand jury illustrates this point.

Examining the tragic series of police shootings in the county, the grand jury sought to learn whether research studies existed which isolate and identify characteristics likely to be shared by officers who have used deadly force in an unjustified manner.

The grand jury found that:

Unfortunately, the answer to the question is no. We are quite surprised to find that so little has been done in this area. The amount of money spent on military research in this country is phenomenal and the amount spent on research in business is also enormous. Yet the percentage of the police budget in this country that is spent on research can best be described as pitiful.

The grand jury's observation is correct. Although the National Institute of Justice has invested in some important research on deadly force and is doing all it can to support police research in other areas, its budget is very limited. I am very pleased to know that the new director of the National Institute of Justice is very interested in this problem, and I think we can be optimistic about the future.

The Police Foundation, too, has made a major commitment to research in the area of deadly force but, like the institute, the foundation's resources are limited.

Besides research, the Federal Government could help through support of needed training in areas tied to the use of deadly force. Not only does the Nation need to know more about police deadly force, but police agencies must have the means of imparting that knowledge through training.

With the demise of the Law Enforcement Assistance Administration, most of the funds for innovative and cross-police agency training have dried up. The LEAA suffered from many criticisms, some of them deserved, but it did provide the means for a wealth of police training, the effect of which is still felt. In policing, we are now living to a considerable degree on the capital of LEAA-supported training.

Let me cite just one area where a new infusion of Federal funds for research and training would contribute significantly to reducing police shootings.

I refer to an examination and imparting of methods by which the police could use communication and persuasion, not their gun and the threat of excessive force, to deal with the recurring challenges of crime and disorder. Most police shootings arise from incidents which I believe could be prevented by officers trained in tested alternatives to the use of deadly force.

There is no natural law that police intervention in family fights, incidents involving motor stops, juvenile vandalism, and the other repetitive street-level events of police tours of duty must end as frequently as they do in police gunfire. Prudence and persuasion can be as effective as the threat of deadly force in dealing with unruly and law-breaking citizens. But research and training, with Federal Government support, is needed.

If society gives authority to the police to kill, the society has the obligation to learn as much as it can about the use of that authority: how police are trained for it, what laws and police department policies affect it, how police management controls the authority, and how police agencies vary in shooting and fatality rates.

The Federal Government, which generously supports research and collects data on enterprises far less potentially lethal than police use of deadly force, should dedicate more resources than at present to controlling the use of deadly force. Ideally, the police do nothing to weaken their compact with citizens through the misuse of force. It is up to all of us, including the Federal Government, to see that this is so. Thank you.

Mr. CONYERS. Thank you very much.

I would like to recognize the gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman.

Your testimony, Mr. Murphy, is excellent and keys in on some of the things of which I've been personally aware for some time. For instance, in the early part of your statement you've ascribed a lot of importance to the personalities involved in two major cities, as you've described them, one in which there is an abandonment with regard to police shooting, and another which shows a great deal of constraint.

It seems to me that that comes down to the core of the problem, and I'd like to see if you agree with me that sometimes it has to do with the political choices of individuals to head cities, and what their predilections are with respect to the conduct of police, and their choices, their appointments in the police structure, headed by the chief of police.

I'd like to give you a quick example.

In the same city in my district there were two so-called race riots. In one, the mayor, who came on the scene along with the chief, used a method which resulted in some police shooting, rounding up everybody, and doing everything they could, and it ended up in some shootings.

The next administration with another mayor, with another chief of police, in a similar situation went there, took down names, observed the scene, used restraint completely, and then later conducted a kind of a roundup of culprits, separate and apart, in daytime, in a calmer atmosphere, concluded the riot had made proper arrests, and obtained some convictions for felonies, and yet there wasn't any police shooting and no confrontation, so to speak, merely a kind of surveillance and after, investigations that solved the problem.

My question is to you, have you found in your overall research—and perhaps it could help us later as we pursue this, as the chairman and I at the side bar agreed that we might do, that somehow the political process should include having a citizens' group, a minorities' group, and so forth, pin down the candidates for mayor, for instance, as to two questions:

One, what is your attitude toward police shootings, and how will you try to restrain that?

Second, what kind of an appointment are you going to be making for chief of police, and what kind of qualifications would you require, Mr. Mayor Candidate, for your choice for chief of police?

Are we—should we delve into that kind of situation to try to alleviate this situation?

Mr. MURPHY. Mr. Congressman, I think——

Mr. GEKAS. It's a long question, I know.

Mr. MURPHY. I think your analysis, is very important and accurate. It's a very important issue. The most powerful people in policing in the United States are mayors. Mayors appoint and remove police chiefs. And although the police do have certain kinds of political power—and my bias is the police unions have more political power than the police chiefs—the mayor who appoints the chief, of course, does set policy. He sets the tone. And he certainly can hold his police chief and his police department accountable.

So I think, Congressman, you've put your finger on a problem that we tend to ignore too much. And as I indicated in my testimony, I think the Federal Law Enforcement Assistance Administration, whatever its faults, made an enormous contribution, to the improvements in policing that have occurred.

Policing is done in great secrecy. Those of us who belong to the cult, give the impression that only we understand our magic. The truth of the matter is that, in the past 10 or 12 years, we've been dispelling these myths, one after the other, as a result of research, better exchange of information among departments, and more training. As a result the public and elected officials are much more aware today of many of the issues once held secret by the police.

I completely agree with you. It is no secret to any of us that some elected officials campaigning for office today feel they must make a law-and-order appeal to the electorate.

I also believe that there are mayors who make a law-and-order appeal, but very quietly see to it that their police departments behave better.

Mayors and even city managers don't know very much about how to hold police departments accountable, in my opinion. Neither do the news media know very much about how to hold police departments accountable. And that's one of our problems concerning police use of deadly force, as well as inefficiency, waste, ineffectiveness, and racial discrimination in police work. We don't know very much yet about how to hold police departments accountable. The reputation of a police department, in my opinion, comes very much from the way the news media evaluates the department in their day-to-day reporting and editorials.

Mr. GEKAS. But isn't it true—I'm thinking as you're answering here, and I'm agreeing with you as we go along. But doesn't that in itself, our agreement that a lot of it has to do with the political structuring of a city and its police department, doesn't that sort of divorce our capabilities here on the Federal——

Mr. MURPHY. Oh, no.

Mr. GEKAS [continuing]. Judiciary Committee level from helping in that situation?

Mr. MURPHY. I apologize for being impatient, Congressman.

Mr. GEKAS. That's all right.

Mr. MURPHY. The other serious problem, the serious weakness in American policing, is that we have a unique system of policing. It is locally controlled. We have more than 17,000 police departments. Frankly, nobody knows exactly how many police departments there are.

Mr. GEKAS. Probably too many.

Mr. MURPHY. We do have too many, I think. But in no system of local policing, in my opinion, can we do a very effective job without strong backup support from every State government and strong backup support from the Federal Government.

Now let me make clear I am not preaching for a national police force. But the police in this country could not function today without the FBI fingerprint file, without criminal history files, without all sorts of other cooperation they receive from the FBI every minute of every day throughout the country.

But that's still too little. The LEAA program got a bad name, for whatever reason, because crime didn't go down. My view of that was that it was an unfair expectation, because crime rates were going up and would have gone up higher, in my opinion, without the LEAA program.

The Federal Government should be giving more support to local policing and to police research. Seven or eight years ago, there was \$80 million for research at the National Institute of Justice. Today it's \$16 million. That's one of the tragedies. What's \$16 million or \$80 million in the Federal budget? We need a lot more research.

Research is a very complex business. You know, lawyers think of us cops as dumb; they sometimes even call us dumb, and of course we're not as well educated as lawyers. But we have the most important job because we're on the street 24 hours a day. We are in touch with the people.

The discretion of a police officer has been referred to, as the Chief Justice has said, is more powerful than the discretion of the President of the United States in certain respects. Because at 3 o'clock in the morning in a dark alley or in somebody's home, the police officer, who isn't thinking straight, is not well-trained, or maybe is a racist or is mentally unstable, can kill a 5-year-old child or a grandparent 80 years old.

Mr. GEKAS. Or be killed.

Mr. MURPHY. Or be killed, yes. And I hasten to add that. I had the sad duty in Detroit of burying 5 police officers in 6 months, and in New York in 1971, of burying 12 police officers, some of whom were victims of the Black Liberation Army in robberies. It's very sad.

I am happy to report that the number of deaths of police officers annually is down from about 130 at its peak to about 90 by the last count. Now some of this decrease is attributable to bullet-proof vests which came out of LEAA research. There is more restraint on the part of police. The ratios between black-white killings by the police are improving also. They were much worse 10 years ago. The gap is being closed.

Of course 10 years ago we did not have black mayors or black police chiefs in many of our cities, not that that is the whole answer, by any means, because even a black mayor will find it difficult to change his police department perhaps because it is the

product of a long tradition. It has Civil Service, unions and so on. It's a tough problem to change them.

But I think the Federal Government should be doing a lot more. When the cities in this country are spending \$15 to \$20 billion a year for policing, I think the Federal Government could afford maybe one-half or one-quarter of a billion dollars for research, training, and some of the other things we need.

Mr. GEKAS. You may be right. I simply wish to state that I just am very pessimistic about Federal involvement, doing anything positive in the way of the political process in the local community which results in the selection of the mayor and the police chief, which is, to me, the crux of the immediate problem.

Mr. MURPHY. I think so. The political aspect of this problem is very important, and we can't deny that improper political interference in police departments still exists in some places.

Mr. GEKAS. I thank the chairman for allowing me to pose these questions. Reluctantly, I have to leave for other pressing business. I thank the chairman.

Mr. CONYERS. All right. I agree, Pat Murphy, that we need to get a little bit more verifiable data. I think it's unconscionable that we don't even have reliable methods of computing who is being killed by police fire. I mean you can't even begin to deal with the problem. And I think you mentioned that in Miami, they ran into that in Dade County, that there was very little research that was on hand to give them anything to go on about the police deadly-force problem that was going on there.

The National Institute of Justice can do more. I think, with a bipartisan effort in Congress, we can get more money. After all, we're not talking really about billions of dollars; we're talking about simple computerized tracking methods which are really very modest indeed. And I think that they will begin to give us the tools that we need to study the problem.

This is really the function of the Federal Government, to give the direction in these troublesome areas at the State and municipal governments so that they can begin to move in the right direction.

We know that as long as they get no indication of our concern about this matter, in many areas, especially in the south, there is just no incentive to do much about it unless it comes from the outside. So I think you made a very important contribution here today.

I am also interested in getting, Pat, some of the results of your study about the flaws in the reporting method that the National Center is using for collecting its data, and any of this other detail I think would be helpful.

Mr. MURPHY. Yes, sir. Anything that would help the committee we'd be happy to provide them.

Mr. CONYERS. Thank you very much for joining us.

Mr. MURPHY. Thank you.

[The prepared statement of Patrick V. Murphy follows.]

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Chairman of the Board

Patrick V. Murphy
President

TESTIMONY OF
PATRICK V. MURPHY
PRESIDENT, POLICE FOUNDATION

SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE HOUSE JUDICIARY COMMITTEE
UNITED STATE HOUSE OF REPRESENTATIVES
10:00 a.m., Thursday, June 16, 1983

Mr. Chairman, I am honored by the invitation to appear before this distinguished committee and I commend you for using this forum to bring to the nation's attention the issues and problems surrounding police use of deadly force.

In my testimony, I propose to discuss first the use of force, then suggest ways by which the federal government can help to reduce the misuse of deadly force.

Society bestows on the police a unique authority to use force, including deadly force, so that the police can have measures of control in containing crime and maintaining order. But there is a compact involved. Society demands in return for this authority that the police use force only when absolutely necessary.

The most important duty of police chiefs is to honor that compact, to make certain their officers do not abuse the use of force. For if the compact is weakened and undermined through the indiscriminate use of force, so, too, are the ties which bind the police to the community they serve. Where citizens are disaffected from the police--in cities where citizens don't trust the police--the source of citizen disaffection invariably is the misuse of force, particularly deadly force.

The effect of distrust and disaffection is to make the police job of controlling crime and maintaining order all the more difficult. This is because the police must have citizen information and cooperation to accomplish that job

and citizens whom the police abuse with arbitrary or unnecessary force will withhold information and cooperation.

So the first rule for police chiefs and departments that want to curb crime and keep the peace is to honor the compact and restrain the use of force, notably deadly force, to a necessary minimum. Put another way, fighting crime begins with police restraint and a primary reliance on persuasion, not force.

In my opinion, the police have made significant progress during the past 15 years in restraining the use of force. There is far less curbstome justice and unnecessary police gunfire than when I became a police officer at the end of World War Two. Police today are far less likely to use the lash of arbitrary force.

Why this improvement? Better training and education, more enlightened and restrictive policies governing the use of force, and tougher police management in enforcing those policies account for some of the change. But a major reason has been the protests and court suits of citizens, particularly minority citizens who have been disproportionately the victims of police abuse of force. To the degree that police chiefs and departments which in the past tolerated the abuse of force have changed, they have changed because black, Hispanic, and other minority citizens and their allies have demanded that abuses stop.

However, in some jurisdictions, the police still have a long way to go in controlling the use of deadly force. The good intentions of a mayor or police chief in hoping to restrain police gunfire have to be translated into training,

policies, management steps, and persistence tied to reducing the use of deadly force.

To illustrate, I'll cite, without naming them, the experience of two big American cities. The cities resemble each other in demographic and racial makeup, population, and rates of violent crime. Yet researchers found that the police were ten times as likely to use gunfire in one of the cities as in the other. In the city where the use of deadly force was restrained, the chief set tough, restrictive shooting policies, provided adequate training, and enforced his will that gunfire be held to a minimum necessary to protect the life of innocent citizens and police officers. The other city has had for years a police department which was abusive and which had a reputation for being inattentive to minority citizens. Even with a new mayor who seeks to reduce police shootings, it may be years before the city's level of police gunfire subsides to the level of the other city.

What can the federal government do to reduce unnecessary police shootings and place the spotlight of public disapproval on the occasional rogue police department which permits repeated unjustified shootings?

First, the Department of Justice, perhaps through the Bureau of Justice Statistics, could collect, verify, and report annually by police agency the number of police shootings--not just deaths by police gunfire--but all police shootings. With this information, citizens could compare their department's rate of shootings per capita with those of other cities. Elected officials, other policy-makers, the news media, researchers, and citizens would know which

police agencies seemed to be restrained in the use of force and which seemed to be shooting at excessive rates.

Such comparisons would be a strong inducement for cities and counties to rein in the abuse of deadly force where it existed. Communities like to think of themselves as enlightened, compassionate, All-American. A city or county which shows up as too frequently using police gunfire to maintain order and curb crime does not fit those definitions.

I regret to say that, although the federal government could provide such accurate, verifiable data, it does not. The National Center for Health Statistics reports annually what it is able to collect on the number of police shooting fatalities. It calls police fatalities "deaths by legal intervention-police." Lawrence W. Sherman, the Police Foundation's director of research, and his colleague, Robert H. Langworthy, examined at length the National Center's system of reporting deaths through police deadly force and uncovered six major flaws.

According to Sherman and Langworthy, one of the flaws is that many coroners lack the awareness of, support for, and legal obligation to comply with the National Center's reporting codes and system. The researchers concluded that the National Center may underestimate by as much as one half annually the number of police fatal shootings of citizens. And so the only count the federal government makes available publicly fails to give a true dimension to the national rate of those fatal shootings.

It became apparent to everyone during the past year that, when necessary, government could trace across the country the location of packages of capsuled pain relievers. I believe the federal government has as at least as great an obligation to be able to collect and report accurately the rates of police shootings which result in many hundreds of fatalities and injuries each year. The Department of Justice is the appropriate agency to do the job because of its natural ties to law enforcement and its responsibility to monitor police shootings where there are suspicions of civil rights violations.

The federal government could make another contribution to lowering the rate of police shootings by increasing significantly its support of research into the police use of deadly force. The recent report of the Dade County, Florida Grand Jury illustrates this point:

Examining the tragic series of police shootings in the county, the Grand Jury sought to learn whether research studies existed which "isolate and identify characteristics likely to be shared by officers who have used deadly force in an unjustified manner." The Grand Jury found that "unfortunately, the answer to the question is No," and added:

"We are quite surprised to find that so little has been done in this area. The amount of money spent on military research in this country is phenomenal and the amount spent on research in business is also enormous. Yet the percentage

of the police budget in this country that is spent on research can best be described as pitiful."

The Grand Jury's observation is correct. Although the National Institute of Justice has invested in some important research on deadly force and is doing all it can to support police research in other areas, its budget is very limited. The Police Foundation, too, has made a major commitment to research in the area of deadly force, but, like the Institute, the Foundation's resources are limited.

Besides research, the federal government could help through support of needed training in areas tied to the use of deadly force. Not only does the nation need to know more about police deadly force, but police agencies must have the means of imparting that knowledge through training. With the demise of the Law Enforcement Assistance Administration, most of the funds for innovative and cross-police agency training dried up. The LEAA suffered from many criticisms, some of them deserved, but it did provide the means for a wealth of police training the effect of which is still felt. In policing, we are now living to a considerable degree on the capital of LEAA-supported training.

Let me cite just one area where a new infusion of federal funds for research and training would contribute significantly to reducing policing shootings. I refer to an examination and imparting of ways by which the police could use communication and persuasion, not their gun and the threat of excessive force to deal with the recurring challenges of crime and disorder. Most police shootings arise from incidents which, I believe, could be prevented by officers

trained in tested alternatives to the use of deadly force. There is no natural law that police intervention in family fights, incidents involving motor stops, juvenile vandalism, and the other repetitive, street-level events of police tours of duty must end as frequently as they do in police gunfire. Prudence and persuasion can be as effective as the threat of deadly force in dealing with unruly and law-breaking citizens. But research and training, with federal government support, is needed.

If society gives the authority to the police to kill, then society has the obligation to learn as much as it can about the use of that authority--how police are trained for it, what laws and police department policies affect it, how police management controls the authority, and how police agencies vary in shooting and fatality rates.

The federal government, which generously supports research and collects data on enterprises far less potentially lethal than police use of deadly force, should dedicate more resources than at present to controlling the use of deadly force. Ideally, the police do nothing to weaken their compact with citizens through the misuse of force. It is up to all of us, including the federal government, to see that this is so.

PATRICK V. MURPHY
PRESIDENT

Patrick V. Murphy, president of the Police Foundation in Washington, D.C., has served as the chief police administrator in New York City, Detroit, Washington, and Syracuse, New York, and was appointed by President Johnson as the first administrator of the Law Enforcement Assistance Administration.

A career policeman, Murphy entered the New York City Police Department as a patrol officer in 1945 and moved quickly up through the ranks. A deputy inspector by 1963, he took a leave of absence to become chief of police in Syracuse. He returned to New York City as commanding officer of the Police Academy in June 1964 and was promoted to the rank of deputy chief inspector.

Murphy came to Washington, D.C., in 1965 where he served for two years as assistant director of the Justice Department's Office of Law Enforcement Assistance and first administrator of the Law Enforcement Assistance Administration. In December 1967, he was appointed public safety director of the District of Columbia. In December 1969, he was named commissioner of the Detroit Police Department. He left that position in late 1970 to become commissioner of the New York City Police Department.

Murphy became president of the Police Foundation in May 1973. The Foundation, established by the Ford Foundation in 1970, is an independent, nonprofit institution dedicated to fostering improvement and innovation in policing.

Murphy holds Bachelor of Arts and Master of Public Administration degrees, is a graduate of the Federal Bureau of Investigation's National Law Enforcement Academy, and is a former dean of administration and police science, College of Police Science, City University of New York. He and his wife, Betty, are the parents of eight children and live in Bethesda, Maryland.

Mr. CONYERS. We next have the manager of the city of Miami, Fla., Mr. Howard Gary. We are glad that he could join us.

The manager of Dade County, Fla., Mr. Merrett Stierheim, was unable to be with us, but he sent his testimony.

[Prepared statement of Mr. Merrett Stierheim follows:]

TESTIMONY OF
M. R. STIERHEIM
COUNTY MANAGER, DADE COUNTY, FLORIDA
BEFORE THE HOUSE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
RE: POLICE USE OF DEADLY FORCE
June 16, 1983

Washington, D. C.

Thank you for inviting me here to speak and testify about Police Use of Deadly Force. I appreciate your courtesy, and I am proud to be able to relate some of the positive things the Metro-Dade Police Department, of Dade County, Florida, is doing to address the use of force issue.

The use of force by police officers has become a matter of increasing concern over the past several years. While no one can dispute the need, in some cases, for the use of deadly force by police officers, particularly when an officer is acting in self defense or the defense of another person, there are a number of critical issues that have caused controversy. Among these issues are questions concerning the appropriateness of the use of deadly force to arrest a fleeing felon, the effectiveness of police agencies in controlling use of force by police officers, and what methods police agencies are using to identify police officers or police officer candidates who have the potential to be involved with unnecessary or excessive use of force.

It is appropriate that these issues be addressed, because the involvement of the police in situations where they are called on to use force to effect arrests, or to protect themselves, is going to continue. Further, it appears to me that if our society becomes more violent, these use of force situations will occur with greater frequency. This

impression is borne out by a study of pertinent literature entitled A Balance of Forces, which was conducted by the International Association of Chiefs of Police with funding by the National Institute of Justice. This study, published in September, 1982, indicates the existence of a high degree of correlation between police use of deadly force and the general level of violence among citizens in the community served. Areas with a higher general level of violence showed a higher rate of police shooting incidents. This correlation tends to indicate that a high incidence of use of deadly force by police officers, even in totally justified circumstances, is just one manifestation of the much greater problem of violent crime in our society. Therefore, now is the ideal time to begin a concerted effort to address the overall problem of violent crime, as well as the attendant issues concerning police use of deadly force. Because police use of deadly force is going to continue to occur, and will continue to be a matter of controversy and concern, I would like to point out some of the things that are being done in Dade County by the Metro-Dade Police Department to control police use of force.

The Metro-Dade Police Department is a law enforcement agency currently employing over 2,300 sworn law enforcement officers,

serving unincorporated Dade County, with a population of over 850,000 people, and providing area wide police support services for almost 2,000,000 people. The agency has hired a large number of new officers in the past several years, and still has a number of vacant positions to fill. Some of the programs concerning use of force undertaken by the Metro-Dade Police Department over the past several years are:

- I. Departmental rules governing use of force are under continuous study and revision. In 1980 and 1981, the Department, along with the Dade County Association of Chiefs of Police, developed a uniform statement of policy regarding the use of force by all police agencies in Dade County. That policy was incorporated into the Metro-Dade Police policy. Additionally, the rules of the Metro-Dade Police Department regarding use of deadly force have been uniformly much more restrictive than Florida law governing that issue.
- II. A Firearms Training Center was opened in 1976, and has been under continuous development since then.
- III. A Survival City Complex, to facilitate training involving the decision as to

whether or not shooting is appropriate in certain circumstances, was started in 1979, and is now nearing completion.

- IV. Training is also under constant review and revision, and the Department has developed and is now in the course of presenting a comprehensive, three day Use of Force Training Program to all police employees, to provide reinforcement and uniformity of training regarding use of force.
- V. In September, 1981, an Early Identification System, to help identify officers who may have potential problems with the way they are dealing with citizens or using force, was instituted. Approximately one year earlier, an employee profile system was instituted. This system summarizes the history of complaints, commendations, use of force incidents, and disciplinary actions for each employee.
- VI. Acting pursuant to a Dade County Ordinance, the Department conducts a psychological screening of all police applicants, in addition to the traditional tests, back-

ground investigations, and interviews. This screening is designed to identify those individuals with a potential for inappropriate behavior that would make them unsuitable for police work. Screening is further enhanced through the use of a newly opened assessment center.

- VII. Psychological services for presently employed officers have also been provided. Supervisors are able to secure mandatory referral of employees who may be having problems that will affect their performance. Additionally, psychological support is also made available to officers who have been involved in traumatic incidents, such as shootings.

All of the previously mentioned programs have an obvious, direct bearing on controlling police use of deadly force. Metropolitan Dade County also utilizes numerous other programs involving community relations, cross-cultural training, and stress management, to name just a few, which are related to the control of police use of force, as well as to overall performance of the police function.

In conclusion, I would again like to express my gratitude

for the opportunity to address the Subcommittee, and to urge support for future studies into all aspects of the issues discussed today, as well as for innovative programs being undertaken by various communities in order to deal with those issues. I also urge that maximum efforts be directed to studies and actions aimed at reducing that root cause of many problems, including those involving police use of force. That root cause is the level of violent crime in our society.

Thank you.

Mr. CONYERS. Welcome, Mr. Manager. We know that a great deal of controversy has visited you as a result of all of the police violence that has been going on in your city. You are the man in motion. You are in a city that is being examined by criminal justice agencies throughout the country.

We are very pleased that you considered this hearing to be of sufficient importance to come to Washington and join us. We have your prepared testimony and we'll include that in the record. That will allow you to unburden yourself in terms of the activities that are now going on and have gone on there.

I note for Congressman Crockett's benefit that you graduated from Morehouse, and also the University of Michigan has been a place where you have made a stop. We're delighted to have you here.

TESTIMONY OF HOWARD GARY, CITY MANAGER, MIAMI, FLA.

Mr. GARY. My pleasure. I would like to thank the chairman and members of the committee for inviting me here today.

To my distinguished colleague, Mr. Patrick Murphy, I would like to correct or modify one of his statements in that not all cities have—city mayors have control of fire and police chiefs. In the city of Miami, the city manager, which I am, has the authority to hire and fire.

I think we also have learned a considerable amount about what police activity is all about, maybe not 15 years ago, but I think we've been forced to do much more than we've done in the past.

I want to thank you for the opportunity to address you today on a matter which is of extreme importance to me as a municipal executive. The fact that this body has seen fit to seek testimony from local administrators and leaders attests to your recognition of the urgency to find answers on a national level to the problems and turmoil caused by police use of deadly force.

In the prepared statement I have already submitted for the record, I have made it clear that I am satisfied that the overwhelming majority of police officers are dedicated men and women who

are committed to one of the most significant public services in our society. But one of the unfortunate realities of law enforcement is exposure to circumstances which could lead to the application of deadly force, either to or by police officers.

We have seen in Miami, as others have seen elsewhere, how the unlawful and unnecessary use of this force can tear apart the fabric of our communities leaving as its aftermath destruction, death, and social chaos.

The last two civil disturbances in Miami both centered on the deadly force issue. They have left the scars of polarization and mistrust embedded in our community.

In my judgment, governments at all levels have an ongoing responsibility to insure domestic tranquillity while affording equal opportunity and protection for all. To the degree that we ever lose sight of this mandate, we can expect an equal or greater reaction from those segments of our communities who feel disenfranchised or oppressed by those sworn to protect and serve.

While municipal administrators may not be directly responsible for individual acts of police officers, we are fully responsible for assuring that the police chiefs we control hold accountable those commanders and supervisors whose daily responsibilities include the monitoring and supervision of police activities.

City administrators and police chiefs must work together in achieving the reduction of crime while reducing the instances of unjustifiable deadly force application.

A clearly stated setting of priorities must be accomplished in which issues of training, supervision, and accountability are affirmatively addressed. This direction must be accompanied by an equal sensitivity to matters of community relations, minority hiring, and upward mobility at both the supervisory and policymaking levels.

I am greatly concerned that deadly force policies vary from town to town, county to county, and State to State. It seems to me that the prospect of citizens being subjected to disparate applications of deadly force influenced not by what is morally correct but what is locally conceived does not represent the equal protection afforded the public by the U.S. Constitution.

In the city of Miami, we took the bold initiative of changing our deadly force policy and placed a higher value on human life than on property worth. Along with our adjoining jurisdictions in Dade County, we have made our policy more restrictive than that allowed to us by the State law.

While we cannot mandate this to other regions, I ask why Federal legislation cannot be considered to ensure uniformity in the police application of deadly force.

Change should not be dictated by the tragedy of a civil disturbance or the horror of a wrongful death. It should result from a national recognition of what is morally right and legally sound.

The city of Miami is taking further measures to address the issue of deadly force. Over the years, the Miami Police Department has held several training sessions to better equip its officers in dealing with urban street settings that may require the decision to use deadly force.

Recently a very successful officers' survival program was conducted in which 90 percent of our sworn personnel participated.

We are also conducting PR-24 police baton training to give officers another effective tool to use as an alternative to firearms and the sometimes deadly Kel-lite.

In May of this year the city of Miami, with an endowment from the McKnight Foundation, accepted the U.S. Department of Justice's recommendation that we purchase a synthesized media environmental simulator, also known as the SME-24, which is a system put out by September and Associates.

Mr. CONYERS. How does it work?

Mr. GARY. The system works whereby there is a big room and you have pretty much a very, very large screen on which projectors are projecting on that screen real-life situations in terms of police confrontation of real-life, deadly force situations whereby the police officer has a gun, he also has blanks in those guns, and he has to make deadly force situation decisions, based on what he sees on the screen.

Based on that, we also have a biofeedback system where we measure the stress level, and also we critique what he has done in terms of the use of deadly force. We feel that this is going to be beneficial to us, as it was to Flint, Mich., because it allows you to put him in that situation primarily before he gets into a real-life situation.

I think it's important for us primarily because 60 percent of our police force has 2 years or less of experience, and we don't have the opportunity or the luxury to wait until police officers get out on the street to decide when to use deadly force or whether it's used properly or not.

Mr. CONYERS. You know, Mr. Gary, I've always wondered about the fact that frequently in larger police units, the only people walking the beat are the rookies. And as soon as you get any promotion at all, you're inside or in a specialized unit, or you're doing something.

We all talk about this as if all policemen are out there in the streets. The fact of the matter, from my limited experience, is that very few of them are, and as you've pointed out, most of them are the newest policemen.

Mr. GARY. That's correct. And that's a very serious situation, not only for the citizens involved but for the police officers.

One thing we did in Miami was to civilianize our police department. We recognized that—maybe where in other cities they have not recognized it because they don't have the large numbers of rookies, we recognized we had to do that, and as a result, we have removed from the offices all of the colonels and the majors and the big brass, and the lieutenants and all those people with experiences.

We put 150 back on the street, which is almost half of what we have.

Mr. CONYERS. I want to commend you for that because one of the things that is beginning to occur to me is that this whole subject of the administration of police departments is one of the most unknown subjects in government.

With all the billions of dollars we spend on police, nobody knows how the money is spent. It's almost like going to a military unit. As a matter of fact, we know more about how the Pentagon spends

our money or misspends our money than we know about our local police department which swallow up hundreds of millions of dollars.

It is one thing to walk into the city clerk's office and say "I want to find out how you guys operate," but nobody wakes up and says "I'm going downtown to the police headquarters and find out what they're doing with the money."

Therefore, there's a sort of a veil that—I think as a city manager, you're doing a very forthright and far-seeing and courageous thing to begin to do that. We've had reports of departments where there would be, in small cities, two or three cars out and everybody else was working on some exotic detail, filing reports, testifying, on leave, in training, en route.

But when you ask yourself, out of all the people on the force, how many are out there on the street, the answer was literally a handful. And I think that's an example of the kind of administration that more managers and more mayors are going to have to take into account.

Mr. GARY. Thank you, sir. Our most recent effort to control the use of deadly force in Miami was the decision to modify all service revolvers so they will be double-action weapons only. A single-action—

Mr. CONYERS. Would you describe a single-action and double-action, just so that we have it in the record?

Mr. GARY. OK. A single-action weapon is a weapon which permits you to pull the hammer back without utilizing the trigger—I mean the finger to shoot the gun.

A double-action is you cannot pull it back, you've got to use the finger. And the reason that is important is because you have a lot of accidents with single-action. When a guy has a gun cocked, that's an accident waiting to happen.

Plus, too, with the finger it takes 3 pounds of pressure to pull that, and that gives you time to think, whereby if you've got the gun cocked, you can easily have an accident. All you've got to do is lightly touch that trigger, and you don't have time to think. Or somebody could just brush the gun and it goes off.

And we have decided that it's in the best interests of our citizens and our police officers that no longer will we have single-action guns. We are now filing them down.

Mr. CONYERS. Are there any other municipal administrations following that, or are there any national agencies that are passing that recommendation on?

Mr. GARY. The only other city I can think of this morning is Los Angeles. That's the only one I can think of.

As many times as it's been said, it must be said again that the root cause of social chaos must be given the highest priority by the Congress and the administration. All too often our street tragedies and civil disorders can be shown to be the result of failures other than the use of deadly force. The use of deadly force may be only the spark.

While I strongly urge the appropriation of funds for interdisciplinary research into the causes and consequence of police-community confrontations, I must unequivocally add that the allocation of funds into enforcement activities alone will not solve the problems

which we, at the municipal level, must face. Diversionary and deterrent programs must be seen as a viable opportunity to address this serious issue.

Without this recognition, our failures and the tragedies which will follow shall be on the conscience of all of us who have had the power to meet the challenge. Thank you.

Mr. CONYERS. Well, now, let's talk about the race-relations circumstances in your city.

Taking into consideration some of the things we've been talking about today, can you paint a backdrop of racial relations that are going on in Miami, and that were going on even before you became the manager?

Mr. GARY. I think Miami is becoming a city that's international. It's drastically changing. Whereby you only had probably one or two segments of society, namely whites and blacks, you now have whites, blacks, Latins, and you also have an influx of refugees which is also adding a new dimension to Miami.

Miami is a very wealthy city, and it's become more wealthier as a result of our connections with Latin American trade. However, the total community has not participated in economic benefits of that wealth, and I'm particularly talking about the black community.

In addition to that they have been promised, over the last 20 or 30 years, that certain benefits will accrue to them, which have not materialized. And there has become a concern that the new arrivals are participating in wealth before the old inhabitants participate. And that's causing some problems.

I think also, too, you've got to add the fact that the domestic programs that have existed in the past are also causing some sense of helplessness, and the community feels that not only are they being forgotten on a Federal level but that the local level also is forgetting about them. And that's causing serious problems.

I think you also have to look at the fact that the acculturation of these news groups of people is not only just causing problems between blacks and Latins but it is also causing problems between blacks, Latins, and whites. And I think we are confronted with the same situation that New York was confronted with in the 1940's when you had a large influx of immigrants.

Mr. CONYERS. To what degree do blacks participate in the political process in Miami?

Mr. GARY. Prior to 3 years ago, their participation was very, very small, as demonstrated by the fact that on any given mayoral or commission election, there was about a 12- to 15-percent turnout.

As a result of the recent shootings and the recent feeling of helplessness by blacks, not only in terms of those shootings but also in terms of certain negative incidences in terms of black professionals in Miami, the black community has realized that they have got to participate in the political process.

In the last mayoral election, that 12 to 15 percent turned into 85 percent. And as demonstrated by that turnout, blacks now are becoming the political force, if I may call it that, in terms of deciding who gets elected. They are now becoming a force and they are now participating strongly in the political process, as demonstrated by the fact that I'm still here.

Mr. CONYERS. Well, the question is, how long are you going to be here? On what circumstances you're going to be here?

Mr. GARY. I'm under a self-imposed gag order, so let's put it this way: I expect to be here for quite some time. And I think that what I have done and what the commission has done in terms of allowing me to make certain changes will continue even after November.

Mr. CONYERS. I'm sure you are going to be around. Let me, though, ask you to—let's start talking about this long list of killing of black people that's going on in Miami. I don't even know where to start.

Mr. GARY. Let's say Miami and Dade County.

Mr. CONYERS. All right, Miami and Dade County.

Can you give us some kind of context for why Miami now has become internationally famous for these murders, the uprisings, the lawsuits, the turmoil that unfortunately doesn't seem to be diminishing?

Mr. GARY. If I may, I'd like to respond to that in two different ways.

I think the first problem that we have is that, as I've stated earlier, we have a very, very young police force, 60 percent of whom have 2 years or less of experience.

I think that also you must take into consideration that prior to civilianization that basically these rookies were, even though the training is very good, were put on the street at a very early time to encounter certain situations which they may not have been able to cope with in terms of experience.

I think that also another problem we have is the lack of understanding and sensitivity on the part of young police officers who may have grown up in a very stereotyped community.

I think a third thing, and I think probably more importantly, which I experienced during the last civil disturbance, is that there is a considerable amount of fear on behalf of the police officers, more so on the younger police officers because they don't know what to expect because they haven't been there before.

Mr. CONYERS. Is this a reflection, sir, of the training they're getting. I was asking Counsel Bowman here about the Arthur McDuffy case which was about 1979. And she felt that that was on the end of a series of episodes of police violence, and that we have started up with another wave of these. If that is the case, we've got a serious problem.

We've had the Civil Rights Commission down there. We've had civil rights organizations. We've had congressional panels. I've been down at least a couple of times. I don't have yet—and I'd like you to give us the benefit of a description of what is going on down there.

Mr. GARY. First of all in terms of McDuffy, that was a situation that was with four county police officers, and I think the result of that triggered the McDuffy disturbance.

I would like to respond to the issue of how do you cope with it, or what's happening, and I think we kind of addressed it earlier in terms of the leadership.

I think if you look at the statistics in terms of the Miami Police Department—I can't talk for Dade County, and I think we've kind

of mixed Miami with Dade County, since we are the hub of that area—you'll find that there have been more terminations due to police abuse, police misconduct, and I think a lot of that has to do with not so much who is the police chief. I think it has to do with who is the chief executive officer and who are the elected officials.

Let me give you an example.

Most of the shootings in Miami were done by those officers that had less than 2 years of experience. I think a lot of it had to do with fear. I think a lot of it had to do with insensitivity, unawareness of a black community.

Let me just give you an example.

In December, when I had the fortunate responsibility of seeing if we can stop what was happening in overtime, that night that it broke out, two of my commissioners—one was black and one was white—and myself were on the street from approximately 7 p.m. to 2:30 a.m., trying to coordinate the police so that we'd make sure we didn't have them overreacting, and trying to calm the community down.

About 2:30 a.m. we finally got them calmed down and we decided to have some breakfast because we hadn't eaten dinner. And on our way back—I was dressed in a coat and tie, and I was clean-shaven. The black commissioner was dressed just as I was. And we were driving in a station wagon, no Cadillac, no pink suits.

And on my way home, which is on a peripheral area, an overtown area, there was a Florida Highway Patrol person there who I had personally called to have them to block off all of the major arterial roads leading to the Overtown area because I did not want any citizen to get harmed because he was not aware of what was going on in that area.

Immediately as we approached there were three or four other cars which had Anglos in them, and they were very nice, "How are you doing? Where are you going?"

"Well, we're going over here to the hospital."

"OK, fine. Have a nice night."

As we approached, I immediately told the guy, I said, "I'm the city manager," dressed like this now.

He immediately drew his gun.

I immediately—I'm a little different than those people we've got in the morgue. I immediately put my hands up, just like this. And I immediately said "My license is in my back pocket. If you'll allow me to go back easily, I will show it to you."

Now I'm not angry about that, but it just highlights the fear and the misunderstanding that exists in police departments. I think that fear and that misunderstanding is the only thing I could think this officer thought of, which was a Florida Highway Patrol officer, was that there is a riot in Overtown, blacks are rioting, and this gentleman happens to be black. And that's fear, and that's lack of understanding.

There are other, similar kinds of cases. So I think it's important that not only the Miami Police Department and Dade County but throughout, that people need to understand what a community is all about. You cannot stereotype people.

We have the same problems in the Hispanic community; we have the same problems in the Anglo community. And even though an

Anglo community it may be positive, in the Hispanic community and black community sometimes it may not be positive.

So I think you have to have the sensitivity training that goes along with particularly those rookie officers. I think you have to have it for the older officers, but I'm talking about particularly the rookie officers who have less experience in terms of very hostile and violent kinds of situations which may not be directly affecting him but indirectly affecting him.

Mr. CONYERS. What about the training then? How can we improve the training? What is the training?

Mr. GARY. We right now have a consortium of police departments that are being trained right now in the Miami-Dade Junior College. That training in my estimation is one of the best trainings you can get. However, in terms of sensitivity training, I think it lacks. I think it lacks for the mere fact that first of all, we don't have any civilians there.

Second, we only have 2 hours—let me correct that—6 hours out of 810 hours that deal with human relationships as it deals with the black community, Hispanic community, and the Anglo community, 6 hours out of 810. And in my estimation that is not adequate.

And as a result of that, with the purchase of the simulation equipment, the city commission authorized me also to immediately start sensitivity training which would not be a part of the academy but would be immediately after they leave the academy, before they go on the street, and would not only include rookies but everybody from the chief on down.

Mr. CONYERS. I think that's one of the problems that you have in training. I think there's probably a serious problem about the training, but what about the selectivity of candidates, even before you get to the training?

What I need to have you do—we're not going to solve the problems of Miami or Dade County in half an hour. But it seems to me that we've got to inquire very deeply into who is being selected as a police candidate for the training in the first place.

What about the racial composition, which is a problem in any city? You don't have to go down South to get that problem. What's the make-up situation like?

Mr. GARY. I have some information here. Let me just respond to your first concern.

First of all, we are under a Federal-imposed consent decree. Since 1976, we have hired 600 new police officers. Of the 600 new police officers, 87 percent of those have been blacks and Hispanics. And that cannot be met by any other city other than possibly Washington, D.C., the city of Washington, D.C.

Mr. CONYERS. Of course the question is how many of them stayed, not how many of them got hired. You know, the revolving-door syndrome is—I'm not saying it exists but the question is not how 600 got hired. What are the percentages now?

Mr. GARY. I can give those to you, but let me just respond.

The revolving door is not the revolving door for the new officers. We don't have that problem. Our problem is that the more experienced officers are leaving, and most of those being white Anglos. So as a result, not only do we have a problem in terms of the 60 percent that are 2 years or less, but a lot of the experienced officers

who have to train them. And even though you may say that may be good, but I would say 80 percent of that is bad, for the mere fact that you don't have anybody out on the street with those guys who have the experience to be able to show them the ropes of the job.

Mr. CONYERS. But most of the senior people aren't out on the street anyway, Mr. Manager. We find in many cities that as soon as you get over being a rookie, the first thing you do is at least get into a squad car, but frequently, you know, they go off the street. It's usually the rookies that unfortunately end up staying on the street, no matter what the city system is.

Mr. GARY. Not to be argumentative, that's not really the case, not at least in the city of Miami. We have a situation wherein if a police officer goes—he comes into the force. Before he can think about going—even becoming a sergeant, he's got to be there 3 years.

Even before he can think about going inside he would probably be there for 5 or 6 years. That officer becomes experienced before he goes inside.

As I said before, we had a problem whereby the more experienced officer—and I don't think this is unique to Miami because I worked in Newark, N.J., and we had brass falling off the top of brass over there.

Mr. CONYERS. In the police department or the city administration?

Mr. GARY. The city administration in Newark.

Mr. CONYERS. Did you know Hubert Williams there?

Mr. GARY. Very well.

We don't have that problem. I mean that problem has been corrected because of our civilianization program where we are now putting them out in the streets. And I think a lot of that has to do with an experience that we had also, because we had a rookie officer shot. And there was no doubt in my mind and in the police department's mind that that officer would not have been killed if he had an experienced officer out there with him in the street.

So they are looking at it even not only from experience in terms of being able to address the community but even in terms of self-preservation. I think that becomes a concern.

What was the second question you asked me, sir?

Mr. CONYERS. What's the ratio of blacks and Hispanics in the police department? You tell me 600 came in over a period of years, but is it good, fair, bad, getting better?

Mr. GARY. I think it's getting better.

Mr. CONYERS. Is it unsatisfactory to you now, and you are moving to correct it?

Mr. GARY. No doubt. Let me explain in two facets.

First of all, in terms of our hiring, in terms of all major cities over 250,000, as a percent of population, we've hired more blacks on a parity basis than any other city in the United States.

We do have a problem, however, in terms of the upper echelons of our police department. And let me explain it this way.

We could do better, but we've made progress. Before I became manager, we did not have a black deputy chief. We now have one. We didn't have a black—Hispanic deputy chief. We now have one.

We only had one black major. We now have two. We now have two Hispanic majors.

One of the problems is the civil service system and the unions in that—and it's better than some other cities wherein in Newark, N.J., I remember in order to become a chief—civil service was from chief on down, and the only thing that was exempt was director.

In the city of Miami, from captain on down is within the civil service or the union. From major up to chief is exempt. So what we've done is we've taken the opportunity to resolve the nonaffirmative action that had occurred in the past in terms of upper echelon, and utilized that exempt system to put minorities up there.

Second, in terms of trying to get around the union system, we have established an executive position which excludes them from having to go up the ranks. And we just make them an executive position and put them up in the high echelon.

So what happens is we've done pretty good in the upper top, but the middle management, from captain and lieutenant, we have some serious problems. Because we're the last hired, and because you have that graduated scale, you've got to be in there 3 years before you become a sergeant, 3 years before you become a lieutenant, and 3 years before you become a captain, obviously we have not caught up with that trail.

That's where we're beginning to have problems and to offset that we're saying instead of dealing with that management level in terms of minorities, because it's going to take some time, let's go above that to address it from the executive position and exempt position category.

Mr. CONYERS. That's a problem on which I can sympathize with you. That occurs in many levels of Government where we're trying to eliminate the past history of segregation.

In the Detroit Police Department, after years of a lawsuit, we finally got a plan in which there would be two black officers hired for every one white officer. That was agreed to, litigated, and now we have the Department of Justice coming back in to set it aside. Our arrangement was to try to do exactly what you are trying to do at your level.

Let me turn now to some of the incidents themselves and see on what reactions you may be free to give us some insight.

The first of course was the Arthur McDuffy situation. Were there any lessons that came out of that terrible incident? I mean how did the Government, how did the police, how did you personally perceive this in terms of where we were to go from there?

Mr. GARY. I think the city of Miami and Dade County—because don't forget, these were Dade County police officers—learned a great deal from it. I think the acts of those police officers were repulsive to the whole community. I think everybody was shocked at the outcome; I think everybody was ashamed of the outcome.

I think that was demonstrated in the fact that even though they, the police officers, were exonerated in terms of a criminal court that the county administrator, Mr. Merrett Stierheim, saw fit to terminate them administratively.

There was the situation wherein we had one police officer whose involvement was minor. When I became city manager, after about 2 months, I found out he was still on the payroll, and I told them

that he had to be terminated immediately. I think the signal has to come from the top that it will not be tolerated. And I think Merrett Stierheim in Dade County demonstrated that, and I think I demonstrated it on our side.

I think it was also demonstrated by the fact that we now have police-community relations being more effective in those particular departments, as opposed to being a subsubsection of a division, they are now reporting directly to the chiefs of police, which demonstrates to them that there is an importance in terms of police-community relations.

I think in terms of the deadly force policy whereby we adopted that, Dade County adopted it, and also the other 27 municipalities, which says instead of what the State law says, that you can shoot any fleeing felon, we're saying that you can only shoot a felon if your life is in danger or if he is about to endanger someone else's life. And that's the only time you can do that. And those other 27 municipalities have adopted that.

I think also, too, that the hiring of minorities in upward decision-making levels has increased as a result of that. A lot of people don't know that when we had the Overtown disturbance and we had the recent outbreak in Liberty City as a result of a disco, that the person who was in charge in the field, commanding the whole force, was the black deputy chief. And that's the first time that has ever happened.

That deputy chief, not only can he require that the police officers be sensitive to what's happening and explain to them what is actually happening, but he also has a rapport with the community, and I think that helps in terms of bridging that gap.

I think if you look at the Miami Herald and read some of the comments that they've made, they've come out very, very strong about not only opening up police records but also making sure that even if a police officer is not cleared, or I mean—I'm sorry—if he is cleared, that the record remains intact so that you can understand what actually happened.

The third thing is that they have called vehemently for a police civilian review board. I think the community in itself has demonstrated that it is concerned. I think the community has made certain actions, as I've demonstrated before. For example, the cocked-gun kind of situation, the Kel-Lite kind of situation which actually killed McDuffy, as well as the simulator is a move in the right direction.

Mr. CONYERS. I think you're right.

Mr. Gary, can you describe your relationship with the police department, with the mayor, with the council, and with the community, so that we get a feel for the environment that you have to work in, day-to-day?

Mr. GARY. OK. Basically we have a community that is 55 percent Hispanic, 25 percent black, and the remainder is Anglo. They elect four commissioners for 4 years of staggered terms, and they elect a mayor every 2 years.

Those five individuals appoint a city manager, the chief executive officer, who is myself in this particular case, who is responsible for hiring and firing all city employees including the police chief.

In terms of responsibility, there is the characterization that just as you have with the President, that I am the chief executive for the police department, just as he is the chief executive of the Army and the Navy, whereby, as demonstrated during the civil disturbance, I walked in the police department and I took control. I gave the orders; I decided what was going to be done. And before anything was done, they had to come and talk to me.

I think that in itself demonstrates that chief executive officers, whether they be mayors or city managers, can have a very, very significant impact on the policies of police departments, particularly as it relates to how they act and what kind of deadly force they use in certain circumstances.

Mr. CONYERS. So how do you get along, if you can speak candidly.

Mr. GARY. I usually do. It gets me in trouble but I do it.

Mr. CONYERS. That's good.

How do you get along with the police chief? In other words, I'm not trying to imagine that this is an easy job you've got. You're caught in between a lot of forces, and I'm trying to get a feel for this in terms of what your relationships are with the policy chief, Kenneth Harms, and with the mayor. All of these are people that you're in touch with. What's it like, being on the firing line as you are?

Mr. GARY. I can't think of an appropriate word that you can print that would describe what it's like.

Mr. CONYERS. You're getting good training, remember that.

Mr. GARY. You better believe it.

The police chief is controlled by me. He is my police chief, who does what I tell him to do.

Mr. CONYERS. Did you appoint him, or was he there when you got there?

Mr. GARY. He was appointed when—he was there when I got there.

Mr. CONYERS. I see.

Mr. GARY. That doesn't preclude me from removing him or any other director once I've taken office. And I don't need the concurrence of anybody to do that.

The relationship exists wherein, as I said, he does what I tell him to do. That doesn't preclude him from recommending or developing policies. And I think a lot of times unfortunately he has gotten bad press when he probably shouldn't have. Let me give you an example—and he's between a rock and a hard place, also.

The cocked-gun situation we did jointly. The deadly force policy he initiated himself, before any other municipality in Dade County, and he took a lot of heat for it. He terminated recently an officer who was involved in a killing. Now he didn't terminate him for that particular killing because the guy has his due process, but he was terminated because prior to that, that particular officer utilized deadly force inappropriately. Even though it was a miss, the person he did not hit, he did not utilize it properly. He terminated him.

So the police department, in my estimation, in terms of leadership is progressive. What we have to do is get down to those who have the responsibility of servicing our citizens. And I think that's

where our key problem is, which—most of them are very, very young.

The relationship with the mayor and the commission is that I work from day-to-day, hour-to-hour, and they can decide at any particular point in time that if they are not satisfied with my services and want a change, they can seek to do so.

Mr. CONYERS. So what's the relationship? Now that we know what they can do when they want to—are you in confrontation with the police department because of your progressive policies, or are they becoming used to them? Do they understand that you are merely doing your job as the majority of right-thinking citizens want you to do it?

Mr. GARY. Let me respond to it this way:

As we talked about it earlier, and I think Mr. Murphy also talked about it, and you also brought it up, I think the police department reflects the leadership. The leadership is the police chief, the city manager in our particular case, and the commission, but particularly the manager and the police chief because they do the hiring and the firing. And if you set the tone, everybody down below understands that's going to be the tone.

And I think that was demonstrated when I walked in, 2 months after I walked in and the guy was involved with McDuffy and I said, "Fire him." Everybody understands that I'm not going to tolerate police abuse.

Second the tone is set not only in terms of what you did at a particular point in time but what policies you implement, and the understanding that those policies are going to be in force.

Let me tell you about our police department.

When I took control of the police department and I said that there was not going to be utilization of deadly force until your life was in danger, there was not going to be the use of tear gas unless you had to use that as an alternative to guns, the police department respected me for those decisions, at least the majority of them did.

And I think most of them are looking for that type of leadership because as I said earlier, I think 95 percent of the police officers are good. If they see somebody who will take the leadership on the good side, then they are going to correct those 5 percent who are considered the bad ones.

Mr. CONYERS. How would you describe, sir, the racial tensions or, to put it positively, the racial harmony in Miami?

Mr. GARY. I think it could be better. I think what we need to decide, probably just like a lot of other cities in this country, is that we're not going to sweep the problems under the rug and that we're going to put them on the table.

I think because of the activities of the recent 2 weeks it brought some of those problems from under the rug and put them on the table.

Mr. CONYERS. Which activities are you referring to?

Mr. GARY. There was an activity in terms of a comment I made in a speech about the President. And I think that raised some issues in terms of whether we do have a problem in Miami and are we forthrightly dealing with those problems.

Mr. CONYERS. Am I to gather that racial tensions are improved, racial harmony is improving in Miami, and you still have a long way to go?

Mr. GARY. That's correct.

Mr. CONYERS. Do you think that the likelihood of additional police violence is being reduced?

Mr. GARY. I think so. I think it's being reduced, based on the fact, if you've been following Miami, there have been a number of indictments for police shootings, and I think that has gotten the message across, not only to the community but also to the police department, that what may have happened in the past in terms of thorough and speedy investigations of those kind of incidents would no longer be what happened in the past.

This is a new day, I think, as demonstrated by the fact that the investigation took a shorter period of time and was very thorough, and there were indictments of police officers.

Mr. CONYERS. Do you see that we're making any progress, or put it like this:

Do you see any relationship between the economic circumstances that blacks live in in Miami, with the outbreaks of racial violence, police motivated, and the riots that occur there anyway?

Mr. GARY. As I stated earlier, I think the use of deadly force in most cases becomes a spark of the insurmountable problems that exist in Miami in terms of a feeling of helplessness, which cannot be just solely attributable to Miami but also has to do with the Federal retreat in terms of helping those who are not as fortunate as you and I are to help ourselves.

I think those two problems come pretty much a boiling point just looking for a spark, and it's usually a deadly-force kind of situation.

I think you came to Miami during the McDuffy situation, and shooting was just not the only issue of deadly force. People started talking about we don't have housing, we're unemployed. So I think the spark becomes the deadly force issue because the police officers are the first line of contact with the people who feel that they've been deprived or they're hopeless, and therefore, that ignites it.

The people who make the decisions are not the ones who are out there on the firing line every day.

Mr. CONYERS. Do I gather correctly that you see little opportunity for economic improvement to occur then?

Mr. GARY. Oh, opportunity exists. There's no doubt that opportunity exists. If you come to Miami you'll see a hundred cranes up in the air building highrise buildings. You'll see all of the banks coming over; you'll see all our cargo stalls filled and all our cargo stalls in the airport filled.

I think what has to happen is that the community has to affirmatively decide that they're going to allow the total community to participate in that economic wellbeing.

Mr. CONYERS. That takes us back to the question. I mean I go to Harlem and I see a lot of cranes. Manhattan has got a building boom. You go to Chicago and downtown is looking great. But that has nothing to do with the question.

I mean the question is what is the black unemployment rate, and to what degree is there any possibility to ameliorate it. Because as

you said, that factors in on the kind of police-citizen confrontations that you experience. So what I was trying to determine is, is the outlook for the average black youngster in Miami changing any, and if so, in what direction?

Mr. GARY. I don't think we disagree. I don't think we're saying anything differently. I don't think Miami is any different than Harlem, Detroit, or any other city in terms of high unemployment rates. We're just studying a situation wherein the combined unemployment rate for everybody there was about 45 percent, which is very, very high.

In terms of opportunity, I say the opportunity exists. The decision in terms of whether or not everybody in that community is going to participate, I think there's a will but I have to wait and find out whether it's going to happen or not.

Mr. CONYERS. What opportunity exists for black youngsters in Miami? I mean if you don't get to school, you don't even get a chance to get a serious job. I mean I really have to—we have to kind of talk to each other now about the problem because in Detroit, we have high unemployment but we don't have police-citizen confrontations in which blacks are getting ripped off at the rate that they are in your general area.

So that's a very different kind of problem. We have the same economic problem which is, as you point out, nationally induced. But I can't tell a kid in Miami that he's got the opportunity because there's cranes building and the ships are shipping, and everything is jumping off, and all you have to do, son, is get into it, when he's coming from a family that has come from some such circumstances, and he's been subject to a school system that has never prepared him to go to the University of Michigan or to Morehouse or to Wayne Law School.

We can't tell him the opportunity is there. I mean we would have to bring the police in with us to tell him that. I mean, I would know better than to do that.

Now what I'm trying to get from you is what opportunity are you talking about, since you say it's there. I really have to—as you can perhaps begin to feel, I disagree with that opportunity aspect. [Applause.]

Mr. GARY. You've talked about a number of issues. Let me just see if I can just address some of them.

First of all, I am sure that Detroit is, in terms of unemployment, no different than Miami.

Mr. CONYERS. It may be higher.

Mr. GARY. Exactly. And I don't have the—

Mr. CONYERS. But nobody is getting killed. The cops are not killing black kids in Detroit.

Mr. GARY. And we talked about that—

Mr. CONYERS. That's what we're trying to hook up.

Mr. GARY. We talked about that and I explained to you what those reasons were.

Now in terms of opportunity, as I said to you earlier, the opportunity exists, but the community—when I mean the "community" I mean the business establishment has to firmly agree to allow blacks and other poor people to participate in that.

Mr. CONYERS. Now tell me about what you conceptualize as opportunity.

Mr. GARY. What I consider opportunity?

Mr. CONYERS. Yes.

Mr. GARY. Apprenticeship programs so we can help construct those buildings from the ground floor on up to the top. That's the kind of opportunity I'm talking about. And I'm saying if they're building in Miami, if they're building five new buildings in Miami, why don't we have participation in that, you know, black and Hispanic architects, contractors, plumbers, electricians, more than what we have right now?

Mr. CONYERS. What you're saying is that opportunity does not exist.

Mr. GARY. Whichever way you want to word it. I'm saying that it exists but they aren't allowing them to participate to the extent that they should.

Mr. CONYERS. You said if they did this, that, and the other thing, the opportunity would exist. But that's another way, a very astute way of saying that opportunity does not now exist.

Mr. GARY. Now the—

Mr. CONYERS. The kids who are rioting aren't college people or workers, they're unemployed people on the street. Isn't that correct?

Mr. GARY. That's correct. And I'd like to say that that's characteristic of most urban centers. This is a national problem, it is not just a local problem in Miami. You can go to New York, Detroit, Los Angeles—

Mr. CONYERS. The police problem that brings you here is not the same problem it is in New York. And Calvin Butts wants me to get there.

Let me suspend these hearings. I've got to go to the floor to vote. Let's take a little break, and then we'll come back in just a short few minutes. Thank you.

AFTER RECESS

Mr. CONYERS. The subcommittee will come to order.

We were discussing, Mr. Gary, the relationships between the black youngsters in Miami and the possibility of having some role in the community, and feeling of belonging.

We were talking about the relationship between the economy and their attitudes toward the kinds of events that lead to the disruptions and to the police violence. And I was trying to get you to describe to me wherein you saw this opportunity.

It was my observation that there was really precious little opportunity for young blacks in Miami, and you are considerably more optimistic about it.

Could you just discuss the matter in that context?

Mr. GARY. Let me see if I can—I think it's a matter of semantics.

The opportunity exists, as I said. There's a potential for opportunity. I don't think it's been exercised or given as freely or as equitably as it should be given, just as I can say that about other cities about the country.

I can also say to you that in terms of the efforts that are now being made, and those efforts have occurred over the last year, I think the community recognizes that they've got to afford that opportunity to the black community, as demonstrated by the fact that a year and a half ago when we had interest rates of 20 percent, the business community raised private funds totally approximately \$7 million for economic development loans without the strings attached that normally you attach, not only just in terms of the Federal bureaucracy but also in the traditional commercial loans to just black businesses. That's a step.

Second, they have committed \$10 million a year and they have already firm'd up \$5 million of that for this particular year that will go directly to black businesses. I think that potential I'm saying is being materialized. It is not what it should be, but it is moving in that direction.

Mr. CONYERS. OK.

Now out of the Neville Johnson case, a 20-year-old shot by a Miami police officer in December of last year, was there anything—any lessons learned about that matter? What's your reaction to that incident?

Mr. GARY. First of all, I won't talk specifically to the case because it is under adjudication right now.

I think what we have learned, without jeopardizing that, is that first of all that we've got to put more of our experienced officers in those communities and that we've got to look at how we deploy our officers, wherein the most senior officers, not only those that are in the buildings but those who get the most favorable beats or locations now have to be reassigned to put in those areas that need better police community relations.

I think the third thing that we've learned is that we need to have better training in terms of our rookie officers, not only in terms of the use of deadly force and deadly force kind of situations, but also sensitivity training, which we have—all three of those things we are beginning to do.

I think we have learned a considerable amount from what has happened there.

Mr. CONYERS. What about Alonzo Singleton, 17, black, shot eight times by Miami police officers on December 28, 1982, fled the scene on Northwest First Avenue, Overtown; cleared of wrongdoing by county grand jury? What do you have to enlighten us on about that matter?

Mr. GARY. First of all, Mr. Singleton had a gun, and he was fleeing an incident, a crime. And he accosted a police officer with a gun in his hand.

Second, that same grand jury which exonerated the officer involved was the same grand jury that indicted five officers in Miami.

Mr. CONYERS. That doesn't help—I mean I'm glad they did that, but that doesn't wash. If they didn't do the right thing here, it's not going to help anybody that they did the right thing in another case.

In other words, you don't have any problem with this case. You don't think this case needs to be discussed where—

Mr. GARY. I personally did the investigation—

Mr. CONYERS [continuing]. The man committing the crime——

Mr. GARY. I personally did the investigation of that and I have no problems with that case.

Mr. CONYERS. You don't have any problems.

Mr. GARY. No.

Mr. CONYERS. OK. All right, let me turn to Gail Bowman. We'll have just a few more questions and be through.

Ms. BOWMAN. Thank you, Mr. Chairman.

I spent about a week in Miami in March, investigating for the subcommittee. Granted that's a very short period of time. I left with a large number of questions, some of which I will ask now.

More than half of Miami's population, as I understood it, is Spanish-speaking. Is that right?

Mr. GARY. Fifty-five percent. Right.

Ms. BOWMAN. What I heard from young blacks in Miami was that they feel that the bilingual aspect in the job market in Miami has locked them out, that whatever few job opportunities they may have had, at McDonalds or whatever small jobs, are now no longer available to them.

Mr. GARY. That's the feeling of the black community and that's a fact.

Ms. BOWMAN. That's a fact?

Mr. GARY. Yes.

Ms. BOWMAN. What's to be done?

Mr. GARY. What's to be done? Well, first of all there is the committee of downtown business people—they are called Greater Miami United—that has identified that as well as other problems that exist in our community, particularly as it relates to blacks participating in the economic development process.

They are in the process now of developing a program that will address that issue, among other things, with the understanding that if we are to live in a harmonious community that those barriers have to be removed.

Ms. BOWMAN. Can you tell us anything about the program?

Mr. GARY. First of all the program says that we will now separate the minorities in terms of blacks and Latins, and that began with the city of Miami and Dade County by recognizing the fact that when you put everybody in the same pot, that not at all times do everybody benefit equally.

So as a result of that what we did is we said we would have a 50-percent set-aside program and in that 50 percent, 25 percent can go only to blacks and 25 percent can only go to Latins, to insure that they participate.

We've gotten the business community to do the same thing, as demonstrated by what I said earlier, that they've committed themselves to 10 million dollars' worth of procurement from black businesses which obviously will generate those business, and jobs in those businesses.

Ms. BOWMAN. So how many jobs are we talking about? How big is the pool out of which we're going to provide——

Mr. GARY. That's hard for me to say right now. I couldn't tell you a figure.

Ms. BOWMAN. I also heard while I was in Miami that black Miamians perceived that Cubans on the police force are particularly

hostile to blacks, and particularly violence-prone. I also heard that a lot of the Cuban officers come out of police forces in Cuba in which a great deal more force was acceptable, and they have brought these practices to Miami intact and are using them in the black community.

Would you care to comment on that?

Mr. GARY. I can say that that's what you heard. I'm not so sure whether that is factual, no more than to categorize all blacks as being more violent than the white community.

Ms. BOWMAN. Is that not a perception that you're familiar with?

Mr. GARY. I'm aware of that perception. I'm just saying that perception and facts are not always mutually inclusive.

Ms. BOWMAN. But don't you—aren't you as concerned about the public's perception of what the police force is doing?

Mr. GARY. Yes; no doubt. I think I said earlier that we have a problem in terms of sensitivity and understanding in not only just the black community but also the Latin community. I think there is a need, particularly when you have communities throughout the country that are accustomed to stereotyping, accustomed to not have interreactions with various ethnic groups, they have a problem when they have to do that.

As demonstrated by the fact that we have 60 percent of our officers that are young, that have not had that kind of experience, that does cause a problem. And that's why we are planning to implement a sensitivity training program that would be for blacks, Latins, and whites.

Ms. BOWMAN. OK.

How are citizen complaints handled in Miami?

Mr. GARY. We have an office of professional compliance which is a form of civilian review board, but not in its truest sense. That office reports directly to the city manager. The director is appointed by the manager. The members are all civilians and they are representative of all segments of the community, Hispanic, Latin, a woman, and an Anglo. And they do investigations once a complaint is lodged.

I might add that we now have centers in all of our neighborhoods whereby any citizen can come up to that particular neighborhood center and make a complaint, whether it might be an uncourteous—somebody using excessive force, that complaint is registered right there with a civilian.

The office of professional compliance, which is civilian, also is on the scene, along with a social agency person who is also there, as well as internal security.

Once that complaint is made, the office of professional compliance sits with internal security and observes every process that they follow. And once they do that, they complete their investigation, OPC, which is office of professional compliance, does a separate report beyond what the police department does, based on their observation of what happened in terms of whether or not it was done thoroughly, whether they got the actual facts, whether the police department's report actually includes what was taken down.

They make a report to highlight whether it was accurate or whether it was inaccurate. If it was inaccurate, the city manager

takes control and the city manager says, "Hey, you've got to correct it."

Ms. BOWMAN. How often do you find that the office of professional compliance is saying that the department is inaccurate?

Mr. GARY. I can send you the last two reports, the one on the Neville Johnson shooting, and the one on the Cuban disturbance. And I would say that probably about 60 percent of the reports said that the police department may have made some mistakes.

Ms. BOWMAN. And what do you do with them then, once they come to you?

Mr. GARY. What we do is I call the police chief in and all of his top people, and I said, "These are the facts." And usually, unless they can refute them, I usually take the opinion of the office of professional compliance.

What we do is we implement policies to insure that that doesn't happen in the future, and we even go as far as to discipline people.

Ms. BOWMAN. Should I assume then from that that the office of professional compliance is viewed with some amount of hostility by a lot of the rank and file of the police department?

Mr. GARY. I haven't seen any. I mean I'm sure there is some. I think it is—they see it as a necessary evil, and I think they see it as something that is not only necessary in terms of what is happening in our community but throughout the United States, but also as something that is more acceptable to them than our traditional civilian review board.

Ms. BOWMAN. Is Chief Kenneth Harms a popular police chief in Miami?

Mr. GARY. It all depends on who you talk to.

Ms. BOWMAN. Who says he's good?

Mr. GARY. I do.

Ms. BOWMAN. Of the citizen groups, who is he popular with?

Mr. GARY. I would say he's popular with Anglos. I would say he's popular with the business people. I would say he's popular with the Latin community. And I would say he's—

Mr. CONYERS. Would you say he is unpopular with the black community?

Mr. GARY. To some extent, yes.

Ms. BOWMAN. Is there anybody else that he's unpopular with that you'd like to list?

Mr. GARY. Put in proper perspective, I think the unpopularity came about as a result of a statement that was in the newspaper, in terms of some hoodlums that were rioting in Overtown. And I think we've all experienced the press. At all times they don't print what you actually say, or they take things out of context.

Now to say that comment should negate all other positive things that I know he's done, and a lot of the people in the community know he's done, I don't think it's fair.

Ms. BOWMAN. OK.

How closely does Chief Harms work with his police community relations officer? Is that Perry Anderson?

Mr. GARY. Yes; it is.

Ms. BOWMAN. Do you have any idea how closely they work together? Do they meet regularly, do you know?

Mr. GARY. I would say that the police chief meets with Perry Anderson, along with the other chiefs, I would say approximately once a week or once every 2 weeks.

Ms. BOWMAN. Does he meet with him privately?

Mr. GARY. Yes; he does.

Ms. BOWMAN. Do you have any idea how frequently?

Mr. GARY. Quite often.

Ms. BOWMAN. OK.

I imagine you have seen the report of the U.S. Civil Rights Commission on Miami.

Mr. GARY. Yes; I have.

Ms. BOWMAN. There are just a raft of recommendations in the back of it. We are interested in whether Miami has set out to implement specifically any of the recommendations. One about the police force is that the review process be examined and be made more efficient. I won't go into the details. But it's education and it's housing and it's job opportunity. It covers the whole gamut.

Have you undertaken to specifically implement any of these, or pay them any special attention?

Mr. GARY. Yes; we have. And I'd be happy to respond to any one in detail.

But I would like for you to understand that you're talking about the city manager of Miami. The city manager of Miami is not responsible for housing. That's the Dade County responsibility.

The city of Miami is not responsible for transportation.

I think that report reflects the city of Miami and Dade County. And a lot of the issues that relate to Dade County, a lot of times people say city of Miami, which we have no control authority over.

Education is not controlled by the city manager. There's a separate school board which has a separate superintendent, has a separate board. They deal with education that we basically don't have any control over, like a city in New Jersey or New York.

Ms. BOWMAN. OK.

Mr. CONYERS. I hate to interrupt again, but the lights are on and so I'm required to go to the floor to cast a ballot.

So we will stand in a short recess. OK.

AFTER RECESS

Mr. CONYERS. The committee will come to order.

I want to thank you very much, Mr. Gary, for your patience with these interruptions that none of us can affect.

My last question is:

Your description of your feeling of the attitude and the hopes of the black community in Miami in terms of this police violence that they've been subjected to, do you think that there is a feeling that there will be some improvement, a diminution of that activity?

Mr. GARY. I think so. I think the reason for that is those things that we've done before December and those things that we are continuing to do now.

I think also they have some faith in the leadership that exists right now in terms of what the police officers can do and what they won't do. And I think they also have some confidence in that leadership in terms of—not only just in terms of police activity but

those things that the government can do, particularly the city of Miami can do in terms of other economic programs that will benefit them.

Mr. CONYERS. You've been very helpful to us. Your job is a difficult one, there's no question about that. I would like you to know that this subcommittee is available for whatever resources, instructions, or comments that you or anyone in the area would like to provide us with.

We deeply appreciate your taking your time to come here and be with us today.

Mr. GARY. I appreciate the opportunity, also.

Mr. CONYERS. Thank you very much.

Mr. GARY. Thank you.

[Prepared statement of Howard V. Gary with attachments follow:]

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PRESENTATION
TO

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

JUNE 15, 1983

HOWARD V. GARY
CITY MANAGER
CITY OF MIAMI, FLORIDA

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, HONORED GUESTS, LADIES AND GENTLEMEN:

THANK YOU FOR THE OPPORTUNITY TO ADDRESS AN AREA THAT IS OF GREAT IMPORTANCE TO ME PERSONALLY AND AS A CITY MANAGER.

THE POLICE USE OF DEADLY FORCE HAS BECOME A DIVISIVE ISSUE THAT HAS POLARIZED COMMUNITIES, SPARKED CIVIL STRIFE, AND CREATED ECONOMIC CHAOS. IN OUR URBAN SOCIETIES, CRIME, DRUGS, WEAPONS AND VIOLENCE ARE UNFORTUNATE REALITIES WITH WHICH LAW ENFORCEMENT MUST CONSTANTLY DEAL. POLICE PERSONNEL WILL ON MANY OCCASIONS HAVE TO RELY ON THEIR ULTIMATE POWER - THE USE OF DEADLY FORCE. THIS SHOULD BE ONLY AS A LAST RESORT WHEN THERE ARE NO OTHER ALTERNATIVES TO SAVING LIVES OR PREVENTING SERIOUS CRIMES OF VIOLENCE. EUROPEAN COUNTRIES THAT HAVE PEACEFULLY POLICED THEIR TOWNS FOR CENTURIES ARE FINDING IT INCREASINGLY NECESSARY TO ARM THEIR POLICE OFFICERS TO COMBAT TERRORISM, ORGANIZED CRIME, AND STREET VIOLENCE.

THE POLICE THEMSELVES ARE FREQUENTLY TARGETS OF GUNMEN. SOMETIMES IT IS EASY TO SECOND GUESS POLICE OFFICERS' ACTIONS. WE ARE NOT THE ONES OUT IN THE STREETS AND ALLEYS WHOSE LIVES ARE OFTEN IN JEOPARDY. THESE MEN AND WOMEN, OF ALL RACES AND BACKGROUNDS ARE PROTECTING US AND DOING SO AS BEST THEY CAN, GIVEN THE CHAOTIC STATE OF AFFAIRS AND CONDITIONS BEYOND THEIR CONTROL. BY AND LARGE, NINETY-FIVE PERCENT OF AMERICA'S LAW ENFORCEMENT PERSONNEL ARE SINCERE, DEDICATED AND FAIR.

WE DO NOT LIVE IN A PERFECT WORLD. A POLICE DEPARTMENT IS REFLECTIVE OF THOSE WHO SERVE IN IT. THEY BRING WITH THEM ALL THE FAULTS AND IMPERFECTIONS OF HUMAN BEINGS.

IN THE ABSENCE OF PERFECTION AND IN THE PRESENCE OF GOVERNMENT'S RESPONSIBILITIES TO CITIZENS, THERE MUST BE MORE OF A BALANCE. THERE MUST BE A TOTAL COMMITMENT TO ASSURE THAT THE MOST FUNDAMENTAL PRINCIPLES OF A DEMOCRACY ARE AFFORDED TO ALL. THE BURDENSOME DUTIES OF THE POLICE OFFICER MUST CALL FOR THE EXERCISE OF DISCRETION. THE EXISTENCE OF POLICE UNIONS AND CIVIL SERVICE RULES WHICH PROTECT THOSE WHO ARE UNFIT TO SHOULDER THESE RESPONSIBILITIES MUST NOT BE AN IMPEDIMENT TO THE FULFILLMENT OF THIS COMMITMENT.

GIVEN THAT POLICE DEPARTMENTS MUST BE ARMED, AND GIVEN THAT A WIDE VARIETY OF EFFECTIVE ALTERNATIVES TO DEADLY FORCE HAVE NOT YET BEEN FULLY EVALUATED, CITY ADMINISTRATORS AND POLICE CHIEFS MUST WORK TOGETHER IN ACHIEVING THE REDUCTION OF CRIME WHILE REDUCING THE INSTANCES OF UNJUSTIFIABLE DEADLY FORCE APPLICATION. CAN WE ELIMINATE ACCIDENTAL, NEGLIGENT, UNJUSTIFIABLE OR INEXCUSABLE FIREARM DISCHARGES? I THINK NOT. BUT OUR FAILURE TO EXHAUST ALL MEANS AND EFFORTS TO CONTROL THESE SITUATIONS WOULD ONLY SERVE AS AN INDICTMENT OF OUR FAITHFULNESS TO THOSE WE ARE DUTY-BOUND TO PROTECT. WHEN THE INEVITABLE TRAGEDY STRIKES, WHAT CAN BE DONE TO PREVENT COMMUNITY TENSIONS FROM BURSTING THE OFTEN FRAGILE BUBBLES OF TRANQUILITY?

IF WE LOOK BACK IN OUR HISTORY, WE CAN SEE THAT THESE DILEMMAS ARE NEITHER NEW NOR UNIQUE.

THE UNITED STATES INHERITED A CODE OF COMMON LAWS FROM ENGLAND. ALTHOUGH THESE LAWS PRE-DATE COLONIAL TIMES, THEY ARE STILL FOLLOWED IN TWENTY THREE STATES INCLUDING FLORIDA. THESE COMMON LAWS HAD ONCE HELD THAT ALL FELONIES INCLUDING PICKPOCKETING AND POACHING WERE PUNISHABLE BY DEATH. ALLOWING A PEACE OFFICER TO INVOKE THE DEATH PENALTY PRIOR TO TRIAL, WAS ESSENTIALLY EXPEDITING THE "INEVITABLE".

THE BLACK COMMUNITY'S PERSPECTIVE ON POLICE USE OF DEADLY FORCE SPRINGS FROM THE TIME IN THE PAST WHEN LAWS AND THE POLICE WHO ENFORCED THEM WERE OPENLY DISCRIMINATORY; WHEN THERE WERE TWO SETS OF JUSTICE, ONE WHITE AND ONE BLACK. SOME SAY THOSE TIMES ARE BEHIND US, BUT ARE THEY? HISTORY IGNORED IS HISTORY REPEATED. THERE ARE STILL THOSE WHO BELIEVE THAT LOCAL POLICE DEPARTMENTS ARE AGENTS OF AN OPPRESSIVE ESTABLISHMENT. THIS PERCEPTION COLORS ALL EVENTS, SO THAT WHAT MAY BE IN ACTUALITY A GOOD FAITH ACTION, MAY APPEAR TO SOME A SINISTER PLOT.

EVEN THOUGH MANY STATES HAVE ENACTED A USE OF DEADLY FORCE STATUTE, MOST PROGRESSIVE POLICE AGENCIES HAVE GRADUALLY ADOPTED MORE

RESTRICTIVE FIREARM POLICIES THAN THOSE REQUIRED BY LAW. COURT OPINIONS ON THE USE OF SUCH RESTRICTIONS HAVE BEEN MIXED. IN ALL CRIMINAL ACTIONS, HOWEVER, STATE LAW IS THE DETERMINANT OF WHAT CHARGE, IF ANY, CAN BE FILED AGAINST A POLICE OFFICER IN THE APPLICATION OF HIS OR HER LAW ENFORCEMENT RESPONSIBILITY.

MANY STATES HAVE ENACTED A POLICE CERTIFICATION PROCEDURE WHICH IS GOVERNED BY STATE LAW. UNFORTUNATELY, THOSE WHO SIT IN JUDGMENT OF AN OFFICER FACING DECERTIFICATION DO NOT ALWAYS VIEW THE SET OF FACTS FROM THE SAME PERSPECTIVE. WHAT MAY APPEAR TO BE GROSS NEGLIGENCE FROM AN URBAN, PROGRESSIVE VIEWPOINT, MAY SEEM JUSTIFIABLE AND HEROIC FROM A RURAL, TRADITIONAL VIEWPOINT. THIS LACK OF CONSISTENCY WITH REGARD TO DISCIPLINARY ACTIONS SENDS CONFUSING SIGNALS TO COMMUNITIES WHOSE APPREHENSIONS ABOUT THE POLICE ARE ONLY HEIGHTENED. FURTHERMORE, THE FAILURE TO DECERTIFY AN UNDESIRABLE POLICE OFFICER CURRENTLY SERVING IN ONE COMMUNITY, ALLOWS THAT SAME OFFICER TO SEEK EMPLOYMENT ELSEWHERE AND PERHAPS PERPETRATE A SIMILAR UNDESIRABLE ACT.

FLORIDA'S STATUTES HAVE CHANGED FROM TIME TO TIME IN SUBSTANCE AND INTERPRETATION, BUT HAVE GENERALLY HELD THAT DEADLY FORCE IS JUSTIFIED WHEN A LAW ENFORCEMENT OFFICER REASONABLY BELIEVES IT TO BE NECESSARY TO:

- DEFEND HIMSELF OR ANOTHER FROM BODILY HARM WHILE MAKING AN ARREST.

- WHEN NECESSARILY COMMITTED IN RETAKING FELONS WHO HAVE ESCAPED,

- WHEN NECESSARILY COMMITTED IN ARRESTING FELONS FLEEING FROM JUSTICE.

IN 1971, THE FLORIDA ATTORNEY GENERAL INDICATED THAT A POLICE OFFICER HAD A LEGAL DUTY TO USE DEADLY FORCE AND THAT A POLICE CHIEF OR SHERIFF COULD NOT NARROW THE SCOPE OF THE OFFICER'S AUTHORITY - DISCIPLINARY ACTION INITIATED BY THE DEPARTMENT FOR A VIOLATION OF A MORE RESTRICTIVE POLICY WOULD NOT BE UPHOLD IN THE COURTS.

IN 1974, THE STATE LEGISLATURE CHANGED THE STATUTE AND RESTRICTED DEADLY FORCE USAGE BY POLICE OFFICERS TO:

- PREVENT DEATH OR GREAT BODILY HARM,

- PREVENT THE ESCAPE OF A FELON WHOSE ESCAPE WOULD ENDANGER HUMAN LIFE OR INFLICT GREAT BODILY HARM.

THE STATE LEGISLATURE AMENDED THE STATUTES AGAIN IN 1975, AND RETURNED TO WHAT IS ESSENTIALLY THE CURRENT LAW. IN 1976, THE FLORIDA ATTORNEY GENERAL REITERATED HIS 1971 OPINION, EXCEPT, THAT A CHIEF OF POLICE OR SHERIFF COULD ADOPT A MORE RESTRICTIVE DEPARTMENTAL POLICY.

MIAMI HAS GONE THROUGH MAJOR CHANGES SINCE ITS INCORPORATION AS A WILDERNESS OUTPOST EIGHTY SEVEN YEARS AGO TO A MULTILINGUAL, MULTI-ETHNIC, BURGEONING METROPOLIS WHICH IS AN INTERNATIONAL HUB OF FINANCE AND TRADE. THIS GROWTH HAS NOT COME WITHOUT HUMAN COST.

MIAMI, ONCE THE FOCUS OF COMMUNITY LIFE, IS NOW THE URBAN CORE OF OUTLYING BEDROOM COMMUNITIES. WE ARE ONLY ONE OF 27 MUNICIPALITIES IN DADE COUNTY, ALTHOUGH WE REMAIN THE LARGEST. BEING THE URBAN CORE HAS ITS DISTINCT DISADVANTAGES. WE HAVE EXPERIENCED TWO MAJOR INFLEXES OF CUBAN EXILES AND THOUSANDS OF HAITIANS FLEEING OPPRESSIVE POVERTY. WE HAVE FACED MAJOR POLICE-COMMUNITY CONFRONTATIONS IN 1938, 1972, 1980 AND MOST RECENTLY IN DECEMBER, 1982.

IT IS WITHIN THIS BACKGROUND THAT WE SAW THE NEED FOR CHANGES IN THE TRADITIONAL METHODS USED BY LAW ENFORCEMENT.

MEMBERS OF THE MIAMI CITY COMMISSION AND THE LOCAL MEDIA HAVE CALLED FOR CIVILIAN REVIEW OF POLICE MISCONDUCT. WHILE THE PROPOSAL HAD SOME MERIT, HISTORY HAS FOREWARNED US THAT TRADITIONAL CIVILIAN BOARDS WERE GENERALLY INEFFECTIVE, POLITICALLY CONTROVERSIAL AND UNACCEPTABLE TO POLICE OFFICIALS AND RANK AND FILE PERSONNEL. IN ORDER TO ACHIEVE THE OBJECTIVES OF PUBLIC SCRUTINY, GOVERNMENT IN THE SUNSHINE, AND ACCOUNTABILITY, A PROCESS WAS ESTABLISHED AND ENDORSED BY THE CITY GOVERNMENT, POLICE UNION, AND THE BLACK AND

HISPANIC COMMUNITIES. ADOPTED BY THE MIAMI CITY COMMISSION, THE OFFICE OF PROFESSIONAL COMPLIANCE WAS CREATED TO INDEPENDENTLY OVERSEE THE MOST SENSITIVE INVESTIGATIONS, INSURING IMPARTIALITY AND OBJECTIVITY. REPORTING DIRECTLY TO THE CITY MANAGER, THE OFFICE OF PROFESSIONAL COMPLIANCE, IS AN ETHNICALLY BALANCED BODY AUTHORIZED TO PHYSICALLY OBSERVE INTERNAL AFFAIRS INVESTIGATION AND ISSUE INDEPENDENT REPORTS REGARDING OUTCOMES AND PROCEDURES.

WE ARE NOW OPENING COMMUNITY OUTREACH CENTERS TO ENABLE CITIZENS THE OPPORTUNITY TO VENTILATE AND DOCUMENT GRIEVANCES REGARDING OFFICIAL BEHAVIOR OF POLICE OFFICERS. WHILE THIS PROCESS ALONE MAY NOT REDUCE INCIDENCES OF UNJUSTIFIED USE OF DEADLY FORCE, WE ARE CONFIDENT THAT A "GRASS ROOTS" COMPLAINT PROCEDURE WILL DIFFUSE COMMUNITY TENSION AND HELP TO IMPROVE TRUST AND CONFIDENCE IN THE ACCOUNTABILITY PROCESS ESPECIALLY DURING THE INVESTIGATION OF A CONTROVERSIAL POLICE SHOOTING.

THE FLORIDA ATTORNEY GENERAL'S OPINION OF 1976, GIVING CHIEFS AND SHERIFFS MORE LATITUDE OPENED THE DOOR FOR A MORE ENLIGHTENED DEADLY FORCE POLICY IN MIAMI. MIAMI POLICE CHIEF KENNETH HARMS WAS THE FIRST LOCAL POLICE ADMINISTRATOR TO PURSUE A BOLD INITIATIVE. MUCH STUDY AND RESEARCH HAD GONE INTO PREPARATION FOR A POLICY THAT WOULD LIMIT THE INSTANCES IN WHICH DEADLY FORCE WAS APPROPRIATE. THE BALANCE WAS STRUCK BETWEEN A COMMUNITY'S RIGHT TO BE FREE OF FEAR

AND THE INDIVIDUAL'S RIGHT TO DUE PROCESS. MIAMI PLACED A HIGHER VALUE ON HUMAN LIFE THAN IT DID ON PROPERTY WORTH.

DURING THE DEVELOPMENT PERIOD, A DEVASTATING 1980 CIVIL DISTURBANCE ERUPTED IN THE CITY OF MIAMI PRECIPITATED BY THE ACQUITTAL OF POLICE OFFICERS WHO WERE TRIED FOR THE BEATING DEATH OF A BLACK INSURANCE EXECUTIVE. THE NEW POLICY WAS IMPLEMENTED DURING THIS DISTURBANCE.

SINCE THAT TIME, OUR POLICY HAS BEEN REFINED AND STRENGTHENED. IT HAS BEEN COPIED ACROSS THE COUNTRY AND IS BEING ADOPTED BY ALL THE 27 MUNICIPAL POLICE DEPARTMENTS IN DADE COUNTY. THIS UNUSUAL CONSENSUS WAS REACHED THROUGH THE UNDERSTANDING THAT HUMAN LIFE IS INDEED THE MOST PRECIOUS OF ASSETS AND THAT CITIZENS SHOULD NOT BE IN FEAR OF A POLICE OFFICER'S GUN FROM ONE LOCAL COMMUNITY TO THE NEXT.

IT IS THE POLICY OF MY CITY THAT ALL DISCHARGES OF FIREARMS BE INVESTIGATED AND DOCUMENTED. EACH DISCHARGE IS INVESTIGATED IMMEDIATELY BY THE INDIVIDUAL'S COMMANDING OFFICER AND INTERNAL AFFAIRS REGARDLESS OF AN INJURY OR A MISS. IF THERE IS AN INJURY, THE INVESTIGATION BECOMES MORE INTENSE. INTERNAL AFFAIRS, THE LAW DEPARTMENT, HOMICIDE PERSONNEL, AND A SHOOTING TEAM, CONSISTING OF AN ASSISTANT STATE ATTORNEY, CRIME LAB TECHNICIANS, AND A MEDICAL EXAMINER ARE SUBJECT TO CALL.

THESE EFFORTS ARE MONITORED FOR QUALITY BY THE OFFICE OF PROFESSIONAL COMPLIANCE. ONCE CONCLUDED, A SHOOTING REVIEW BOARD IS IMPANELED ON ALL FIREARM DISCHARGES TO MAKE RECOMMENDATIONS ON POLICY, PROCEDURAL COMPLIANCE, DISCIPLINARY ACTIONS AND POSSIBLE TRAINING NEEDS.

WHILE MUNICIPAL ADMINISTRATORS MAY NOT BE DIRECTLY RESPONSIBLE FOR THE INDIVIDUAL ACTS OF POLICE OFFICERS, WE ARE FULLY RESPONSIBLE FOR ASSURING THAT THE POLICE CHIEFS WE CONTROL HOLD ACCOUNTABLE THOSE COMMANDERS AND SUPERVISORS WHOSE DAILY RESPONSIBILITIES INCLUDE THE MONITORING AND SUPERVISION OF POLICE ACTIVITIES.

AS A MUNICIPAL ADMINISTRATOR, THE ETHNIC COMPOSITION OF THE WORKFORCE IS OF PARAMOUNT INTEREST TO ME. AS IN ANY LARGE CITY, THE MINORITY POPULATION MUST HAVE EQUAL REPRESENTATION IN MUNICIPAL GOVERNMENT. MIAMI IS NO DIFFERENT. IT IS A COMMUNITY COMPRISED OF ALMOST 55% HISPANIC, 24% BLACK AND 21% ANGLOS.

EQUAL OPPORTUNITIES AT THE ENTRY AND PROMOTIONAL LEVEL MUST BE AFFORDED TO EVERYONE. PUBLIC OFFICIALS MUST BE WILLING TO MAKE PERSONAL SACRIFICES IN ORDER TO ACCOMPLISH AFFIRMATIVE ACTION GOALS. OUR POLICE AGENCY, FOR EXAMPLE, IS CURRENTLY STAFFED BY A MINORITY CONFIGURATION OF 55%. ALTHOUGH NOT YET REFLECTIVE OF THE ACTUAL ETHNIC PERCENTAGES IN THE COMMUNITY, IT REPRESENTS A TREMENDOUS

STRIDE FROM THE PREVIOUS PERCENTAGES WHEREBY NON-MINORITIES REPRESENTED MORE THAN 55% OF THE POLICE FORCE.

AFFORDING EMPLOYMENT OPPORTUNITIES FOR MINORITIES MUST BE FOLLOWED BY UPWARD MOBILITY OPPORTUNITIES. IN POLICE WORK ESPECIALLY, I HAVE FOUND THIS TO BE OF URGENT PRACTICAL IMPORTANCE. TOO OFTEN, I HAVE PERSONALLY OBSERVED ETHNIC CUSTOMS OR CULTURAL DIFFERENCES MISINTERPRETED BY POLICE OFFICERS WHO, IF SUPERVISED BY A MORE REPRESENTATIVE MIX OF LEADERSHIP, MIGHT NOT HAVE MISINTERPRETED THE SITUATION AS HOSTILE OR THREATENING.

CONTROLLING THE APPLICATION OF UNJUSTIFIED USE OF DEADLY FORCE IS NOT EXCLUSIVELY THE FUNCTION OF SUPERVISION. SUPERVISION MUST BE SUPPLEMENTED WITH A COMMITMENT TO A PROGRESSIVE TRAINING PROGRAM.

OVER THE YEARS, THE POLICE DEPARTMENT HAS HELD SEVERAL TRAINING SESSIONS TO BETTER EQUIP ITS OFFICERS IN DEALING WITH URBAN STREET SETTINGS AND THE PUBLIC. RECENTLY, A VERY SUCCESSFUL OFFICER SURVIVAL PROGRAM WAS CONDUCTED IN WHICH 891 SWORN PERSONNEL WERE TRAINED ON HOW TO BETTER HANDLE HIGH STRESS AND LIFE THREATENING SITUATIONS WHICH MIGHT RESULT IN THE USE OF DEADLY FORCE. ANOTHER TRAINING PROGRAM BEING CONSIDERED IS ROLE PLAYING AT AN OUTDOOR RANGE THAT HAS AN URBAN STREET SETTING.

POLICE DEPARTMENTS MUST EVALUATE ALTERNATIVES TO THE USE OF DEADLY FORCE. IN MIAMI, WE ARE CURRENTLY CONDUCTING PR-24 POLICE BATON TRAINING TO GIVE OFFICERS ANOTHER EFFECTIVE TOOL TO USE BEFORE RESORTING TO A FIREARM AS OPPOSED TO USE OF THE (SOMETIME DEADLY) KEL-LITE.

IN MAY OF THIS YEAR THE CITY OF MIAMI COMMISSION, WITH AN ENDOWMENT FROM THE MCKNIGHT FOUNDATION, PURCHASED A SYNTHESIZED MEDIA ENVIRONMENT SIMULATOR. THE SME-24, AS IT IS CALLED, IS ANOTHER TOOL THAT WILL BE USED BY THE POLICE DEPARTMENT TO TRAIN POLICE OFFICERS IN RESPONDING TO HIGH STRESS DEADLY FORCE SITUATIONS. THROUGH THE USE OF COMPUTER-CONTROLLED SLIDE PROJECTORS AND TAPE RECORDERS, THE SME-24 CAN CONFRONT THE OFFICER WITH REALISTIC SITUATIONS AS THEY MAY OCCUR ON THE STREET. WITH THE USE OF BIOFEEDBACK MACHINERY, AND INFRARED CAMERAS, THE REACTIONS AND STRESS LEVELS OF THE OFFICER CAN BE MONITORED. IF THE OFFICER HANDLES THE SITUATION CORRECTLY, HE SHOULD BE ABLE TO AVERT A SHOOTING CONFRONTATION WITH THE SUBJECT BEING PROJECTED. IN THE EVENT THE OFFICER MAKES MISTAKES IN THE HANDLING OF THE SITUATION, THE SME-24 OPERATOR OR COMPUTER CAN UTILIZE A SYSTEM CALLED BRANCHING TO ESCALATE THE SITUATION TO A SHOOTING CONFRONTATION, AT WHICH TIME THE SCENARIO SHOULD END. THE OFFICER IS THEN CRITIQUED ON HIS PERFORMANCE AND COUNSELLED ON THE DIFFERENT WAYS TO BETTER HANDLE THESE SITUATIONS.

SIMULTANEOUS WITH OUR INITIAL INQUIRIES ABOUT THE SIMULATOR, WE RECENTLY MADE A DECISION IN MIAMI TO MODIFY ALL SERVICE REVOLVERS SO THAT THEY WOULD BE DOUBLE-ACTION WEAPONS ONLY. A SINGLE ACTION WEAPON, IS NOTHING MORE THAN A COCKED HAND GUN, - AN ACCIDENT WAITING TO HAPPEN. THE SINGLE ACTION FEATURE SERVES NO REAL FUNCTION IN POLICE WORK OTHER THAN RISKING THE POSSIBILITY OF TRAGEDY AND CIVIL STRIFE, MIAMI POLICE GUNSMITHS ARE BUSILY WORKING AND GRINDING OUR WEAPONS TO ALLOW THEIR DISCHARGE IN A DOUBLE-ACTION MODE ONLY.

THIS KIND OF POLICY IS ANOTHER STEP THAT OUR DEPARTMENT HAS PURSUED TO DEMONSTRATE OUR COMMITMENT TO THE PRESERVATION OF LIFE, - BOTH THE OFFICER'S AND THE CITIZEN.

IT IS ESSENTIAL, ALWAYS, THAT THE FIREARMS TRAINING OF POLICE OFFICERS, WHETHER ON THE RANGE OR THE SIMULATOR, BE ACCOMPANIED WITH A SIMILAR OR GREATER AMOUNT OF TRAINING IN HUMAN SKILLS. TO ME, THE HEROIC OFFICER IS THE ONE WHO CAN DEFUSE A SITUATION, NOT WITH HIS WEAPON, BUT WITH HIS PERSUASIVE COMMUNICATIONS ABILITY.

THERE ARE NO EASY ANSWERS TO THE MANY QUESTIONS RAISED BY THE CONTROVERSY AND PAIN CAUSED BY THIS ISSUE. THE ATTENTION AND ENERGY WE MUST COLLECTIVELY DEVOTE TO ITS RESOLUTION DOES NOT APPROACH THE ANGUISH AND FRUSTRATION LEFT IN THE SOUL AND SPIRIT OF THOSE WE ALIENATE BY OUR FAILURES.

AS CITY MANAGER OF MIAMI, I HAVE ATTENDED AND OBSERVED THE GRIM REALITY OF BOTH POLICE AND CITIZEN FUNERALS. TO THOSE FAMILY AND FRIENDS LEFT BEHIND REMAIN THE EMPTINESS OF UNANSWERED QUESTIONS AND BROKEN PROMISES.

THE CITIZENRY IS SUBJECTED TO DISPARATE DEADLY FORCE POLICIES FROM TOWN TO TOWN, COUNTY TO COUNTY AND STATE TO STATE. SERIOUS CONSIDERATION SHOULD BE GIVEN TO UNIFORM LEGISLATION AT THE FEDERAL LEVEL TO ASSURE THAT REGIONAL OR LOCAL STANDARDS DO NOT VARY THE APPLICATION OF DEADLY FORCE.

IN THE ABSENCE OF SUCH LEGISLATION, PUBLIC ADMINISTRATORS MUST DEMAND OF THEIR LAW ENFORCEMENT CHIEFS THE ABSOLUTE COMMITMENT TO THE PRINCIPLES WHICH RECOGNIZE THE SANCTITY OF HUMAN LIFE. DEADLY FORCE POLICIES MUST COEXIST WITH MUTUAL RESPECT AND COOPERATION BETWEEN A COMMUNITY AND ITS POLICE.

AS MANY TIMES AS IT HAS BEEN SAID, IT MUST BE SAID AGAIN THAT ROOT CAUSES OF SOCIAL CHAOS MUST BE GIVEN THE HIGHEST PRIORITY BY THE CONGRESS AND ADMINISTRATION. ALL TOO OFTEN, OUR STREET TRAGEDIES AND CIVIL DISORDERS CAN BE SHOWN TO BE THE RESULT OF FAILURES OTHER THAN THE USE OF DEADLY FORCE. THE USE OF DEADLY FORCE MAY BE ONLY THE SPARK.

WHILE I STRONGLY URGE THE APPROPRIATION OF FUNDS FOR INTER-DISCIPLINARY RESEARCH INTO THE CAUSES AND CONSEQUENCES OF POLICE-COMMUNITY CONFRONTATIONS, I MUST UNEQUIVOCALLY ADD THAT THE ALLOCATION OF FUNDS INTO ENFORCEMENT ACTIVITIES ALONE, WILL NOT SOLVE THE PROBLEMS WHICH WE, AT THE MUNICIPAL LEVEL, MUST FACE. DIVERSIONARY AND DETERRENT PROGRAMS MUST BE SEEN AS A VIABLE OPPORTUNITY TO ADDRESS THIS SERIOUS ISSUE.

WITHOUT THIS RECOGNITION, OUR FAILURES AND THE TRAGEDIES WHICH FOLLOW SHALL BE ON THE CONSCIENCE OF ALL OF US WHO HAVE HAD THE POWER TO MEET THE CHALLENGE.

HOWARD V. GARYExperience

04/81 - Present

CITY MANAGER, CITY OF MIAMI

Directs the administration of all departments of the City of Miami government with a budget of more than \$190 million and 3,500 employees. Responsible for the efficient administration of all departments and has the authority to enforce the laws of the City; to appoint, remove, or promote City employees under his control; exercise ultimate control over City departments; and to inform and advise the City Commission on all City affairs. Ongoing organizational development, preparation of the City budget, labor relations, project planning and execution of intergovernmental affairs, as well as public information efforts, are among the primary functions of the City Manager's Office. Successfully negotiated the Cable TV license, recognized nationally as the strongest and most comprehensive agreement negotiated by a municipality; achieved significant progress in the recruitment and promotion of minorities in the Miami Police Department and for the City as a whole, so that out of 3,503 permanent full-time employees, blacks now comprise 29%; Hispanics 28%; and Anglo females 7%; created and implemented a Minority Vendors Program; evaluated and implemented cost-effective management improvements in major City departments; improved the City's financial systems; implemented the Affordable Rental Housing Development Program, as well as multi-family and single-family rehabilitation programs; and reduced the City's crime rate by 15%, thus creating a safer environment for City residents.

11/79 - 04/81

ASSISTANT CITY MANAGER, CITY OF MIAMI

Directed the Departments of Management and Budget, Finance, Computers and Communications, and Human Resources, with control over a staff of 190 employees. Responsible for developing and managing the City's fiscal affairs, its human resource (personnel) needs, developing the centralized computer and communications systems, and providing a liaison with the Police Department. Responsibilities included the development of the City's first civilian review process of police activities in response to allegations of police misconduct and use of excessive force; coordination of the development of a personnel system to expedite recruitment, selection, and employment of police officers under a stringent, court-imposed affirmative action program; and implementation of a plan to coordinate the activities of the external auditor and the Finance Department, which resulted

in the timely closing of the City's financial records. Also coordinated the City's first two-year plan for the development of the computer and communications operations.

12/76 - 11/79

DIRECTOR OF THE DEPARTMENT OF MANAGEMENT AND BUDGET, CITY OF MIAMI

Directed and supervised the Budget Division, Operations Analysis Division, and Internal Audit Division. Developed an annual plan (budget) and means by which performance reports on all activities may be generated. Prepared and administered the annual budget which exceeded \$127 million, as well as all federal and state-supported programs, totalling \$92 million. Developed the Activity Reporting Management System (ARMS) to provide the City Manager with a means for controlling and evaluating municipal operations in terms of stated objectives. Supervised Operations Analysis activities to improve the effectiveness of both management and operations of the City. Insured the proper collection of City revenues, their recording and control in accordance with generally-accepted accounting and auditing principles. Developed and implemented performance audits, which have been accepted by federal auditors as sufficient evidence of local fiscal control.

12/73 - 12/76

BUDGET DIRECTOR, CITY OF NEWARK, NEW JERSEY

Directed and supervised the Budget Division of the Business Administrator's Office. Prepared the annual budget, which exceeded \$250 million; analyzed the organization and operation of departments and agencies; developed practices for improving administration and procedures of city government; and reorganized the Budget Office to improve its planning, programming, and budgeting capabilities.

01/73 - 12/73

ADMINISTRATIVE ANALYST, CITY OF NEWARK, NEW JERSEY

Assisted the Mayor, who served as the chief executive officer of the City. Served as liaison between the City and the Chamber of Commerce on budget and financial matters. Supervised municipal departments; prepared the annual budget; assisted the Mayor in policy planning; evaluated the cost-effectiveness of programs and their relation to the overall policies and goals of the city; developed administrative directives for the operation of City government; prepared budget estimates which compared anticipated revenues to projected expenditures; and assisted the Mayor in the coordination of various departments and agencies of City government.

01/72 - 01/73

CHIEF ADMINISTRATIVE ASSISTANT, CITY OF NEWARK

Assisted the Business Administrator in the management and operation of all departments, divisions, offices, and agencies of City government. Assisted the Business Administrator in the preparation and review of the annual budget; developed and implemented systems for all departments; prepared comprehensive reports containing findings, analysis, conclusions, and recommendations. Implemented the "Management by Objectives" (MBO) system.

08/71 - 01/72

PROJECT COORDINATOR, UNIVERSITY OF MICHIGAN

Designed, coordinated, and implemented a seminar entitled "City Management," to give practical knowledge of city management and its operations to graduate students.

08/71 - 01/72

ADMINISTRATIVE ASSISTANT, CITY OF INKSTER, MICHIGAN

Assisted the City Manager in his daily operations. Evaluated the annual budget; prepared cost analysis studies for various purposes; reorganized the municipal organizational structure and procedures; conducted a survey on the adequacy of refuse collections; analyzed and reported on Public Works Department operations and on the trends of the city's budgets; and developed alternatives for increasing the tax base.

01/69 - 08/70

ASSISTANT DIRECTOR, METRO-DADE MODEL CITIES PROGRAM, MIAMI, DADE COUNTY, FLORIDA

Assisted in the establishment of the Model City Program. Directed the Administrative Division, involved in evaluating, designing, and implementing the budgetary, personnel and administrative policies and controls as they related to the Model Cities Program. Implemented federal guidelines of budgeting and programming for various Dade County programs. Responsible for the budgeting of \$25 million.

06/68 - 08/70

ADMINISTRATIVE ASSISTANT FOR THE METRO-DADE COUNTY MANAGER'S OFFICE, Miami, Dade County, Florida

Evaluated and implemented budgetary policies and controls as they related to various departmental programs of Dade County government. Directed cost analysis and control, budget preparation and expenditures, purchasing and inventory control, methods and procedure studies, special studies and report writing. Assisted department heads in planning, programming, and budgeting, involving the County Welfare Department, the County Hospital, the Department of Housing and Urban Development, Planning Department, and the Department of Social Services.

Personal Data

VITAL STATISTICS: Date of Birth: 1/13/46 Marital Status: Married, two children

EDUCATION: High School: Northwestern Senior High, Miami, Florida.
Graduated in 1963.

College: Morehouse College, Atlanta, Georgia.
B.A. Degree, major in Political Science
and minors in Business Administration,
Economics, Accounting, and Business Law.
Graduated in 1967.

Graduate: University of Michigan, Ann Arbor, Michigan.
Master of Public Policy (M.P.P.)
Rackham School
Graduated in 1971.

COMMUNITY ACTIVITIES: Member, Urban League Board of Directors, Miami, Florida
Member, YMCA-Carver Branch Board of Directors, Miami, Florida
Member, Board of Directors, Sunshine State Bank, Miami, Florida
Guest Lecturer at Rutgers Schools of Public Administration and
Planning
Guest Lecturer at Dade County Public School System

PROFESSIONAL ORGANIZATIONS: International City Managers' Association
Municipal Finance Officers' Association
American Management Association
American Society of Public Administrators

ADDRESS: 1605 N. W. Eighth Terrace
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Work Telephone: (305) 579-6040

**Presentation of Awards, Recognition
and Outstanding Achievements**

1981	The Greater Miami Chapter of NABA
1981	The Boys Club of Miami
1982	Miami Dade Chamber of Commerce and Local Black Business
1982	United Negro College Fund
1982	Dade Miami Criminal Justice Council
1982	Florida City and County Management Association
1982	South Florida Chapter of the American Society for Public Administration
1982	The Minority Business Opportunity of the Miami Federal Executive Board
1982-1983	Coconut Grove Jaycees
1982-1983	Woodson Williams Marshall Association - University of Miami
1983	Centro Hispano Catolico
1983	Public Technology, Inc.
1983	The Forum of South Florida, Inc.
1983	Miami Northwestern Senior High School
1983	Black Caucus of Eastern Airlines
1983	Florida Congressional Delegation's Distinguished Service Award

Mr. CONYERS. Our next to the last witness is Raymond Fauntroy, president of the Greater Miami-Dade County Branch of the Southern Christian Leadership Conference, a branch which he helped to found.

Originally a Washingtonian, he has been in Miami for a good number of years. And these hearings have to be conceded to have stemmed from his communications and contact with myself and other members of the Congressional Black Caucus.

We are very pleased to have you here, Mr. Fauntroy, and we know of your deep concern about the activities that are going on in your city and State. And as you know, we need to get a very clear picture of Miami and Florida, because it is a center of the very disturbing police violence which is the subject of our hearing.

So we welcome you, and will incorporate your prepared statement, which we are glad you were able to provide for us. You may feel free to make any comments about any of the matters that you've heard us comment on today, including any matters that the Congressional Black Caucus or the members of Congress deal with that have to do with the Federal Government or the Department of Justice.

Welcome to the subcommittee.

TESTIMONY OF RAYMOND FAUNTROY, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, MIAMI, FLA.

Mr. FAUNTROY. Thank you, Mr. Chairman, and members of the panel.

I want to thank you for conducting these hearings on a growing problem in this country, one that reflects itself in the deadly consequences in our community. I would like to discuss this issue in the context of two incidents which occurred in Miami, which had far-reaching consequences for policy community relations and the general peace and security of the public.

On December 17, 1979—before I go to that, I would like to—I inadvertently left out of my statement a very important issue, and that is the issue of Nathaniel Lefleur.

I would like to state that Mr. Lefleur was beaten severely in February, I believe it was, of 1979, in a wrong-house raid by the police department, and consequently died.

Mr. CONYERS. You say it was a wrong-house raid?

Mr. FAUNTROY. A wrong-house raid, in which he was beaten severely.

Mr. CONYERS. So the police were illegally in the house in which Mr. Lefleur was residing?

Mr. FAUNTROY. Right.

That very week—that was supposed to have been a raid on—a drug raid. They were supposedly breaking into a home that was supposedly selling drugs.

That very week, there was a vessel confiscated in Biscayne Bay with two tons of marijuana on it. No one was struck, shot, beaten, and all of the people arrested were out of jail the next day. And we saw that as being particular to the problem that we have in Miami.

On December 17, 1979, Arthur McDuffy, an ex-U.S. Marine and an employed insurance agent, was brutally beaten to death by offi-

cers of the law after a high-speed chase reportedly started after a traffic violation. We will never hear Arthur McDuffy's version of the incident. Consequently, Mr. McDuffy lay severely beaten and motionless with his hands cuffed behind his back when the final and fatal blows were struck.

As a result of this callous behavior on the part of the police, 18 lives and millions of dollars' worth of property were lost. Fifteen of the people killed were black, all killed by whites or white policemen.

There have been no arrests of whites, no conviction of whites, and no reprimand of the policeman. In fact, those at the command level have all been promoted, and none were ever reprimanded or demoted. Dade County was held up as a national disgrace, and the conditions that provoked the riot at this moment are still in place.

On December 28, 1982, 20-year-old Neville Johnson, a respected Dade County employee, was shot in the head at point-blank range in front of witnesses by an officer of the law who was, one, off of his assigned beat, two, uncalled, and three, unprovoked. I cannot and will not elaborate further on this case because it has not come to trial yet. However, this careless act resulted in 8 days of violence and death.

These are two cases you may have heard about through the news media. However, there are other cases you should know about. And I also brought with me a list of blacks who have been killed at the hands of the police since February 1982. And they total 12, 8 of which have been since October 1982.

On October 5, 1982, correctional officer Ernest Kirkland was shot four times with nondepartmental issue bullets believed to be Supershocker III bullets. This fatal force was used by a plain clothes officer Pellechio during a traffic violation in which witnesses say officer Pellechio struck the first blow. I might add that there was an ensuing fight between Officer Pellechio and Officer Kirkland, resulting in the death of Officer Kirkland.

Donald Harp was shot point-blank on March 4, 1988, by a Metro Dade policeman. Mr. Harp was a passenger in a car that was being chased by police after a minor traffic accident. Mr. Harp was either too intoxicated or too afraid to respond to the police command to get out of the car. While in the grasp of one officer, another officer fired point-blank into Mr. Harp's chest, thereby killing him.

Anthony Nelson, shot in the back at close range while he stood spread-eagled with both hands on the truck and following instructions of the policeman.

The Dade County commission has failed to show good faith to the citizens of Florida and to the Nation as a whole, and a sincere effort to eliminate the possibility of this catastrophe from occurring again has not been taken. They consistently refuse to accept the fact that the level of command is improperly trained and improperly led.

The county commission of Dade County, one and all, do not have the innovative thinking necessary to end this grave injustice against the people. They abrogate their responsibility to the county manager, who is likewise uninformed and largely depends on hand-picked members of his own staff and political mercenaries of all

ances, dependent upon him or his agency for sustenance, to support the irresponsible direction of the police department.

Intelligent debate in Dade County is neither supported by the political structure, the electronic media, nor the newspapers. So, honorable gentlemen, perhaps we do the Nation proud at this hearing held here today. While these hearings are being held, may we consider a hearing of this nature being brought to Dade County, Fla?

Due to the multiethnic black population, the multiethnic Latin population, the multiethnic caucasian population, all citizens of different nations, cultures, and legal practices foreign to us, who make up the city of Miami, and Dade County, I should add, it is rather difficult for you on this committee to form a clear picture of the problem that is present.

We propose to bring into existence a psychological profile, of which there is none in the Nation at this time, to our knowledge, dealing with police officers, white men and women, Latin men and women, black men and women, this being the first step in eliminating the instant and unjustifiable use of fatal force. Black and other minorities have no respect for police, for they fear and know that policemen are an instrument of those who would suppress the minority population.

Finally, I would like to point out the effect of unions on police decisionmaking.

When command-level officers and the rank-and-file policemen participate in union activities, the command level loses its ability to lead. Police departments are being run by men whose names you do not know, and whose faces you never see.

In summary, I would like to read to you from our December 30, 1982, SCLC statement. It starts:

The SCLC comes once again, as we have done before, for the voice of McDuffy cries out still for this community to address itself to the problems that brought about riots and death, problems that are still prevalent.

The failure of the police leadership at the command level and the improper training of police officers were brought out before the Governor's Riot Investigation Board even though we were denied the possibility of presenting our point of view.

Presently the State Police are in a state of organizational dismay. In order to remedy the situation, we publicly ask that the county commissioner hear our point of view. We asked the State Attorney for the right to present to the grand jury our point of view and recommendations and were denied that right.

It is therefore abundantly clear that neither the Governor, the county commission nor the Miami Commission are capable at this time of addressing the monumental problem of reorganization and training that will be necessary to put an end to this problem of periodic civil carnage.

We at this time ask the last remaining body that stands above reproach, the Dade County Grand Jury, to convene itself that they may hear from us the truth as to why these conditions exist and for us to deliver to them recommendations that would eliminate the consistent causes of complaint.

These things that we have said and stated are all a matter of public record. In dealing with the body politic, we stand and wait with the knowledge of truth for the purpose of service to the citizens of Dade County and the city of Miami in a troubled time when the nation may point to us with pride and honor us for what we say and do.

I had written some points that I would like to address of some of the previous speakers.

Mr. CONYERS. Please do.

Mr. FAUNTROY. We have opposed the simulator in this particular instance in Miami simply because the blacks who have been killed

have not been killed under those circumstances. These people, as I've pointed out, were killed while surrendering, were killed while, in Neville Johnson's case, while playing a computer game, hands on the game, were killed as a result of traffic accidents.

None of the situations that had been shown in the simulator were present when these people were killed. So we feel that that's a bandaid to a very serious problem.

We feel that the double-action gun that has been proposed would only jeopardize the lives of those officers who are doing a professional and real job of policing.

We are not opposed to law and order and we are not opposed to the police department, and we do not want to hinder the policemen from doing their job, but we feel that the double-action gun would only hinder them and would not stop the killing needlessly of blacks.

Mr. CONYERS. Tell me a little bit more about the simulator, since our next witness is I think going to be talking about it from a favorable point of view.

Mr. FAUNTROY. I believe that the simulator is a good training tool for officers.

Mr. CONYERS. You think it's a good training tool.

Mr. FAUNTROY. Yes; I do. But in the case in Miami at this time it has no bearing on what the problem is.

Mr. CONYERS. It won't change anything.

Mr. FAUNTROY. That will not change the fact that black men are being killed—

Mr. CONYERS. I see.

Mr. FAUNTROY [continuing]. In Miami at the rate that they are being killed, as this list will testify to. The circumstances do not exist in these cases, so that will not help the problem that exists there now.

Mr. CONYERS. The subcommittee will come back to order.

Thank you, Mr. Fauntroy, for your patience. Let me turn the presentation over to you for your conclusion, and then we can ask you some questions.

Mr. FAUNTROY. I think I had about covered everything that I wanted to bring out. I did submit a list of those killed by the police department in Dade County.

Mr. CONYERS. We will include that in the record with your statement.

Let's get down to our attempt to understand what's going on in Florida. Can you describe the mood of the black citizens there, the young people, what the relations are? I'm afraid I'm not getting a very clear picture of what's going on in your city and in the county, and even in the State.

Mr. FAUNTROY. First let me say the perception among the young people and poor people and black people is that—is one of frustration, one of fear of the police department in this particular case, and one of total disbelief of the judicial system, of the political system. There's a feeling that we don't stand a chance, that an officer of the law can shoot us on the street and be acquitted in a court of law in cases such as McDuffy, in cases such as Officer Kirkland, who was a correctional officer, and in cases like Anthony Nelson who, admittedly, was part of the theft of a truck; but does a

policeman have the right to take his life, especially when he has surrendered, in such a manner?

There appears to be the perception that if you're rich that you can get through the system and you can get out of trouble, if you're poor you don't stand a chance; that in the judicial system the poor folk are not represented properly, that the prosecutions of the officers in these cases have been less than desirable, that the prosecuting attorneys had not done the job that they would do had they been prosecuting for whites or Latins. And it's a direct result of the lack of money when it comes to that, it's a result of racism in the court system and racism in the political structure, where there seems to be less concern about what takes place in the black community.

As we pointed out earlier, we are not antilaw and antiorder, we want law and order as everyone else does, we want the drug pushers run out, too; though we don't want to be accused of being drug pushers and killed ourselves when we, in fact, are not.

It was pointed out by our city manager, who had a gun drawn on him in his suit, in his shirt and tie, we all become hoodlums to the racism policemen. And that is the irresponsible statement of the police chief. And you may know that we have called for, and are calling for the firing of the police chief, and we intend to get that come November. We have served notice on the commission that we have started a very strong voter registration drive, and we're going to the polls in November and we're going to use that political muscle that we have to cause change in that community.

We hope that the young people, however, will join in with us, and we'll try one more time to use the legal process and one more time to use the political process, and be a part of that change, instead of throwing caution to the wind and forgetting about the political process and believing that it has no bearing on the future; that they've tried and nothing has come out of that. We want to change that perception.

Mr. CONYERS. Do you think this subcommittee would learn more about the situation in Florida by holding a hearing in your city?

Mr. FAUNTROY. Yes; I do.

Mr. CONYERS. Would there be witnesses that could come forward and help fill in the gaps that now exist about what goes on in terms of police-community relations?

Mr. FAUNTROY. Yes; there are witnesses. I have a list of witnesses that I could present to you, and they are black and they are Latin and they are white, who would come and testify about what's taking place in their lives relative to police-community relations.

Mr. CONYERS. Let me try out a theory on you, and then you can give me the benefit of your own experience. The theory runs like this: that the police violence that we experience is really reflective of a deeper problem in the society, that it is an economic problem, it is a question of political repression, it is a matter of basic unfairness that permeates the society, and that police violence is just one manifestation of that.

What do you think of that?

Mr. FAUNTROY. As I stated earlier, that the perception in the community is one that the police are protectors of those who would oppress all of us. And I believe that's accurate. There are other op-

pressors, other people who are responsible for what's taking place in our community relative to education, to housing, to jobs.

We pointed out that most of the products that we purchase in this country are made in another country and imported here, and most of those products are manufactured by American corporations, and thereby taking the jobs out of the country, particularly in Florida where we could do a number of things. There is no industry there, and there could be industry created there. And we point to what has taken place in Haiti as relates to the aluminum industries, as relates to the sporting goods industry. Baseballs and gloves and footballs are made in Haiti because of the cheap labor, and because of the fact that—because of the situation in Haiti. Those kinds of industries could be brought to South Florida, and they should be brought to south Florida in areas where we don't have other kinds of industries, such as the automobile industry and the like.

But, again, once those industries are brought there, there is still the problem of racism where blacks are excluded from the job market, where they're excluded from being in the hierarchy of employment vis-a-vis the African trade. Whites want to control that, Latins want to control the African trade, and we believe that blacks ought to be controlling African trade, especially in Florida and in the Miami area, simply because of the proximity of Florida to Africa and because of the relationship between black Americans and black Africans.

But, again, we're excluded from those positions, not allowed to—or, should I say, not allowed to get loans, not given the loans it takes to do business of that nature, for one reason or another.

Right now we were instrumental in getting a young man a contract with a dog track in Florida, which is a big moneymaker. We achieved the contract, but he can't get the money, the \$50,000 that he needs to get the dogs. So we have a real serious problem: the banks won't loan him the money, and we don't have a black bank in Miami that would be responsive to the needs of that community.

So it's a cycle that has to be broken in a number of ways.

Mr. CONYERS. Now, blacks are a minority group and Latinos are a majority group. And I'm aware of some of the difficulties that these two minority groups have experienced in trying to work together. It seems to me that the large concentrations of Cubans may add another dimension.

It has been advanced to me that the Cubans are, first of all, anti-Castro Cubans who are brought here by the American Government, or at least allowed in; are also in their training programs taught to evade, or have as little to do with the black community as possible, and that some of these attitudes are inculcated and that they reflect in terms of the Cuban and, to some extent, the Latino-black relationships.

Can you enlighten me on that?

Mr. FAUNTROY. Let me first say that the perception in the black community is—and I think, accurately so—that the Cubans have come with a racist attitude; also, that the racist attitude that the Cubans bring is as bad, if not worse, than the white racists who got them here.

We have in our community—and this deals with the black community in particular. We have at least five different cultures in the black community alone. We have Jamaican, we have Haitian, we have Bahamian, we have Trinidadian, the Caribbean islands, and we have black Americans, all with separate cultures and all with different characteristics. And that alone is a problem.

Then you have the Cuban who comes with a racist attitude, who comes with a different cultural background, who is then placed in our community to police our community; and which is a problem; along with the white racist attitude of those who are allowed to exercise that racism. And you get a situation such as the Neville Johnson case. And one of the things that was reported was that the officer who was training the rookie officer was a rookie himself, came off of his assigned beat to show the other rookie how to police a black community. And we're not sure what terms were used. And that is a matter of record, because of the tape that they have, I'm told. How to police a black community, and how to shake down a black poolroom.

And those are the kinds of problems, those are the kinds of attitudes and situations that cause the problems that we have.

Mr. CONYERS. The experience I've had with the Cuban Interest Section people and the Cuban musicians who fuse with the black progressive jazz musicians, and the Cubans that I've met here in Washington, were all very race conscious, were very sympathetic to the black cause, and did not manifest a racially discriminatory attitude at all.

Do you have some explanation for this?

When Castro came to the United States he went to the famous black hotel in Harlem. He has always espoused excellent race relations.

How do we square these different items—or how do you square them?

Mr. FAUNTROY. Let me first say that I believe that the Americanization of the Cubans has given them the attitude and the idea that it's all right to do whatever to black folks in this country, and it has been proven that if you do it, we're going to get you off through the law, OK?

So that has happened. It happened with the McDuffy policeman, Alex Merrero. And I'd like to point out about that situation that Alex Merrero was one of the policemen who caused a near riot in Miami in 1979, in February 1979, when he arrested a black and handcuffed him and beat him on the street in front of other blacks, which started a near riot.

Reverend Al Sampson from Chicago happened to be in town that week with me, which catapulted me into getting involved in the community. And we recommended that that officer be moved out of the black community. And we were totally ignored.

But let me say that—and I don't like to stereotype, because there are Latins, there are Cubans who sincerely want to have a community as described in our Constitution and in our Declaration, they sincerely want that kind of community. And they're concerned. But, on the other hand, there's a lot of money in Miami. And it has been my statement that Miami is an international city that's being run with a Jefferson Davis mentality, and the two will not work.

We have attempted on several occasions to bring the Cuban community, the Haitian community, and the black community together around certain issues. One of the issues was the refugee issue. And we felt that, for example, the Haitians were being blown up as a real serious problem, and you're only talking about maybe 2,000 Haitians, and, at the same time, 250,000 Cubans were allowed in, you know, and put into Dade County and expected—the citizens of Dade County had to handle that. That, as far as we're concerned, was wrong on the part of the Federal Government, it should not have been done that way, and if they insisted on doing it, that the funds should have been there to handle the situation.

We tried to bring those communities together, and we did, and we came up and met with the Vice President's chief of staff, surrounding the issue of refugees and what we should do—how we should handle the situation. And that effort fizzled out. We had 12 or 18 Cuban organizations, 12 or 18 black organizations working together, black and Haitian, working together to solve that particular problem. But each time there's a wedge of some sort driven in between the organizations, whether it's over Federal funds to deal with the issue, or the Cubans get more money than the Haitians, or the black community is excluded from certain projects and excluded from the job market and from the big money.

Construction, for example. There are no black construction companies that have any piece of the pie. We all work as a subcontractor for someone else. Or, if we can get a job, we get a small job. And there are qualified construction companies there. And it's growing. And there's more awareness of what has to be done in the black community to deal with its problems.

The Cuban-black American, or Cuban-black—what some folk are beginning to call "confrontation" is being fueled by, for example, the Neville Johnson case. When eyewitnesses to that case said what they saw, and when I've talked to several of them and they've told me what they saw, and some folk in the black community made statements such as "That officer ought to be arrested," and he should have been arrested and he should have been charged, that the Cuban community would come together to defend that officer. And that in itself was very polarizing to that community, especially with the kinds of attitudes that Cuban policemen have had toward blacks in that community.

That is not to say that all of them have that attitude. There are some very fine Cuban policemen on our force, and the community will attest to that.

But it appears that when one breaks the law, that other community and Fraternal Order of Police and fraternities, police fraternities, come to the aid of that policeman, whether he is right or wrong. It's a very serious problem and it's one that polarizes the community.

Mr. CONYERS. Can you tell me what the Southern Christian Leadership Conference in Dade County is working on in terms of resolving some of these racial and economic tensions?

Mr. FAUNTROY. Some of the things that we have attempted to do—and I might add that the SCLC in Dade County is not funded by any organization and there are very little funds to do any of the kinds of things that have to be done relative to addressing these

issues. So we do what we can with what we have, which may not always be enough. But at least we are trying to put our fingers on the immediate problems.

One of the things that we are trying to do is to bring a total community together. Last Saturday we met with representatives from 25 or 26 different organizations, black and white and Latin and Jewish, and all people who were interested in what we're trying to do, bring the total community together, so that we can begin to take the blindfold of racism off, and to bring out the real issues of what's happening.

Most folk have the perception that the black community is violent. That's not true. The black community has reacted violently to the violence that has been heaped upon it. And there is only one way to react to that, and we felt that—not only one way to react to that; it has been only one way that the community has reacted to the violence that has been heaped upon it, the treatment that they have received.

They are not going to tolerate it any more, and I'm certain that there will be other uprisings and other rebellions because of the treatment that continues to exist in Dade County.

Mr. CONYERS. Are things getting better?

Mr. FAUNTROY. No; they're not getting better, they're getting worse. We're trying to—We're doing our best to depolarize the community, to say to people that, you know, because a white officer kills a black person does not make that white officer justified in that killing.

Because the incidences that have been portrayed on the television and in the newspapers are not the way it had gone—for example, I was invited to do a television show with one of the policeman. He happened to have been a major, and he happened to have been in charge of training.

When I got to the program, they open the program with scenes from a riot. They open the program with the training of the policeman when he has to make a decision whether to shoot or not. OK? So thereby giving the perception that these policemen are put in dangerous situations. And that is not the case at all. Thereby, attempting to say to the total community that these policemen fear for their lives, when I can point to each one of these cases and show you where, that is not the case.

There has been no attack on policemen; not in these cases have men feared for their lives. There wasn't a "Should I shoot or not?" These men were in other circumstances.

Then to have the audience stacked with two Cuban policemen, one white policeman, and one black policeman, all taking the side of the police department, and other community agencies such as the drug program that obviously were there, obviously there under the hand of—financial hand of the county, to take that position, thereby, setting up a scenario that in the black community there's violence, and that the people are violent, and that the policemen have got to defend themselves, which is really not the case.

Mr. CONYERS. Thank you very much. I've enjoyed your testimony, Mr. Raymond Fauntroy. I am very obligated to you, all of us in the Congressional Black Caucus are, for the work that you and a

handful are doing there to stem the violence that seems to be never ending coming out of Miami.

You have my continued support, and I'm very pleased to see you up here. Thank you very much.

[Prepared statement of Raymond Fauntroy follows:]

STATEMENT OF
RAYMOND FAUNTROY
PRESIDENT
DADE COUNTY CHAPTER
SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

Mr. Chairman and Members of the Committee, thank you for conducting these hearings on a growing problem in this country, one that reflects itself in deadly consequences in our community. I would like to discuss this issue in the context of two incidents which occurred in Miami, which had far reaching consequences for police community relations and the general peace and security of the public. On December 17, 1979, Arthur McDuffy, an ex-U.S. Marine and an employed insurance agent, was brutally beaten to death by officers of the law after a high speed chase reportedly started after a traffic violation. We will never hear Arthur McDuffy's version of this incident. Consequently Mr. McDuffy lay severely beaten and motionless with his hands cuffed behind his back when the final and fatal blows were struck. As a result of this callous behavior on the part of the police, 18 lives and millions of dollars worth of property were lost. 15 of the people killed were Black, all killed by whites or white policemen. There have been no arrests of whites, no conviction of whites, and no reprimand of policemen. In fact, those at the command level have all been promoted and none were ever reprimanded or demoted. Dade county was held up as a national disgrace and the conditions that provoked the riot at this moment are still in place.

On December 28, 1982, 20 year old Neville Johnson, a respected Dade County employee was shot in the head at point blank range in front of witnesses by an officer of the law who was (1) off his assigned beat, (2) uncalled, and (3) unprovoked. I can not and will not elaborate further on this case because it has not come to trial yet. However, this callous act resulted in three days of violence and death.

These are two cases you may have heard about through the news media; however, there are other cases you should know about. On October 5, 1982, Correctional Officer Ernest Kirkland was shot four times with non-departmental issue bullets, believed to be super-shocker III bullets. This fatal force was used by a Plain Clothes Officer Pellechio during a traffic violation in which witnesses say Officer Pellechio struck the first blow. Donald Harp was shot point blank on March 4, 1983 by a Metro Dade policeman. Mr. Harp was a passenger in a car was being chased by the police after a minor traffic accident. Mr. Harp was either too intoxicated or too afraid to respond to the police command to get out of the car. While in the grasp of one officer, another officer fired point blank into Mr. Harp's chest.

Anthony Nelson, shot in the back at close range while he stood spread eagle with both hands on the truck and following the instructions of the policemen. The Dade County Commission has failed to show good faith to the citizens of Florida and to the nation as a whole and a sincere effort to eliminate the possibility of this catastrophe from occurring again has not been taken. They consistently refuse to accept the fact that the level of command is improperly trained and improperly led. The County Commission of Dade County, one and all, do not have the innovative thinking necessary to end this grave injustice against the people. They abrogate their responsibility to the County Manager who is likewise uninformed and largely depends on hand picked members of his own staff and political mercenaries of all races, dependent upon him or his agency for subsistence, to support the irresponsible direction of the police department. Intelligent

debate in Dade County is neither supported by the political structure, the electronic media, nor the newspapers. So honorable gentlemen, perhaps we do the Nation proud at these hearings held here today. While these hearings are being held, may we consider a hearing of this nature be brought to Dade County, Florida. Due to the multi-ethnic Black population, the multi-ethnic Latin population, the multi-ethnic Caucasian population, all citizens of different nations, cultures and legal practices foreign to us, who make up Miami, it is very difficult for you in this Committee to form a clear picture of the problem that is present.

We propose to bring into existence a psychological profile, of which there is none in the nation at this time, dealing with police officers, white men and women, Latin men and women, Black men and women. This being the first step in eliminating the instant and unjustifiable use of fatal force. Blacks and other minorities have no respect for police for they fear and know that policemen are an instrument of those who would suppress the minority population.

Finally, I would like to point out the effect of unions on Police decision making. When command level officers and the rank and file policeman participate in union activities, the command level loses its ability to lead. Police departments are being run by men whose names you do not know and whose faces you never see.

In summary, I would like to read to you from our December 30, 1982 S.C.L.C statement. It starts:

The S.C.L.C. comes once again, as we have done before, for the voice of McDuffy cries out still for this community to address itself to the problems that brought about riots

and death, problems that are still prevalent. The failure of the police leadership at the command level and the improper training of police officers were brought out before the Governor's Riot Investigation Board even though we were denied the possibility of presenting our point of view. Presently, the State Police are in a state of organizational dismay. In order to remedy the situation, we publicly ask that the County Commissioner hear our point of view. We asked the State Attorney for the the right to present to the Grand Jury our point of view and recommendations and were denied that right. It is therefore abundantly clear that neither the Governor, the County Commission nor the Miami Commission are capable at this time of addressing the monumental problem of reorganization and training that will be necessary to put an end to this problem of periodic civil carnage. We at this time ask the last remaining body that stands above reproach, the Dade County Grand Jury, to convene itself that they may here from us the truth as to why these conditions exist and for us to deliver to them recommendations that would eliminate the consistent causes of complaint. These things that we have said and stated are all a matter of the public record. In dealing with the body politic, we stand and wait with the knowledge of truth for the purpose of service to the citizens of Dade County and the city of Miami in a troubled time when the nation may point to us with pride and honor us for what we say and do.

Thank you very much gentleman!

Blacks Killed by police from January, 82 to April, 83
Dade County Florida

<u>NAME</u>	<u>AGE</u>	<u>DATE KILLED</u>	<u>POLICEMAN</u>
1) Felix Toca	31	February 16, 1982	
2) John Thomas	78	March 6, 1982	
3) Michelet Joseph	29	June 23, 1982	
4) Theotis Sharp	26	June 26, 1982	
5) Ernest Leonard Kirkland	58	October 6, 1983	Palechio
6) Anthony Nelson	30	October 20, 1982	Urtiaga
7) Alonzo Singleton	17	December 28, 1982	Reaves
8) Nevell Johnson	20	December 29, 1982	Alvarez
9) Donald Harp	22	March 4, 1983	Koenig
10) Clarence Edward Page	33	March 9, 1983	
11) Johnny Browning	19	March 27, 1983	
12) Armando Oliva (Latin Black)	25	April 11, 1983	

Mr. FAUNTROY. Thank you very much.

Mr. CONYERS. Our final witness for the day is Mr. Raymond Frank, vice president and director of training for September and Associates, which provide the synthesized media simulator for use for police officers.

He is a former Detroit police officer and has included in his responsibilities the investigation of police shooting.

So we're glad you are here to discuss your views about deadly force, and also any comment on what you have heard here today, in addition to your own testimony which you prepared in advance. Welcome.

Mr. FRANK. Thank you, Mr. Conyers.

TESTIMONY OF RAYMOND FRANK, VICE PRESIDENT AND DIRECTOR OF TRAINING, SEPTEMBER AND ASSOCIATES, EAST, INC., FLINT, MICH.

Mr. FRANK. I really appreciate the opportunity to be here. I am going to set aside my introduction because of the things that I've heard here today.

I've heard a lot of people talk about research studies, complaining about the problem, but I have not heard anyone say that they had some sort of solution, an answer.

September and Associates is a minority-owned business. We are a black business. Initially we were in Seattle, Wash., and we have an office there. We also have an office in Flint, Mich.

Early today you heard a young man from the Urban League who stated that he was from Seattle, Wash., and to his knowledge, no one had died inappropriately in that town since 1978. That's true.

In Flint, Mich., as of 1981, December, to this date, no poor person has died inappropriately in the city of Flint, to this date. That is what we have done.

We are presently under contract with the city of Miami, and hopefully, that phenomenon will occur there also.

Mr. CONYERS. How will that happen? I'm very glad to see you here.

Mr. FRANK. I'm very glad to be here.

Mr. CONYERS. You should have been the first witness.

Mr. FRANK. Yes, sir. And I would like to reiterate another little item.

Our company has been struggling for 7 years, and every time we find ourselves in a meeting somewhat similar to this, there is no press there, so no one ever finds out that there's a black training company that is the leading black trainers in the Nation.

We are here, and alive and well. And our mission in life is to create a change in the quality of life for everyone across the board, because it gives me great distress any time I hear that anyone has died inappropriately. And what we have in Miami, the kinds of things that occur there, hopefully we will change them.

The synthesized media environment is nothing new. The Air Force has used it, airplane pilots use it. It's a simulator, a synthesized environment, so that a pilot can all of a sudden, before he takes up a \$1 million plane, he learns how to fly it on the ground.

Prior to September, that particular technology was not available to police agencies. We came up with a synthesized media environment for police officers in the use of deadly force. And what it simply is is 33 rear-projected carousel-type projectors that have slides in it, in league with a computer that also shows a scenario on a screen that is 8 feet by 22 feet.

We have a 16-track audio recorder that gives various tracks of information. And what we simply do is take a police officer and put him in darkness, take his sight away from him, we start playing the audio track, it causes a problem for him. He starts moving up into the hyperstress area. We call it the high side of the curve. That's where critical decisions are made. That's when people die, up there.

We've found that research in 7 years, and we didn't have \$5 million or \$168 million. But we found out that that's what happens.

Now in the process of the scenario, we can put together a scenario any kind of way that we want to. It can be on anything. OK? So it is unlimited. We constantly take this officer up and down that hyperstress area until he feels extremely comfortable with dealing with the visual path that's before him.

What occurs is training. What occurs is retention. That officer, for the first time in his life, he has an opportunity to find out how good he is as a police officer. I was a Detroit police officer for 15 years. I have been through all the training that exists; be it the FBI, Secret Service, Alcohol and Tobacco, State Police, Detroit police, I've had it all.

Mr. CONYERS. That's how you invented the simulator?

Mr. FRANK. I'll explain to you how that happened.

Now the system itself, it's really nothing new. But officers invariably have a fear level, and that's what we're really talking about, that the shooting that have occurred across this Nation—and it's just not germane to Miami, there are poor people that are dying in Des Moines, Iowa, and Omaha, Nebr., that nobody reads about. But I've been there, and we're trying to sell a simulator there because we're concerned about poor people, period.

Just as I indicated in talking to some folks in Miami, that sure enough some black people have died, and you will see some Latins die and you will see some whites die also, and we have to be about the business of saving everyone's life.

Presently in Miami, we're looking forward to that change. I was very interested in Mr. Fauntroy's comments that he was against the simulator. I just wish he had had an opportunity to have been available to see it when we presented it in the city of Miami for all the—

Mr. CONYERS. That was qualified. You remember I asked him a little more about it. He said he wasn't against it; he said it was a good training—he thought it was a good training device, but he didn't see how it would stop the killing.

Mr. FRANK. The only problem that I have, sir, is that in order for someone to make a comment like that, you'd have to see it.

Mr. CONYERS. Why don't I get you two together, which I think I could do.

Mr. FRANK. I've already talked to him about that, sir.

Mr. CONYERS. They are going to be together. OK. This is all all right.

Mr. FRANK. What I want to say is that our particular company, we have fought the wars for 7 years. I've tried to get press.

As a matter of fact, I don't know if you had an opportunity to read it, but in the Christian Science Monitor in January, they said that the only three cities in the United States that had the best community-relations program going was Santa Ana, Calif., Atlanta, Ga., and Flint, Mich. I wish someone would write about that, because I'm not saying that our synthesized media environment is the answer, by itself. We never say that. We stay plugged in with existing training, and also community input.

We created a model in Flint, Mich. That brought us to Flint. It had the same kinds of problems that Miami had. They had National Guard in the street. They had very, very bad police-community relations. They had a black man that was killed. They had two police officers that fired at each other. It got national attention.

And if you were to go into Flint, Mich., today, you would find that you have a different relationship between the police and the community. And they still have a problem with economics as far as jobs, and what have you, but nobody is dying in that town.

I wish that someone would listen to us for a change. We are—Do you realize how many people will be reading about this hearing for the rest of this century? I would hope so. I notice that the press is not here so I don't know. [Laughter.]

And I'm sort of used to that.

But I think that what we have, this country has been able to send spaceships to the outer limits. All of a sudden this little, small company that doesn't have two nickels to rub together, we have the technology to save people's lives. And the interesting aspect about that, some folks have said that our system was a shoot-don't-shoot situation, and it is not. That is a misnomer.

What we do is to teach police officers how to make critical decisions. We can take that same hardware system that we have and change the software, and I can take someone that graduates from whoever's university with an MSW and put them in that system for 1 week, and that person will complete the delivery service to the first client that they meet.

Mr. CONYERS. Could you comment on that relationship between your process and the selection process to determine who is going to be the police officer that gets the training? Have you invented yet a method of selecting appropriate citizens to be trained to carry weapons as sworn officers?

Mr. FRANK. We have a motto that we can use the system to look at a police officer, a psychological profile of a person who is going through training. Presently in Flint, Mich., that is being used in recruit training. Those officers are being screened.

Mr. CONYERS. We could save a lot of lives there, too, couldn't we?—

Mr. FRANK. That's very true.

Mr. CONYERS. By just not getting the wrong people into the force.

Mr. FRANK. That's very true. But I think an interesting aspect of all of that is to realize why police officers get involved in shooting. As I indicated about the—

Mr. CONYERS. What is the answer, by the way, since we're all here?

Mr. FRANK. OK, I can give you some benefits of what I know.

Mr. CONYERS. All right.

Mr. FRANK. The police officers invariably have a fear level. What we try to tell them—when we come into a police agency, they usually accept us because we're not coming in as men and women with a bunch of Ph.D.'s; we're coming in with practical experience.

Mr. CONYERS. Because you're an ex-cop; you're one of them. They would welcome you because you understand where they're coming from.

Mr. FRANK. This is true. But I think that what we try to tell them is a very simple thing, that even though that you are a police person, that you're a human being, you have the same kinds of desires and concern as community people. You want to see your kids grow up, go to the best schools, retire, cottage, the whole shot, just like community people.

The only difference between the two of you is that you're charged with the responsibility of delivering service to that community, and you derive that power from the legislature, and the legislature derives its power from the community.

We bring the community and the police department together and tell them and show them. As we train the police department, we also train the community. We bring them through the simulator and let them—for the first time in their life, they have an opportunity to get up in that hyperstress area and find out what it's like to be a police officer, to see what it feels like.

For a whole lot of reasons, they've known that they did not want that job, but we let them sit up there, wear those shoes for a few moments, and come back down and come back together.

So that you can solve this particular violent kind of problem that's occurring throughout this country and create change. And that's what we're about, and it works.

Mr. CONYERS. Are you based in Flint now?

Mr. FRANK. Yes; we are a Michigan corporation.

Mr. CONYERS. So you get into Detroit fairly often?

Mr. FRANK. It's funny that you should mention that. Yes, quite a bit.

As a matter of fact, the Detroit Police Department wants our simulator. Coleman Young has given us the blessing to go and find funding for Detroit, and we can't find it, because sometimes I wonder, does anyone really care about people dying in this country, and how much is a human life really worth.

Mr. CONYERS. All of us here do, obviously.

Mr. FRANK. Then I would hope that—throughout this country most cities that I have come in contact with where they have this kind of problem, the police department would love to have this new system, but they do not have the financial wherewithall to acquire it. And it appears that legislation is the only way for this to happen.

Mr. CONYERS. These cities have set aside millions; sometimes hundreds of millions of dollars are allotted out of the city resources for the police department.

That's almost like what goes on in Washington. We have groups soliciting in my neighborhood in Washington to collect money to get bulletproof vests for policemen. Now they only spend x millions of dollars for the police department.

I keep asking the people that solicit the money, what do they do with the hundreds of other millions of dollars? If they really need police bulletproof vests, why don't they just go out and give every cop a bulletproof vest, and stop asking me, on top of city taxes, to donate some extra money for something they claim they need?

Mr. FRANK. I have no idea why they do that.

Mr. CONYERS. I make the analogy because I think if enough people become convinced by the program you've developed, we will make it a necessary item and not some additional luxury.

Mr. FRANK. I think that that's the whole thing, sir, is that of letting people know what is available, that it works. That has been our problem.

Mr. CONYERS. Right. I'm sure glad you're in Flint because you have a possibility of attracting a very loyal, supportive member of Congress to your ranks.

Mr. FRANK. We are trying to get everyone we can get, believe me.

Mr. CONYERS. OK.

Mr. FRANK. But I think that we are a sort of a different type of company. We have some philosophical beliefs that are very important to us, and we are committed to what we do. In the lifetime of this company, several people have tried to take our company over, and we're still around in 1983.

Mr. CONYERS. That's the American system. You've heard of conglomerate takeovers, haven't you?

Mr. FRANK. Yes.

Mr. CONYERS. I didn't know they were doing it on this level. [Laughter.]

Mr. FRANK. Apparently so.

Mr. CONYERS. Apparently you're doing something right. That's the highest compliment that can be paid to you in our free enterprise system: somebody wants to own you.

I want to thank you, Raymond Frank. We have apparently a lot of friends in common because I'm working on a number of problems of law enforcement with many of your former colleagues in the Detroit Police Department, just how to make the city safer, how to develop more meaningful relationships.

You know, just having a black mayor and a black police chief doesn't solve all the problems by a long shot. We have improved—we don't have the horrible kinds of discussions that bring us here, but we still have a lot of small housekeeping to do.

We're talking about neighborhoods where people walk down the street shooting guns, and people are afraid to report them because if there's no police response, you have to deal with that. Sometimes you're afraid that if there is a police response, you've got to live with the people.

Mr. FRANK. Could I say something?

Mr. CONYERS. We have all kinds of incidents which attract my attention in Detroit, and I think that I'd like to keep you in touch with your former home town.

Mr. FRANK. I'm very much in touch.

But one of the things I wanted to say, in the community, if one believes that the police will not arrive to your particular house because of where you live at, and you have a simple domestic situation, a boyfriend, girlfriend, husband or wife, and you get on the telephone and tell that police agency that there's a man with a gun, you have created a time bomb when that officer arrives at your particular location.

Studies have been made that when that officer arrives at that particular location, violence occurs when he finds out that it is not a man with a gun.

So we do a whole educational process from the community, also. We have classes. We started a class in Seattle, Wash. It was called the personal safety skill class where people had an opportunity to come to our class via the simulator and find out how to be safe, to do some things.

If you've ever noticed about police officers, they never get robbed that many times, and it's a very simple reason why they don't.

Mr. CONYERS. I could think of several very simple reasons.

Mr. FRANK. One basic thing is they use a thing called the sensory net. And we teach community people to use that same principle, and it's really very simple. And the people who go through our class leave there feeling a heck of a lot better and more secure in what they're doing. And they survive in this violent world that we live in.

Mr. CONYERS. People may be considered crazy who commit crimes of intrusion, like burglary and robbery, but they're very, very crazy when they try that on a police officer's home or person. I mean that's like inviting it, although we have instances where police officers' homes have been burglarized, just like everybody else's in the neighborhood.

[The prepared statement of Raymond Frank follows:]

A POSITION PAPER ON THE:
"SYNTHESIZED MEDIA ENVIRONMENT SYSTEM"
FOR POLICE TRAINING
SUBMITTED TO: THE UNITED STATES SENATE
June 14, 1983

INTRODUCTION:

September And Associates East, Inc., is a minority-owned private corporation in the general business of Media Communications. Our most noteworthy product is the Synthesized Media Environment Training Education System. We have the most successful Law Enforcement Training Program in the country presently located in Flint, Michigan. The S.M.E., program consists of a computer graphic simulator the is used to train Police Officers in the use of deadly force.

September And Associates East, Inc., is a blend of Engineering, Psychological and Law Enforcement expertise. We have spent five years in the research and refinement of the S.M.E., system. We are one of the few private corporations giving Law Enforcement Training the attention and full time effort in developing high technology state of the art training in the area of decision making as it relates to the use of deadly force.

SUBMITTED BY: SEPTEMBER AND ASSOCIATES EAST, INC.
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A POSITION PAPER ON THE:
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In 1977, with the intent of improving the "state of the art" in law enforcement training, along with instituting a new deadly force policy in the City Of Seattle, Washington, H.A. Bud Vandenwyer, then Police Chief contracted with September And Associates to develop a new technology. His idea was to create an interactive system that would be flexible enough to provide decision making training at every skill level within the department.

September And Associates delivered that first system in October of 1977 and by January 1978 the entire 1000 person department had gone through the system. 97% of the officers felt the training was the best they had ever had in the area of decision making.

September And Associates has refined the technology over the past six years from that early pilot 8 projector system delivered to Seattle. The Intermediate 25 projector system delivered to Flint, Michigan in July of 1982, to the 33 projector complete system contracted for delivery to the City Of Miami, Florida in the fall of 1983.

SUBMITTED BY: SEPTEMBER AND ASSOCIATES EAST, INC.
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A POSITION PAPER ON THE:
"SYNTHESIZED MEDIA ENVIRONMENT SYSTEM"
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THIS ENCLOSED DOCUMENT AND BROCHURE RELATE THE
EVOLUTION OF A NEW TECHNOLOGY THAT SHOULD BE IMPLEMENTED ON
A NATIONWIDE BASIS TO SAVE HUMAN LIVE, OFFICER AND
CIVILIAN.

SUBMITTED BY: SEPTEMBER AND ASSOCIATES EAST, INC.
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A POSITION PAPER ON THE:
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The technique carries itself into the human psych in a very profound and deliberate manner. This technology and its utilization are the critical path that can take a department from the height of indecision to the solid ground from which good decisions are made.

THE CRITICAL PATH

Step One Knowledge Factor The process of decision making as it relates to the world of the police officer begins with knowledge of an event either seen by the officer or reported to him (or her) over the radio. The information is processed and modified by memory. If there is a time differential between receiving the information and having to act on it there is a possibility that a gradient of stress is present. As the officer closes the distance between the origin of the information and the location of the problem a series of things start to occur to his physiology.

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The rate of change of this information differential and level of anticipated violence (AV) is one of the primary contributors to directed stress. It is at this most crucial stage of the process, as the officer starts to give up distance and safety that the maximum number of alternatives are available. Experience plays a vital role at this juncture. THE S.M.E., IS DESIGNED TO CREATE AN SYNTHETIC EXPERIENCE OF THE POLICE OFFICERS, FOR THE PURPOSE OF OF REFINE THEIR SKILLS.

Step Two Transit Time, this is the vital period between the point of knowledge or dispatch and the time of arrival at the scene of conflict. During this time the officer must mentally assimilate a plan of action and determine what variables are going to be present once he (or she) arrives at the scene. A host of factors affect the officers plan of action, once on the scene. Ultimately the area, prior knowledge of the persons at the scene, perception, truth validation skills and psychological compression will all impact the decision making process. .

A POSITION PAPER ON THE:
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It is important that the well trained officer validate his (or her) information and sort the facts so that an adequate risk assessment (RA) can be done prior to the arrival at the scene.

The ability to anticipate those factors that act as accelerators in escalating events are extremely crucial during this time. Cognitive constriction, tunnel vision begins here, during this time. The rate of cognitive constriction is directly proportional to the the experience factor (EF).

Step Three Arrival and Threat Recognition are related to the sense of time compression experienced by the officer during the transit to the scene. The ability to adapt the sensory network so that it starts immediately to bring new information to the officers cognitive level is again a direct function of experience and skill. Once the car is positioned and the initial action complete, there must be a decision to determine, what is the problem?, is it a matter for the police? etc.

A POSITION PAPER ON THE:
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It is at this most crucial juncture that the officers perception and experience play a very vital part. In addition both short and long term memory act as behavior modifiers at this juncture. Any pre-set or pre-event bias will come to play in an active manner while the officer is assimilating the information available upon their arrival on the scene.

Threat Recognition is one of the most important factors that the officer must consider under any life threatening circumstances. A simple fact is that the greater the distance at which an officer recognizes a threat towards himself or others, the greater the probability the same officer will survive a confrontation. The sensory network is a key tool for the officer at this point. Time, Nutrition, Synthesis, Light and Age all impact the networks capacity to sense the information needed to provide the officer with the foundation for a good decision.

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The parameters of the problem are determined by the use of actual information from the sensory network. Any attempt to bypass this step usually ends in catastrophic results for the officer and the suspect. It is imperative that decision making at this level reflect non-emotional, factual data. A series of questions must be answered in rapid succession:

-
- A. What is the problem?

 - B. Is it a police or civil matter?

 - C. How many people are involved?

 - D. Is it a life threatening situation?

 - E. How many threats are present?

 - F. What is the highest priority threat?

 - G. What risks are involved in any action that
the officer might take to reduce threat?

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H. What other achievable alternatives are available to the officer?

Step Four Risk Assessment, In the event of a confrontation the officer must through threat recognition and risk assessment almost simultaneously.

Determining risk requires experience, perceptivity, sensory input and a reasonable degree of skill in the area of truth validation. All of these factors interact with one another in the minds eye to give the officer a risk factor. From this a determination must be made in relation to the speed of the threat resulting in a velocity which in this document is referred to as threat velocity. The accurate determination of this velocity gives the officer an adequate perception of risk, or a risk assessment.

(Continued)

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The velocity of threat and its prioritization relates directly to the main thrust of the September approach to training. As the human body is thrust into the energy vortex of human conflict the human physiology changes because of condition known as hyper-stress. The ability to cognitively process information and correctly analyze a problem during a time of elevated heart rate and blood pressure is a skill that must be acquired. The officer must be able to discriminate between long term memory patterns and current sensory input. New data must be able to reach the brain and not be blocked or shunted by existing biased memory patterns. This ability to keep the mind open and not cognitively restricted is part of the primary training accomplished in the S.M.E., simulator.

Step Five Decision Making The officer having acquired a host of information now is faced with the necessity of making a decision or a series of linked decisions all serving the purpose of reducing the threat velocity to 0. There are several variables that must be taken into consideration before or during the decision making process.

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POSITION PAPER

September And Associates East, Inc., has developed a strategy to employ the best technology available to train Law Enforcement Personnel in the area of decision making as it relates to the use of deadly force. The technology has been explained in an the enclosed brochure. This document will deal with the philosphy that is the foundation of the Synthesized Media Environment System. It must be understood that the classical model for training Law Enforcement Officers is based on a simple performance system that has no relationship to the primary problem that causes the loss of human life in the real world. That primary cause simply stated is "A lack of Achievable Alternatives in the perception of the person in a confrontation." The ability to transform an individual from the darkness of the Simulator to the real world of confrontation on the streets, is a specific process that goes far beyond the normal multi-image presentation format.

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They are as follows:

A. Light conditions are extremely important because for most untrained officers it is the base for vision and their primary sensory connection to the incident. Image forming in the brain and the ability to analyze patterns is directly related to a number of factors that vary from officer to officer.

Age, nutrition, heart rate, blood oxygen level, circulatory constriction, drugs and alcohol all impact the ability of the eye to transmit visual information to the brain. Further the image forming and pattern seeking portions of the brain have a problem prioritizing this information when all of the above factors including stress present. It is therefore understandable when the data shows that the majority of officer injuries and death occur during the hours of darkness. It is also that period of time that generates the greatest number of wrongful death shootings, costing municipalities millions of dollars in lawsuit settlements.

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The lack of visible light in evening hours, can cause the image forming portion of the brain to at times, fill the void with illusions or images of the mind, (people see what they fear most). Hence the large number of weapons discharged for no apparent reason, or the number of shootings where officers claimed to have seen suspects with weapons, that in fact did not exist. (The classical phrase, "I thought he had a gun!")

The S.M.E. System allows the trainer to select scenarios that have different light levels, hence by selection it is possible to train the officer to rely on their entire sensory network at all times. In this manner the the impact of low light levels is minimized. In addition the person gains insight about their functional levels during the dark cycle. (The dark screen portion of the training cycle.)

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B. The most catastrophic variable to impact the decision making capacity of police officers is their own fear of a given situation. Fear itself is a particular kind of anxiety that is directly impacted by stress and hyper-stress. In a given situation officers will react intensely with their own anxieties associated with a given type of call or a specific type of suspect. Cultural, Ethnic and Religious differences cause the decision making capacity to be modified if that officer by perception, hear-say or experience is reinforced by fear of particular group or person.

The S.M.E., system allows officers to find out how they behave and what their own fears are as they relate to the task of being a law enforcement person. Specific kinds of fears can be identified ie. darkness, intense verbal conflict, multi-cultural, ethnic oriented, time dependent, memory intensified past negative experiences and others related to long term memory.

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A number of other factors affect the overall decision making process of the individual officer, but none so dramatically as those mentioned. Decision making is a skill that has to be learned. Information processing in an objective manner is extremely difficult for most officers to achieve when they are in the high emotional state of human conflict. It is for that precise reason that the S.M.E., system is vital in its ability to recreate stressors and simulate in a real life manner the kind of problems that law enforcement personnel encounter. This final stage in the process is the most important. It will tell how well all of the other steps have been accomplished. Ultimately it will reveal in its final stage how well the department is functioning. If done properly, it will save lives.

Step Six Action Plan - Execution Once the data has been assimilated the officer must formulate at the conscious level a plan of action that will neutralize the threat and resolve the conflict. The action plan must require simplicity and a series of achievable alternatives that are within the skill reserves of the law enforcement officer.

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Each step of the action plan must reinforce the final solution. Sensory input must be available to change the plan if there is a detectable alteration of the expected outcome. The S.M.E. system allows officers to test various action plans and at the same time measure against a set of common problems just what their individual skill reserve is capable of. By learning to constantly update the information available to the sensory network, validation of each kind of action plan can occur, i.e., home disturbance, robbery in progress, felony car stop. They will learn under the guidance of an experienced trainer how to think their way through various kinds of conflicts. In the process, they will gain experience in problem solving under the impact of physiological hyper-stress.

THE SYNTHESIZED MEDIA SYSTEM IS THEREFORE NOT A CLASSICAL "SHOOT-DON'T-SHOOT" SYSTEM. IT IS MUCH MORE COMPLEX. IT BUILDS A POSITIVE EXPERIENCE RESERVE IN BOTH SHORT AND LONG TERM MEMORY. IT CREATES THROUGH SYNTHESIS A PERSON THAT CAN MAKE GOOD DECISIONS UNDER HYPER-STRESS.

Mr. CONYERS. I've enjoyed your testimony, and it's a pleasure to see you. And I want to express my appreciation for your contribution, and that of all of the witnesses, and many people who are concerned about this matter.

A number of our visitors are here for the Criminal Justice Workshop of the Congressional Black Caucus, we welcome you all and thank you for your participation.

I pronounce the subcommittee hearing at an end.

[Whereupon, at 2:29 p.m., the subcommittee hearing was concluded.]

POLICE MISCONDUCT

MONDAY, JULY 18, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
New York, N.Y.

The subcommittee met, pursuant to call, at 10 a.m., at 2nd Floor Art Gallery, 168 W. 125th Street, New York, N.Y., Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Rangel, Owens, and Towns.

Staff present: Thomas Hutchison, counsel; Gail Bowman, assistant counsel; Ray Smietanka, associate counsel.

Mr. CONYERS. Congressmen from New York, mayor of the city, brothers and sisters all, this is a meeting of the Subcommittee on Criminal Justice of the Judiciary Committee, the U.S. House of Representatives. Good morning to you. And I would like Rev. Henry Grant Jones to begin this unusual hearing with a prayer. Reverend Jones.

Reverend JONES. Eternal God, our Heavenly Father, we are grateful to thee for the opportunity that is ours to assemble on this occasion. We pray at this hour that all of us might be conscious of the need of the hour and the concern for all of humanity that justice might be done to all. We pray for this occasion. And we pray that the hour has now come that we will have that type of unity and that type of justice that all men deserve.

Bless the deliberations of this hour. Give us the victory we seek in the name of the Father, in the name of the Son, and the name of the Holy Spirit, let us all say. Amen.

Mr. CONYERS. Thank you very much, Reverend.

Now to welcome us appropriately is our friend, the longstanding, outstanding member of the Congressional Black Caucus, its former chairman, the Congressman from this District, the Honorable Charles Rangel.

Mr. RANGEL. Mr. Chairman, on behalf of the citizens of the city of New York, I welcome you to the 16th Congressional District. I applaud you as you perform your constitutional responsibilities in allowing people the opportunity to have their grievances heard.

I apologize for the attack that has been made on your subcommittee that these hearings have been politically motivated.

I think these attacks are especially regrettable considering the historic performance of this committee, especially as it relates to the impeachment of a former President.

On June 28, the mayor of the city of New York saw fit to write the chairman of the full Judiciary Committee about these hearings.

On the third page of that letter to Chairman Peter Rodino the mayor said:

Finally, I am troubled by the apparent use of this subcommittee of the Judiciary Committee, by those political leaders in New York City, who have decided that they would seek this vehicle to enhance their political objective, which is to secure the mayoralty for themselves in 1985. I have no objection to Congressman Charlie Rangel, Congressman Major Owens, or anyone else running for mayor. But when they do it, it should be on the merits. They should not take actions which might place the city or other communities in jeopardy.

Mr. Chairman, the mayor released this letter to all of the newspapers, but he failed to release the response to his letter from Chairman Peter Rodino. Chairman Rodino has given me a letter, July 13, which says:

Dear Charlie: Unfortunately, due to the illness of my brother, it appears that I will not be able to attend the hearings in New York, on Monday, June 18, to be held by the Subcommittee on Criminal Justice, chaired by John Conyers.

This hearing is being held in your Congressional District and I am enclosing for your use a copy of my response to Mayor Koch letter of June 28th, concerning this hearing. With best regards, Peter.

The letter that Chairman Rodino refers to, which was not released to the press by the mayor, is dated June 30, and it says, addressed to the Honorable Edward Koch, mayor of the city of New York:

Dear Ed, I have received your letter of June 28, 1983, and I have reviewed it with great care. I am concerned, of course, at your perception that New York City has been unfairly singled out. That, however, is not the case.

The hearing scheduled for New York City is a part of a continuing general investigation that is national in scope, and that has been going on for some time.

On June 16 of this year, for example, the Subcommittee on Criminal Justice, chaired by John Conyers of Michigan, held a hearing that included extensive testimony about police-community relations in Miami, Fla. as well as testimony about police-community relations in Berkeley, California.

The subcommittee hearing, I can assure you, will be fair, as this committee's hearings have always been. City and police department officials will be offered ample opportunity to testify. John Conyers joins me in inviting you to be the opening witness at the hearings.

You may be assured that the hearing has a serious purpose. The decision to schedule this hearing was made after much evidence and many complaints were filed with the subcommittee by a substantial number of reputable citizens of the city of New York. No member of the New York City congressional delegation serves on the Criminal Justice Subcommittee, and I am not aware of any request from a member of that delegation either to testify or otherwise take part in the hearing.

The hearing will be fair and balanced. The only impact I can foresee is that the hearing will provide the members of the subcommittee with an opportunity to draw their own conclusions after hearing from a variety of witnesses. I appreciate your bringing your concerns to my attention.

Mr. Chairman, in view of the fact that this letter was not released, and that the newspapers paid a great deal of attention to the accusation that you and this entire subcommittee would be here to promote my political ambitions, I think that at this time I would be forced not to accept your kind invitation, one that is normally extended to Members of Congress, to sit on this panel.

I do this not because I want to remove myself from a panel that is sitting in my congressional district, but because I would hate for someone to set a house on fire, throw a cup of water on it, and then be acclaimed for trying to keep peace and order.

Mr. CONYERS. Thank you, Congressman Rangel. We do have with us, joining us from from the 12th Congressional District in Brook-

lyn, our newest and very brilliant Member of Congress, the one and only Major Owens. We welcome him.

Mr. OWENS. Thank you very much, Mr. Chairman. I want to echo the welcome of Congressman Rangel and welcome you on behalf of New York City, including Brooklyn. I want to stress the fact that you are here today to kick off a process that will last for quite a while. I understand that you will be back on September 28, I think, and September 29. I say that because there are a large number of people who have requested to testify at these hearings, who have not been able to testify. I want to assure these people that one of those days, the 28 or the 29 of September, the hearings will be held in Brooklyn.

I would like to make a brief statement at this point. I agree, and I think we are all in agreement that the majority of the members of the New York City Police Department perform admirably in their attempt to provide adequate protective services to the majority of the residents of New York City.

Today's hearings are being held in response to complaints and petitions which indicate that despite the performance of the majority, a large segment, too many of the members of this city's police force, are guilty of misconduct, ranging from abusive language and verbal harassment to the inflicting of serious physical injury and death.

Most of these forms of police misconduct are directed against the racial minority groups of New York City. Racial discrimination and racial persecution are the major issues to be explored at these hearings. A particular segment of the population of New York is the target. Violation of civil rights are of major concern to these hearings. Violations perpetrated against a whole class are the issue. Patterns which reflect an overwhelming number of minority victims and an overwhelming number of white perpetrators are the subject of this subcommittee's analysis.

Minorities are the victims of two forms of discrimination with respect to law enforcement: lack of police protection and police brutality. These are twin evils arising out of the same base of racist contempt. Police abuse and brutality are forms of police corruption. Police abuse and brutality represent police inefficiency. The time and energy expended on racially motivated harassment is time and energy lost to the area of legitimate law enforcement and protection.

The racism reflected by acts of abuse and brutality repeatedly shred the bonds between the citizenry and the police and further complicate law enforcement activities.

Efforts to minimize or eliminate abuse and brutality will save money and increase services. All of the citizens of New York will benefit from the hearings that are being held today.

At the outset of these hearings, it should be noted that the creation of the original police review board of 1953 was the result of a Federal investigation and hearing. Even before the Civil Rights Act, the Federal role was deemed useful in this very sensitive area.

Under the Civil Rights Act, a clear role is established for the Federal Government with respect to police abuse or brutality which is racially motivated. The use of abusive language by law en-

forcement officials is alone sufficient grounds for the filing of a complaint with the U.S. Justice Department.

Clearly the allegation that there is a pattern of abuse and brutality against minorities is sufficient grounds for the holding of congressional hearings. It must be recognized that the charges made are not frivolous, sensational or without substantiation. One non-governmental organization, the Black United Front, because of its reputation for defending victims of police misconduct, has received numerous complaints and has summarized statistics for the last 3 decades.

Their records show that in the 20 years preceding the present city administration, there were only 22 questionable police killings. But from 1979 through 1983, there have been 70 questionable police killings. In 1983, there have already been 10 killings, all by white officers, and all of the victims have been minorities. There have been 31 shootings which did not result in death.

The Black United Front has received 124 reports of beatings and 63 cases of serious racist harassment. Three hundred of the cases reported to the Black United Front have been discontinued as a result of the complainant's fear of police reprisal.

On the other hand, the official statistics maintained by the police department also indicate that while there were only 926 complaints in 1966, the number of complaints in 1982 was 8,419. Without a doubt, the official statistics are sufficient enough to justify the activities of this subcommittee.

Many serious charges have been made which are clearly worthy of investigation. The charge has been made that the civilian complaint review board is really an expunging agency, whose primary purpose has become the removal of complaints from the files of officers, since under present procedure the board removes all records of an unsubstantiated case it reviews. Last year only 3 percent of the total cases that were brought were found to be substantiated.

It has been charged that while race is always indicated for the complainant at the beginning of each case, the race of the complainant is not shown for those cases that are substantiated and where punishment of the officers is ordered. This has led to a charge that this is a coverup for the fact that most of the cases substantiated involved white victims. If this charge is not true, we would like facts to refute it.

It has also been charged that Mayor Koch's repeated reductions of the budget of the civilian complaint review board was read by racist elements as a signal that such complaints were not a priority concern of his administration. All of these charges and allegations deserve the benefit of the hearing and review process.

Leadership by the mayor and by the police commissioner must also be evaluated. The signals from the top definitely have an impact on the lowest ranking officer. Racism and racist behavior may never be eliminated, however, official policy can restrain the harmful expression of such racism, especially within a paramilitary organization such as the police department.

It must be noted that in Philadelphia, under Mayor Frank Rizzo, a former police officer who favored minimum review of police actions, complaints of police brutality soared to the point where the U.S. Justice Department found it necessary to conduct a special in-

vestigation which led to the commencement of a legal action seeking injunctive relief against systemic police abuse.

[Disruption from the floor.]

Mr. CONYERS. Ladies and gentlemen, I would like to reluctantly make this announcement. There is no way that these hearings can reasonably proceed unless we have the attention and the order that is required to conduct them. Now, unless that is to be the case, we will inadvertently cause these hearings to be cut off far sooner than they ought to be.

So I would like to enlist the support of all of you whose deep concern brought you here today, to cooperate with the Chair in these endeavors.

Congressman Rangel has apologized that the facilities are not as accommodating as he would have liked them to be.

I must say to you, I must plead with you that we allow these proceedings to move on. We must not inadvertently cause them to be short-circuited. Every single witness must be afforded their time and heard before this committee without any interruption.

Voice from the audience. Brothers and sisters, hear me. The racists do not want us to have this hearing. And I am asking you in the spirit of black unity for you to go along and respect our black leaders.

Rev. HERBERT DAUGHTY from the Audience. For a long time we have marched up and down these streets. I see all of you. I recognize all of the faces. We have been in the street. We have been asking. We have been marching and demonstrating for some outside entity to hear what we have to say.

Now, I know all of us are not satisfied. We left hundreds of people out on the street because we asked them to come down. And we are not satisfied with the arrangements. However, listen to me very carefully. There are some people, as Reverend Timothy Mitchell just indicated, that do not want even this to happen. And if we do not allow it to happen, brothers and sisters, if we do not allow it to happen, we are playing precisely into their hands.

May I plead with you, you know me and I know you, I see everybody. We know everything. But let me plead with you to let us proceed on with these hearings. There will be more hearings. This is the beginning. And there will be more hearings later. When they come to Brooklyn, we will have the whole field out, everything. But now we have got to proceed, brothers and sisters, with the hearing. We have got to proceed. Would you please then let us proceed on with the hearing.

[Disruption from the floor.]

Mr. CONYERS. Could I ask the witnesses at the witness table, including the mayor and the members of the subcommittee if they would kindly follow me, please. We are in a 25 minute recess.

Mayor KOCH. You want us to follow you to another room. We would be happy to do that.

Mr. CONYERS. Thank you very much.

[Whereupon, at 10:25 a.m., the subcommittee hearing was adjourned.]

POLICE MISCONDUCT

MONDAY, SEPTEMBER 19, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
New York, N. Y.

The subcommittee met, pursuant to call, at 10:40 a.m., at the 369th Division Armory, 2366 5th Avenue, New York City, N.Y., Hon. John Conyers, Jr. (chairman of the subcommittee) presiding. Present: Representatives Conyers, Crockett, Rangel, Weiss, Towns, and Owens.

Staff present: Thomas Hutchison, counsel; Gail Bowman, assistant counsel; and Ray Smietanka, associate counsel.

Mr. CONYERS. The committee will come to order.

Good morning, ladies and gentlemen. I am Congressman John Conyers, chairman of the Subcommittee on Criminal Justice of the Judiciary Committee of the House of Representatives. The hearings on police violence will now come to order.

I would like to turn the microphone over to the Congressman in whose district we reside, Congressman Charles Rangel.

Mr. RANGEL. Mr. Chairman, on behalf of the Harlem community and constituents of the 15th Congressional District and the people of the city of New York, we welcome the opportunity to look into the allegations that have been made by responsible citizens of our community who have come to the Congress to speak their grievances.

Mr. CONYERS. Thank you, Congressman Rangel.

I would like to introduce the members of the committee. First is my colleague from Michigan's 13th Congressional District, Judge George Crockett.

Would you care to make any comments, Judge Crockett?

Mr. CROCKETT. Thank you very much, Chairman Conyers.

It is always a pleasure to come to my colleague Charles Rangel's district. I could wish for perhaps a more auspicious occasion.

The subject of this hearing—allegations of police brutality in New York—is basically a local issue, and really should be resolved locally, but we are confronted with the complaints that seem to indicate that local authorities are not doing what should be done. Then it becomes a constitutional issue. It becomes a question of the Federal Government insuring that Federal citizens are protected by the States and the localities in which they reside.

I think the primary purposes of this hearing are, one, to determine if in fact the complaints are well founded and, two, to put the

city and the State on notice that if they do not act, the Federal Government is competent to act.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Judge Crockett.

I would like now to recognize our colleague Ted Weiss, from the 17th Congressional District of New York.

Congressman Weiss.

Mr. WEISS. Thank you very much, John.

I want to express my appreciation to my friend and colleague, the distinguished chairman of the subcommittee, John Conyers, for inviting me to sit in at these hearings. Although I do not serve on the Judiciary Committee, Mr. Conyers and I both serve on the Intergovernmental Relations and Human Resources Subcommittee, which I chair, of the Government Operations Committee.

Earlier this year, Mr. Conyers welcomed my subcommittee to the Detroit area, and I am pleased to add my words of welcome as he commences these important hearings in New York.

Allegations of excessive and unnecessary use of force by members of the police department, however widespread they may be, require impartial and expeditious disposition for the sake of all segments of the community, including the police. It is not enough for such complaints to be dealt with fairly; they must also appear to be dealt with fairly.

That is the reason why I introduced legislation in 1964, as a member of the New York City Council, to create an independent civilian complaint review board. The board would have heard complaints, and would have been comprised of civilians independent of the police department. Unfortunately, that proposal was not adopted. Why it was not is a matter of history, and you could look it up, but I still believe that is the only way we can have the acceptance of and confidence in decisions handed down.

The allegations which the subcommittee will be hearing about today are only that, allegations. Hopefully, today's hearings will give everyone a better sense of how serious the problem is.

More importantly, perhaps they will point us toward some constructive ways of dealing with it.

Thank you very much, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. Weiss.

I would like now to recognize Major Owens, Brooklyn's 12th Congressional District.

Welcome again to these hearings, Congressman Owens.

Mr. OWENS. Thank you, Mr. Chairman.

I submitted testimony at the July hearings and I would like to place that testimony into the record. I don't want to add to that testimony except to say that since the July hearings were held, a number of outside evaluators, investigative reporters and others have added very important facts.

I have examined testimony that was presented in writing by Mayor Koch and by the police commissioner at that time, and I have found a number of discrepancies in this testimony. I think the record should show these discrepancies and we should include an article titled "Deadly Force," by Wayne Barrett in the recent issue of the "Village Voice" as part of the record.

[The information follows:]

the village VOICE

OL. XXVIII No. 38 THE WEEKLY NEWSPAPER OF NEW YORK SEPTEMBER 20, 1983 \$1.25

Deadly Force

The Debate Over Police Violence

By Wayne Barrett

It happens in the dark of the night in an instant of instinctive fear. The police finger clutching the trigger may be only a twitch ahead of a gunman's equally fatal fire. But almost as often, the victim turns out to have been armed only with a "shiny object," pliers, a fishing rod, or a flashlight. When he has nothing, a police report explains later that the dead man "seemed to be reaching into his waistband in a menacing manner" or began to back a car in the direction of a cop approaching from behind.

In a city where the death penalty has been perhaps the most controversial public issue for a decade, cop bullets killed 39 people last year. The trials lasted seconds. Two hundred have died this way since Ed Koch became mayor in 1978. And until the recently aborted and now rescheduled congressional hearing on police brutality (set for September 19), there was little public debate of these officially sanctioned executions. The Koch administration is now engaged in an attempt to mythologize its police record and to discredit those who raise the issue as partisans who have invented it to advance a 1985 mayoral campaign. But tongue-lashing police is hardly the way to build a broad-based coalition for a mayoral run and no one knows that better than the poll-armed incumbent. Indeed it is the mayor who seized on the politically ill-timed urge by blacks to press this issue now and is using it to polarize the 1985 campaign. The best way to gauge Koch's role in fanning this media fire has been to follow its handling in the pages of the *New York Post*, which began a drumbeat of stories about the canceled

July congressional hearing weeks before it was scheduled to occur. But no amount of mayoral or *Post* hype, nor any of the distorted statistics Police Commissioner Robert McGuire bandied about in his undelivered but released congressional testimony, can conceal a host of shocking facts about police violence in the Koch years.

□ A steady, downward (Continued on p. 8)



Bus driver Julio Castillo: beaten by a cop in front of his own house after speeding to his sick wife.



Police Commissioner Robert McGuire (far left) and Mayor Koch prepares to testify at the July congressional hearings on police brutality. The hearings were abruptly canceled before either could speak and have been rescheduled for this Monday. Koch and McGuire's released testimony distorts the administration's record on excessive use of police force.

By Wayne Barrett

(from page one)
 trend in fatal police shootings, begun at the end of the Lindsay era when tough new regulations on firearm use were implemented, and continuing through the Beame years, has been reversed under Koch. Police killings dropped from a record smashing 93 in 1971 to an average of 28.5 in the two years prior to Koch. In the five Koch years for which complete numbers exist (1972-82), there has been an average loss of 36 lives a year, a statistical leap of 28 per cent. This year's numbers are consistent with that trend: 33 deaths as of last week.

◊The increasing death toll in New York also bucks a national decline. The same nationwide survey that Commissioner McGuire based his misleading congressional testimony on reveals that New York cops, virtually alone among those of the major cities cited by McGuire, have been killing more citizens in the Koch years than in the immediately preceding years. While Los Angeles, Chicago, Detroit, Philadelphia, Houston, Baltimore, and Washington—all cities named by McGuire as worse than New York—improved during the Koch years covered by the survey, killings were up only in New Orleans and New York.

◊In 1982 city police killed twice as many Latins as blacks (20 to 10, according to the department's official statistics). This disturbing new trend, inconsistent with the Hispanic population percentage and crime rate, began the year before when, for the first time, there was one more Hispanic killed than blacks. The department did not seem to have focused on this trend until questioned by the Voice; they now point out that so far in 1983, the rate of Hispanic shootings is down. If anyone has a political motivation for their silencing on the police violence issue, it is the quiscent and generally pro-Koch Latin elected leadership, especially Bronx congressman Robert Garcia, who did not even attend the explosive July hearing.

Garcia is so uninformed about the changing ethnic dynamic of deadly police

force that he told the Voice: "I think the situation has gotten better." Bronx assemblyman Joe Ferrano, whom Koch is wooing as a possible running mate on a 1983 citywide ticket in a transparent effort to split blacks and Latins, says he was not invited to participate in the congressional probe. "I believe there's a problem between police and the Hispanic community, but I don't think it's attributable to a City Hall administration," said Ferrano. East Harlem neighborhood leader Angelo Del Toro was the only Latin elected official who came to the recent hearing

fewer than three. Four cops a year have been killed under Koch, one more than the average number of cop suicides in the same period. While this is slightly higher than the average of the two years preceding Koch, it is half the cop-death rate of the early '70s. There has also been no statistically significant change in the number of cops wounded, as the rising use of fatal force by police is occurring in a less threatening overall environment.

◊In statements that the mayor and Commissioner McGuire prepared but did not deliver for the congressional hear-

McGuire concocted a chart, which is incorrectly attributed to the IACP study, listing four cities worse than New York: the rate of police homicide per 100,000 population. Actually, the IACP study charts 34 cities and New York is 25th. McGuire chose to diagram only cities we were ahead of. He had to look no farther than across the river to find one we are behind: Newark, New Jersey. On every measure selected by McGuire himself, all of which are adjusted for population, Newark is better than New York: fewer deaths per police officer on the force, fewer correlated with the violent crime rate, fewer per 100,000 people. The mayor's testimony that of every major American city "is pure lies."

◊Confronted by the Voice, with the rising death figures Deputy Police Commissioner Kenneth Cobby preferred to discuss the drop in shooting incidents as a clearer indicator of the impact of departmental policy on the cops on the beat. But in fact, the entire recent drop in discharge incidents is attributable to a reduction in firings at animals (due to a toughening of the regulations). The annual discharge rate under Koch is virtually indistinguishable from the rate of the final two Beame years if all that is counted is shots fired at human beings. The first statistic cited by McGuire in his testimony, and the only one mentioned twice, is the 29 per cent drop in discharges since the new regulations in 1973. But once the reduction in animal firings is factored out, McGuire and Koch can claim no role in this downward trend; it all occurred before they took office. Indeed, the category of firings that McGuire's own academic expertise say is most likely to involve excessive use of force—namely shootings by off-duty police officers—has risen dramatically under Koch, from a prior average of 83 to 100.

◊Despite increases in fatal and off-duty incidents, disciplinary action against cops who shoot has declined significantly during the Koch years. In the two years prior to Koch, 43 per cent of all gun firings resulted in a departmental finding that the officer had violated regulations and that charges and specifications should

Continued on next page

Deadly Force

McGuire said that studies revealed that
 New York has the lowest incidence of police
 shootings of any major American city. Yet
 the only national study he cited puts dozens
 of other cities ahead of us on 67 of 67 cities in
 the study; New York is 25th.

though Garcia says he hopes to attend the upcoming one.

◊Compared with the final Beame years, black deaths are also up under Koch. In 1976 and 1977, cop bullets killed 14 blacks a year. Since then, an average of 16 blacks a year have died. Blacks deaths have dropped in the two most recent Koch years, while the Hispanic toll soared. Ironically, fewer blacks were killed last year than in any year for which the city maintains ethnic death data. But so far in 1983, the black death toll is already ahead of last year's final total.

◊Whites are also being killed at a slightly higher rate in the Koch years, and there are some of the most inoperable killings.

◊New York cops are killing more people at a time when criminals are shooting

ing—and in a host of related public appearances—they have tried to make the case that the city's police are the most restrained in the nation. The essence of McGuire's argument is that the rate of police shootings here has declined significantly owing to "an institutional commitment by the Police Department to actively promote racial understanding, community outreach, and a department representative of New York's diverse population." He said "studies revealed" that NYC has "the lowest incidence of police shootings of any major American city." Yet the only national study cited by McGuire specifically—that of the International Association of Chiefs of Police (IACP)—puts dozens of other cities ahead of us.

As an exhibit to his testimony,

Reporting assistance by Anne Wilson. Additional research by James Moore and Todd Friedman.

Cops live with fear. They do it to protect us.



Kenay Gambler took four bullets with his hands up

Continued from preceding page
that are one-day stories in the media but fester on the streets of this city's black and Latin neighborhoods for years. In 1974, black businessman, by Arliss Miller was choked to death by an army of cops, none whom was ever indicted or disciplined. The ostensible cause was a sanitation violation.

The next year Luis Bass, a young, disturbed Puerto Rican, was shot by a platoon of cops after Bass's mother had summoned them to her house in an effort to calm him. Twenty-one bullets were fired into what Daughtry recalls was "his frail body." No one was punished.

Another Latin, Peter Funches, a totally disabled Vietnam veteran, "shell-shocked and on medication," was beaten to death by cops. Daughtry's account: "In June 1978 his wife, recognizing that he was having problems, called the Veterans' Administration for help. They never came. In the meantime Peter began to react to his Vietnam experience and got into his car and commenced driving. He drove until he ended up on a street in the Bronx and for whatever reason, police cornered him." According to witnesses who came to BUP, "the police broke open the car with crowbars and beat Peter Funches to death." Daughtry says that differing police explanations of Funches's death went from a car crash to his wielding a knife at them, but that no knife was found and no crash occurred.

Daughtry closes his speech with a list of the minority youths killed by cops going back to the early '60s and asks an anguished question: "I wonder what the Irish or Italian or Jewish or Polish people would say if black officers were killing their children, not to mention men and women." The importance of Daughtry's speech is not the accuracy of the fine points of each story (though the police offer no other persuasive versions of the three deaths cited here from the speech). It is that this history makes a fraud of the Koch claim that there is no real police violence issue, only a campaign charade. Daughtry's chronicling of the bot incidents of the Koch years proves the opposite. The campaign for '83 hasn't manufactured the brutality issue; instead this sort of real problem over time has created the momentum for a political campaign, felt at the most grass-roots level.

This is one time when the impassioned shouts and the random anecdotes get us closer to the truth of a hard problem than a seemingly cool efficiency of a forthright commissioner with a batch of charts in his hand. No campaign agenda could produce the massive number of people who jammed the Harlem State Office Building and talked to each other, after the hearing was abruptly closed, about hundreds of incidents for the rest of a hot day. John Covert, the congressman who called the hearings, would have to have been a political prophet to have first told

the basis for these hearings may be in the summer of 1980. The Voice reported after the Miami riot that Covert's subcommittee on crime began investigating police brutality and cited New York as one of three cities "with particularly explosive potential" (NYC, June 5, 1980).

The Voice has examined a series of police violence incidents during the Koch years. One category of incidents is made up of 20 fist beatings in 1982. Another is a loose compilation of beatings and killings, some suggested by BUP's Walter, some by attorneys who represent victims in these kinds of cases (including the Puerto Rican Legal Defense Fund), and some by law enforcement agencies. These incidents are not typical of police use of punishing or deadly force; they are ones that rise to the level of a questionable case or a filed complaint. Though Koch and McGuire desire any critical version of a police act that hasn't been filed as a police act, the CCRB record of dispositions and its entirely in-house structure does not encourage the filing of the complaints. Dave Walker's storefront on Nostrand Avenue is one of a civilian review vehicle for police complaints than the CCRB bureaucracy.

The Voice has attempted to get both a police and citizen version of these incidents. The police version is contained in incident reports that are filed with the department. Though the department encouraged this reporter to read individual incident reports when I was doing a similar story in 1980, and freely provided the reports, they refused Freedom of Information requests for the same access for this story. Instead, they prepared for the Voice one-paragraph summaries of each report. They answered some additional questions on specific incidents. They refused to inform the officers involved of our



Tony Reggerio: armed only with a fishing rod

But that does not license them to instill fear. And to do it to so many of us.

request for interviews. Our own attempts to reach those cops at their precincts did not produce a single officer willing to discuss the case. Since union, departmental and legal reasons might legitimately prevent officers from discussing these cases, the Viers asked both the department and the Peirce's Board of Police Association to arrange a confidential group interview with cops who had actually been in shooting incidents. We offered to print excerpts from that taped interview, without comment and without identifying the cops by name or printing details that would've revealed a specific incident. The purpose was to let cops explain what runs through their heads during and after those incidents. We struck out everywhere. Despite those limitations, we've pieced together these glimpses of the violence behind the current storm:

One Year's Deadly Tally

Of the 30 shot dead last year by cops, 20 were armed with guns and four had knives. On the other hand, David Ramsey, a 35-year-old Hispanic, was shot in the back of the neck while sitting unarmad in his car. The officer, in civilian dress and leaving an unmarked police van, claimed that Ramsey tried to shove his car into him. Though department regulations ban firing at moving vehicles, the officer has not been disciplined. Thirteen months after Ramsey's death, a Brooklyn grand jury cleared the cop. The criminal proceeding ended four months ago, but a departmental case is "still open."

A 31-year-old black, Otis Morrison, was shot in the park adjacent to the 115th Precinct stationhouse in Queens. At least four cops went into the park looking for Morrison, who was creating a disturbance. So close to their home base and with Morrison so overmatched, the cops nonetheless lifted him when they mistook a pliers in his hand for a gun. No criminal or disciplinary action was taken.

Rudy Santos, an unarmed 18-year-old Hispanic, was shot by cops executing a narcotics search warrant at a Manhattan apartment. They said he "reached into his waistband in a menacing manner." A number of narcotics arrests were made in the apartment. Thirty-five-year-old black Edward Latham took 16 police bullets from four different cops after he cut a fifth with a knife. Police claimed they trod through garbage at him and firing Mace at him before emptying their guns. Neither incident led to any action against the cops.

Ironically, though, the two most questionable police killings of 1982 involved white victims. Nine whites were killed last year, continuing an upward trend. Anthony Ruggiero, a 35-year-old transit employee who had passed the police exam and was awaiting appointment, was shot dead at point-blank range on the shoulder of a Staten Island road. He had been interrupted by an unmarked police car that pulled alongside his car to watch him and his girlfriend, parked and half-naked,

engaged in midnight sex. The police were in civilian clothes and, according to their own initial statements, did not identify themselves. Ruggiero's girlfriend said: "Tony was frightened and worried. We both thought that they might be officers or perverts. So he got out of the car and he smashed the newspaper window with a fishing pole."

From a sitting position in the car, one cop shot Ruggiero square in the chest. Seventy-five white demonstrators marched on the Staten Island District Attorney's office, but no indictment was handed down. A departmental probe wound up laced by the cop's own supervisor who had made newspaper statements clearing the cops immediately after the shooting. The officer remains a detective in the "retirees" against the person's speed.

Another 33-year-old, Richard Sirigano, was shot twice by an off-duty cop who had spent the night at four different bars and, earlier in the evening, drawn his gun on six bar patrons and frisked one in an unprovoked argument. Sirigano and two Red Cross operations assistants had been talking on a street corner for a half hour, and when they

started to walk across the street, the cop appeared to drive right at Sirigano. Sirigano and officer Charles Tschopp Jr. got into an argument. Tschopp claims Sirigano hit him with a bottle. Queens D.A. John Santucci, who ultimately indicted Tschopp, says that "at the time the officer fired his weapon, the deceased allegedly was in retreat, not advancing on the officer, and therefore did not represent a threat to the officer's safety." After a series of honorific and ineptible rulings by Queens State Supreme Court Justice Herbert Posner, Tschopp was a hung jury. He didn't even take the stand. Santucci may try him again. Tschopp is suspended from the force, and is being defended by the PBA.

Another Few Bite the Dust

Of the 1982 questionable killings are replicated by other disquieting deaths of in recent years, beyond the notorious deaths of Arthur Miller, Lela Bares, and Peter Fuchsen. Voice reporter Jill Nelson, in a cover story ("Cops Who Kill," January 26/February 3, 1981), documented the extraordinary Brooklyn slaying of two

young black men, construction worker Kelly Lewis, 24, and 18-year-old Kenny Gamble, in a fusillade of police bullets. Cops opened up on a carload of six young blacks, subsequently claiming that one of the passengers had earlier been involved in a shoot-out with a plainclothes cop. There was never a charge that any of the other five were involved in the alleged shooting incident, nor that anyone in the car was armed during the blast-out.

Several eyewitnesses questioned by reporter Nelson said that Gamble, already wounded, emerged from the bullet-riddled car with his arms in the air and took four more shots in the chest, followed by a beating and kicking. One of the survivors in the car told the voice: "I was lying on the sidewalk and I looked up and saw the police coming. They was running and firing away at the car. I just see a big clump of smoke, I could see the fire jumping out of the barrels, oh man. They was stepping through the smoke and kept on firing. I didn't expect to live. I thought they were killing everybody in the car. The police laughed and said, 'They all dead.' No one was ever indicted or disciplined for the two deaths; the city

Continued on next page



David ran down on his knees.



Fifteen-year-old John Cortese was killed by police in this Queens alleyway. His car was stuck in the garage at far right. Cortese was shot while sitting in the car. His mother (above) can't bring herself to go back to the site.

Continued from preceding page
 received an out-of-court cash settlement with one of the victims' families. A black accountant, college graduate Vernon Lawrence, was grown up with the dead Lewis, arrived at the scene that night as the ambulances drove off. He watched 30 cops: "They were congratulating themselves, singing 'Another one bites the dust.'"

In another Brooklyn killing this March, 19-year-old black Larry Dawes died after he and a friend were chased on their moped by a cop car. Dawes' companion and several witnesses claim that the cops rammed the moped into a parked car. The police say they chased the moped for 13 blocks after it ran a red light. Dawes' companion, Corey Gibson, told the Voice that he was thrown under the parked car and watched one cop kick Dawes' body. Last week a grand jury decided not to indict the cops involved and the Police Department is "just getting involved" in its own review of the case.

During a New Year's Eve party in 1981, a Harlem cop killed an unarmed 39-year-old woman, Ruth Alston, claiming that she and two other women were striking him from behind. In another incident nine days later, 18-year-old Donald Wright was shot at point-blank range in front of a Harlem shoe store by a cop who'd escorted the youth out of the store after getting involved in an argument with him. Neither incident led to an indictment, though the officer who killed Wright, the only black cop involved in the deaths detailed here, was removed from the police force. Alston's family eventually won a \$50,000 settlement and Wright's a \$125,000 settlement with the city.

A 15-year-old white Queens kid, John Cortese, was shot to death this March by an off-duty cop while he sat unarmored in his car. Cortese had brushed the cop's personal car in a minor traffic accident and had driven from the scene. Cortese headed his car to his Astoria home and, in an alleyway near his home, got stuck. The cop got out of his car and started to approach Cortese. According to the recent indictment of the officer by D.A. Santucci, "the officer fired into the driver's door window after jumping out of the way as it started to move again. When the shot was fired the officer was not in danger of being hit by the car."

Billyclub Beatings

But the police incident that provoked the current controversy and compelled the congressional hearing did not result in a citizen's death. It was a beating case and what turned it into a political

issue was the mayor's fast and loud lip. The black man beaten was Reverend Leo Johnson, a first-year graduate student at Union Theological Seminary. Reverend Donald Shriver, Union's president, issued a press statement describing how a traffic summons resulted late police arresting Johnson with a flashlight and a nightstick, amid a barrage of racial epithets. The beating and lawsuits were kept "from the streets in the tide flow." The Koch response was one of dab-dab. "I had it certainly possible, but verifiably strange, that in the heart of Harlem two white cops would intentionally, in violation of the law, harm a minority. It's possible. It could have happened... but again, in a police precinct filled with large numbers of black officers."

The Johnson incident was followed a week later and with less media attention, by an allegation from Ryan and Woods, the co-owner of one of Harlem's best-known restaurants, Sylvia's, that he was roughed up and verbally insulted by officers from the same precinct. "None of you motherfuckers ain't shit," businessman Woods says one cop roared. "All of you are the God damn same."

The documented beating incidents are as multiracial as the shooting cases. On July 29, Jullie Castillo, a 42-year-old Hispanic bus driver with 12 years seniority, was driving to his Manhattan home in a rush after receiving a call on his beeper from his wife, who'd recently been hospitalized. A cop car pursued him the last mile or so for a traffic violation. Castillo recalls getting out of the car and the officer coming toward him with a gun in his hand. "I was in tears explaining to him that I live there, that my wife was ill and that I needed help. He kicked me in the stomach. I fell back and I don't know how my head got cracked. One witness said he hit me with the butt of his gun." Until Castillo made clear that he intended to press charges against the cops, none were filed against him. Then he was hit with reeling arrest and disorderly conduct. After Castillo filed a CCRB complaint, police investigators showed up unannounced at his home one night. The first thing they said was "Have you thought about not considering the whole thing?"

A white victim, Richard Simmons, filed a police complaint against him after moving police cars crossed his path and Simmons collided with it, one hand slipping against a window. Simmons, who thought little of it and kept running, was subsequently chased the wrong way

down a one-way street by the officers and clubbed twice with a nightstick. The cop then tried to bring the nightstick up between his legs to hit him in the groin, but Simmons avoided the blow. The cops then just drove off. An initial CCRB investigation led to a quickly closed case, but NYU lawyer got District Attorney Robert Morgenthau's office to force the CCRB to reopen the case. On its second go-around, the CCRB concluded, "The Board has found the complaint substantiated and has determined that the appropriate action in this case is to have the officer involved instructed by his Commanding Officer... regarding his responsibility to conduct himself properly in his contacts with the people we serve."

The Voice has examined details of half a dozen similar cases—La Masi and Hayward, who had an electric recording brush thrust down his throat in the Lower East Side stationhouse and Nore Richardson, a 16-year-old disturbed youth whose mother called the cops who beat him into a hospital bed. Each case has elements that lend some plausibility to police denials, but the bruises and the wounds are real. The frequently clean criminal records, before and after the incidents, are real. The credibility of the victims—most of whom were employed and pressing legal suits—is genuine. And the paucity of governmental response to either individual charges or the persistent patterns of abuse is disturbing.

Ed Koch has misrepresented the numbers of blacks and Latins he's appointed to top positions. He's lied about the percentage of the city budget that's spent on services for the minority poor. He's built a mosaic of deception around every important race question raised since he's been mayor. Now he's distorting the numbers of minorities who've been beaten and killed by the Police Department he's charged with running. The media has let him get away with this type in part because Koch's are always white lies, issued with an air of efficiency and countered only by black accusers without a press office of their own.

Police violence did not end with the riots they once provoked. Indeed, in the Koch years, when indifference or hostility to black concerns has become city policy, police brutality and police violence have become workable. The only two cases chronicled here that led to criminal charges against cops involved the Queens D.A. prosecuting a Brooklyn cop for death of a white. Koch is not responsible for that, the underperformance of prosecutors and police attorneys such as every other, but his own departmental

line is now as rare as any by a prosecutor.

Copsey's subconscious beating will surely provoke remedial ideas. Assemblyman Det Turso and others are already pushing a bill to reform the CCRB, as is City Councilman Fred Samuels. But the father of one of the white victims of fatal police force, a man who has spent a lifetime working in law enforcement himself, said he'd rejected a lawyer's suggestion that he participate in Copsey's hearing. "I never miss Mass." is his way of saying back. "Every night and every day I pray that those cops will be punished. He has filed a federal suit and it is determinedly waiting to force the cops he believes led about the death of his son to take the stand. That is the way individuals trust on pecking away at the institutionalized police violence that has so many ways to insulate itself.

Cops live with fear. They do it to protect us. But that does not license them also to inflict fear. And so it is to many of us. The theory is that a mayor's policies and pronouncements teach the troops on the line. That it is difficult to square with 93 dead in the Lindsay year of 1971. But Lindsay did something about that, and the 1973 change in police regulations, plus a curtailment of "buy and bust" drug raids by police, dramatically and permanently lowered the death rate until Koch was elected.

When all the figures are adjusted for population, neighboring Newark, with a black mayor, a black police commissioner, an increasingly black police force (30 percent), and an overwhelmingly black and poor citizenry, is doing far better than New York in restraining the use of police firearms. There were five times as many police killings in Newark in the first half of the 70s (23) than in the second half (five). Deputy Police Commissioner Conroy argues that Newark is simply not comparable because of the "management issues," the size of the two forces. While it is true that this comparison can be stretched too far, it is hardly a useless one. Police death tolls in Atlanta and Detroit, for example, did Newark-like wonders with the rise of black political power and the election of black mayors.

The race messages of the Koch majority has been as clear for cops to see as it has been for blacks and Latins. The message has also been translated into law numbers at the CCRB and in disciplinary dispositions. The cop response in the streets may change little in a mayoral rhetoric or the institutional handling of the violence cases does. That is a life-or-death matter, and it is not the kind of political case that is appealing to a political candidate.

Mr. OWENS. I would also like to place in the record a letter I have from the comptroller of the city of New York in response to a request for information about the amount of money paid out by New York City in connection with suits that are brought against the police department for harassment, brutality or even police killings.

[The information follows:]



STEVEN J. MATTHEWS
CONFIDENTIAL ASSISTANT
TO THE COMPTROLLER

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

HARRISON J. GOLDIN
COMPTROLLER

September 7, 1983

Mr. Jacques Maurice
Grand Council of Guardians, Inc.
30 Vesey Street, Suite 1100
New York, New York

Dear Mr. Maurice:

Comptroller Goldin asked me to reply to your letter of August 23, requesting information about certain claims against the City for the last 20 years.

Our category for the information you requested is police actions, rather than police brutality. The attached worksheets detail, by fiscal year, the number of police action claims settled, the method of settlement and the total amount of the settlements, as requested in Points 1 and 2 of your letter.

As to Points 3 and 4, our system is not coded to break out separately police action cases involving claims by police officers against other law enforcement officers.

The number of police action claims still in litigation, as requested in Point 5 of your letter, was 2,039 as of August 31, 1983.

If you have any questions about this material, please do not hesitate to let me know.

Sincerely,

Steven J. Matthews

sb

Enclosures

Prepared By	Checked	Date
Approved By		

POLICE ACTION CLAIMS
SETTLEMENTS

YEAR	EXTRA OF SETTLEMENT	NUMBER OF CLAIMS	AMOUNT OF SETTLEMENT
1967	1/30/67	9	24,187.00
		62	2,007,790.00
		71	2,321,777.06
1968	10/30/68	7	165,334.75
		51	2,199,336.00
		60	3,812,215.87
1969	1/1/69	4	7,170.44
		42	1,623,444.44
		46	1,734,761.88
1970	1/1/70	4	2,446.48
		45	2,882,104.6
		49	3,137,744.74
1971	1/1/71	3	64,110.00
		65	4,122,410.00
		68	4,029,660.00
1972	1/1/72	3	404,100.00
		48	2,105,200.00
		50	2,679,740.00
1973	1/1/73	7	247,817.00
		67	2,050,000.00
		74	2,301,807.8
1974	1/1/74	10	429,720.01
		73	1,744,000.00
		80	1,711,120.01

Prepared By	Checked	Date
Approved By		

POLICE ACTION CLAIMS
SETTLEMENTS

LEASAL YEAR	T.Y.C. OF SETTLEMENT	NUMBER OF CLAIMS	AMOUNT OF SETTLEMENT
6/30/73	VERDICT ACTION	11 92 105	\$ 11,104,039 6,477,760 8,582,213
6/30/73	VERDICT ACTION	10 84 99	4,911,100 2,187,350 7,536,794
10/1/74	VERDICT ACTION	8 124 114	1,711,926 9,580,300 12,292,226
1/1/75	VERDICT ACTION	7 96 95	752,023 11,077,000 11,829,023

Approved By		
Approved On		

PLACE OFFICERS CLAIMS
POLICE DEPARTMENT SETTLEMENTS

MONTH	YEAR	TYPE OF SETTLEMENT	NUMBER OF CLAIMS	AMOUNT OF SETTLEMENT
1/1	6/30/70	VERDICTS ACTION	7 50 59	\$ 143,974.98 138,276.00 681,047.98
2/1	6/30/71	VERDICTS ACTION	8 103 111	327,102.37 2,379,524.60 1,366,684.87
3/1	6/30/72	VERDICTS ACTION	14 81 77	1,866,216.00 6,780,678.24 1,964,333.59
4/1	6/30/73	VERDICTS ACTION	14 113 127	6,031,760.32 2,044,824.66 2,158,727.98
5/1	6/30/74	VERDICTS ACTION	17 125 194	2,854,671.07 20,620,332.00 47,474,921.07
6/1	6/30/75	VERDICTS ACTION	14 313 330	1,024,794.22 2,017,828.44 9,237,629.42
7/1	6/30/76	VERDICTS ACTION	11 304 314	6,521,023.25 2,729,126.18 4,912,679.63
8/1	6/30/77	VERDICTS ACTION	10 154 164	4,174,912.20 2,511,810.63 8,989,771.23

Mr. OWENS. The comptroller's report shows that since 1968, the amount of money that the city of New York has paid out in cases involving suits brought against the police has risen from \$420,000 to a total of \$9 million last year. That is \$9 million of the taxpayers' money being paid out as a result of suits brought against the police department.

I would like to submit the comptroller's letter for the record. I think it is an important fact that the citizens of New York should know.

Thank you very much.

Mr. CONYERS. Without objection, the materials will be introduced into the record.

Congressman Towns of the 11th Congressional District will be present with us shortly.

Our first witness is Dr. Donald Shriver, president of the Union Theological Seminary of New York City. Will you come forward, please?

Dr. Shriver has been president of the Union Theological Seminary for 8 years. Union is well known for its training of ministers. Dr. Shriver also serves as president of the American Society of Christian Ethics.

Welcome, Dr. Shriver, to this subcommittee hearing. Without objection, your testimony will be incorporated in the record in full and you may proceed to testify in your own way.

TESTIMONY OF DONALD W. SHRIVER, PRESIDENT, UNION THEOLOGICAL SEMINARY, NEW YORK CITY

Dr. SHRIVER. Thank you, Congressman Conyers.

My name is Donald W. Shriver. I thank you for the privilege of appearing on this panel, though I must admit at first that I am embarrassed for being the first on this panel because I am by no means the principal person to testify personally about suffering from this problem. On behalf of others, I am proud to be here, however.

As most of you know, our school, Union Theological Seminary, has been in New York City since the early 19th century. We are now located on Morningside Heights and we are a neighbor of Harlem.

My own institutional and personal relations to the police of this city, especially the offices of our own precinct 26, have been cordial and helpful during most of my 8 years here. I have lived in large cities long enough to know the importance of competent, professional police work.

With the vast majority of people at this hearing, I cannot consent to see myself as an enemy of the police. It is realism and not just professional humility when I say that this city can afford to live without ministers and theologians for a day or two but not without its police.

Dr. Charles Anchrom was surely speaking for many residents of this community when he said recently that this hearing would be about police neglect as well as about police brutality. We are concerned about police neglect because we value police protection. Just

so, we are concerned about police brutality because we value the courage and humanity of adequate police work.

In a way, we are here to probe the truth of the statement of a white patrolman, Donald Kennebruh, who was wounded in the line of duty not long ago and who conceded this summer that police officers do use restraint, sometimes too much.

Can and should that sometimes be reduced? Granted that none of us here lives up to our own highest standards all the time, are there significant reductions in excessive use of force that we could expect of the police of New York?

I am convinced the answer is yes.

I come to this subject as an educator with responsibility for the interests of some 400 students. They come from many parts of the country and 20 foreign countries. The reputation of this city as a center of education and culture helps draw these students to our schools as well as our faculty.

Any tarnishing of this city's reputation as a safe place to live discourages our students and faculty from feeling at home here or from wanting to come here. Therefore, we have a great institutional stake in the health and welfare of this city as a whole.

My entry into public discussion of this problem was by way of a single instance of the Rev. Lee Johnson, a student from the Baptist ministry enrolled in our program for a master of divinity degree. Mr. Johnson's story, which has been told and retold widely in this city over the past 4 months, has prompted many other stories that have come forward to the glare of publicity.

This very phenomenon should be of interest to this committee. If Mr. Johnson's problem with the police were a rarity, would all this public interest be stirred? Can any sober observer believe that this many hundred people on a working Monday would come out to a public meeting merely to protest injustices done to one theological student from Los Angeles?

The difference between Mr. Johnson and some of the other cases that will be described here is chiefly a matter of his connections. He got the listening ear of a lot of important people in this city.

But I am not here because of the connection of a single student of our school on this problem. I am here with the suspicion that if it could happen to a Baptist minister at Lennox Avenue at 127th Street, it could happen to anybody there and already has happened.

It reflects my respect for the police profession that I should say how astonished, appalled, and incredulous I am that any members of the police force should let the word "nigger" drop from their lips in the midst of dealing with any black person for any crime whatsoever.

I am similarly shocked that any officer of the law should use scornful language about anyone's religion or take fists and clubs to the body of any handcuffed prisoner. Yet all of these actions were perpetrated upon the Reverend Lee Johnson.

People accused of murder deserve better treatment. People accused of resisting arrest deserve better treatment. People accused of traffic violations, as he was, well, that is an accusation that sooner or later comes to all of us who own a car.

I can tell you that I have learned a lot from the bruised body and the bruised spirit of Lee Johnson in my many conversations with him since April 30, 1983. What I learned most from him, though, was what he himself learned: How to discover how many other people there are in this city who have suffered from similar incidents.

To be brief about it, this issue is not going to subside in public concern until two sorts of changes come to public affairs in this city.

First is some convincing evidence—and I stress “convincing”—that the leaders of city government are willing to persuade or to compel city police to control the lawless behavior as illustrated in this one incident and dozens of others. The evidence so far is not very convincing.

What is an ordinary newspaper reader to make of the fact that in 1981 only 104 of 3,048 complaints to the civilian complaint review board were sustained. Did over 3,000 citizens in this city take the trouble to complete all that paperwork when only 104 of the complaints were worth writing about? Is that not a strain on anybody's credulity?

Is it credible that the national conviction rate for police killing found unjustifiable should come to only two-tenths of 1 percent? Are policemen in America 99.8 percent innocent in their use of guns?

Why, even the cops on “Hill Street Blues” are not that good. In their own line of work, very few students in our seminary make that good a record in their grades.

The mayor himself has testified in the recorded testimony of July 18 that there are bad apples in every profession. When we discover that apple and he or she, after due process, is found guilty, we will discipline you, suspend you and fire you, says the mayor.

Where is the evidence of significant discipline, suspension and firing? When was the last time some officer in New York was visibly punished for calling somebody a nigger? Will the officers who used that language to Lee Johnson get reprimanded?

The widespread suspicion among many black people in this city is that such an epitaph is not important enough to merit discipline or suspension, not to speak of firing. Any employee around Union Seminary who uses that sort of language, I assure you he or she does so at risk.

Why not raise the risk of using racial slurs in the police force? Why not have the appointment of a truly civilian board of review as opposed to members now in the employ of the police department?

The second change that many of us hope to see coming from this upsurge of public concern is a rise in the climate of respect that surrounds police community relations in this city.

It is clear again in recent months that some city officials are speaking out more clearly on this matter than they have spoken before. It is clear again that the mayor should say in his recent testimony prepared for the July 18 hearing that he concedes that every black family has been subject to some indignity or some violence on the part of the police.

The trouble is, in my 8 years here I have not heard the mayor say that kind of thing.

It is also clear again that in early summer the head of precinct 28, why would a black captain finally be appointed as head of a precinct at this late time? Who can do other than applaud Commissioner McGuire's ringing words saying:

How can we ask the public to place its confidence in a police officer who is either unwilling or unable to live up to high standards? How can we ask our fellow citizens to support a police officer who violates the laws, uses excessive force or is rude and vulgar?

Such words should be applauded by city officials high and low. They should be applauded by the benevolent association and every desk sergeant in precincts.

The police themselves have much to gain from this society's fight against racism. Let them join publicly in the fight and then the people in this city might begin to perceive that the police can admit to mistakes too and correct them publicly.

Let me stress in conclusion that no one expects police or citizens to be perfect in their dealings with one another. If I believed in human perfection, I would not need to be a Christian or minister. We are dealing here with the potential for evil in us all. There is potential for good in us all.

One of our great former faculty members said, "The good in humans makes democracy possible; the evil in humans makes democracy necessary."

There are minimum standards of conduct that we all should be capable of, sir. For the sake of the police themselves, for the sake of New York City and all of us, our public leaders must raise their voices and use their power to bring these standards to street level practice. If they do not, our leaders may find themselves presiding not over a city but a battlefield.

I thank you for this hearing and your decision to reschedule.

[Prepared statement of Dr. Shriver follows:]

Testimony of

Dr. Donald W. Shriver, Jr.

President, Union Theological Seminary, New York City

to the House Committee on the Judiciary
Subcommittee on Criminal JusticeHEARING ON POLICE MISCONDUCT
New York City, September 19, 1983

My name is Donald W. Shriver, Jr. I have been president of Union Theological Seminary in the City of New York since 1975. Our school, located on Morningside Heights, is a neighbor of Harlem. I welcome this opportunity to speak with this panel on behalf of the students and faculty of one of the oldest institutions of higher learning in this city.

My own institutional and personal relations with the police of the city, especially the officers of our own Precinct 26, have been cordial and helpful during most of my eight years here. I have lived in large cities long enough to know the critical importance of competent, professional work by the police. Along with the vast majority of persons present in this hearing, I cannot consent to an image of myself as an enemy of the police. It is realism, and not just professional humility, which compels me to confess that a city could more afford to live for a day without its ministers than a day without its police. Dr. Charles Ancrum was surely speaking for many residents of the Black Communities of New York when he suggested recently that this hearing could well be concerned about "police neglect" of those communities as well as about police brutality in them. If we are concerned about police neglect, it is because we value police protection. Just so, if we are concerned about police brutality, it is because we value the competence, courage, and humanity of which we think the police capable.

We are here to probe the truth spoken in July by Donald Kinebrew, a policeman wounded in line of duty, who conceded that "we do use restraint, sometimes too much..." Can and should that "sometimes" be reduced to a lot fewer times? Granted that none of us lives up to our highest standards all the time, are there significant reductions in excessive use of force that we should expect of police in New York City?

The statistics and incidents already before us in this hearing convince me that the answer has to be a resolute "yes."

I come to this subject as an educator with responsibility for the interests of some 400 students annually enrolled at Union Seminary. They come from many parts of the country and almost twenty foreign countries. The reputation of this city as a center of education, commerce, and culture helps draw these students to our school along with many distinguished scholars.

Any tarnishing of New York City's reputation as a safe place to live discourages the coming of students and faculty to us. We have a great institutional stake in the health, safety, and welfare of this city as a whole.

My entry into public discussion of the problem of police brutality was by way of the single instance of the Rev. Lee Johnson, a student for the Baptist ministry enrolled in a degree program of our school. Mr. Johnson's story, which has been told and retold widely in this city over the past four months, has prompted many other stories to be told and publicized. This very phenomenon should be of great interest to this committee. If Mr. Johnson's problem with the police were a rarity, would all this public interest have stirred? Can any sober observer believe that this many people, on a working Monday, would come out to a public meeting merely to protest injustice done to one theological student from Los Angeles? The difference between Mr. Johnson and some of the other cases described here is the number of his CONNECTIONS: He got the listening ear of a lot of important people in this city. But I am not here because of my connection to a single student of our school. I am here with the suspicion that, if it could happen to a Baptist minister from Los Angeles at Lenox Avenue and 127th Street, it could happen to anybody there. And has happened there. We are here to talk about the respect, the restraint, and the professionalism which the police owe to the anybodies of this city, whether they are presidents of universities or just unemployed drug addicts.

There are standards of conduct we have a right to expect of all professional persons. It reflects my respect for the police profession that I should say how astonished, appalled, and incredulous I am that ANY member of the New York Police Force should let the word "nigger" drop from his lips in the midst of dealing with ANY Black person for ANY crime whatsoever. I am similarly shocked that ANY officer of the law should use scornful language about ANYone's religion or take fists and clubs to the body of ANY handcuffed prisoner. Yet all these actions were perpetrated upon Lee Johnson. People accused of murder deserve better treatment. People accused of resisting arrest deserve better, too. And people accused of traffic violations...an accusation that, sooner or later, comes to all of us.

I can tell you that I have learned a lot from the bruised body and the bruised spirit of Lee Johnson, in my many conversations with him in the days since April 30, 1983. What I learned most from him was what he himself learned from this bruising experience: to discover the history of other citizens among New York's minority communities who have been largely unnoticed victims of similar incidents.

This issue is not going to subside in public concern until two

sorts of changes come to public affairs in this city. The first is some convincing public evidence that the leaders of city government are willing to persuade and compel city police to control the lawless behavior illustrated so abundantly in this hearing. The evidence so far is not very convincing. What is an ordinary newspaper reader to make of the fact (reported in Attorney Vernon Mason's testimony) that in 1981 only 104 of 3,048 complaints to the Civilian Complaint Review Board were sustained? Did over 3000 citizens take the trouble to complete all that paperwork, when only 104 of the complaints were worth writing about? Is that not a strain to anybody's credulity? Is it credible that the national conviction rate for police killing found unjustifiable should come to only two tenths of one per cent? Are policemen in America 99.8 % innocent in their use of guns? Why, even the cops on Hill Street Blues are not that good. Not even ministers and rabbis are that good. As the Mayor himself said in the testimony prepared for the aborted July 18 hearing, we all know about "bad apples" in our respective professions. "When we discover that apple and he or she after due process is found guilty, we will discipline you, suspend you, and fire you." But where is the evidence of significant discipline, suspension, firing? When was the last time that some officer was visibly punished for calling someone "nigger"? Will the officers who used that language to Lee Johnson get reprimanded? The widespread suspicion among many black people in this city is that such an epithet is not IMPORTANT ENOUGH to merit discipline or suspension, not to speak of firing. If any employee around Union Seminary uses that sort of language, I assure you, he or she does so at risk. Why not raise the risk of using racial slurs in the police force?

My concentration on illustrations of verbal violence may not touch the heart of the matter, but all the degrees of violence here are interconnected. The second change that many of us hope to see coming from this upsurge of public concern is a rise in the climate of respect that should surround police-community relations in this city. It is clear gain, in recent months, that some city officials are speaking out more clearly on this matter than they have spoken before. It is clear gain that the Mayor should say, in his testimony prepared for the July 18 hearing, that "any racial remark by an officer of the law is intolerable." It is clear gain that in early summer a black captain was appointed to head Precinct 28. These words and such action come belatedly, in my opinion, but better late than never. Who can do other than applaud Commissioner McGuire's ringing words to the graduates of the Police Academy last spring? Said he:

"How can we ask the public to place its confidence in a police officer who is either unwilling or unable to live up to...high standards? How can we ask our fellow citizens to support a

police officer who violates the laws...uses excessive force...or is rude and vulgar...?"

Such words should be applauded by city officials high and low. They should be applauded by the officers of the Patrolmen's Benevolent Association and by every desk sergeant in the precinct. Police themselves have much to gain from this society's fight against racism. Let them join publicly in the fight, and then the people of this city might begin to perceive that the police can admit to mistakes, too, and can correct them publicly.

Let me stress in conclusion that no one expects police or citizens to be perfect in their dealings with one another. If I believed in human perfection, I would not need to be a Christian or a minister. We are dealing here with the potential for evil in us all. But there is a potential for good in us all. There are minimum standards of conduct that we all should be capable of. If we are not we should not become ministers OR police.

For the sake of the police themselves, for the sake of New York City, and for the sake of all its citizens, our public leaders must raise their voices and use their power to bring these standards to street-level practice. If they do not, our leaders may find themselves presiding, not over a city, but a battlefield.

I thank you for this hearing and your decision to reschedule it.

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To the Union Seminary Community:

The attached statement was delivered by President Shriver at a press conference held Thursday, May 5, 1983, at the Abyssinian Baptist Church, 132 West 138th Street, New York.

Union Seminary joined with a group of New York Black clergy to respond to an attack on UTS M.Div. student Lee Johnson by New York police officers.

5/5/83



UNION THEOLOGICAL SEMINARY • 3041 BROADWAY AT REINHOLD NIEBUHR PLACE, NEW YORK CITY 10027 • TELEPHONE: 212-662-7100

FOR RELEASE May 5, 1983

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STATEMENT BY THE REVEREND DONALD W. SHRIVER, JR., PRESIDENT,
UNION THEOLOGICAL SEMINARY, NEW YORK

I am Donald Shriver, the President of Union Theological Seminary in the City of New York.

I am speaking to you today as head of Union Seminary, an institution of higher learning whose life and history have been intertwined with those of New York City for nearly 150 years. I am speaking also as a teacher and pastor. In all three of these ways I have very central responsibilities toward Union's students. And I am speaking, too, as a citizen of this city.

Early last Saturday evening, a ~~first~~^{second}-year graduate student at Union Theological Seminary, the Reverend Lee Johnson, was stopped by two New York City police officers as he, accompanied by two friends, was driving his car on Lenox Avenue.

One of the police officers approached the Reverend Mr. Johnson's stopped car and requested his driver's license, registration, and insurance card. Mr. Johnson asked to be allowed to get out of the car in order to get at the documents; the request was denied and the officer locked the car door. Mr. Johnson asked why he had been stopped; his question received only profanity in response. Mr. Johnson identified himself as a clergyman and remarked that the officer must be inexperienced if he addressed any citizen in that way.

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The officer unlocked and opened the car door, attempted to strike Mr. Johnson in the face, then struck him repeatedly on the leg with a flashlight, and ultimately pulled him from the car.

A second officer joined the first. Mr. Johnson was handcuffed and, while handcuffed, was repeatedly struck with a nightstick and thrown against the car.

He was put into the front seat of a police van and told that he was under arrest. He was not told his offense.

At the 28th Precinct Mr. Johnson was attacked verbally, both with explicit racial epithets such as "nigger" and with disparaging remarks about his religious beliefs and affiliations ("I don't believe in that shit anyway, Reverend" and "You don't pay no taxes anyway").

He was removed to a stairwell and then taken upstairs to a room containing a cell; in both places, while handcuffed, he was again beaten, choked, and kicked by the same two officers who had arrested him. He was told, "I am going to teach you a lesson, nigger" and "When you open your mouth, nigger, you had better say Sir."

Mr. Johnson was released by the police at about 9:30 that evening. As far as he knows, he is not charged with any crime. He was, however, given three summonses for motor vehicle violations.

Mr. Johnson was then able to return to his apartment at Union Seminary and to his wife and baby daughter. Accompanied by a Seminary security guard, he then sought and received treatment of his injuries at the emergency room at St. Luke's Hospital.

I hardly know how to express to you the degree of outrage, shame and despair that I feel as I recount these events.

I feel outrage that this young man was threatened, insulted, humiliated and beaten by the police of this city.

I feel shame that my institution, which had invited this young man to join its community, is unable to assure him of protection by the police, protection of life and limb and of dignity. Shame, too,

MORE

that I cannot assure our other students, who are from all over this country and from 18 countries around the world, of this same protection.

And I feel despair that yet again, yet again, a black person in this city has been subjected to unlawful violence, carried out by those appointed to uphold the law.

There is no question but that because Lee Johnson is black it was assumed that he was a troublemaker, a public danger, that he was not worthy of respect, that his civil and human rights could be denied him, and that he could be physically injured with impunity.

Nothing in the minor traffic violations with which he was ultimately charged could in any way justify the treatment accorded him by New York City police officers. Such physical and emotional abuse is unprofessional; it is unmoral; it is inexcusable.

I cannot restore to Lee Johnson what has been taken away from him by this police attack. I cannot alleviate his rage, his frustration, his despair.

I can only state that Union Theological Seminary will bend every effort, will use whatever influence and resources it has available to help ensure that this kind of event will not be tolerated and will not recur. In this effort, we will, at the start, do all we can to make sure that the two arresting officers, who have demonstrated such hatred, contempt, and fear in their attack on Lee Johnson, do not continue to serve on the police force of the City of New York.

To permit them to continue even now is unworthy of the best traditions of the New York police system itself. It is unworthy of the city's own efforts to eliminate racism and brutality from its public life, and it is a threat to the life and security of all of us.

END

Mr. CONYERS. I would like to particularly commend you for your statement, sir, because you have raised the question that has been in some confusion among many people's minds.

This hearing is not just on police violence and police killings; it is on every level of disrespect, discourtesy, abuse that black people and other minorities are subject to at the hands of the police. I am very glad that you made that important connection in your remarks, which are very appropriate for beginning these hearings.

I would like to ask Congressman Rangel for any questions that he may have.

Mr. RANGEL. No; I want to thank the Reverend not only for the leadership that he has shown and given to our community over the years, but for shattering any myth that anyone may have that this was a circus.

Thank you so much.

Mr. CONYERS. Congressman Weiss.

Mr. WEISS. Thank you, Mr. Chairman.

I think the testimony was eloquent and spoke for itself.

I have no questions. Thank you, Dr. Shriver.

Mr. CONYERS. Congressman Crockett?

Mr. CROCKETT. Thank you, Mr. Chairman.

Has there been a black captain in precinct 28 at some previous point in history?

Dr. SHRIVER. I do not know the answer to that question, which, of course, is a good one. I am reasonably assured that at the time of Mr. Johnson's mistreatment inside that precinct, the captain was a white person.

Mr. CROCKETT. Do you know how many police precincts you do have in New York City and how many of them are headed by a nonwhite?

Dr. SHRIVER. I don't know the statistic, but I know it is very, very few.

Mr. CROCKETT. Thank you, Mr. Chairman.

Mr. CONYERS. Congressman Owens.

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

Mr. CONYERS. We thank you very much.

Mr. CONYERS. The next witness is Attorney Hector Soto of the Puerto Rican Legal Defense and Education Fund. This attorney has been active in police misconduct matters for 6 years. The Puerto Rican Legal Defense Fund and Educational Fund has been in operation for 11 years and has handled numerous police brutality cases and voting rights and other related civil rights matters.

Welcome to our hearing, Attorney Soto, and we will incorporate your prepared statement. You may proceed in your own way.

TESTIMONY OF HECTOR SOTO, ATTORNEY, PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND

Mr. Soto. Thank you, Congressman Conyers and distinguished members.

I am going to read my prepared statement.

Police violence in the Puerto Rican-Latino community of New York City is a serious and longstanding problem. It is a problem triggered primarily by ethnic and racial prejudice fueled by lan-

guage discrimination and reinforced by the continuing institutionalized nature of the problem as it exists in the police department and the police benevolent association.

This institutionality is reflected in the police department's failure to acknowledge the severity of the problem; its failure to properly investigate; its failure to maintain accurate and meaningful statistics; and also, but not in the least, the police department and city's continued use of discriminatory hiring and promotional procedures as well as the department's continuing insensitivity to language and cultural issues.

Mr. CONYERS. Mr. Soto, would you suspend until we can get a little better audio system going?

Ladies and gentlemen, I apologize. We have such an overload of microphones that we are experiencing some difficulty. We will suspend for 1 minute.

[Recess.]

Mr. SOTO. The situation during the last 5 years has gotten worse, not better. This is especially true for the Puerto Rican and Latino community. As recorded in the current issue of the "Village Voice," in 1982 city police killed twice as many Latinos as blacks—20 to 10 according to the department's statistics.

Moreover, we who deal with this problem on a continuing basis know from the testimony of victims and witnesses that this statistic covers only the most serious aspect of the problem of racially and ethnically motivated police violence.

These are statistics which accurately reflect the number of incidents involving unjustified use of physical force. There are no statistics which accurately reflect the number of incidents involving verbal and psychological abuse of Latinos and blacks by the police.

There are no statistics which accurately reflect the statutory violations suffered by the Latino and black communities. Moreover, and more importantly, no method has yet been devised to measure grief, embarrassment, anger, and loss of faith caused by these incidents.

Who are the victims? Some would have us believe that the situation and characters portrayed in the movies like "Fort Apache, the Bronx" and similar TV shows are a true picture of everyday Puerto Rican and black existence.

Therefore, the police by using deadly or physical force are doing only what is necessary to protect themselves and maintain order, if not law.

The testimony of today's witnesses belies the Fort Apache perception of the Puerto Rican and black communities and the role of the police within these communities. As regards the Puerto Rican Legal Defense Fund's experience since the last hearing date of July 18, we have had brought to our attention five major incidents of racially motivated police abuse.

The victims have been a 42-year-old Puerto Rican busdriver whose alleged crime was that he was rushing home in response to an emergency call from his wife; a 35-year-old Puerto Rican mother and her two sons whose home was broken into by the police who were then abused by them; a middle-aged black couple whose misfortune it was to be walking arm-in-arm on the street to which the police were responding to a radio call; a Puerto Rican New York

sanitation worker who went with a friend to the local precinct to transact some business and then could not move fast enough when he was instructed by the police officer to remove himself from the front of the building.

Finally, the unemployed Puerto Rican mother of six who herself was the victim of an assault who was arrested and assaulted by the same police officer to whom she went for assistance.

These victims, as well as the others who testify today were beaten and abused by the police and forced to endure the embarrassment and anguish of arrest and now face criminal charges.

They are atypical only to the extent that they have complained and sought to do something about the police crimes of which they have been victim.

The majority of Puerto Rican and black victims, however, do not and cannot speak out. There are many reasons for this silence.

Primarily is the lack of faith in the system of redress as currently comprised and fear of reprisals.

The civilian complaint review board is perceived by most of the Puerto Rican, Latino, and black communities as a police department front, and don't believe that the police department is willing or capable of investigating and disciplining itself on these matters.

The statistics of the CCRB disclosed an annual finding rate against accused officers of 2 percent. The actual rate of discipline is even lower.

It should be noted that as in the "Village Voice," that the discipline rate has been getting lower during recent years.

The CCRB also is known for discouragement and harassment of people who file complaints. A similar lack of faith exists in the community regarding prosecution of the offending police officers by the district attorney.

This lack of faith is reinforced by the low city-wide statistics regarding indictments and prosecutions. It is clear that in order for a district attorney to be effective he or she must maintain a good working relationship with the police department.

The district attorney is in fact dependent on the police department in many respects. This is an inherent conflict of interest that places limitations on the willingness and ability to prosecute in these matters.

Prosecution by the local Attorney General's office under the Federal Criminal Civil Rights Act of 18 U.S.C. 241 and 242 are even less likely.

The failure of the CCRB, the county district attorney's office and the local U.S. attorney general's office to conduct effective investigations or to discipline and prosecute police officers has reinforced the lack of faith in the Puerto Rican, Latino, and black community regarding these matters.

Although some redress is theoretically possible through civil suits and Federal court and violation of constitutional and civil rights and through State civil tort actions, the length and complexity of these litigations, substantial costs involved and the formidable defense provided at no cost to the police officer by the city or the police union limits the availability and effectiveness of these types of actions.

Another limiting factor is the disposition of the cover charges usually lodged against the victims of police violence. Usually the big three, assault, attempted assault of a police officer, disorderly conduct or resisting arrest charges are falsely filed against the victim.

Success of any Federal or State civil action depends in substantial part upon the victim's ability to clear him or herself of any criminal wrong doings. Innocent victims are often forced out of fear of getting a record or going to jail, out of fear of losing their jobs because of repeated court appearances, out of disgust, frustration, or embarrassment to simply cop a plea, accept a plea bargain to a lesser charge and in effect waive their right to civil redress.

As an avenue of redress, civil suits have significant limitations and often impose an additional burden on the aggrieved victim or his family.

The problem of racially/ethnically motivated police violence is only part of the institutionalized problem of prejudicially motivated police department and police union behavior.

The problem manifests itself through the continuing use of discriminatory hiring and promotional practices by the police department in the city of New York. Challenges filed by my organization over the past 11 years and continuing to the present day are testimony to the extent of the problem.

The more general problem is also reflected in the police department's continuing failure to recognize Spanish language ability as a special skill not only preferred but required in New York City's Puerto Rican, Latino neighborhood.

The failure of communication between Spanish-speaking, Latino and English-only speaking police officers has undoubtedly contributed to the creation and escalation of many a confrontation. Similarly for the need to sensitize non-Latino police officers to cultural differences.

The Puerto Rican Legal Defense and Education Fund welcomes the investigation of the House Subcommittee on Criminal Justice as a viable first step in dealing with the problem of prejudicially motivated police action.

The fund joins in the call for both the establishment of an independent and fully empowered nonpolice administrative agency to investigate civilian complaints against the police as well as the creation of a special prosecutor's office.

The Puerto Rican Legal Defense and Education Fund also calls for the elimination of the use of discriminatory hiring and promotional practices and requiring of basic Spanish language ability for police officers working in Puerto Rican and Latino neighborhoods. Thank you.

[Prepared statement of Mr. Soto follows:]

NEWS from
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Legal Defense and
Education Fund, Inc.
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STATEMENT OF THE PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND
 For Release: FOR THE PUBLIC HEARING OF THE HOUSE SUBCOMMITTEE ON
CRIMINAL JUSTICE

9/19/83

PRESENTED BY HECTOR W. SOTO

Police violence in the Puerto Rican-Latino community of New York City is a serious and long-standing problem. It is a problem triggered primarily by ethnic and racial prejudice, fueled by language discrimination, and reinforced by the continuing institutionalized nature of the problem as it exists within the Police Department and the Police Benevolent Association. This institutionalization is reflected in the police department's failure to acknowledge the severity of the problem, its failure to properly investigate and discipline and also, but not in the least, by the Police Department/City's continued use of discriminatory hiring and promotional procedures, as well as the Department's continuing insensitivity to language and cultural issues.

The statements and statistics of Mayor Koch and Police Commissioner McGuire notwithstanding, the situation during the last five years has gotten worse not better. This is especially true within the Puerto Rican-Latino community. As reported in the September 14th issue of the Village

Voice, in 1982 city police killed twice as many Latinos as Blacks (20 to 10, according to the department's statistics). However, we who deal with this problem on a continuing basis know from the testimony of victims and witnesses that this statistic covers only the most serious aspect of the problem of racially/ ethnically motivated police violence. There are no statistics which accurately reflect the number of incidents involving unjustifiable use of physical force; there are no statistics which accurately reflect the number of incidents involving verbal and psychological abuse of Latinos and Blacks by the police; there are no statistics which accurately reflect the number of constitutional and statutory violations suffered by the Latino and Black communities. Moreover and more importantly, no method has yet been devised to measure the human grief, embarrassment, anger and loss of faith caused by these incidents.

And who are the victims? Some would have us believe that the situations and characters portrayed in movies like "Fort Apache, the Bronx" and similar TV shows are a true picture of everyday Puerto Rican and Black existence. Therefore, the police by using deadly or physical force are doing only what is necessary to protect themselves and maintain order, if not law. The testimony of today's witnesses belies the Fort-Apache perception of the Puerto Rican and Black communities, and the role of police within these communities. As regards the Puerto Rican Legal Defense Fund's experience since the last hearing date of

July 18th, we have had brought to our attention five major incidents of racially motivated police abuse. The victims have been a 42 year old Puerto Rican New York City bus driver whose alleged crime was that he was rushing home in response to an emergency medical call from his wife; a 35 year old Puerto Rican mother and her two sons whose home was broken into by the police who then abused them physically, verbally and psychologically; a middle age Black couple whose misfortune it was to be walking arm-in-arm on a street to which the police were responding on a radio call; a Puerto Rican New York City sanitation worker in his mid-twenties who went with a friend to the local precinct to transact some business, and then could not move fast enough when he was instructed by a police officer to remove himself from the front of the building; an unemployed Puerto Rican mother of six who was a victim of an assault, and then arrested and assaulted by the same police officer to whom she went for assistance. These victims, as well as others who testify today, were beaten and/or abused by the police, forced to endure the embarrassment, and anguish of an arrest, and now face threats and/or criminal charges. They are atypical to the extent that they have complained, and seek to do something about the police crimes of which they have been the victims. The majority of Puerto Rican-Latino and Black victims however do not or can not speak out.

There are many reasons for this silence. Primary among them is a lack of faith in the system of redress as

currently comprised and a fear of reprisals. The Civilian Complaint Review Board (CCRB) is perceived by most in the Puerto Rican-Latino and Black communities as a Police Department front. Few believe that the Police Department is willing or capable of investigating and disciplining itself in these matters. The statistics of the CCRB disclose an annual finding rate against accused officers of 2%. The actual rate of discipline is even lower. It should be noted, as reported in the Village Voice (Sept. 14), that the discipline rate has been getting lower during recent years. The CCRB also is known for its discouragement and harassment of complainants.

A similar lack of faith exists in the community regarding prosecution of offending police officers by the District Attorney. This lack of faith is reinforced by the low citywide statistics regarding indictments and prosecutions. It is clear that in order for a District Attorney to be effective that he or she must maintain a good working relationship with the Police Department. The District Attorney is in fact dependent on the Police Department in many respects. This is an inherent conflict of interest which places limitations on a District Attorney's willingness and ability to prosecute in these matters. Prosecutions by the local Attorney General's office under the Federal criminal civil rights statutes, 18 U.S.C. §§241 and 242 are even less likely. The failure of the CCRB, the county District Attorney's office, and the local U.S. Attorney General's office

to conduct effective investigations or to discipline/prosecute guilty police officers, has reinforced the lack of faith and apathy within the Puerto Rican-Latino and Black communities regarding these matters.

Although some redress is theoretically available through civil suits in federal court for violation of constitutional and civil rights, and through state civil tort actions, the length and complexity of these litigations, the substantial costs involved, and the often formidable defense provided at no cost to the accused police officer by the City and or the police union limits the availability and effectiveness of these types of actions. Another limiting factor is the disposition of the "cover charges" usually lodged against victims of police violence. Usually, the big three: assault or attempted assault of a police officer, disorderly conduct, and resisting arrest charges, are falsely filed against a victim. The success of any federal or state civil action depends in substantial measure upon a victim's ability to clear him/her self of any criminal wrongdoing. Innocent victims often are forced out of fear of getting a record or going to jail, out of fear of losing their jobs because of repeated court appearances, out of disgust, frustration, or embarrassment to simply accept a plea bargain to a lesser charge, and in effect, waive their right to civil redress. As an avenue of redress, civil suits have significant limitations, and often impose an additional burden on the aggrieved victim or his/her family.

The problem of racially/ethnically motivated police violence is only part of the institutionalized problem of prejudicially motivated Police Department and police union behavior. The more general problem manifests itself through the continuing use of discriminatory hiring and promotional practices by the Department and the City of New York. Challenges, for the most part successful, filed by my organization over the past eleven years and continuing to the present day, are testimony to the extent of the problem. The more general problem is also reflected in the Police Department's continuing failure to recognize Spanish language ability as a special skill not only preferred, but required, in New York City's Puerto Rican-Latino neighborhoods. The failure of communication between a Spanish-speaking Latino and an English-only speaking police officer has undoubtedly contributed to the creation and escalation of many a confrontation. Similarly for the need to sensitize non-Latino police officers to cultural differences.

The Puerto Rican Legal Defense and Education Fund welcomes the investigation of the House Sub-Committee on Criminal Justice as a viable first-step in dealing with the problem of prejudicially motivated police action. The Fund joins in the call both for the establishment of an independent and fully empowered, non-police administrative agency to investigate civilian complaints against the police, as well as the creation of Special Prosecutor's office. The Puerto Rican Legal Defense and Education Fund also calls for the elimination of the use of discriminatory hiring and promotional practices and the requiring of basic Spanish language ability for police officers working in Puerto Rican-Latino neighborhoods.

Mr. CONYERS. Thank you very much.

Mr. Soto, you have raised a number of very important factual conclusions and I want to express on behalf of the committee our appreciation for the information you have brought to the attention of this hearing.

We are going to continue to examine the discrepancies that you have pointed out in the statements that have been submitted by Mayor Koch and Commissioner McGuire. I think that we need to continue to spell out the apparently great number of discrepancies that have been found in those statements that they have released.

Perhaps they will yet find it in the public interest to come forward to this committee and explain these discrepancies or misstatements. The statistics they have presented are quite different from the ones that we have gleaned and from the ones that you have put to us.

Let me ask you about a different dimension in this hearing: racially motivated police violence toward women. How much does this problem exist or doesn't it exist in your judgment?

Mr. Soto. I have no statistics to provide on the subject. However, I can tell you that in dealing with witnesses and victims of police brutality here in the city among the Puerto Rican and black community the police do not discriminate against men and women in their attacks.

One of my clients filed a civil suit over an incident that occurred in 1981. The case involved an 18-year-old Puerto Rican woman whose crime it was to be in a pizza parlor while three police officers were looking for a suspect and they decided that she was a suspect.

More recently, the Puerto Rican mother whose home was broken into and then was physically and psychologically abused had occurred since July 18.

We have the middle-aged black couple who—in fact the incident occurred the day after the hearings were scheduled, July 19. This was a black middle-aged couple who were walking in Manhattan.

A number of police cars responded to an incident and the police just went forward and abused both the husband and the wife without regard. I think there may be a special problem with women to the extent that women may be perceived by the police as being less able to defend themselves.

Whether that is true or not may be a perception on the part of the police and may add to the problem.

Mr. CONYERS. Might they also be more reluctant to come forward to press these complaints?

Mr. Soto. I think so, too. There is a general problem with pressing complaints against police in New York City. The entire procedure from the moment that you have to go back basically to the same precinct from which the police officers who assaulted you or abused you were working.

The fact you have to go back to the same precinct is an intimidating factor that stops most people from going back. Of course, people can always go to 17th Street and Park Avenue which is the central office, but if you live in north Bronx, Far Rockaway, or Queens, you are not going to make a special trip, especially if you

are too poor to file a complaint in which you have very little faith to start off with.

Mr. CONYERS. You have mentioned a number of remedies and I would like to advise you that we are planning a special hearing in which after we have heard from all of the witnesses and assessed the facts and allegations in this matter, we will then begin to examine all of the remedies that have come forward and I would like you to continue to develop some of the very excellent suggestions that you have had so that you may again come back and you may begin to examine what it is we recommend that be done at the Federal and the State and the local level to remedy this deplorable situation.

Mr. SOTO. We will be more than happy to cooperate.

May I make one final comment. I am here as a representative of the Puerto Rican Liberal Defense Fund and the community. A witness is here from the Bronx and I believe he has something also to contribute to the testimony.

I would like to point out that the problem is not something that is limited to the black community or the Latino community in New York City.

Minority communities of New York City are the victims for the most part and seem to be the targets of police brutality and the ones that are most suffering. The investigation in this matter has to be broad and not concentrated on differences between the various groups.

Mr. CONYERS. We have some studies that indicate that even the violence against nonminorities is on the increase.

Mr. SOTO. I believe that is correct as well. However, the majority of the victims are black, Latino, Asian-Americans, and other minority members.

Mr. CONYERS. Thank you very much.

Mr. RANGEL.

Mr. RANGEL. I want to thank the organization for compiling the testimony presented today. I was asking my colleagues, these victims that you describe are they clients of the legal fund?

Mr. SOTO. Yes; they are.

At this moment we are still investigating and the decision has not been made either by them or ourselves to go forward and file legal suits.

Mr. RANGEL. I guess my follow-up question is since there is an apprehension for the victims of brutality to go to the precincts or go to the civilian review board, Chairman Conyers' committee could rely on the cooperation of your agency to substantiate your testimony.

Mr. SOTO. Yes; no problem.

Mr. RANGEL. Thank you very much.

Mr. CROCKETT. Mr. Soto, I don't know how many other lawyers we will have coming in this morning, so I hope you will forgive me if I take advantage of this opportunity to inquire what, if anything, the nonwhite members of the legal profession in New York are doing about these claims of police brutality.

There are many instances in which a judge in the course of a judicial proceeding can make an independent assessment of whether the defendant has been victimized by the police department. He

can do it at the time he is conducting a probable cause hearing to pass on the question of bail. He can do it at the time he is conducting a sentencing hearing to decide what the sentence shall be.

In those instances, he would be taking the testimony in open court so that the public, itself, would know whether or not the facts have been established, which is altogether different from these secret, confidential police trial board hearings.

I remember a few years ago, the New York Wall Street Journal remarked about a certain judge in Detroit who has said that after a hearing that he was convinced that the State, acting through the police department, had already brutalized a defendant, he would not compound that injury by again punishing the defendant; that the State was only entitled to one bite of the apple, and there was a lot of consternation created as a result of that.

But I think that kind of attitude went a long way toward discouraging police brutality in our own city of Detroit.

Now, my basic question is: To what extent have nonwhite judges in New York shown any consciousness of these complaints and any interest in trying to do something about it? [Applause.]

Mr. Soto. I think the first point is that the number of nonwhite, that is, black and Puerto Rican judges in New York City, at least, is extremely, extremely low. We don't have the kind of representation on the bench that we should have. That is No. 1. [Applause.]

No. 2, I think the problem is inherent in the system. Although there are some very courageous black and Puerto Rican judges in the city, they cannot be in all five boroughs in criminal court, which is where most of the victims first show up in the legal system and deal with the problem.

We do have judges that are more sensitive to the issue. However, the overriding problem seems to be that once a person becomes a victim of police brutality, they have the criminal charges lodged against them; they then start on the process which aggravates the situation.

A number of things can happen as I indicated in my statement. No. 1, there is usually a lot of pressure for the person to plea bargain and get out of the system, especially if the person has never had a record, especially if it is the first time that they have ever dealt with the legal system. They are very afraid. They are uptight.

They usually have a legal aide attorney who, although he may or may not be sensitive, is bound to feel the pressure of the system on him or her as much as the judge may feel the pressure, and they are told, "Well, listen, if you cop a plea and you take a violation or take this or take that, you will be out of the system and you won't have to come back to court any more."

Some people say, "Fine, this is the first time; I am not going to cop a plea," but on the sixth, seventh, or eighth time back to criminal court, they are much more receptive to accepting a plea even if they feel very strongly about not having done anything.

The other thing that happens, and this is one of the reasons why I don't recommend filing CCRB complaints unless you have to, is that I have known instances where the assistant district attorney, who is on the case at the criminal court level, if there has been a CCRB complaint filed, has it in his folder, knows that a CCRB com-

plaint has been filed and then feels more pressure to find the person guilty of something in order to cover the police action.

The same thing exists with the civil suits. If you file a civil suit against the city, the department and the police officer, the district attorney, the next appearance in court knows about it, has the information and again feels compelled to go forward and find the person guilty of something in order to, in effect, kill the civil action on the other side.

It is also not unusual for the district attorney at that point to offer some kind of a plea, which is basically, "You drop yours and we will drop ours," which we believe is unconstitutional but has not been challenged in the court. [Applause.]

Mr. WEISS. Mr. Soto, how long does the average civilian complainant require from the filing of the complaint to the deposition?

Mr. Soto. Sometimes forever. I filed a complaint personally in August 1979 on the basis of a police riot that occurred in Brooklyn, and I think there are many people here, both in the gallery and as witnesses, who were also present who were the victims of a police riot. The policemen drove their patrol cars into a crowd, assaulted people at random.

We filed at least 10 CCRB complaints and the same number of complaints filed with the U.S. Attorney General's Office. The U.S. Attorney General's Office at least responded. I am still waiting for a response from the CCRB. The CCRB, depending on who the victim is, in part, and whether or not the case gets publicity, will try to do something about it, that is, deal with it.

What they do is, for the most part, harass the complainant. They discourage the complainant from coming forward. They have a process called conciliation, which is not found in any of their literature or anything else, but basically they go to the victim and say, "Why don't we try to work this out between us and if you agree to that, we will give basically a slap on the wrist to the police officer."

He will be called before his commanding officer and reprimanded, but no permanent file is created, and as far as I know, those are marked "settled," and when the statistics are given at the end of the year, the impression is given that these were settled and that somehow that is a plus to the police that it wasn't all that serious. [Applause.]

The people are discouraged.

Let me expand on this. In the CCRB, a person files a complaint. The first person to get investigated is the complainant. It is not the police officer, but the complainant, who gets investigated. [Applause.]

The CCRB has been known to go to people's houses. I am representing at this moment a 42-year-old busdriver who was assaulted by a police officer. My client filed a CCRB complaint before coming to the office. The CCRB showed up at his house at 10 p.m. on a Monday night, no prior notice, no warnings, knocked on the door and said, "This is the police, open up." I wonder whether or not that is a proper way of conducting an investigation.

Similar incidents have occurred with many other CCRB clients. Also the CCRB has been known to call the employers of complainants and say, "Listen, this is the police department; we are investigating so and so," not investigating the complaint of so and so, but

"We are investigating so and so," and intimidating the person by contacting an employer.

These events are commonplace. They happen on a regular basis, and I think discredit the system, add to the confusion, and destroy any kind of faith that people may have or want to have in the system.

Mr. WEISS. One final question, if I may, Mr. Chairman.

Last week, Commissioner McGuire indicated the staffing of the review board was going to be increased by 25 percent.

Can you indicate to us what improvement and how close to meeting the needs that 25 percent increase will provide?

Mr. Soto. CCRB, the complaints that they handle will be a fraction of all the complaints that are generated in the community. Many complaints go to organizations like the Black United Front, go to churches, or come to organizations like mine; the CCRB will never deal with them.

To the extent that they have a backlog, I think it represents their failure to effectively handle whatever minute number of complaints they do have. I don't know whether increasing the personnel, if the policy and the practices of the CCRB are not modified, is going to help. If anything, it may help increase the number of settled cases, but again I don't know what that means other than it is really a favorable disposition for the police officer who ends up with nothing on his record and basically a slap on the wrist.

Mr. CONYERS. Thank you.

Congressman Owens.

Mr. OWENS. Mr. Soto, I don't have a question. The charge has been made that in the process, even after minority recruits passed the test and are included in the training and are at the police academy in the process of screening and in the process of training and in the process of evaluation, and during this period of probation, there are extensive discriminatory practices which eliminate blacks and Puerto Ricans before they can become full-fledged patrolmen.

If you have any information about the screening, training, and evaluation processes, I think the committee would like to have that information. I would certainly like to have copies myself.

Mr. Soto. We will provide you with whatever information we have. I can only say part of the problem is, once a person is accepted, from the moment of acceptance to the end of probation, which is a 2-year period in the police department, that is a very closed and almost secret process that takes place completely internally within the police academy and in the police department.

We have received complaints of individuals who have been arbitrarily dismissed, and I say arbitrarily because no reason was given. However, the civil service laws for the probationary period up to 2 years allows for that kind of dismissal. That made it much more difficult to deal with that problem. We can tell you we have received complaints and the Hispanic Society and Guardian Society are concerned about those issues and should be contacted.

Mr. CONYERS. Thank you. Your testimony has been extraordinarily helpful.

Mr. Soto. Thank you.

Mr. CONYERS. Our next witness is Laura Blackburne, counsel for the New York State NAACP, responsible for legislative agenda in

New York State. She also serves on the Citizens Committee Against Prison Overcrowding and the Congressional Black Caucus Criminal Justice Brain Trust.

Welcome. Identify those accompanying you, please.

TESTIMONY OF LAURA BLACKBURNE, NATIONAL CHAPTER, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ACCOMPANED BY MICHELLE RUSS, ROSE MARY STERRETT, CORNELIA MUAMBA, AND DARNEL MURDAUGH

Ms. BLACKBURNE. Welcome to New York, Congressman Conyers.

I have with me four people who will tell you their own stories of their experiences with the police. Before you hear from them, I have a few opening remarks.

First, I would like to bring you greetings on behalf of the National Association for the Advancement of Colored People and to thank you for coming back to Harlem on this most serious matter. It is absolutely fitting and indisputably appropriate in light of the Federal Government being focused on the problem of police misconduct, as well as the problem of excessive use and abuse of police force.

There are 77 branches of the NAACP in New York State. Fifteen of those branches are inside prison walls, so that the NAACP is intimately familiar with every form and every instance of the way in which law enforcement officials abuse their authority and misuse black citizens in New York State. There are some serious physical abuse problems, but I want to address and highlight the other forms of police misconduct that in the final analysis are more destructive of the spirit and more dehumanizing than a blow or an example of physical force.

It is interesting that in every story from a victim of police brutality you will hear the violent actions were accompanied by abusive, vile, obscene, savage, dehumanizing racial epithets. Someone once said, what is in a name. In a name we find our self-esteem and our dignity. It took the U.S. Supreme Court in 1964, in the case of *Hamilton v. Alabama*, to tell the State prosecutor in Alabama that he was required to accord a black woman the dignity of addressing her by her title in the case of Miss Mary Hamilton. Today, black women, black men, are seldom addressed by their name when they encounter police.

In addition to this, it is important to note for the record, that whatever statistics are offered by whomever, it is without question that there is a pervasive fear that every black person in this city feels when they encounter a police officer. This is without regard to age, sex, race, or station in life. If you are a black New Yorker, you automatically read indelibly but invisibly written "caution" when you pick up the phone to call the police. Calling a police officer can be hazardous to your health. It can result in death, serious physical injury, and almost certain spiritual abuse of your person and your dignity.

That is why, Congressman Conyers, Congressman Towns, Congressman Owens, Congressman Weiss, and Congressman Rangel, especially our Congressman, Congressman Crockett, that we in-

treat you to take these hearings seriously because they are serious to us.

It is ironic and appropriate that these hearings are held in Harlem, U.S.A., the spiritual capital of black people. We will ask specific items for you to consider in legislation, but I want you to hear what happens when a black person encounters a police officer in New York State. I selected only a few of the numerous complainants who come before the NAACP seeking help because they don't know where else to go.

[The prepared statement of Ms. Laura Blackburne follows:]

TESTIMONY OF LAURA D. BLACKBURNE, COUNSEL, ON BEHALF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Welcome to New York Congressman Conyers. I am pleased to bring you greetings on behalf of the National Association for the Advancement of Colored People, the oldest and most effective civil rights organization in the World. The 77 branches in New York State, including 15 inside correctional facilities and 24 units here in New York City are grateful to you for your response to the requests of the coalition of community leaders to convene the Subcommittee on Crime of the House Judiciary Committee here, in Harlem USA, the spiritual capitol of Black America. It is altogether fitting and indisputedly appropriate that you are bringing the Federal Light to focus on the charges of wide-spread, unchecked racially motivated police brutality and other forms of police misconduct. Thank you for being here today. For the last 75 years the NAACP has served as a vigilant sentinel in seeking to insure equal protection of the laws for Black Americans and to make it possible for them to share equally in the benefits and resources of America. This has not been easy because of the racism that is endemic to life like in these United States. The NAACP has had as a continuing priority since 1908 the elimination of racial violence that has had a chilling effect on our exercise of Constitutionally guaranteed rights.

Police brutality and misconduct motivated by race continues today to be the most heinous form of racially motivated violence. This is so, obviously, because if those charged with protecting us violate this sacred responsibility then our life is forfeit. Life and liberty are the most fundamental rights provided for by the founding fathers and extended to Black Americans in the 13th, 14th, and 15th Amendments. But for Black New Yorkers these rights are not intact and secure.

Fear prevents the enjoyment of life and liberty for Black New Yorkers, fear that they will be the next victim of police violence and abuse solely because they are Black. Neither age, sex nor station in life make any difference. If you are Black in 1983 in New York you fear any encounter with the police. Indeed it is written in indelible invisible ink: *Caution*, calling the police may be hazardous to your health, resulting in death, serious injury, verbal abuse obscenities and racial epithets, when a police officer arrives on the scene, This fear is fueled by incident after incident of savage, inhuman, cruel police behavior that is unchecked by police outrage or effective official policy.

The witnesses whom you are to hear represent a range of personal painful experiences that Black New Yorkers endure at the hands of New York police officers. These acts degrade us the victims and will ultimately destroy the whole of our civilized free Democratic society.

After you hear these victims you will have a glimpse of their horror, and all our shame. Please note the abusive racially derisive, obscene name calling that accompanies the other wrongful police actions. "What is in a name," Shakespeare said, Calling someone other than their name is a form of subjugation and the first step in dehumanizing that individual by assaulting their dignity and self esteem. In 1964 the United States Supreme Court spoke to this very issue in *Hamilton v. Alabama* when the court held that a State prosecutor was required by the due process and equal protection clause to address a Black woman by her name—*Miss Mary Hamilton* with the same form of respect accorded to whites.

We all saw the television dramatization of "Roots" and Kunta Kente's struggle to retain his name even under the most savage efforts of his slave master to force him to answer to something else.

First, let us hear from a young Black woman whom you can see is tiny—5'2" 125 pounds, Michele Russ (her statement).

Now another Black woman who saw her Black man emasculated by not being able to protect her from a moment of terror which is forever etched into her memory. Rosemary Starret (her testimony).

Now Cornelia Muamba who was trying to help protect a Black youth will tell how she was beaten.

Our fourth victim is a young Black man 23 years old in the prime of his life. He is also the prime target of police misconduct. Young Black men like him are an "endangered species." Young Black men continue to live in constant jeopardy of serious physical injury and other abuse at the hands of police, here is Darnell Murdaugh (his statement).

Now Congressmen Conyers, on behalf of the NAACP and the coalition of community groups I urge you to further acknowledge the seriousness and legitimacy of these complaints of police misconduct and police brutality. We need your help in New York City in:

(1). Establishing an independent properly funded, representative Civilian Review board. Such a board must have subpoena power and the authority to investigate and make public their findings as well as to take appropriate disciplinary actions against police officers who are guilty of abuse or violence or brutality. We urge you to sponsor appropriate legislation to make this happen.

(2) We also urge you to take legislative action to restrict even further the use of deadly force including the choke hold and body carries that asphyxiate, such as the one that killed William Harvey, a prisoner who was also an officer in the Prison Chapter of NAACP.

(3) And finally, we urge you to sponsor legislation providing for the withdrawal of Federal funds from any city that fails to take aggressive, affirmative action steps in the recruitment, hiring, retention and promotion of Blacks in the police forces.

I will conclude by paraphrasing the words of Martin Luther King Jr. in his letter from a Birmingham jail which captures the essence of the events here in New York in recent months; and which sounds a warning that we must heed.

"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutually, tied in a single garment of destiny. Whatever affected one directly affects all indirectly. Some deplore the demonstrations (hearings) that are presently taking place in Birmingham (New York City). But I am sorry that their statement did not express concern for the conditions that brought the demonstrations (Hearings) into being. I am sure that each of you would want to go beyond the superficial social analyst who looks merely at effects and does not grapple with underlying causes. I would not hesitate to say that it is unfortunate that so called demonstrations are taking place in Birmingham (New York City) at this time, but I would say in even more emphatic terms that it is even more unfortunate that the white power structure of this city left the negro (Black) community with no other alternative. Thank you.

Ms. BLACKBURNE. I have asked that you hear the witnesses and put their stories in the context in which you see them today. The first witness is Michele Russ. I want you to note that she is no more than 5 foot 2 and barely weighs 125 pounds. Michele will tell you her story.

TESTIMONY OF MICHELE RUSS

Ms. Russ. Good afternoon. My name is Michele Russ. I was a victim of police brutality. I am 21 years old. My occupation is a secretary.

The date that it happened was Labor Day, September 5, 1981. This happened first on the bus. I was taking a bus coming from the east New York festival. On the bus, you were told to get a ticket which transferred you on to take you the rest of the way that the train wasn't going. As I got on the bus I realized that I couldn't find my ticket. The busdriver told me I had to go back upstairs and get another ticket. I had souvenirs and other packages with me from the festival. I told them I put a token in instead of going back up the stairs. There was a woman on the bus that her son was

playing with the machine. So his mother told him to give the lady a ticket so the bus can move on.

The bus passengers, everyone had somewhere to go. "Well, look, the bus isn't going to move unless you go upstairs and get another ticket." When I put the ticket in the bag and took my seat he drove off, saying, "well, look, I am going to have a police officer remove you from the bus, I don't like your attitude", and so on.

As we got to New York he got off the bus and a police officer got on the bus. Then the busdriver told him what happened and that I get off the bus, he requested I get off the bus and wait for the next bus, which didn't really make any sense, because the next stop was the last stop on the bus, and I had packages and everything with me.

The next thing I knew, before I could say anything, the police officer grabbed my right arm and twisted me around in the seat. The new buses are like three seats in the front. I was sitting in the third seat which had an arm rest like the chair I am sitting in. When he twisted my arm, my ribs slammed into the left seat. He then picked me up and shoved me off the bus and told me, "look miss, you wait for the next bus."

Two guys picked me up, tried to help me. "This is a female, this is a woman, what can she possibly do to you? You told her remain in your seat."

"I don't want to have to draw my gun." And told the busdriver to close the door and drive away.

So I am standing there, which people are looking at me like I am the one that is crazy because they didn't know what happened on the bus. I am asking the officer for his badge number and his name, which he walked away, he made some comment which was in abusive language that he did use, which I cannot say, I don't remember what he did say to me.

When he walked away I told him "Look, the precinct is only right around the corner. This particular precinct I spent 2 summers in the youth program working there. I went to the precinct. I was terribly upset. Someone approached me and then said, "Were you mugged?"

I said, "I was assaulted."

"Who did it, your boyfriend?" That is the first thing they said.

I said, "No."

"Do you know what the guy looked like?"

"He is a police officer like the rest of you here. All of a sudden, I got five or six officers around me.

"What did you do?"

It wasn't a point where he said I was arrested. He said nothing to do with the law, he said, "Ma'am, go to the precinct," which I did.

I told them "The guy is patrolling this area, can't you go there so there will be no mistake about his name? Can't you go there and find out his name and it would be no problem."

They told me that I would have to sign a civilian report and it had to go downtown. Then at the time, I was so upset, I wanted someone to take me over there to this area so you can see exactly what this police officer is.

They told me, "No; we are not authorized to do this."

Now I said to them, "If it would have been any other normal pedestrian, that I had been mugged or assaulted or whatever, they would have taken me into the squad car around the area to see if I saw this guy again. What is the difference with a police officer?"

The next day I went to work. They told me—I went to see the nurse because my arm was hurting—the arm which he twisted, and I had two bruised ribs. She told me then, the nurse advised me, she said, "You should go to the NAACP for this matter."

When I called the NAACP, they pointed me to Ms. Blackburne. She told me that the first step I should take is by going to the doctor and getting a report of all the bruises or whatever had happened. When I went there, I got the report, and Ms. Blackburne got back in touch with me and told me about the meeting they would be having on September 19.

All I say is a police officer should realize—he had to be at least 175, maybe 200 pounds, at least maybe 6 feet. I am only 5 feet 2 inches, 125 pounds, what was I going to do to him? People should really realize that when you see all the crimes that happen, all the people aren't right all the time, we do have the ones that resist officers, but then again, we have police officers who attack normal citizens who work 9 to 5 and do their job like anyone else.

One thing I would like to say, how I have been humiliated, you would not believe. This is one thing in my life that I will never forget, because I am not a fighter. I do not resist police officers. My nerves have been just shattered. You know, being a female, I am going through physical changes right now, with my menstrual cycle like crazy. I can't even keep up with it, the doctors don't even know, they told me it is my nervous system.

All I would like is something to be done about this. When they were speaking about a civilian report, I have not heard nothing about this. Nothing has come back to my attention. All I know is I just want something to be done. Thank you.

Mr. CONYERS. Thank you very much.

Ms. BLACKBURNE. I would like now to have you hear another form of police violence that women experience in a way that is equally as humiliating as what Michele described. Rose Mary Sterrett will tell you her story.

TESTIMONY OF ROSE MARY STERRETT

Ms. STERRETT. Hello everyone. Before I begin, my name is Rose Mary Sterrett. I am a mother of three and I am a technician by occupation. On August 8, a friend and I were going downtown to take packages to the Trailways buses to send things home. During our trip there—it was approximately 45th Street, I am not too sure of the address—we were riding around looking for a pen to fill boxes out so they would be legible for postage.

My friend and I were in the block in between the blocks. All of a sudden there were police cars. They blocked us off. "Get out of the van," they said to us. "Get out of the van with your hands up."

We got up to go get out of the van, we got guns in our backs, merging police officers, lights you would not believe. I don't really understand what is going on. All I could do is scream "what hap-

pened?" My friend started to profusely perspire. Myself I can't describe how I felt. I know I couldn't stop shaking.

The guns were in our heads and our backs. I saw a police officer cock her gun as if she had lost grip on it and then do this again. My mind kept saying, gee, whiz, what about my children, will I ever see them again? What is really going to happen to my children? What will they tell them?

If one police officer gets nervous enough to fire a gun and that is going to start a chain reaction. It was the most horrible thing I could ever experience. I am very nervous from it now. I have a lot of friends that are police officers. Every time I see them I feel a little scared.

During all this time, no one ever said anything except we have to search the van. Then when they finished they said, they are clean, and they let us go. They never even said I am sorry, or anything.

My question is, if our police commissioner, at my age—41—I could be sick. If I were, I could have possibly had a heart attack, maybe even died with a gun on me. My question is, if this had happened, my friend and I had gotten killed because of something that we knew nothing about, what would they tell our children? What is supposed to happen to our children's lives from then on, and being innocent, why doesn't somebody tell you what really happened?

I would like to bring out the point that this experience emasculated the man that I was with. I don't think any man likes to take a female anyplace and feel as though he can't take care of her. I seen him go through so many changes until he got so he was a violent person and I never seen him like that in my life.

I would like to say thank everyone for coming.

Mr. CONYERS. Thank you very much.

Ms. BLACKBURNE. We will hear next from Cornelia Muamba.

TESTIMONY OF CORNELIA MUAMBA

Ms. MUAMBA. It is really hard to speak because I have been through so many changes. I had to drop out of college because—I never had high blood pressure in my life, my family doesn't have it, and what I have been through, the doctor says is because of this police experience. I have constantly run high blood pressure, in tests when they take my blood pressure.

On May 18, I was sent on a field assignment by the Office of Community Affairs, because I was a student at the College of Human Services. I was at 125th Street and 8th Avenue, and I finished my assignment and I entered a subway. I went to the token booth with a \$5 bill and got four tokens. I put the token into the turnstile, went through and a youngster, a male and his girlfriend went through the gate.

A white officer, number 1317, entered, came toward the youngster, so I kept going on, I didn't pay any attention. I kept hearing this profanity as I went on. So I came back and I said why is he using profanity like that? I am going to check it out. So I came back and I stood by the gate and I observed what was going on. This white officer was throwing this youngster around and he had this Asian officer pushing him around. Whatever he did, I am

going to check it out because they are not supposed to be slapping him.

I came to the gate and I stood on the side, didn't interfere and didn't say anything. They were abusing this youngster saying that he went through the gate without paying. So I took the officers' shield numbers, the white one and the Asian. They said to the youngster: "Who is this?"

He shook his head because he didn't know me and I didn't know him. The white cop said: "You better move on and mind your ——— business." I didn't answer.

He said to me, "The youngster, you have a dime, if you don't have a dime I am going to arrest you." I put in my hand and got out my purse a dime, put it between my index finger and my thumb, not thinking what I was doing, but something told me to make sure the officer could see that that is all I had. I had nothing in my hand. No one could say they saw anything in my hand. My hand was like that. I reached the youngster this dime.

The white officer said again, "I told you, you had better mind your ——— business." So they grabbed the youngster. "She is going to cause him to get arrested." First they called over his girlfriend and his girlfriend was shaking. I told her "Don't shake, I am standing with you. Don't shake whatever they ask don't shake, I am going to be with you."

So they said: "This woman is going to cause you to get arrested." So the officer took the youngster, twisted his arm and roughed him up and pushed him through the gate. So I came through the turnstile. The white officer said, you are going to get arrested, you are asking for it. So I ignored him. I put another token in and came through the turnstile. The girl showed her train pass and she came through the gate. So I told her, "I will walk with you. If we stay here they won't beat him up because they are going to beat him." So they took him around the corner at the 125th Street and 8th Avenue subway.

So I said, "We will walk along, stay on the side, don't say anything. If we stay here they won't beat him." So the white officer kept roughing up the teenager, kept pushing him, cursing, and the Oriental officer said to me, using profanity: "You are going to get arrested if you don't get out of here." I never answered any of them.

When he decided we weren't going to leave so he could give the teenager a summons, he gave him a summons, the teenager and his girlfriend was going off to Brooklyn. I turned, walking in the downtown direction to go to the steps to go to 14th Street where my office is, and this white cop rushed up to me. I turned to the side because I know people have said they will hit you with the stick in the back at your kidneys. I turned to the side to face him and he said, "I should kick your ———, ———."

I can't say any more what happened after that because I am going to court for the third time Thursday, the 22nd of this month.

I want to say I filed a complaint with the civil complaint board on May 18, 1983. I have yet to hear what they are going to do about this case. May 18, 1983. Today is September 19, 1983. And what I want to know is, when you say you believe in the system, and you try to work through the system, and you teach your chil-

dren and your family, the young people, people in your community to believe in the system, to work through the system, and you are a woman after 40 and come to the aid of a youngster, not interfering in police business, but coming to their aid, as I come to the aid of Jews, I have come to the aid of Italians, Irish, Germans, French, anyone who has a human complaint I have come to their aid, why, when I come to the aid of my own, I must be brutalized?

I was thrown to the wall, I was handcuffed, they kept throwing me to the wall, trying to fracture my head. But I kept letting my face hit it and behind hit it, anything but my head, and they have not damaged my head. I have pains in my head, and the doctor said I have pains in my head because they snatched my face to the wall.

But this fight—I hope that something is seriously done about this, because I want to believe in the system. I want to keep telling people to believe in the system and people are telling me I told you so. And eye for an eye and tooth for a tooth. But I am trying to hold on, I want to believe in the system.

Ms. BLACKBURNE. Our last person, Darnel Murdaugh, I saved as the last witness that I would present. Darnel fits the profile, and all of you know what the profile is. Darnel is an endangered species. He represents the prime of young black manhood. He also represents the prime target of police violence and police misconduct.

Darnel's story is replicated daily if not hourly in this city and I want you to hear it from him.

Darnel?

TESTIMONY OF DARNEL MURDAUGH

Mr. MURDAUGH. Good afternoon, ladies and gentlemen. I am glad to see everybody here. My name is Darnel Murdaugh, my age is 23, and I am employed at the Wayne Nursing Home and Precision Furniture Co. I work 6 to 7 days weekly. I am also a part-time student at PSI Institute programing systems.

The day of September 6, I was coming home from work on my motorbike, moped. I was on my way to the moped shop. When I was at a light at Gun Hill and Webster Avenue, I was going to make a left hand turn. I pulled up beside a car. There were two white males in it. I sit there and was waiting for the light. The passenger in the car yelled out of the car and said, "Hi, nigger, what is wrong with you?"

I did nothing. I replied back to him and I said, "Who the hell are you to call me a nigger? I don't consider myself a nigger." And I kept on waiting for the light to turn green.

Then, at the same time, the driver reached out of his car and slapped me in the face. I then turned back and I slapped him back. Then the light turned green and he tried to cut me off with his car. I made an extra sharp turn and I went onto the sidewalk. He almost hit the bus that was making a turn also from the opposite side. I then don't know where the car sped off to. I was at my destination, the moped shop. I went inside and there was a line there and I came back outside.

Then 3 or 4 minutes later, a man hollered to me—which is serving as a witness for me—and told me to "watch out, somebody is

coming after you." I turned around and there was a guy coming after me and swung at me, but he missed and he kept on coming. By the way, he was drunk, he was drinking in the car. They had two beer cans apiece.

He turned around, after he swung at me and I swung at him. I hit him in his jaw, and then I hit him again on the other side. Then I left him alone because I knew he was drunk. He went to the wall. I backed up into the street and then he started to digging into his pants. He was wearing shorts and no shirt. He started digging into the front of his pants and he pulled out a revolver. I then pulled up my hands and started talking to him quick trying to make him know that this doesn't happen to be like this.

I said, "Please, please don't shoot me." The officer kept on coming toward me. I walked back. Every two steps he took I took one step backwards. Then the other guy, the passenger came around in back of me and grabbed me by my neck, threw me on the floor, and kicked me in the back, stomped me in my face with the heel of his shoe. I still had on my helmet.

The officer—which I didn't know he was an officer—he began hitting me with his gun on my arm and then my legs. Then my helmet was removed from my head by the passenger, and then I was stroked on my head nine times with a butt of a pistol and then my face. He broke my tooth with his pistol. I got 10 stitches in my lip and 10 stitches in my head. I never went unconscious.

Then about 5 minutes later, the police came, uniform police came to the scene. They immediately put handcuffs on me while I was laying on the floor. Then they took the officer's revolver from him. At that time, the officer, which I still didn't know was an officer, pronounced himself an officer and demanded his revolver returned to him and produced his badge as a transit police officer.

At that time, I was transported to North Central Hospital and I was there for treatment. I requested X-rays. I never received X-rays. I requested later on when I was transported to 155th and 8th Avenue transit police station for a Lister test on an officer when he showed up. Because he had went to the hospital. They refused me. They never gave it to him.

My wife did the same thing. She was called down to the hospital, and my father. The cop never showed up in court. He never said that he was with anybody. He said he was there by himself all the time. I have witnesses that he was there with somebody else but the guy disappeared just like that.

Then I was charged with assault. I was thrown in jail and I got out the next day. The judge—I filed a complaint that night at the precinct at 155th Street and 8th Avenue. I asked for a receipt for my complaint. They told me it was coming but I never received the receipt. My complaint I made it with the sergeant.

Later on, I was then released and I went down to the 52nd precinct and made another complaint, which I had my receipt now to date and that is it. I would like to see justice done by all means, because I look for trouble from no one.

Mr. CONYERS. Thank you.

Ms. Blackburne, Mr. Murdaugh, Miss Muamba, Ms. Sterrett, Ms. Russ, your testimony has been so vivid and moving there are no questions here.

First of all, we want to congratulate you for having the additional courage to come forward and relate publicly for the record the incredible treatment to which you have been subjected. You have referred to many others who have been victimized that are afraid or too traumatized to follow your courageous example and so we pledge to work with the NAACP, with the civil rights organizations, with the ministers who brought us here, with your Congressmen, to correct a situation that I don't think anybody can question exists in New York City as of now.

I thank you all for coming here.

May I point out our colleague, Congressman Towns is now with the panel. Welcome to our panel, Congressman.

Our next witness is Assemblyman Al Vann, who represents the 56th Assembly District in Brooklyn. He is in charge of the Coalition for Communities, and chairs the Coalition for Justice in New York.

Assemblyman Vann, we welcome you to this hearing and commend you for your continued effort in this struggle. We will also incorporate your prepared testimony into the record in full.

TESTIMONY OF ALBERT VANN, NEW YORK STATE ASSEMBLYMAN

Mr. VANN. Mr. Chairman, members of the subcommittee, honorable members of the legislature, ladies and gentlemen, I was very deeply moved by the previous testimony. It makes you feel so proud to be a black man and know the strength that exists in our people against such hardships to maintain our dignity.

As has been stated, I am Al Vann, the assemblyman from the 56th Assembly District in Bedford-Stuyvesant, Brooklyn. I am also the chairman of the City-Wide Coalition for a Just New York, the Coalition for Community Empowerment in Brooklyn, and one of the founding members of the Black United Front.

Undoubtedly you will receive graphic testimony today from many of the victims of police brutality, so that there is little need for me to reiterate those individual cases of inhumanity. Let me simply reaffirm what all of us who are black or brown and who live in this city already know from first-hand experience: Yes; police brutality does exist, and at some time in our lives each of us will experience the humiliation of this use of excessive police force, whether it be physical or psychological. Therefore, to the black and Hispanic citizen of this city it matters little whether this police violence is pervasive or institutionalized, or whether it is supported by the judicial system. All that is known is that the presence of police violence in our communities is the price one pays for doing business in this city.

What is most ironic is that alongside this reality of police brutality there exists in the black community the expressed need for more police protection against the random violence of the common criminal. When I walk the streets of my community, when I visit a block party or host a town meeting, the most consistent request is for more police protection against the muggers and the drug pushers. So that the average law-abiding citizen in the black community still perceives the police to be on his side until that initial experi-

ence with police violence, then that confidence, that sense of security in having police protection suddenly changes to rage and hostility.

This loss of confidence in the police is really not sudden. What has happened is that the black citizen has just experienced first-hand the violence of racism in this society. Sometimes we tend to overlook the obvious—which was restated by the Kerner Commission—that America is a racist society, that this racism permeates every level of life in America.

Racism is apparent in our schools and the inferior education being given to our children; it is apparent in our communities with their poor housing and marginal basic services—health, sanitation, et cetera. If racism permeates life at every level in America, why then would we not expect it to rear its head in the institution of the police department. These men and women are the product of this society and cannot escape the subtle influences of racism or their attitudes and behavior toward members of other racial groups.

Racism, as we all know, prevents the normal development of communication and trust between people of different ethnic backgrounds; it colors our reflexes; it gives rise to irrational fears and hostilities toward members of other racial groups. The presence of these psychological conditions in individual members of the police force is of grave concern, because these men and women are armed with deadly weapons and their irrational fears can and do have deadly consequences.

Given this reality, how then do we begin to address these effects of racism in an attempt to arrest the cancerous spread of police violence in our communities. One way would be to have those in positions of authority in the police department acknowledge the existence of racism and its psychological effects on their officers and to adjust their methods of selection, training, and performance evaluation accordingly.

In addition, a more concerted effort must be made to recruit and train black and Hispanic men and women who live in the community to serve as police officers in their communities. Black officers with seniority must be promoted to the ranks of department chiefs, lieutenants and borough command positions, especially in the boroughs of Brooklyn and the Bronx where the black and Hispanic population is 50 percent or better.

Furthermore, New York City must begin to require that its police officers live in one of its five boroughs as a condition for appointment and retention on the force. We can no longer tolerate the situation where those who are paid by the taxpayers of this city to enforce its laws do not even live here or pay taxes here.

Finally, the misnamed civilian complaint review board must be restructured into a truly independent civilian board with civilians appointed by the borough presidents and chaired by a civilian commissioner appointed by the chief elected official of the city and reporting directly to him. This board must be given broad subpoena powers, as well as the power to discipline officers where warranted, including the authority to recommend removal from the force.

Law-abiding citizens must know that there is an independent tribunal where their legitimate grievances against the police will re-

ceive serious review, and where police officers who are guilty of misconduct will be properly disciplined.

I thank you for this opportunity to testify before you and will be happy to answer your questions.

Mr. CONYERS. Thank you very much, Assemblyman Vann.

We would like you to work with us on that part of these hearings that will begin to analyze the various remedies that will be forthcoming.

You have articulated a great number of them and we would like you to help us fashion a constructive resolution to these hundreds, perhaps thousands of complaints—we will never hear them all but we know from sampling that the problem is real and it challenges on all of us in elected office as well as this committee, not just to hold a hearing here and leave, but to come back as many times as is necessary to fashion real constructive democratic relief. If we do any less than that, we will have done a disservice to all of you who are here today.

Do any of the members have any questions of the assemblyman?

Mr. RANGEL. I want to thank him and point out that it is hard for me to see how any thinking person that is looking for equity in terms of the review of wrongdoers could possibly challenge what you recommended.

Thank you very much.

Mr. VANN. Thank you, Congressman.

[The prepared statement of Assemblyman Al Vann follows:]

TESTIMONY BEFORE
THE HOUSE JUDICIARY SUB-COMMITTEE

PRESENTED BY
HON. ALBERT VANN
NEW YORK STATE ASSEMBLYMAN, 56TH A.D.

SEPTEMBER 19, 1983

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, LADIES AND GENTLEMEN:

I AM AL VANN, THE ASSEMBLYMAN FROM THE 56TH ASSEMBLY DISTRICT IN BEDFORD STUYVESANT, BROOKLYN. I AM ALSO THE CHAIRMAN OF THE CITY-WIDE COALITION FOR A JUST NEW YORK; THE COALITION FOR COMMUNITY EMPOWERMENT IN BROOKLYN, AND ONE OF THE FOUNDING MEMBERS OF THE BLACK UNITED FRONT.

UNDOUBTEDLY YOU WILL RECEIVE GRAPHIC TESTIMONY TODAY FROM MANY OF THE VICTIMS OF POLICE BRUTALITY, SO THAT THERE IS LITTLE NEED FOR ME TO RE-ITERATE THOSE INDIVIDUAL CASES OF INHUMANITY; LET ME SIMPLY REAFFIRM, WHAT ALL OF US WHO ARE BLACK OR BROWN, AND WHO LIVE IN THIS CITY ALREADY KNOW FROM FIRST HAND EXPERIENCE, - YES! POLICE BRUTALITY DOES EXIST; AND AT SOME TIME IN OUR LIVES EACH OF US WILL EXPERIENCE THE HUMILIATION OF THIS USE OF EXCESSIVE POLICE FORCE, WHETHER IT BE PHYSICAL OR PSYCHOLOGICAL. THEREFORE, TO THE BLACK AND HISPANIC CITIZEN OF THIS CITY IT MATTERS LITTLE, WHETHER THIS POLICE VIOLENCE IS PERVASIVE, OR INSTITUTIONALIZED, OR WHETHER IT IS SUPPORTED BY THE JUDICIAL SYSTEM. ALL THAT IS KNOWN IS THAT THE PRESENCE OF POLICE VIOLENCE IN OUR COMMUNITIES IS THE PRICE ONE PAYS FOR "DOING BUSINESS" IN THIS CITY.

WHAT IS MOST IRONIC IS THAT ALONG SIDE THIS REALITY OF POLICE BRUTALITY THERE EXISTS IN THE BLACK COMMUNITY THE EXPRESSED NEED FOR MORE POLICE PROTECTION AGAINST THE RANDOM VIOLENCE OF THE COMMON CRIMINAL. WHEN I WALK THE STREETS OF MY COMMUNITY, WHEN I VISIT A BLOCK PARTY OR HOST A TOWN MEETING, THE MOST CONSISTENT REQUEST IS FOR MORE POLICE PROTECTION AGAINST THE MUGGERS AND THE DRUG PUSHERS. SO THAT THE AVERAGE LAW-ABIDING CITIZEN IN THE BLACK COMMUNITY STILL PERCEIVES THE POLICE TO BE ON HIS SIDE UNTIL THAT INITIAL EXPERIENCE WITH POLICE VIOLENCE, THEN THAT CONFIDENCE, THAT SENSE OF SECURITY IN HAVING POLICE PROTECTION SUDDENLY CHANGES TO RAGE AND HOSTILITY.

THIS SUDDEN LOSS OF CONFIDENCE IN THE POLICE IS REALLY NOT SUDDEN. WHAT HAS HAPPENED IS THAT THE BLACK CITIZEN HAS JUST EXPERIENCED FIRST HAND THE

VIOLENCE OF RACISM IN THIS SOCIETY. SOMETIMES WE TEND TO OVERLOOK THE OBVIOUS WHICH WAS RE-STATED BY THE KERNER COMMISSION - THAT AMERICA IS A RACIST SOCIETY; THAT THIS RACISM PERMEATES EVERY LEVEL OF LIFE IN AMERICA. RACISM IS APPARENT IN OUR SCHOOLS AND THE INFERIOR EDUCATION BEING GIVEN TO OUR CHILDREN; IT IS APPARENT IN OUR COMMUNITIES WITH THEIR POOR HOUSING AND MARGINAL BASIC SERVICES (HEALTH, SANITATION, ETC). IF RACISM PERMEATES LIFE AT EVERY LEVEL IN AMERICA WHY THEN WOULD WE NOT EXPECT IT TO REAR ITS HEAD IN THE INSTITUTION OF THE POLICE DEPARTMENT. THESE MEN AND WOMEN ARE THE PRODUCT OF THIS SOCIETY AND CANNOT ESCAPE THE SUBTLE INFLUENCES OF RACISM ON THEIR ATTITUDES AND BEHAVIOR TOWARDS MEMBERS OF OTHER RACIAL GROUPS.

RACISM, AS WE ALL KNOW PREVENTS THE NORMAL DEVELOPMENT OF COMMUNICATION AND TRUST BETWEEN PEOPLE OF DIFFERENT ETHNIC BACKGROUNDS; IT COLORS OUR REFLEXES; IT GIVES RISE TO IRRATIONAL FEARS AND HOSTILITIES TOWARDS MEMBERS OF OTHER RACIAL GROUPS. THE PRESENCE OF THESE PSYCHOLOGICAL CONDITIONS IN INDIVIDUAL MEMBERS OF THE POLICE FORCE IS OF GRAVE CONCERN, BECAUSE THESE MEN AND WOMEN ARE ARMED WITH DEADLY WEAPONS AND THEIR IRRATIONAL FEARS CAN, AND DO HAVE DEADLY CONSEQUENCES.

GIVEN THIS REALITY, HOW THEN DO WE BEGIN TO ADDRESS THESE EFFECTS OF RACISM IN AN ATTEMPT TO ARREST THE CANCEROUS SPREAD OF POLICE VIOLENCE IN OUR COMMUNITIES. ONE WAY WOULD BE TO HAVE THOSE IN POSITIONS OF AUTHORITY IN THE POLICE DEPARTMENT ACKNOWLEDGE THE EXISTENCE OF RACISM AND ITS PSYCHOLOGICAL EFFECTS ON THEIR OFFICERS AND TO ADJUST THEIR METHODS OF SELECTION, TRAINING AND PERFORMANCE EVALUATION ACCORDINGLY.

IN ADDITION, A MORE CONCERTED EFFORT MUST BE MADE TO RECRUIT AND TRAIN BLACK AND HISPANIC MEN AND WOMEN WHO LIVE IN THE COMMUNITY TO SERVE AS POLICE OFFICERS IN THEIR COMMUNITIES. BLACK OFFICERS WITH SENORITY MUST BE PROMOTED

TO THE RANKS OF DEPARTMENT CHIEFS, LIEUTENANTS AND BOROUGH COMMAND POSITIONS, ESPECIALLY IN THE BOROUGHS OF BROOKLYN AND THE BRONX WHERE THE BLACK AND HISPANIC POPULATION IS 50% OR BETTER.

FURTHERMORE, NEW YORK CITY MUST BEGIN TO REQUIRE THAT ITS POLICE OFFICERS LIVE IN ONE OF ITS FIVE BOROUGHS AS A CONDITION FOR APPOINTMENT AND RETENTION ON THE FORCE. WE CAN NO LONGER TOLERATE THE SITUATION WHERE THOSE WHO ARE PAID BY THE TAX PAYERS OF THIS CITY TO ENFORCE ITS LAWS DO NOT EVEN LIVE HERE, OR PAY TAXES HERE.

FINALLY, THE MISNAMED CIVILIAN COMPLAINT REVIEW BOARD MUST BE RESTRUCTURED INTO A TRULY INDEPENDENT CIVILIAN BOARD WITH CIVILIANS APPOINTED BY THE BOROUGH PRESIDENTS; AND CHAIRED BY A CIVILIAN COMMISSIONER, APPOINTED BY THE CHIEF ELECTED OFFICIAL OF THE CITY AND REPORTING DIRECTLY TO HIM. THIS BOARD MUST BE GIVEN BROAD SUBPOENA POWERS, AS WELL AS THE POWER TO DISCIPLINE OFFICERS WHERE WARRANTED, INCLUDING THE AUTHORITY TO RECOMMEND REMOVAL FROM THE FORCE. LAW ABIDING CITIZENS MUST KNOW THAT THERE IS AN INDEPENDENT TRIBUNAL WHERE THEIR LEGITIMATE GRIEVANCE AGAINST THE POLICE WILL RECEIVE SERIOUS REVIEW, AND WHERE POLICE OFFICERS WHO ARE GUILTY OF MISCONDUCT WILL BE PROPERLY DISCIPLINED.

I THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE YOU AND WILL BE HAPPY TO ANSWER YOUR QUESTIONS.

Mr. CONYERS. Ladies and gentlemen, I would like to now call Rev. Calvin O. Butts, who caused these hearings to occur, from the Organization of Afro-American Clergy, the executive minister of the Abyssinian Baptist Church, who is accompanied by Rev. Timothy Mitchell and Larry Dixon.

We welcome you, Dr. Butts, to these hearings. We remember with great affection your visit to Washington with the dozen or more ministers with the Afro police leaders, with the Hispanic police officers, and we stand here, publicly acknowledging the work that you have initiated and the enormous effort that you have contributed to make these hearings come to pass.

Thank you very much. We will include any prepared remarks that you have in their entirety into the record and allow you to proceed in your own fashion.

TESTIMONY OF REV. CALVIN O. BUTTS, ORGANIZATION OF AFRO-AMERICAN CLERGY, EXECUTIVE MINISTER, ABYSSINIAN BAPTIST CHURCH, ACCOMPANIED BY REV. TIMOTHY MITCHELL, NATIONAL COUNCIL OF CHURCHES; REV. LARRY DIXON OF THE AFRICAN METHODIST EPISCOPAL CONFERENCE; AND FATHER LAWRENCE LUCAS, OF THE RESURRECTION ROMAN CATHOLIC CHURCH OF HARLEM

Reverend BUTTS. Thank you, Congressman Conyers. Thank you for returning with the subcommittee to the city of New York, and especially to the community of Harlem. We are very grateful for your cooperation. We are very thankful for the cooperation of our Congresspersons from the city of New York, Mr. Towns, Mr. Owens, and especially for the cooperation of Mr. Rangel here in the Harlem community.

We are glad to see Mr. Crockett and also Mr. Weiss who are here with you.

I am here representing the Organization of Afro-American Clergy and the Abyssinian Baptist Church of the city of New York. I am glad to say that our church has been in New York City for 175 years and has been located in Harlem for 60 years, that one of our pastors was among the greatest Congresspersons this country has ever had, Adam Clayton Powell, Jr.

I have with me today the Reverend Timothy Mitchell, representing the National Council of Churches, the World Council of Churches, and also the Ebenezer Baptist Church in Queens.

I have also the Reverend Larry Dixon representing the AME Conference here in the State of New York, and Father Lawrence Lucas of the Resurrection Roman Catholic Church here in Harlem.

We are here today because white New York City police officers are verbally harassing and physically brutalizing black, Latino and Asian people here in the city of New York. I am not making this statement based on the report of one or two persons but based on the documentation of numerous cases checked by attorneys, civil rights, and activist groups in this city; also based on the number of phone calls I have received from victims of police brutality and harassment since these hearings were announced.

I have encouraged those who called to be here today to register complaints with your committee, and if they all come we will have more than 1,000 complaints documented this day alone.

This is a serious problem. There is a serious problem of police violence against minorities in New York City. I say against minorities because, as you can see, the one strong constant that runs through all of the complaints made today, or that will be made, is that all of the victims are mostly black, but all of them are minorities and 99 percent of all the police officers involved are white.

The victims involved are high school students, public officials, politicians, clergy persons, and business persons, and a close look will reveal that every segment of our community has been touched by this wretched expression of racism.

I am here representing those who are called to serve the needs of our community. I am not here, as stated by someone, out of any desire to advance my cause in the political arena. There are still some of us who believe that the call of God is more compelling than the call of Washington or city hall or Albany. We are here because our people and our sense of justice and mercy have constrained us to come to say to you that you might help us, you must help us, stop the killing, brutalizing and harassing of our people by the police in the city of New York.

In New York City our people have come to us, their ministers, and asked us to do what we can. There was and is no other place for them to go. We come to you because the police commissioner in this city has been too preoccupied to meet with us. Our mayor has said about this issue of police brutality, concerning one incident, "I doubt it", and then he goes on to make sensational accusations about those who are genuinely concerned.

The so-called civilian complaint review board has a shameful record regarding its troubled history and handling of complaints and our people have told us that they will not complain to this board any longer because they have no faith in its effectiveness or sincerity.

All doors in our city are closed to us, and now, before we turn to a higher authority in absolute frustration, and ask for guidance in addressing this issue ourselves, we have come to you to seek your assistance. What can you do to help us?

Both Reverend Lee Johnson and Mr. Kenneth Woods, whose cases you will hear, sought my assistance. Countless times we tried to get the police commissioner to meet with members of the clergy. It never came to pass but we tried.

When Mr. Woods first talked with me, I was getting breakfast in his parents' restaurant with Deputy Police Commissioner William Perry and Deputy Commissioner Charles Adams, eating breakfast with them, seeking ways to solve the problems of police brutality and harassment. I encouraged Mr. Woods to make complaint to the civilian complaint review board. To date, to my knowledge, the board has not responded.

This is why so many of our people say why bother, and if the statistics show a decrease in the number of cases of police brutality, it is only because there has been a decrease in the reporting of the incidents, not the incidents themselves.

We have tried but no one in the city does anything to help. What can you do to help us?

After Mr. Koch said it is possible, it could have happened, but again, in a police precinct filled with large numbers of police officers, I doubt it. After our mayor said this, I was visited by the Guardians Association of the New York City Police Department. These black men and women are or were police officers. They were outraged by the mayor's statement. They know first-hand of police violence against black people in New York City. It is true that the Guardians, several of them have tried to stop white police officers from beating up black people or abusing them otherwise, only to be subjected to attack or reprisals from white police officers.

The Guardians make some interesting points.

One, there is a severe problem of police violence against black citizens. The 1968 referendum regarding the establishment of a civilian complaint review board would never have come about if there was not a serious problem. The reason we have a so-called complaint review board is because white officers have been beating black people in this city for years.

The Guardians led the fight for the review board while the police officers benevolent association spent over \$1 million to defeat it.

What has the review board done over the years since it has been in existence to curb police brutality? Nothing. All the members of the civilian complaint review board are appointed by the police commissioner, and they are all New York City Police Department employees. White police officers are not concerned when they are called to appear before the board because they know that little or nothing will be done to them by their colleagues. The problem is still serious.

It is not enough to say that lynchings have gone down from 100 a year to 80 a year; 80 people are still dead. The police department will argue that the number of killings have decreased, but the large number of complaints dealing with beating and verbal abuse are on the increase. People simply have no faith in the review board process and do not make complaints there. They complain to us and we are here to say to you there is a problem.

Will the police department do anything in the future about this situation? The answer is no, not without continual pressure from the Federal Government.

Since we have called for these hearings, Mr. Conyers and the other members of the committee, Dave Scott, a black man, has been named the commanding officer of the infamous 28th precinct and Benjamin Tucker, another black, has been named deputy director of the civilian complaint review board and I understand that recently there has been a proposal to increase the numbers on the civilian complaint review board.

Police brutality in New York City is a problem and we are bringing this problem to light.

Mr. Koch and Mr. McGuire love the darkness more than they love the light and they are trying to block out the light with shades of two black appointees.

I want you to understand that no action was taken by anyone on this until we went to see you in Washington, D.C., and then they tried to come and talk to us. We have tried to get more black police

officers on the force, more people who understand and appreciate our culture and our tradition, people who could do better police work in our communities.

Did the police department do minority recruitment voluntarily? No; the Guardians Association took the police department to court.

Did the police department try to impede the increase of blacks on the New York City Police Department? Yes; the police department fought the case all the way to the Supreme Court.

When the New York City Police Department lost the case, did they try to spend any money to recruit officers? Very little; it was the Federal Government that gave \$250,000 for the effort and then the police department only supplied 10 to 12 full-time recruiters at a time when active recruitment had not been done in over 5 years.

Rev. Burrs. When the department found that the recruiters had to work overtime to do a good job, the police department cut out the overtime for the recruiters.

In 1979, 4,000 blacks passed the written examination; yet, in 1983 blacks have been reduced from the largest minority in the police force to the second largest minority on the police force. What happened to the thousands of eligible black people? They were victims of psychological screening, medical screening and inordinate pressure placed on them during the probation period. Blacks were screened out at a higher rate than any other minority group.

What has the police department done on a voluntary basis to investigate the reason for this or to improve this condition? Nothing. And, left alone, they will continue to do the same thing—absolutely nothing. That is why we have come to you.

The Guardians also point out that black police officers are killed by white officers, harassed by white officers and beaten by white officers. And all the evidence points to race as the reason for these occurrences.

But you should also note that there has never been a case, never, when a black police officer has killed or beaten a white police officer. [Applause.]

For years, we have heard of and witnessed incidents of police brutality and watched as little has been done about it. So we bring our case to the Subcommittee on Criminal Justice and ask that you do the following.

I should also say we went to the Department of Justice to see Mr. William Bradford Reynolds. After a 2-hour meeting, he told us he would investigate several cases of police violence against blacks in New York City. A week later, Mr. Reynolds was in New York saying that he could find no problem.

What did Mr. Reynolds investigate in 1 week's time? If this is what we can expect from Washington, then we have made a mistake. But I don't believe that we have.

I want to make several proposals on what we would like to see come out of these hearings. First, we propose that Federal legislation be enacted that will make it mandatory for all municipalities to establish an independent civilian complaint review board with specific guidelines as to procedure.

Second, that we move to set up a special Federal agency to address the excessive use of force by police departments. The agency could come under legislation similar to the Voting Rights Act.

When the voting rights of a group are being violated, the Federal Government can step in and establish guidelines to protect said rights. A similar procedure could be set up to deal with the abusive use of force by police.

Present Federal legislation is not adequate. Only the killing of a person by excessive and unprovoked force is recognized by the Justice Department as a felony. This needs review and revision.

Third, a balance needs to be established between the buying of hardware and the training, screening and consciousness-raising of police officers. The Federal Government might provide funding for the establishment of special units within municipal police departments to provide for the above, or perhaps all Federal funds should be kept from the city that does not provide extensive sensitivity training on an ongoing basis for its police officers.

What can you do to help us? These are some things that you might consider.

Finally, I would like to say this: Several police officers are here today to give testimony. They are active police officers now on the force. We know that the white police officers on the New York City Police Department Force and their superiors may threaten them with reprisals. The only way these officers can speak, Mr. Conyers, is if your committee can assure them that they will not lose their jobs because they stand up for what they believe. [Applause.]

I hope that you can give that assurance.

I invoked the name of Adam Clayton Powell, Jr. earlier. I am a New Yorker, born and raised here. I am also one influenced by the great auditory of Brother Malcolm X. [Applause.]

Then I went away to school to a town called Atlanta to a place called Morehouse. There I learned of the life and thinking and the ways of a man called Martin Luther King. And all of these men stood for one thing, and that was for freedom, justice and equality. And I hope that this committee will help us today to correct some of the wrongs that we have addressed in our police department here in the city of New York.

Again, I thank you, Mr. Conyers, Mr. Crockett, whom we have admired and respected across the years. I want to thank Mr. Towns and Mr. Owens for their initial support, and our Congressman, Mr. Charles Rangel, for his continuing efforts, and say God bless you, and I hope that our efforts have not been in vain. [Applause.]

Mr. CONYERS. Thank you, Reverend Butts. You inspire and redouble our determination to make certain that these hearings, the most covered hearings on police violence in American history, will go somewhere and will not just stay here in this area. I pledge you my continuing energy and commitment to a complete change. You have moved me very highly with your testimony.

I would like to recognize my colleague, Congressman Crockett.

Mr. CROCKETT. Thank you, Mr. Chairman.

Reverend Butts, I didn't know you were from Morehouse College until you mentioned it a few minutes ago. I should have suspected it all along.

Reverend BUTTS. Thank you, Mr. Crockett.

Mr. CROCKETT. From your presentation, it seems that you have taken as your theme what can you do to help us, talking to this subcommittee. I want to address that question very briefly, and

then have you react to it, because I don't want to leave our hearings with witnesses and observers under the impression that there are all sorts of remedies and powers available to the congressional subcommittee. That would not be true.

Most of what we can do to help you we are doing right now by conducting this public hearing and letting the media hear what has been going on, and letting the people who attend here know what is going on. Following this, we will issue a report, and that report will, of course, be made available to the Department of Justice.

Now, I know, and you know, that with the present leadership in the White House, this Department of Justice isn't going to do a ——— thing about our report. But then you also ask that we sponsor new legislation. I can tell you as a lawyer with considerable civil rights experience that we already have on the Federal books enough legislation to take care of what you are complaining about here in New York.

The difficulty is that we do not have an enlightened administration. We do not have public officials who are attuned to using that legislation and doing the job that should be done. So when you ask what could you do to help us, the answer is the remedy is already within your hands. You have got to change the administration. [Applause.]

Now, let me be a little more specific. Twenty years ago, when I came to the bench in Detroit, it had the worst police brutality record in this country. Blacks and Hispanics were being shot, beaten, killed every day. What did we do? The first thing we did was say we need more nonwhite judges on the bench. And I don't mean orecos. [Applause.]

So we got blacks in Detroit registered in large numbers. They stood in the rain on election day. I can remember the election in 1972, and when the count was in, one-third of the criminal court judges in the city of Detroit were nonwhite.

Police brutality took a decided drop, but that was not the end of the story. Then we said, you have got to do something about these so-called trial boards and complaint bureaus. We said, let's do something about the mayor; he is the one who has the authority to make these changes. So we went to the polls and we elected Coleman Young as the mayor. [Applause.]

You know what Coleman did. The first thing he did was fire the police commissioner and appoint a black police commissioner. [Applause.]

The second thing he did was to say that blacks were to be upgraded in the police department, until we got to a point where they reflected the proportion of blacks in the city population.

And the final thing he did was to appoint a police trial board responsive to him as mayor.

Someone asked me at the beginning of this hearing—the implication was, why do you two Congressmen from Detroit come out here to have a police brutality hearing and you haven't had one in Detroit in the past 10 or 15 years? The answer is, we haven't needed one in Detroit because we did the job in Detroit.

Reverend BUTTS. Thank you, Mr. Crockett, for your answer. The only thing I can say is your analysis is absolutely correct. The people in this room know that your analysis is absolutely correct,

and I assure you that we are taking actions to solve our problems because, truly, as even Adam Clayton Powell, Jr., once said, it is in your hands and it is in our hands, and we will know what to do.

Thank you very much.

Mr. CONYERS. Reverend Butts, it is in all of our hands here. We in the committee are experienced with this cancer of racism called police violence, racially motivated police violence, and the solution lies between the analysis that both of you have put into the record. And I pledge you that this hearing, the most celebrated and the most extensive and the most analyzed in American history, will go somewhere.

There are people in other cities that have been begging to have us come to the hearings, just like the ones that are going on here now. We trust that they will be reading and analyzing and acting upon the kinds of action resolutions that have to come out of these hearings.

But first, we are going to hear from all of the witnesses. We are going to document all of the cases. We are going to meet with all of the organizations. And then we are going to put together all of these many important ways to reverse this problem.

We have had over 3 dozen suggested here. Some of them are more meritorious than others. We will have to set some priorities. And I know that you and your organizational people will continue to work with us toward this resolution.

Again, thank you all, all you ministers who were the moving force that brought us in the Congress not just to promise to come here, but to come here fast, as you requested that day only a few months ago in Washington, D.C. Thank you so much.

Reverend BUTTS. Thank you, Mr. Conyers. [Applause.]

Reverend MITCHELL. Mr. Conyers, I want to say something. My name is Reverend Timothy Mitchell. I am here as a representative of the National Conference of Black Christians, and I have been authorized to make some statements about the World Council.

You mentioned that this is a celebrated hearing; that it has taken on national significance. And I want to inform you that it has taken on international significance. It has taken on international significance because the World Council of Churches has an office here in New York city which will act as a clearinghouse for those who have been victims of racial oppression, and we are here today to let you know that this is not a spectacular event but it will be a committed event for us; and that the churches are together and nationally and internationally we are committed to see that justice is done and racial oppression stops in the city of New York. Thank you.

Mr. CONYERS. You are welcome.

One of the things that has been suggested that we need, Reverend Mitchell, is a clearinghouse that would be based in New York but would cover the entire New England area, because there is violence on the part of police that is being reported all up and down the eastern seaboard. So we need these organizations to work together to be documenting and analyzing even as we finish these hearings.

Reverend MITCHELL. Just one word. The program to combat racism which is an arm of the World Council of Churches will act as such a clearinghouse.

Mr. CONYERS. Thank you.

Reverend LUCAS. The Reverend Father Lucas.

Congressman Conyers, I just wanted to take this opportunity to thank you and to mention several other nuances, particularly the area of deliberate precipitation of violence on the part of the police under three categories: namely, the nonfunctional police officer; second, the law breaker police officer; and third, the police officer whose mind cannot control his physical or bodily appetites.

In the first place, there are a number of officers who assume that their bodies and minds are not affected by alcohol and other drugs, and when they are allowed to carry weapons 24 hours a day very often violence is precipitated by intoxicated and out-of-his-mind or her mind officers who, with the freedom from drink or drugs, say what is on their minds and cause an argument and then precipitate violence by pulling out a weapon or a shield, only after they have caused someone to reciprocate to them.

The second area is that of lawlessness, whereby the complete disregard for rules and regulations. There are many acts of violence precipitated in our community by the officer out of uniform in communities where badges are almost as plentiful as guns, who refuse to identify by way of an identification or ID card, and having caused somebody to respond to them when they are asked for identification, not only refuse but they are called a wise guy and immediately the violence comes.

The rules and regulations require that a policeman identify himself or herself, not only by way of a shield but also by ID card.

The third category is that of the inability of a mind to control bodily appetites. Apparently, too many officers feel that the shield gives them the right to make any remarks to any of our women that happen to appeal to their eyes, and when that woman is alone or even accompanied by a male, the kind of remarks that they feel free to make. Any male with a woman, regardless of who she is, is going to come to her defense. And, again, it precipitates violence.

Does a white officer think any black woman in a black community is fair game regardless of who she is and who she is with?

Mr. CONYERS. I appreciate your analysis.

Thank you, one and all.

Mr. CONYERS. Ladies and gentlemen, our next witness is the Reverend Herbert Daughtry, Chairperson, National Black United Front; accompanied by Dave Walker, Michael Amon-Ra, Alton Maddox and Bert Edwards. We welcome you. We know of the great documentation that you have been carrying on for years.

We will accept for the record the statement which you have previously prepared so that you may make whatever remarks are on your mind and heart at this time. We acknowledge, the subcommittee, the incredible amount of work that you, your church and organization has been engaged in over the years, long before this hearing, in connection with any police violence in your city.

Welcome to these hearings.

TESTIMONY OF REV. HERBERT DAUGHTRY, CHAIRPERSON, NATIONAL BLACK UNITED FRONT, NATIONAL PRESIDING MINISTER, HOUSE OF THE LORD CHURCHES, ACCOMPANIED BY DAVE WALKER, CHIEF INVESTIGATOR, BLACK UNITED FRONT, NEW YORK CHAPTER; MICHAEL AMON-RA, CHAIRPERSON; ALTON MADDOX; CHARLES BARROW; JAMES ANDERSON; COREY GIBSON; ROY SHABAZZ; AND ERNEST WRIGHT

Reverend DAUGHTRY. Thank you very much, Honorable Congressman John Conyers and other members of Congress. Congressman Crockett, we know of your record and other incidents where you stood alone to represent people who were being brutalized. Congressman Rangel and to our Brooklyn Congressman, the long-time struggle of Major Owens and Congressman Ed Towns and Counsel Gail Bowman.

I wish, first of all, to introduce the members who are sitting here at the table with me. To my far right is our attorney, Alton Maddox. Immediately to my right is the hardest working, most dedicated brother it has been my good pleasure to meet, the New York chapter Chairperson, Michael Amon-Ra.

To my left, behind me again, was my special assistant and chief of staff of the African Peoples Christian Organization, Charles Barrow.

To my left here is our chief investigator, the brother who has compiled these statistics for these many years, and may I just say for the record he has done it without funding sources. He has done it with grave sacrifice to himself and to his family, Dave Walker; and his assistant who accompanied the delegation to Washington, Brother Jimmy Anderson.

Honorable members of the House of Representatives, the subcommittee of the Judiciary Committee of the House on behalf of 99% percent of the black community, all liberal, progressive, decent, fair-minded citizens of New York, we welcome you to New York City, the Big Apple, and applaud your decision to conduct congressional hearings into police misconduct.

Allow me to say at the outset that there is here, and we want to commend them, the Emergency Medical Services Black and Latino Association who are providing three medical services at the risk of their jobs.

As we came into the hearing, we began to receive requests for an opportunity to testify. Obviously, this congressional hearing does not allow for all of the testimony, but there are many in the seats up yonder and yonder and yonder and over there who wait with written documents to add to the record.

My organization, the Black United Front, was born in 1978 out of the community's protest over the 1976 police killing of 15-year-old Randolph Evans and the subsequent acquittal of Robert Torsney by reason of insanity and the 1978 police killing of Arthur Miller, a respected businessman, husband, and father.

For the record, may I just say that they claim Robert Torsney had psychomotor epileptic seizures. Nobody really knows what that is. In fact, the Epileptic Foundation issued an immediate rejection of any such disease. [Applause.]

Since 1976, we have exhausted every avenue of appeal. On Thanksgiving night, 1976, when Robert Torsney, who had been summoned by neighbors who said that there was a disturbance, walked up on Randy Evans who was 15, as I have indicated, and this lad came forward and said, "Officer, what is happening?" Torsney, without provocation or justification shot him in the head.

There is a pattern here that I want to note at the outset. Even when black citizens call policemen for help, often times their relatives or some innocent black or Latino is beaten or killed. As one speaker has indicated, you take your life into your hands when you summon the police to help. But it is not so with respect to property.

We have a saying in our community, if you want the police assistance immediately, do not say "Some poor black lies with his throat cut"; say, "The bank is being robbed," and before you put the receiver on the hook, the police will be there.

In 1979, Luis Baez, who had a history of aberrant behavior, was shot 21 times by at least five officers. On the day he was killed, his mother called the police for help. When the officer arrived, Baez leaped or fell from the fire escape into the yard. Police officers claim that he had a knife, the eternal shiny object, and I know that you will understand me, all of you in the audience, if I were to say that if we had as many knives as they claim we have, we wouldn't be in the predicament we are in.

So they emptied their revolvers into his frail, 125-pound body playing cowboy with a human life, and no one was punished for this crime.

On Sunday morning, when most people are on their way to church, January 19, 1983, Henry Woodman was walking with his sister and his girlfriend when he was confronted by attackers. His sister ran to get help from the police. However, when they arrived, Woodman was fired upon and killed by the police officer, who escaped without punishment.

One other example, I was going to put this in the record because this occurred the Wednesday before the hearing. Policemen were summoned to a street around the corner from my church and for the record, by the way, I would like to say I have been pastoring the same church for 25 years in Brooklyn, N.Y. Some youngsters were having an argument. One was alleged to have had a knife. When the police arrived, they commenced beating the black teenager while he and other friends screamed "He is not the one. He doesn't have the knife."

All of this was happening while they watched a white teenager, who was his friend, screaming "I have the knife, here is the knife, stop beating my friend." The police officer continued to assault this teenager who then suffered broken ribs, facial scars, and body bruises.

These incidents indicate clear racist attitudes and actions. There is a conditioned reflex where blacks are concerned, whatever their age or sex. Police attack first and ask questions later. If they are black or Latino, surely they must be carrying a knife or committing some criminal act. After all, that is the way blacks and Latinos are portrayed in the larger society.

So with the acquittal of Torsney in 1977, Black United Front launched a selected patronage campaign, in addition, by the way, with our honorable, distinguished, illustrious mayor who somehow still inhabits city hall. My long and honorable friend, for he is an honorable man, so are they all who inhabit city hall honorable men.

We went to Mayor Koch 12 days after he hit office to entreat him to influence the U.S. Attorney to indict the officer on the violation of Randy Evans' civil rights.

The Black United Front has marched and demonstrated on several occasions. In July 1978, thousands rallied in the Crown Heights section of Brooklyn to protest the killing of Arthur Miller.

And you know what, Arthur Miller was one of those "Pull yourself up by your bootstraps" success stories. He had a thriving business, enjoyed friendly relations with the police department, but on the evening of June 14, 1978, he came to see his brother who was discussing a matter with the police relative to a traffic violation. An altercation followed and another police officer carried him off in their car. When he arrived at the precinct, he was dead. No officer was charged with any wrongdoing.

In September 1978, thousands marched and rallied at city hall to protest police brutality.

In November 1978, thousands marched on Wall Street to protest police brutality.

In August 1979, thousands rallied and marched in Brooklyn to protest the killing of Luis Baez. Likewise, there were rallies and marches around the killings of Louie Rodriguez, whose family was given a cash settlement, 17-year-old; the Peter Funchez; all of these persons were killed without provocation by members of the New York City Police Department.

In June 1979, Peter Funchez, I have his picture. This is a case very painful, very deeply moving. We understand that we needed to document all these things, and we have additional documentation, and whatever. This is Peter Funchez after they had beaten him, but let me tell you the story.

In June 1979, Peter Funchez's wife, recognizing that he was having problems, he was a 100-percent disabled Vietnam veteran. He had fought for this country, and she called the Veterans Administration for help, and they never came. In the meanwhile, Peter began to react from his Vietnam experience and got in his car and commenced driving.

This particular day he drove until he ended up on a street in the Bronx and for whatever reason, the policemen cornered him. There he was, according to witnesses, closed up in this car, and you can imagine, given the nature of his sickness and past experiences, shaking like a leaf. The policemen broke open the car with crow-bars and beat poor Peter Funchez to death.

Do you hear what I said? A 100-percent disabled Vietnam veteran beaten to death by the New York City Police Department. Here is this brother here. The police said that he was in a car crash, but one of the eminent reporters, Earl Caldwell, of Daily News noticed that there were certain discrepancies in the story.

We went to investigate and took the photographs, as we have done on numerous occasions, which show there was no crash in the wall, no crash anywhere.

By now, the policemen had changed their story. They said he had a knife, the eternal shiny object. No knife was ever found. The fact of the matter was that they beat this poor, sick man to death, and again we have shown you the pictures. We even went to the Federal court and sat in when an honor student named Jay Parker, whose father worked for the police, was killed.

November 1980, the National Black United Front conducted national hearings on racial violence and collected testimonies from 21 cities regarding racial violence from police and others.

In April 1980, we organized a national march against racist violence. This was done, again, to highlight the magnitude of police violence against blacks.

Since 1977, the Black United Front has repeatedly sought State and/or Federal intervention. In 1978, we met with David Trager who was the then U.S. attorney on the Randy Evans killing. Nothing happened. He promised a decision on the civil rights violation charge by spring.

I have also enclosed correspondence that we sent to President Carter, the Justice Department, Governor Cuomo, and because we never received any response, we took to the streets.

Now, it may be of interest to some, but I have correspondence indicating that when we first met with Ed Koch, and by the way the minutes will indicate that I thought it was a cordial meeting. We will submit for your perusal the minutes from our initial meeting January 12, 1978. We will submit for the congressional record the press release.

We met with Commissioner McGuire time after time, and we will submit to the congressional record our recommendation, 14 recommendations. And do you know what one of the simplest ones was? We suggested that there be periodic meetings between community leaders and the police commissioner, and do you not know, Honorable Congressmen, that not one of these recommendations was ever implemented.

If the simplest one of simply sitting down and meeting with community leaders with the elected officials and appointed officials were implemented, maybe some of the long list of people that we are talking about would be with us today. And maybe your energies and our energies could be given to other constructive and positive pursuits. [Applause.]

We will submit for your record a letter that I wrote to Commissioner McGuire in February 1978 urging him to get the meetings started. They were never started.

Congressional hearings, blue ribbon commissions and special State and Federal investigations have been implemented to investigate police corruption. These endeavors are generally energetically praised by all the respectable citizens, but when the investigation is directed toward police violence on black and Latino citizens, these same people become hysterical. Are these, our leading citizens, saying to us that in their estimation, policemen stealing money and peddling dope is more important than policemen taking lives?

Mr. Chairman, local officials have failed to examine the problem of police brutality. Local governments must now be indicted for not indicting the police. [Applause.]

This is not the first time that a congressional subcommittee had to examine police violence in New York City. There was an investigation in 1953. Afterwards a police review board was established. Thirty years have proved that the policemen cannot police themselves. [Applause.]

Significantly, the Black United Front, frustrated with the continued killings and brutalizations of blacks and Latinos and the refusal of State and/or Federal authorities to act, carried out an appeal to the United Nations. On December 11, 1980, International Human Rights Day, the Black United Front, along with the organization, went to the United Nations for assistance. The Black United Front, also along with other organizations represented here, appealed to the Organization of African Unity. His Excellency, Dramane Ouatarra, who was at this time the Organization of African Unity's ambassador to the United Nations, issued a sharp statement comparing Arthur Miller's killing to Steve Biko's in South Africa. We will submit this statement for your congressional record.

A coordination to statistics compiled by the New York Metropolitan Area Black United Police Brutality Investigation Unit concerning police misconduct against black people from 1978 to the present incidents of police misconduct were an astonishing 605 reported cases.

The breakdown of the 605 reported cases are as follows: killings by police, 92; beatings by police, 125; harassment and attacks by police, 57; shooting by police not resulting in death, 31; nonfollow-through complaints or fear of police reprisal cited by complainants, 300.

There were two other kinds of police brutality I need to mention. One has been already alluded to when policemen attack trials. The distinguished representative of the Puerto Rican Legal Defense Unit pointed out that riot. We were leading that riot at that time.

William Barrett was standing right next to us as we led the crowd, and do you know what, Congressman? We were attempting to lead thousands of people away from the precinct because we had word that there were provocateurs. We were leading them away from the two precincts when the policemen ran into us with their cars.

Not only that, on the Brooklyn Bridge, my wife and three children are here. On the Brooklyn Bridge when we tried to protest to President Carter, he is concerned about Shcharansky and Goldberg, and somebody in Russia when policemen are killing us right here in New York City. And we marched across the bridge, and these same police officers came at us on horseback, women and children, and ran us into the bridge.

These alarming statistics further substantiate the systematic and pervasive nature of police misconduct perpetuated against the black community in New York City.

Moreover, Black United Front police and investigative unit statistics document a substantial increase in the use of deadly force,

abuse of authority, discourtesy, and ethnic slurs by police during the Koch administration, which began in 1970.

From 1979 to 1983, the police killed 70 black persons, a sharp increase over previous years. Further statistical information—further statistical information will be submitted to the congressional record.

In addition to the statistical information submitted by the Black United Front, we submitted an article entitled "Deadly Force," written by Wayne Barrett and appearing on the front page of the September 20, 1983 "Village Voice."¹ There are several significant points we need to underscore.

First, it highlights the distortion of statistical information submitted to this congressional body by Police Commissioner Robert McGuire.

Second, it further substantiates the claim by the Black United Front that there has been an increase of police killings of civilians in New York City during the Koch administration.

Third, it also highlights some of the more glaring cases of unwarranted and unjustifiable uses of deadly force by law enforcement agencies against the citizens of New York City.

In the interest of time, I am going to submit it, and I have it included in my presentation, but what I would like to point up in all of this statistical business are the statistics cited by McGuire from the report issued by the International Association of Chiefs of Police. In 1982, and the report only covers the period from 1975 to 1980, which does not touch the years of 1980 to 1983 which our records indicate are the worst years of police killing or police harassment under the Koch administration. [Applause.]

But isn't it ridiculous that here we are, talking about upmanship on who kills the most. How uncivilized can we become? What does it matter that some State or some city in the United States killed 1,000 citizens unjustifiably and New York City only kills 500? How uncivilized can you be? What are we doing with this gruesome upmanship? Shouldn't public officials say, wouldn't it be the right, decent thing for public officials to say if there is one unwarranted killing in a city, in a State, the most impartial independent investigation ought to be implemented so that justice might be done? Isn't that what ought to be said? [Applause.]

But that would be only indicative of the insensitivity of my good friend, the honorable man in city hall, and they are all honorable men, Congressman.

Several other comments further substantiate the racist character of the abuse of police power. A black police officer has never killed a white teenager; yet white officers have killed 11-year-old Mickey Borden, 11-year-old Clifford Druther.

In fact, the city gave his mother some cash for that one. Fourteen-year-old Claud Reese, 15-year-old Randy Evans, 15-year-old Jay Parker, 17-year-old Autoro Ray just to name a few.

Now let me make a statement, and I hope for all the world you understand what I am trying to do. I am only trying to make a point, so all my good friends I hope you understand, but I do wonder, Mr. Congressman, what would Commissioner McGuire say

¹ See page 433.

if black police officers were killing Irish teenagers? And I just wonder, and I know everybody understands that I am just trying to sensitize the climate, what would Caruso say if black officers were killing Italian teenagers? [Applause.]

I know everybody understands. I wonder what our honorable mayor, Ed Koch, would say if black officers were killing Jewish teenagers? [Applause.]

Would we have this vigorous objection to a congressional hearing? I think not. There is not a sane soul in this city who thinks that there would have been any vigorous opposition, any hysterical opposition to a congressional investigation.

Black police officers have never abused white officers by mistake. White officers have abused and killed black citizens by mistake they say.

There was a disturbing dimension to this racist character of the abuse of police power, and it is overkill. According to several eye witnesses, victims were reportedly kicked and beaten each as their bodies lie lifeless in the streets of New York. Poor Louie Baez was shot 21 times. How many times do you need to shoot somebody to kill them or to stop them?

The questions about a woman. I remember a woman a couple of months after Louis Baez was killed, this woman was shot five times. Five times was this woman shot. How many times do you need to shoot somebody to stop them? Would a big, bad police officer need to put five bullets into a woman?

There is another point. It does seem, and I hope I will be under here, but we have got to get the record of this. It does seem on this overkill that there are instances where white policemen have to kick black men in their groin. Now that ought to say something to us that it is not just the removal of a human being. It is something more fundamental and psychological going on. It is the attempt to destroy the very essence, the very soul, the very spirit of a human; that is what it is.

Mr. Chairman, I cannot pass without making allusion to another form of police brutality.

Many members of the community have prevailed on me to make sure we put this in the record, and it is that as a result of the undercover work of the New York City Police Department, how many of our brothers are now in jail, not because they committed a crime but because there was a conspiracy which the police said let's get somebody and many of our brothers and sisters are now in jail not because they have done anything but because of police work.

I am certain you are sensitive to that. After all, we have just come out of the Nixon administration.

I can state without flinching that 99% percent of blacks in New York believe that police misconduct toward blacks and Latinos is a reality. No one in the black community argues the question any more. It is believed that the abuse of police power is not an isolated act, committed here and there by a few policemen in clear and unmistakable violation of their superiors' wishes and directives, but it is deep, persuasive, and increasing and is indirectly encouraged by the absence of strong, assertive, moral, no-nonsense leadership from the mayor of the city who, by the way, is an honorable man.

So are they all in city hall but they are insensitive and unresponsive and downright antiblack.

To illustrate, we met with the mayor in January 1978 and also in July of the same year. We also had a series of meetings with the police commissioner. On every occasion, we emphasized the necessity of addressing police misconduct toward blacks and Latinos. On every occasion, we offered recommendations for better relationships—all to no avail.

One recommendation we made was for a task force of community leaders to meet monthly with the commissioner and his staff. This recommendation, although simple and ought to occur in the normal flow of a democratic society, was agreed to, but was never implemented.

On May 5, 1979, I wrote the commissioner urging him to start the community/commissioner's meetings. He never did.

Pleas and petitions have been submitted to local officials simply because persons who are the victims of police brutality have no effective avenue to redress grievances. In each and every instance, the pleas have fallen on deaf ears and the petitions for simple justice have been denied.

Presently the city has advised civilians and has lulled them to believe that every person who is the victim of police brutality may submit a complaint with the erroneously-labeled "Civil Complaint Review Board." In other words, that civilian review board was a misnomer. It is neither civilian nor is it a review, but the police. Nobody goes there any more. We don't bother. We don't appeal to it any more. To appeal is to give it some kind of significance which it doesn't deserve.

It is a violation of law for any civilian or municipal official to review or pass judgment on a claim of police misconduct. Thus, the local law allowing for the present review board mandates that the police must police the police. This arrangement runs counter to every notion of fairness, decency and impartiality.

In practice, this police review board not only officially sanctions police brutality but makes every effort to exonerate the offending police officer while victimizing and humiliating the injured civilian. Over 97 percent of the complaints filed are summarily dismissed. The overwhelming majority of the remaining claims are eventually dismissed. Consequently, every act of police misconduct is condoned and the police officer's record remains unblemished.

These consequences are not surprising. It is an axiomatic concept and a fundamental principle of jurisprudence that justice can occur only when the fact-finding forum is impartial. The Knapp Commission explicitly found that the police cannot be trusted to investigate the police.

In 1972 the late Governor Nelson Rockefeller, may he rest in peace, in appointing a special prosecutor to weed out police corruption in New York City, made the following observations:

I have taken this action in recognition of a fundamental reality that under the present circumstances only an independent agency with city-wide authority, assigned a clear and specific mission and armed with full prosecuting power and independent investigative capacity, can break through the natural resistance of government agencies to investigate themselves or their close allies, can overcome the forces of inertia, and can finally deal a decisive blow to narcotics, crime and corruption in New York City.

That is Governor Rockefeller, may he rest in peace. I would simply add, it is equally true for policemen. There is no way a policeman is going to mete out punishment on another policeman with respect to killing a black or Latino youth.

Benefiting from our own experiences, listening to testimony made at the people's hearing held on July 18, 1983 about police brutality and adopting the findings of the Knapp Commission and the late Governor Rockefeller, BUF advocates that the entire structure of the present police review board be replaced. It is neither an independent nor an impartial agency. It has neither deterred nor reversed the rising incidents of police misconduct in New York City.

Furthermore, the present police review board only has jurisdiction over the New York Police Department. Thus acts of brutality committed by police of the New York Housing Authority, the New York Transit Authority, uniformed court officers, and other so-called peace officers are beyond the jurisdiction of any structured civilian or police review board.

Just this past Thursday, Michael Stewart was severely beaten by New York Transit police officers after he was handcuffed. I just returned from the hospital. The wife went down to see him Saturday night. I wish sometime that all of the vigorous hysterical opposers of congressional hearings and impartial hearings would just visit some of the people that have come through the police hands.

Here was a young 25-year-old handcuffed, scars up and down his legs, his neck is out this big, his head is bloated out, on his body are scars. You have to ask if the man was handcuffed why did he need to be beaten? If he was beaten, why did he need to be handcuffed?

I have been to many of these, Mr. Chairman, I have been in the room with many mothers and many wives and been in the hospital room, and do you know, according to the present civilian review board, as it is called, that case cannot come before them? It is not constituted to bring that, to bring these culprits to justice. Who will say to Mr. Stewart, Mr. Stewart, who were there in the hall, I will tell you, Mr. Chairman, who will identify with them, who will do something about this—and so, Mr. Chairman, all avenues for the redress of grievances against so-called peace officers have been shut down.

In New York City civilians are at all times subject to the whims and caprices of law enforcement personnel. Since the city of New York has failed to take remedial action, BUF calls for a public referendum in November 1984 to replace the present police review board and to establish a thoroughly civilian review board which will have the power to investigate, to hear and to take action against not only members of the New York Police Department but also members of the New York Housing Authority, the New York Transit Authority, and other so-called peace officers.

The referendum will also empower the mayor and other elected officials to take action against police officers who violate any person's civil rights. In 1966, the Patrolmen's Benevolent Association stripped every local, municipal official except the police of the power to investigate and discipline a police officer. This is an intolerable restriction. Mr. Chairman, this law must be repealed.

BUF will be calling a meeting of concerned leaders and organizations to examine BUF's proposal for a public referendum and to implement the plan of BUF for an effective review system in New York City to arrest the rising incidents of police brutality. Legal counsel to BUF has already formulated proposed legislation which will stop the irrational and unfair practice of only allowing the police to police the police in New York City. We will muster all of our energies and resources to make this proposed law a reality in November 1984.

So, Mr. Chairman, for a long time we have been waiting for you. So we welcome you to the Big Apple. Tragically, it is an apple with a lot of worms in it. The biggest, ugliest, most conspicuous worm is the police department. Unfortunately, there are those who condemn your presence. But their children, husbands, fathers, mothers, brothers, and sisters have not been killed or brutalized by members of the New York City Police Department. They write their editorials, do their politicizing, take care of their business, walk their streets and enjoy their homes secure in their membership in the dominant class and race.

Why should so conservative and constitutional an act as a congressional hearing into one of the systems within a society drive people to whip up racial antagonism and anxieties and raise the question of political expediency? The impartial observer is forced to ask, what are they hiding?

If this is the finest police department in the country, then let the world come in and take a look. Open up the records, invite everybody to come in and see what a noble, progressive, competent, sensitive police department it is. But the very fact that the media and police department and public officials become hysterical at a constitutional, conservative congressional hearing, we are driven to no other reason but they have something to hide, and what they have to hide is the most vigorous, brittle, and uncivilized police department in New York and across this country.

On behalf of the Black United Front I respectfully submit this testimony and exhibits and thank you for conducting hearings in this city and across the country on a problem national in scope.

By the way, one of the exhibits we will be submitting is our videotape. History has taught us to document everything we do. We have 6½ hours of documentation that we put together at our own expense that we will be submitting to the congressional hearings. Since it comes out of our expense—we are a poor struggling organization—I am certain the rich Federal Government will keep us doing the video tapes. We will submit them to your congressional record, Mr. Chairman.

Again, we appreciate your coming, all of the congressmen, our great friends Rangel, Towns, and Owens. We appreciate your coming and we want to bring about a better society for every citizen in New York City.

Thank you Mr. Chairman.

[Prepared statements of Reverend Daughtry and BUF Counsel Alton H. Maddox, Jr., follow:]

H E A R I N G S

before the

SUBCOMMITTEE ON CRIME

of the

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

Who Police the Police in New York?

Respectfully submitted,

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INTRODUCTION

Abuses and excessives of police power is unfortunately not uncommon in New York City. Concerns about police abuses date back in the nineteenth century when New York City in 1845 formed a unified police force. Police terrorism was a way of life in New York not for the purpose of eliminating crime but for the purpose of social control. Lewis Valentine, the police commissioner under Mayor Fiolello LaGuardia, favorite words were "Muss em up!"

The first attempt to reform the police department came about in 1953 when a newspaper story revealed that the New York Police Department had failed to take disciplinary action against five cops who had been successfully sued for police brutality. The City had to pay the damage award of \$152,000. An investigation was conducted by a House Judiciary Subcommittee. The police department refused to make any police office available for questioning by a federal law enforcement agency. After receiving bad publicity, the department established a police review board.

After 1953, New York has witnessed rising levels of police abuses and police terrorism. The levels of police misconduct has now destroyed any potentially meaningful relationship between so-called minority communities and the police. Incidents of physical injury, serious physical injury and fatal injury by police officers have almost been exclusively aimed at Blacks and Latins. In almost every instance, every offend-

ing police officer has enjoyed complete impunity.

POLICE REVIEW BOARD

No effective law enforcement mechanism exists in New York City to control abusive police power and to arrest police crimes against Afro-Americans and Latins. For thirty years New York City has permitted the police to police the police. In 1966, Mayor John Lindsay changed the structure of the police review board so that civilians could also play an advisory role in reviewing claims of police crimes against citizens.

The Lindsay plan, which went into effect in July 1966, increased the board from a three member review board to a seven member board which included four civilians. Under the Lindsay plan, the police commissioner would still have the final say about any disciplinary action to be taken against abusive and violent cops. Thus the Lindsay board only possessed advisory powers. In addition, four of the top supervisory staff positions were occupied by civilians.

The Lindsay board was short-lived. The Patrolmen's Benevolent Association (PBA) launched a successful, vigorous, political and legal campaign to defeat civilian participation in the review of police misconduct. First, the PBA secured a legal victory which required the public through a referendum to establish a civilian review board. On November 8, 1966, the notion of a civilian review board was resoundingly defeated. Blacks, Puerto Ricans and liberals supported the notion of a civilian review board but were out-voted by white

voters.

The PBA victory also meant that the police will police the police when a citizen complains about police misconduct. Of course, this notion offends every fundamental aspect of due process. Even under the Lindsay plan, civil rights group maintained that the advisory review board would be neither impartial nor independent. The police review board has accorded to offending police officers an undue "Bill of Rights" since virtually every act of police misconduct is exonerated and the officer's record remains unblemished.

Even if the review board was thoroughly independent and impartial, it would still be insufficient and inappropriate to stem police misconduct. A civilian review board, in effect, insulates a police officer from a criminal prosecution. The most effective penalty under a civilian review board concept is a dismissal from the police force even though the police officer has also committed a criminal act. A police review board actually encourages police officers to perpetrate criminal acts against citizens since the possibility of a severe penalty is remote.

The mere fact that citizens would file a citizen's complaint with a police review board indicates their desperation and the level and intensity of police brutality in New York City. Abused citizens recognize their helpless status in New York City. They are subject to further police abuse at every stage of the police review board mechanism. Every level of the function of the police review board

is staffed by police officers who make decisions involving investigations, conciliations, hearings and review.

In 1966, less than 1,000 police misconduct complaints were filed against police officers. In 1982, the Civilian Complaint Review Board only assumed jurisdiction over four thousand cases even though the board received 8,419 complaints, of the 4,106 complaints that the police review board reviewed, the board only substantiated three per cent of them. The disciplinary action taken in virtually every substantiated case was a slap on the wrist or a pat on the back. Dismissal from the force is a rare occurrence and a remote possibility.

Even though the incidents of police misconduct has risen to epidemic proportions under the current mayoral administration, no constructive and corrective action has been undertaken. Instead, the mayor has blamed the messenger for the message. He has publicly questioned the veracity of the complainants. On the other hand, he has sought to dismantle the current police review board so that no conceivable wall of defense will stand between a defenseless citizen and an armed police officer.

Since the current mayor took office, he has annually reduced the budget of the review board by 5%. This annual budget reduction has been authorized in the face of rising incidents of police misconduct. The mayor has also been sheepish in sponsoring bills to counter police misconduct. This apathetic posture gives a dangerous signal to irresponsible cops.

The notion of a civilian review board has clouded the public's perception of police misconduct. When a person assaults another person, it is called a crime. When a police officer assaults another person, it is called police brutality. The New York Penal Law defines criminal conduct and authorizes criminal penalties. The term "police brutality" has no presence nor meaning in the New York Penal Law.

The recognition of the term "police brutality" by public officers is designedly misleading and has fraudulent consequences. Acts which are otherwise called criminal are labeled "police brutality" to skirt the penal laws. This terminology and the establishment of a police review board would channel criminal conduct into an administrative forum. This conduct allows police officers to violate the penal laws with complete immunity from criminal prosecutions.

The penal law does not immunize a police officer from a criminal prosecution when a citizen is either offended or brutalized. Penal Law Section 35.30 does permit a police officer to use physical force to effect an arrest when it is necessary. Penal Law Section 35.27 mandates that a person must stand defenseless when he is being unlawfully humiliated or assaulted by a police officer. In short, a person in New York is not allowed to protect himself or herself against police misconduct however life-threatening. This is known as the "no sock" provision. Despite Penal Law Section 35.27, a police officer is still subject to prosecution under the penal laws.

Nonetheless, district attorneys in New York City look the other way when police officers are offending and brutalizing human beings. In the rare situation, a criminal prosecution is initiated against a police officer when normally indifferent public officials fear a rebellion. Consequently, an untold amount of police brutality is carried out with impunity simply because of official indifference to lawless police action which falls short of sparking a rebellion.

Even when a prosecution is commenced against a police officer, the outcome usually favors the police officer. District attorneys wittingly fail to put heart into obtaining either an indictment or a conviction. In most cases an indictment is never obtained even though it is well-known that a grand jury is a prosecutor's rubber stamp. If an indictment is obtained, a conviction is unlikely. The investigative work is sloppy and the prosecution is half-hearted.

Of all the instances of unlawful police killings, only one police officer has ever been convicted. This conviction occurred in Bronx County where Blacks and Puerto Ricans comprise a majority of the population. It was the growing political strength of these communities that prompted this prosecution.

The typical prosecution is staged. For example, Police Officer, Robert Torsney fatally shot a child, Randolph Evans at point blank range. At trial, Torsney feigned mental illness because he was supposedly suffering from a rare form of epilepsy. The defense was a hoax. Yet, the prosecution failed to present expert testimony to refute the defense. A

not guilty verdict because of insanity was therefore mandated. The Torsney prosecution occurred only because of the outrage expressed in the Black community and the presence of street demonstrations led by the Black United Front.

Instead of vigorously prosecuting the perpetrators of police racial violence, the district attorneys vigorously prosecute the victims to suffocate their complaints. District attorneys act on the assumption that a criminal conviction will silence the complainant. Invariably, the victims receive two sentences. This constitutes double jeopardy. Under the Criminal Procedure Law Section 210.40, a criminal complaint can be dismissed because of the injuries that an accused suffers from police misconduct. People v. Plummer, 80 Misc.2d 820, 364 N.Y.S.2d 697 (Sup. Ct. 1975). District attorneys refuse to give homage to this statutory proviso.

The dropping of criminal charges against a brutalized, accused person will remove any obstacles to pursuing either administrative or civil remedies. Given this reality, district attorneys pursue bogus, criminal prosecutions simply to insulate an offending police officer from administrative and civil penalties.

The district attorney has the exclusive responsibility for enforcing the penal law against police officers. The decision in New York to prosecute police officers depends on the race and status of the complainant and the community responses to the complained-about incident. No district attorney in New York City will act on the complaint of a Black

or Latin against a police officer unless there is a fear of physical or economic reprisals. No district attorney has established a unit to combat police misconduct.

Similarly, the Offices of U. S. Attorney for the Southern and Eastern District of New York also have responsibility to enforce civil rights statutes against police officers who annoy, offend or brutalize human beings. In New York, this is a well-kept secret. Neither officer has sought to educate the public about its responsibilities in this area. Furthermore, neither office has sought to intervene in a situation when probable cause existed to believe that the federal civil rights statutes had been violated.

Prosecutors fail to enforce the penal and civil rights law against police officers since they view police agencies as part of their offices. Judicially, police departments have been deemed agencies of prosecutor offices. Thus, a citizen who files a complaint with a prosecutor's office is asking the prosecutor to police and indict itself. Prosecutors also believe that exempting police officers from the penal laws is a trade-off for otherwise competent, investigative work.

It is clear that no mechanism currently exists in New York City which police the police and which has the potential of curbing and arresting police abuse. The prosecuting attorneys and the police review board are either wittingly or unwittingly fostering police abuses. These agencies, acting alone or in concert, have and will continue to insulate police officers from administrative and criminal

penalties and civil damages.

The time has come for the governor to appoint a special prosecutor to combat the rising incidents of police offenses committed against men, women and children. New York Executive Law Section 63 authorized the appointment of a special prosecutor. The Knapp Commission recommended to the late Governor Rockefeller that a special prosecutor be appointed to investigate and prosecute police corruption in New York City. The reason the Knapp Commission stated for the special prosecutor was simple. A district attorney cannot be trusted to investigate and prosecute an offending police officer.

In 1972, the late Governor Rockefeller directed the Attorney General to appoint a Special Prosecutor. In making this direction, Governor Rockefeller stated:

I have taken this action in recognition of a fundamental reality that under the present circumstances, only an independent agency with city-wide authority, assigned a clear and specific mission and armed with full prosecuting power and independent investigative capacity, can break through the natural resistance of government agencies to investigate themselves or their close allies, can overcome the forces of inertia, and can finally deal a decisive blow to narcotics, crime and corruption in New York City.

Within the letter of this appointment, a special prosecutor was empowered to investigate and prosecute incidents of police abuse against persons.

CONCLUSION

In form, New York has in its presence many agencies which have jurisdiction to investigate and prosecute police misconduct. Each agency however which has jurisdiction to review police misconduct also enjoy a special, legal relationship with the police. No independent body has been established in New York City with the clear and expressed purpose of reviewing and arresting police misconduct. Until such an agency is established, the police will continue to routinely and automatically exonerate the police of any alleged police misconduct and heighten its terroristic desires against Blacks and Latins.

TESTIMONY GIVEN BY

Reverend Herbert Daughtry, Chairman
National Black United Front

before

The Sub-Committee on Criminal Justice
of the Judiciary Committee of The
House of Representatives

September 19, 1983

369th Armory

New York, New York

Honorable Congressman John Conyers;

Honorable members of the Sub-Committee on Criminal Justice;

Honorable members of the Judiciary Committee of The House of Representatives;

Honorable members of the House of Representatives

On behalf of 99 9/10ths per cent of the Black community and all liberal, progressive, decent, fair minded citizens of New York I welcome you to New York City - the Big Apple, and applaude your decision to conduct Congressional Hearings into police misconduct.

My organization, the Black United Front, was born in 1978 out of the community's protest over the 1976 police killing of 15-year old Randolph Evans and the subsequent acquittal of Robert Torsney by reason of insanity and the 1978 police killing of Arthur Miller, a respected businessman, husband and father.

Since 1976 we have exhausted every avenue of appeal.

On Thanksgiving night, 1976, Robert Torsney, who had been summoned by neighbors who said there was a disturbance, walked up on Randy Evans who was 15 years old at the time. When Randy asked, "What's happening?" Torsney without provocation or justification shot him in the head.

There is a pattern here that I want to note at the outset. Even when Black citizens call policemen for help often times their relatives or some innocent Black or Latino is beaten or

killed.

In 1979, Luis Baez, who had a known history of aberrant behavior, was shot 21 times by at least five officers. On the day he was killed his mother called police for help. The officers arrived and Baez leaped or fell from the fire escape into a yard. Police officers claimed that he had a knife, so they emptied their revolvers into his frail body. No one was punished for this crime.

On Sunday morning, January 9, 1983, Henry Woodley was walking with his sister and his girlfriend when he was confronted by attackers. His sister ran to get help from the police. However, when they arrived, Woodley was fired upon and killed by the police officers who escaped punishment.

One other example of a beating. On the Wednesday night preceding the July 18, 1983 police hearings, policemen were summoned to a street around the corner from my church. Some youngsters were having an argument. One was alleged to have a knife. When the police arrived, they commenced beating a black teenager while he and others screamed, "He's not the one. He doesn't have the knife." All of this was happening while a white teenager screamed, "I have the knife, Stop beating my friend." The police officers continued to assault the youngster who now suffers from broken ribs, facial scars and body bruises.

These incidents indicate clear racist attitudes and actions. There is a conditioned reflex if Blacks are present.

Whatever their age or sex, Police attack first, and ask questions later. If they are Black and Latino, they must be carrying a knife or committing some criminal act -- after all, that is the way Blacks and Latinos are portrayed in the larger society -- and after all, no one gives a damn about Black humanity anyway.

So with the acquittal of Torsney in 1977, the Black United Front launched a selective patronage campaign to solicit the business community's assistance in bringing the killer cop to justice. In addition, we met with Mayor Koch just 12 days after he took office to entreat him to help influence the U.S. Attorney to indict the officer on the violation of Randy Evans' civil rights.

BUF has marched and demonstrated on numerous occasions to protest police killings and brutality.

In July 1978 thousands rallied in the Crown Heights section of Brooklyn to protest the killing of Arthur Miller. Arthur Miller was one of those "pull yourself up by your bootstraps" success stories. He had a thriving business and he enjoyed friendly relations with the Police Department. On the evening of June 14, 1978, he came to see about his brother who was discussing with the police a matter related to traffic violations. An altercation followed and a number of policemen carried him off to their car. When he arrived at the precinct, he was dead. No officer was charged with any wrongdoing.

In September 1978, thousands marched and rallied at

City Hall in a city-wide protest against police brutality.

In November 1978, thousands marched on Wall Street, New York City to protest police killings.

In August 1979, thousands rallied and marched in Bed-Stuy, Brooklyn to protest the killing of Luis Baez.

Likewise, there were rallies and marches around the killings of Louis Rodriguez, whose family was given a cash settlement; Arturo Reyes (17 years old) and Peter Funches. All of these persons were killed without provocation by members of the New York City Police Department.

In June 1979, Peter Funches's wife recognizing that he was having problems, called the Veterans' Administration for help. They never came. In the meanwhile Peter began to react from his Vietnam experience and got into his car and commenced driving. This particular day he drove until he ended up on a street in the Bronx and for whatever reason, police cornered him.

There he was, according to witnesses, closed up in his car -- and we can imagine, given the nature of his sickness and past experience, shaking like a leaf in the wind. The police broke open the car with crow bars and beat Peter Funches to death.

The police said that he was in a car crash. But one of the eminent reporters, Mr. Earl Caldwell of the Daily News, noticed that there were certain discrepancies in the story.

We went to investigate and took photographs which showed no crash in the wall -- no crash anywhere. By now the policemen had changed their story. They said he had a knife but no knife was found. The fact of the matter is that they beat this poor sick man to death. We have pictures here which show his appearance when they were through with him. No officer was charged with anything.

BUF even conducted a sit-in when 15-year old Jay Parker, an honor student, whose father worked for the law enforcement agency, was killed by policemen.

In 1979 BUF conducted a people's tribunal to collect testimonies from people who had been victims of police misconduct.

In November 1980, the National Black United Front conducted national hearings on racist violence, collecting testimonies from 21 cities regarding racist violence from policemen and others.

In April 1980, NBUF organized a national march against racist violence. This was done to again-highlight the magnitude of police violence against Blacks.

Since 1977 BUF has repeatedly sought state and/or federal intervention. In 1978 we met with David Trager, U.S. Attorney, on the Randy Evans killing. Nothing happened although he promised a decision on the civil rights violation charge by Spring.

I have also enclosed correspondence to:

- 1) Governor Cuomo
- 2) Justice Department, and even
- 3) President Carter

It was only after we received no response from President Carter or the Justice Department that we used the march and demonstration to attract his attention. During this march we were attacked by policemen on horseback riding with swinging clubs into women and children. All our action and appeals fell on deaf ears.

The business community did help in establishing the Randolph Evans Scholarship Fund. On July 16, 1983, we held our fifth scholarship awards ceremony and awarded our 53rd \$1,500.00 scholarship. We give ten each year.

Also, a Randolph Evans Crisis Fund was established to assist persons in an emergency. Nearly 500 indigent persons have received emergency grants and loans. A youth training and employment program was also implemented, but even the corporations and business community could not bring killer cops to justice.

Congressional Hearings, Blue Ribbon Commissions and special state and federal investigations have been implemented to investigate police corruption. These endeavors are generally energetically praised by all the respectable citizens. But when the investigation is directed toward police violence toward Black citizens, these same people become hysterical. Are our leading citizens saying to us that in their estimation, police-

men stealing money is more important than policemen taking lives.

Mr. Chairman, local officials have failed to examine the problem of police brutality. Local governments must now be indicted for not indicting the police. This is not the first time that a congressional subcommittee had to examine police violence in New York City. Congress conducted an investigation in 1953. Afterwards, a police review board was established. Thirty years have proved that the police cannot police the police.

While we believe, with the Presidential Commission, that America is in fact, two societies; one white, one Black, separate but unequal and that the ghetto was a creation of white society; while we believe also, that racism permeates all of American institutions and for various reasons, especially the police department; we still place policemen in three categories.

- I. There are the brutes, the savages and the racists. They are the ones who kill and brutalize and because in most instances they escape punishment and in some instances receive accolades -- the whole police department is held in suspicion.
- II. There are the go alongers. They do not want to rock the boat. They have mortgages to meet and like most human beings, they go along with whatever the program is, especially since, they are the beneficiaries of the system.
- III. There are those who resist; who make waves; who understand the nature of institutional racism. They try to bring some changes.

BUF, frustrated with the continued killings and brutalization of Blacks and Latinos, and the refusal of state and/or federal authorities to act, carried our appeals to international quarters.

On December 11, 1980, International Human Rights Day, BUF appealed to the United Nations for assistance. BUF also appealed to the Organization of African Unity for help.

His Excellency Dramane Ouatarra, OAU Ambassador to the United Nations, issued a sharp statement comparing Arthur Miller's killing to Steve Biko's in South Africa.

According to statistics compiled by the New York Metropolitan Area Black United Front's Police Brutality Investigation Unit concerning police misconduct against Black people from 1978 to the present, incidents of police misconduct were an astonishing 605 reported cases. The breakdown of the 605 reported cases are as follows:

*Killings by police	92
*Beatings by police	125
*Harassment/attacks by police	57
*Shootings by police not resulting in death	31
*Non-follow through complaints on police with fear of police reprisals cited by complainant	300

These alarming statistics further substantiate the systematic and pervasive nature of police misconduct perpetuated against the Black Community in New York City. Moreover, BUF's

police investigative unit statistics documents a substantial increase in the use of deadly force, abuse of authority, discourtesy and ethnic slurs by police during the Koch Administration which began in 1978. From 1979 to 1983, the police killed seventy Black persons, a sharp increase over previous years. For further statistical information consult the attached PBIU report which is attached hereto and submitted for the Congressional Record.

In addition to the statistical information submitted by the Black United Front, we submit an article entitled "Deadly Force: The Debate over Police Violence" written by Wayne Barrett and appearing on the front page of the September 20, 1983 issue of The Village Voice.

There are several significant points in Mr. Barrett's article. First, it highlights the distortion of the statistical information submitted to this congressional body by Police Commissioner Robert McGuire. Second, it further substantiates the claim by the Black United Front that there has been an increase in police killings of civilians in New York City during the Koch Administration. Third, it also highlights some of the more glaring cases of unwarranted and unjustifiable use of deadly force by law enforcement agencies against civilians in New York City. According to Mr. Barrett:

1. "McGuire said that 'studies revealed that NYC has the lowest incidence of police shootings of any major American City.' Yet the only national study he cited puts dozens of other cities ahead of us: out of the cities in the study, New York is 25th."

2. "A steady, downward trend in fatal police shootings, begun at the end of the Lindsay era...has been reversed under Koch. Police killings dropped from a record-smashing 93 in 1971 to an average of 28.5 in the two years prior to Koch. In the five Koch years for which complete numbers exist (1978-82) there has been an average loss of 36 lives a year, a statistical leap of 25 per cent."
3. "Ninety-eight percent of all the complaints filed in the Koch years 43,283 complaints evoked no disciplinary response...Fewer cops are being disciplined even though the number of complaints filed has been increasing every year."

(NOTE # 1)

The above-mentioned quotes are but a few excerpts taken from the article. Because we feel Mr. Barrett's article will assist this committee in achieving its objective, we have attached a copy of this article as an exhibit and submit it to be made a part of the Congressional Record.

Several other comments further substantiate the racist character of the abuse of police power.

A Black police officer has never killed a white teenager, yet white officers have killed:

11 year old Ricky Borden

11 year old Clifford Glover (the city gave a cash settlement to Mrs. Glover)

14 year old Claude Reese

15 year old Randy Evans

15 year old Jay Parker

17 year old Arturo Reyes

to name a few.

I wonder what would the Irish, or Italian or Jewish or Polish people would say if Black officers were killing their children, not to mention men and women.

Black police officers have never killed or abused a white officer by mistake; but white officers have killed and abused Black officers by mistake, they say.

There is very disturbing dimension to the racist character of the abuse of police power, and it is the "overkill." According to several eyewitnesses, victims were reportedly kicked and beaten even as their bodies lie lifeless in the streets of New York City. Poor Luis Baez was shot 21 times by police officers who had been summoned by his mother to protect Luis Baez from harming himself.

Another example of this overkill occurred in August 1979, a week or so after the Baez killing. This time it was a woman Elizabeth Mangum. The policeman who killed her said she had a knife. So he shot her -- not one or two times in the leg or arm -- but five times, killing her. Willie Harper was killed when police claimed he reached for another officer's gun.

I can state without flinching that 99 9/10ths of Blacks in New York believe that police misconduct towards Blacks and Latinos is a reality. No one in the Black community argues the question anymore. It is believed that the abuse of police power is not an isolated act, committed here and there, by a few policemen in clear and unmistakable violation of their superiors wishes and directives. But, it is deep, pervasive and increasing and is indirectly encouraged by the absence of strong,

assertive, moral, no nonsense leadership from the Mayor of the city.

To illustrate, we met with the Mayor in January 1978 and also in July of the same year. We also had a series of meetings with the police commissioner. On every occasion, we emphasized the necessity of addressing police misconduct toward Blacks and Latinos. On every occasion, we offered recommendations for better relationships -- all to no avail.

One recommendation we made was for a task force of community leaders to meet monthly with the commissioner and his staff. This recommendation, although simple and ought to occur in the normal flow of a democratic society, was agreed to, but was never implemented.

On May 5, 1979, I wrote the commissioner urging him to start the community/commissioner's meetings. He never did.

Pleas and petitions have been submitted to local officials simply because persons who are the victims of police brutality have no effective avenue to redress grievances. In each and every instance, the pleas have fallen on deaf ears and the petitions for simple justice have been denied.

Presently, the city has advised civilians and has lulled them to believe that every person who is the victim of police brutality may submit a complaint with the erroneously labeled "Civilian Complaint Review Board."

It is a violation of law for any civilian or municipal

official to review or pass judgment on a claim of police misconduct. Thus, the local law allowing for the present review board mandates that the police must police the police. This arrangement runs counter to every notion of fairness, decency and impartiality.

In practice, this police review board not only officially sanctions police brutality but makes every effort to exonerate the offending police officer while victimizing and humiliating the injured civilian. Over 97% of the complaints filed are summarily dismissed. The overwhelming majority of the remaining claims are eventually dismissed. Consequently, every act of police misconduct is condoned and the police officer's record remains unblemished.

These consequences are not surprising. It is an axiomatic concept and a fundamental principle of jurisprudence that justice can occur only when the fact-finding forum is impartial. The Knapp Commission explicitly found that the police cannot be trusted to investigate the police. In 1972 the late Governor Nelson Rockefeller in appointing a Special Prosecutor to weed out police corruption in New York City made the following observations:

I have taken this action in recognition of a fundamental reality that under the present circumstances, only a independent agency with city-wide authority, assigned a clear and specific mission and armed with full prosecuting power and independent investigative capacity, can break through the natural resistance of government agencies to investigate them-

selves or their close allies, can overcome the forces of inertia, and can finally deal a decisive blow to narcotics, crime and corruption in New York City.

Benefitting from our own experiences, listening to testimony made at the People's hearing held on July 18, 1983 . about police brutality and adopting the findings of the Knapp Commission and the late Governor Rockefeller, BUF advocates that the entire structure of the present police review board be replaced. It is neither an independent nor an impartial agency. It has neither deterred nor reversed the rising incidents of police misconduct in New York City.

Furthermore, the present police review board only has jurisdiction over the New York Police Department. Thus acts of brutality committed by police of the New York Housing Authority, the New York Transit Authority, uniformed court officers and other so-called peace officers are beyond the jurisdiction of any structured civilian or police review board.

Just this past Thursday, Michael Steward was severely beaten by New York Transit police officers after he was handcuffed. He is in a coma at a local hospital and is fighting for his life. The present police review board is without jurisdiction to investigate this incident. The killing of Henry Woodley was done by New York Housing police officers. The present police review board was without authority to investigate his killing.

Mr. Chairman, all avenues for the redress of grievances against so-called peace officers have been shut down. In New

York City, civilians are, at all times, subject to the whims and caprices of law enforcement personnel. Since the City of New York has failed to take remedial action, BUF calls for a public referendum in November 1984 to replace the present police review board and to establish a thoroughly civilian review board which will have the power to investigate, to hear and to take action against not only members of the New York Police Department but also members of the New York Housing Authority, the New York Transit Authority and other so-called peace officers.

The referendum will also empower the mayor and other elected officials to take action against police officers who violate any person's civil rights. In 1966, the Patrolmen's Benevolent Association (PBA) stripped every local, municipal official except the police of the power to investigate and discipline a police officer. This is an intolerable restriction. Mr. Chairman, this law must be repealed.

BUF will be calling a meeting of concerned leaders and organizations to examine BUF's proposal for a public referendum and to implement the plan of BUF for an effective review system in New York City to arrest the rising incidents of police brutality. Legal counsel to BUF has already formulated proposed legislation which will stop the irrational and unfair practice of only allowing the police to police the police in New York City. We will muster all of our energies and resources to make this proposed law a reality in November 1984.

So we welcome you to the Big Apple. Tragically, it is an apple with a lot of worms in it. The biggest, ugliest, most conspicuous worm is the police department. Unfortunately, there are those who condemn your presence. But their children husbands, fathers, mothers, brothers and sisters have not been killed or brutalized by members of the New York City Police Department. They write their editorials, do their politicizing, take care of their business, walk their streets and enjoy their homes secure in their membership in the dominant class and race.

Why should so conservative and constitutional act as a Congressional Hearing into one of the systems within a society, drive people to whip up racial antagonism and anxieties and raise the question of political expediency? The impartial observer is forced to ask -- "What are they hiding?"

On behalf of the Black United Front I respectfully submit this testimony and exhibits and thank you for conducting hearings in this city and across the country on a problem national in scope.

NOTE #1

Significantly, the statistics cited by McGuire are from the report issued by the Interantional Association of Chiefs of Police (I.A.C.P.) in 1982, and the report only covers 1975-1980, which does not touch the years 1980-83, which our records indicate are the worst years of Police Killings or Police Misconduct, under the Koch Administration.

Secondly, the I.A.C.P. report does not distinguish unwarranted homicide from justifiable homicide.

It should be emphasized that this kind of argument on homicide is uncivilized. Public officials paid by citizens to protect them, ought to be saying, if there is one unjustified killing a thorough impartial investigation is imperative.

Mr. DAUGHTRY. We do have some witnesses. Would you allow me to bring our witnesses? These are witnesses who are the victims of these brutalities, and again, some of these brothers and sisters have been on the streets a long time and would you allow a few minutes more for their testimony?

Mr. CONYERS. It took us a long time to get here, so we are going to hear everybody that you wish to bring forward.

Reverend DAUGHTRY. I am going to ask some of them to come forward. One of the things we have always tried to do is to maintain a close relationship with the people with whom we have associated over the period of time, and this is Brother Dave Walker. Brother Dave Walker will say a word as to how the cases come to us. That is to say, we are a nonfunded community-based organization and I think it is important for Dave Walker, who does all of this work, for which I sometimes get a little credit, to say how these cases come to him and then introduce the witnesses.

Thank you very much.

TESTIMONY OF DAVE WALKER

Mr. WALKER. Thank you, Reverend Daughtry.

Good afternoon, Congressman Conyers.

On behalf of the police investigation unit I would like to welcome you to New York. In the interest of time I want to move forward and kind of introduce a couple of our witnesses here.

This is a young brother by the name of Corey Gibson. A very close friend of his was killed in 1983. I would like to turn it over to Brother Corey Gibson.

TESTIMONY OF COREY GIBSON

Mr. GIBSON. Good afternoon, ladies and gentlemen, and our distinguished guests.

My name is Corey Gibson. I come from the Bedford-Stuyvesant neighborhood in Brooklyn. I would like to tell my little story of how the New York police force murdered one of my best friends. I may have a smile on my face today but I am still deeply angered over this incident that happened on March 15, 1983.

My friend and I, we were on our way home from visiting one of his girl friends' house in the Park Slope area of Brooklyn. As we proceeded to return to the Bedford-Stuyvesant area, a police car turned on the avenue of Claremont Avenue and almost collided into us on our little moped. My friend Larry, he maneuvered out of his way and avoided the crash. So we proceeded, being that the police car didn't have any lights or sirens on, we didn't figure that there was no problem. We just proceeded and went on about our business.

But me, I happened to be a passenger on the back of the bike. I happened to turn around to see what the police officers were going to do. They came the block and at full speed, with just their lights on—so being that we almost collided into them, I suggested to my friend that we should stop and pull over, but they were coming at us at such a fast speed that if we would have made an immediate stop they would have just crashed us right then and there. So I told him, I suggested to him, pull on the sidewalk and slow down.

As we were about to slow down, he was on the sidewalk, the police car jumped the sidewalk and hit us. They hit us one time and we began to fall off the bike. But that wasn't good enough for them. They speeded up and smashed us into a parked car.

I wound up, I flew under the car, and I was looking at the police car over top of us. I am under this car screaming for help, begging for help, didn't know where my friend was, when the police got out of the car, after they had rammed us into the parked car, he just got out and laughed at us. Got out and laughed and made snide remarks. Said that was good for us.

So he backed his car up off us, pulling me from under the parked car, he literally knocked the car on its side, that is the impact, how much speed and force they used, you know, to try to kill the both of us, because they did kill my friend Larry Dawes. He died of multiple severe wounds. He died of a broken neck, his head was smashed, but that wasn't good enough for them either. When they backed up the car off of us, they got out and started kicking him and beating him, calling him all kinds of ----- and things, dirty this and that—they claimed he ran a red light. A red light, a traffic violation. They took a 19-year-old man's life, he was in his prime of his life, only 19 years old, just got out of high school—and they took his life, kicked him and beat him for what, a red light.

I feel that if we are going to let the police force do this to another brother, over a red light, imagine what they are going to do to our women and our little babies who are coming up. I am still deeply angered over this incident because the incident has gone to the Supreme Court but you know what happened—nothing. That is what happened, nothing.

The police officers, they still are on the force, rookie cops, young rookie cops, 25 and 24 years old on the police force, only 1 year out there acting like Starsky and Hutch. Trying to kill and trying to go after their first big bust, but they were wrong, they didn't know that, what happened and now my friend Larry Dawes is lying in a grave, his mother all destroyed, and depressed, all shaken up, what she should do over this situation.

Who should she turn to to get justice for her son. Who can she turn to. I would like to know, I am asking the Congressmen, who should she turn to.

Mr. CONYERS. We are here to try to formulate some remedies. I don't think we can dispose of this in the first 4 hours hearings that are going to go on for months. When I asked for the remedies, at a special hearings on remedies, they are going to put together the dozens of solutions that have been brought forward here. Some of them are better than others, some are not going to work, some are going to be practical.

Let's not try to soften each case at the hearings where we are hearing about the case for the very first time that it has been brought to our attention, sir. We want the forum to identify the problem and continue to dominate the racially-motivated bond. All of us here are charged equally with that responsibility as fighters to end racism and police brutality.

Mr. GIBSON. I understand that and I appreciate that very much and I would like to say thank you on behalf of my friend Larry Dawes and myself. I would like to say thank you for my family

who had to look after me after that incident, who has taken care of me, and I know justice will be done sooner or later.

Mr. CONYERS. You are a brave young black man and we all stand behind you. We want you to know that. Thank you.

Mr. WALKER. Our next witness is Roy Shabazz.

TESTIMONY OF ROY SHABAZZ

Mr. SHABAZZ. Congressmen Conyers, Rangel, it is a pleasure having you here today. It is a pleasure for me to be here also to give an account of what took place in my situation.

This was July 9. I am an electronic technician and I was on my way home, along with a lady companion, when we were stopped by two police officers. They came over and asked me for my particulars which I gave to them. Approximately in 15 minutes they called me back to their car and handed me a summons, rolled up like a cigarette, and after serving the summons the officers said to the driver, let's go, and immediately drove up to the sidewalk, knocking me right into the light pole. I was angry so I told him OK, I would report this incident to the precinct.

I got in my car, along with my lady companion, and we proceeded on about three blocks. There I could see the police officers coming behind me in the van that they were driving. There was no red lights, there was no siren coming on. However, we pulled in into the intersection of East New York and Schenectady. While we stopped there, the officers came and they hit my car from the left side. They crashed into my car, left a terrible dent, he jumped out of his car and said, "OK, MF, you are under arrest." I am sure everyone knows what the MF stands for, the abbreviation. So I did nothing. I just sat there. My engine was running. He said, "OK, MF, I am taking you in, you are under arrest." I still did not know, I asked him what was I under arrest for. He said, "Ask no questions, Nigger."

He pulled his gun, he stuck it in the car, he said, "OK, Nigger, I am going to blow your MF brains out." He said, "Get out of the car." Immediately the other officer, he ran around the other side of the car. He pulled my lady companion out, and in pulling her out he punched me in the face about three times, then they proceeded to pull me out of the car by my ears, and by my throat. He pulled me out and kicked me about three times in the groin.

The other officer, he came around, he pulled his billy club out, he slapped me a couple times around my neck, in my mouth, and stuff like that, twisted my arm and put handcuffs on one of my hands.

By then a crowd grew. The people shouted police brutality and began throwing bottles and stones, so they radioed for help. In approximately 5 minutes a contingent of police officers came, and they asked no questions, they jumped in and started beating on me, kicking me in the groin. I received about eight kicks in the groin.

I was taken to the police station where I was arrested. I was not told what I was arrested for. Apparently they pulled me out of my car and took me in and left my car running right at the intersection with the keys in the ignition. Just the same, I was taken to the police station with handcuffs. There were several bruises on my

hand from the handcuffs. They abused my lady companion. They called us nigger, ——, and other various names, and I had to spend the night in jail. This was really uncalled for.

However, I saw a judge the next morning and that is when I realized I was charged with assault on a police officer in the second degree. I was charged with reckless endangerment in the second degree. I was charged with resisting arrest, and so I had to put up a bail in order to get out of the courthouse and also get a lawyer to defend me in this case, which cost me money.

All of this matter was really uncalled for. I was given a summons, not for what I was stopped for. And so there was several witnesses who went down, they filed a complaint with the complaint review board; they never got in touch with me until Friday, this past Friday. They called and said I am to get in touch with them this morning at 9 o'clock, when I had to be here at this hearing. That is when they first called me. So this is just how my incident goes. My case is due next Monday. I am still charged with these charges.

Mr. CONYERS. Thank you very much.

Reverend Daughtry, we know you have a file which probably goes into hundreds and hundreds of these kinds of cases. What we would like you to do is continue this documentation and help us establish some kind of clearing house so that we can keep an orderly record of the statistics.

Your factfinding and careful recordkeeping joined with others to help refute some of the incredible discrepancies that have been submitted in the mayor's and police commissioner's testimonies to this subcommittee, we congratulate you for it, for your inspiring testimony, and for your unswerving dedication to see that black and Latin people, as a matter of fact all people here in this city, are rid of this incredible oppression that is being visited in what appears to me to be a systematic manner, and that is being condoned by a municipal leadership who are not in the police department.

You know this is not just the police department. There is something else wrong besides the police department as this hearing unfolds itself in these incredibly moving cases, cases that would destroy any rational person's belief in a democratic form of government, cases that belie the fact that we are not down south but up south.

The system here makes me wonder where I am. This is the New York that I have come to and visited and worked with and enjoyed year after year for so very long and now we hear this underside, this hidden part of New York—that only through the vigilance of you here who have forced this committee to bring itself here as a Federal presence to join with you in this struggle, that we are now beginning to unfold to the world what is really going on and what the life of so many black people is like in trying to merely survive in the largest city here in this country.

So you have my gratitude, you have my pledge that our committee and its efforts as a federally-constituted panel will join in to rectify a situation that shames us all and it is a problem of all of us; no one, no black people or Latin people anywhere in America are going to be saved or free until we free ourselves in New York,

in Mississippi, in the West. The problem is the same and what we have uncovered is a cancer that goes to the heart of this frail and fragile American system.

We are all in your debt, sir.

Reverend DAUGHTRY. Thank you, Mr. Chairman.

Mr. RANGEL. Mr. Chairman, I want to join with you in thanking the Reverend Daughtry for the patience that he has had over the years and the hard work and documentation that you and your great organization have done for these hearings.

You know, it has been absolutely surprising how, as you pointed out so eloquently, how in the past couple of weeks nobody has asked about the substance of the hearings, about the victims of the hearings, and yet we read in the papers about the atrocities that are being committed in South Africa and certainly we hear what is happening in some parts of the South.

It would appear to me that we can be proud of those of us who serve in government if we didn't have to rely on private christian organizations to bring victims of acts that have been committed by public officials to have to take them to such an institution. But I do hope that the media that has spent so much time in analyzing the political motivations of some of us, spent so much time describing the size of the congressional hall, whether it is too small or whether it is too big, might take a look at some of the testimony that was received today, and might think about ways of trying to bring some solutions, some answers to those problems, rather than spending the time in the editorials and in the stories talking about the personalities.

It seems to me that you and other witnesses have done a great job in saying that you are screaming to be heard, you are screaming for equity, you are screaming for justice, and I can't see how any fair-minded person in the city and State of New York would think that it would be unfair to the members of the New York City Police Department to have honest, sincere people review their conduct as they deal with other citizens of this great city.

So you brought your facts before the committee, and certainly a record has been made by the chairman and the subcommittee, as well as the Judiciary Committee. I only hope that the people in the City of New York will be responding in the same way. I thank you for your testimony.

Mr. CONYERS. Congressman Owens.

Mr. OWENS. I think most of us are not at all surprised at all at the statement made by Reverend Daughtry. Reverend, what you have done today shows a wider audience that not only is the Black United Front on the cutting edge, as militant as necessary, but that you are also doing a thorough job of documenting and researching this problem. You have followed it from the very beginning, and have made every effort to take a conciliatory approach with Mayor Koch and other city leaders that has fallen on deaf ears.

If there is anybody who has acted responsibly in this whole matter, it has been the Black United Front. I think you are to be commended for that and that should be shown in the record.

Reverend DAUGHTRY. Thank you. You should know because you were on the bridge with us when the horses came down upon us, so we appreciate your comments.

Mr. CONYERS. Congressman Towns.

Mr. TOWNS. Thank you, Mr. Chairman.

I would like to join my colleagues in saying to Rev. Herbert Daughtry and the members of the Black United Front, that we appreciate your bringing to our attention the seriousness of the situation. After hearing your testimony, I think the 1 percent that you talked about now should think differently. Because as you indicated this situation is very serious, and we must address it immediately.

I think you have made some very sensible recommendations and we will do whatever we possibly can from this committee, I am certain, to make certain that some of these things are changed. So I appreciate the effort and time you put into this hearing, obviously, we need more organizations around like yours that will spend the time to document information on police brutality problems. The fact that your organization is not funded is further testament to the credibility of your work in this area.

Rev. DAUGHTRY. Thank you.

Mr. MADDOX. Congressman Conyers, before we submit Reverend Daughtry's statement to you, we ask that you have one more testimony from a victim who has had a hardship coming here today, and this will be the conclusion of our presentation.

TESTIMONY OF ERNEST WRIGHT

Mr. WRIGHT. Good afternoon, Congressman Conyers and subcommittee. My name is Ernest Wright. I live in Brooklyn. I am married and father of five.

On June 5th, my wife either jumped or fell from the sixth floor of my apartment building. When I was notified, I rushed downstairs. My wife was still alive. The paramedics came and they were working on her. The first two policepersons on the scene were female, and they were very professional.

While they were working on my wife, I was sitting to the side when a sergeant came, and one of the female officers was filling in a report. She said to him, as a matter of fact, that there is her husband there. The first words out of this man's mouth was, "He probably pushed her." I started walking toward this man and I called him an insensitive bastard. That is what I called him. He kicked me in the stomach and, at the same time, I think it was his driver, he had a baseball cap on, got me in the infamous choke hold and, at the same time, had his billy club out.

The only reason why my brains wasn't scrambled on the spot was the fact that a friend and neighbor of mine, who is also a police officer, saw it going down and he told them, "It is not going down this way."

I now have two children at home, one a 9-year-old and, ironically, one a 21-year-old female who will become a transit police some time in January. This sergeant was nothing. He is nothing. But he represents the police of this city, and I am telling you this man—something has got to be done to this man. I want something done to him.

They called me and told me to come and see them a certain time, and if that wasn't fast enough, to come at my own convenience. I went down there, and guess who is investigating this; another sergeant who, when he interviewed me, I could see he didn't believe a ——— thing I said. He didn't believe nothing I said.

Then he tells me he is the investigative officer. I have submitted my witnesses. He says, "I want you to canvass the neighborhood and come up with more witnesses." That is his job. I am not a policeman. There is plenty of them out there, and they will tell a story. I have enough witnesses, but this thing will never be heard. I know it will never be heard. So at least I can tell the world what is going on here. [Applause.]

What I really want to do is get satisfaction, but I can't because I have children to take care of. But the one thing I wished on him was the same horror be visited on his family that was visited on mine. Thank you.

Mr. CONYERS. I want to thank you again, Reverend Daughtry, and all your associates and your organization for their great help.

Reverend DAUGHTRY. We want to submit these documents for the record.

Mr. CONYERS. Without objection, the records and additional information will be incorporated in the record at this point.

[The information follows:]

RECOMMENDATIONS

1. The immediate creation of experimental precincts in two boroughs (Manhattan and Brooklyn) where the police officers reflect the racial composition of those precincts. The precincts should be under the command of a Black or Hispanic officer.
2. The elevation of Blacks and Hispanics into supervisory and policymaking role that reflects the percentage of minorities in the general population of New York. In order to rectify past effects of discrimination, only Blacks and Hispanics should be promoted until minorities represent 10% of officers at all levels of the department.
3. The creation of an independent civilian review board as a part of the executive branch. Board members of the Civilian Review Board should be elected and have power to grant immunity and to subpoena witnesses.
4. Emphasis of the New York City Police Department should be on crime prevention rather than arrest-making.
5. A detailed explanation be made public of all funds received and expended by the New York City Police Department, e.g., revenue sharing funds, Law Enforcement Assistance Administration funds, etc.
6. The immediate destruction of political files compiled by the Bureau of Special Service (BSSS) on Black and Hispanic political activities.
7. Expansion of the role and function of Precinct Councils into a Citizen's Policy Advisory Board to consult with the Commissioner of Police on a regular basis.
8. The Commission of an independent study group by the City Council to analyze the possibility of decentralizing the New York City Police Department. This study group should reflect the racial composition of the city and should conduct intensive discussion with members of the Black and Hispanic communities.
9. The immediate development of an affirmative action program (employment and services) with an acceptable timetable to rectify all effects of past discrimination against Black and Hispanic people, e.g., police brutality, inadequate services, employment discrimination, etc.
10. The assignment of police officers to areas in which they reside. In order to carry out this recommendation, officers would have to live within the city limits.
11. The establishment of a community approved Ethnic Studies course and Human Relations course to help sensitize officers to the city's cultural diversities.
12. The assignment of all newly assigned officers to predominately Black and Puerto Rican precincts to a community approved orientation program.
13. The immediate administration of psychological and/or psychiatric tests for all members of the Department to establish and evaluate their emotional and mental stability and fitness to serve the public.

NATIONAL BLACK UNITED FRONT

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Rev. Herbert Daughtry
 Chairperson

Secretary

POLICE BRUTALITY INVESTIGATION UNIT CITIZENS KILLED BY NYPD 1979 TO 1983

Elaine Dillahunt Treasurer	1. PETER FUNCHES	35	BRONX	1979	JUNE
	2. BENILLA NICHOLAS	30	NEW YORK	1979	JUNE
	3. EMERY ROBINSON	18	BRONX	1979	JULY
	4. LOUIS RODRIQUES	?	BRONX	1979	JULY
Western Region Coordinator	ARTURO REYES	17	BRONX	1979	AUGUST
Ron Herndon Portland Black United Front P.O. Box 3878 Portland, Oregon 97208 (503) 289-3388	5. ELIZABETH MANGUM	35	BROOKLYN	1979	AUGUST
	7. JAMES McREE	48	BROOKLYN	1979	SEPTEMBER
	8. LOUIS BAEZ	29	BROOKLYN	1979	AUGUST
	9. HERBERT JOHNSON	35	BROOKLYN	1979	SEPTEMBER
	10. DARRYL WALKER	17	ORANGE, N.J.	1979	OCTOBER
Southern Region Coordinator Sabata Akili P.O. Box 11157 Atlanta, Georgia 30310 (404) 753-5228	11. JOHN DAVIS JR.	28	QUEENS	1979	NOVEMBER
	12. WILLIE HARPER	?	BROOKLYN	1979	DECEMBER
	13. CURTIS GARVEY	?	BROOKLYN	1979	DECEMBER
	14. JAY PARKER	15	QUEENS	1980	FEBRUARY
	15. ABDUL HADI	26	BRONX	1980	FEBRUARY
Mid-west Region Coordinator Conrad Worrell 8714 S. Harper Chicago, Illinois 60619 (312) 268-7500	16. SONNY EVANS	?	BROOKLYN	1980	APRIL
	17. EDWARD QUINONEZ	20	BROOKLYN	1980	APRIL
	18. RALPH TARANTINO	28	BROOKLYN	1980	AUGUST
	19. EDWARD LEWIS	18	BROOKLYN	1980	OCTOBER
	20. KENNETH GAMBLE	19	BROOKLYN	1980	OCTOBER
Eastern Region Coordinator Min. Michael Amon-Ra 415 Atlantic Avenue Brooklyn, New York 11212 (212) 625-8292	21. MICHAEL FURSE	16	BROOKLYN	1980	JUNE
	22. MARMAN CHARLES	33	BROOKLYN	1980	
	23. JOEY CHINO MANDEZ	17	BRONX	1981	FEBRUARY
	24. MANUEL HERNANDEZ	?	BROOKLYN	1981	FEBRUARY
Jitu Weusi National Coordinator	25. ROBERT GREEN	42	BRONX	1981	APRIL
	26. SYLVESTER ELLIS	17	BROOKLYN	1981	APRIL
	27. JOSEPH WOLANSKI	25	BROOKLYN	1981	FEBRUARY
	28. EDWARD FONESCA	21	LONG ISLAND	1981	MARCH
	29. ROBERT ENDERSBEE	22	BRONX	1981	MARCH
	30. DONALD WRIGHT	19	BRONX	1981	JANUARY
	31. JOSEPH FITZPATRICK	18	?	1981	?
	32. GARY BECTON	26	BROOKLYN	1981	SEPTEMBER
	33. MACKENZIE DESIR	14	BROOKLYN	1981	SEPTEMBER
	34. BOARERCES GOMEZ	18	?	1981	JUNE
	35. RICHARD SIRIGNANO	?	QUEENS	1982	JULY

Forward Together - BACKWARD NEVER !

NATIONAL BLACK UNITED FRONT

Mailing Address - 415 Atlantic Avenue
 Brooklyn, New York 11217
 (212) 596-1991 625-8292 638-0811



Rev Herbert Daughtly
 Chairperson

Secretary

POLICE BRUTALITY INVESTIGATION UNIT
 CITIZENS KILLED BY NYPD 1979 to 1983

Elaine Dillahunt	36	JOSE RODRIGUEZ	16	STATEN ISLAND	1981	?
Treasurer	37	ALFREDO De JESUS	20	BROOKLYN	1982	NOVEMBER
	38	JUAN RUIZ	32	?	1982	NOVEMBER
	39	HENRY WOODLEY	23	BROOKLYN	1983	JANUARY
Western Region Coordinator	40	MARTIN CIANCY JR	18	CORAM	1983	?
Ron Harndon	41	CLARENCE JENKINS	53	BRONX	1983	FEBRUARY
Portland Black United Front	42	ANTHONY WRIGHT	20	HARLEM, N. Y.	1983	MARCH
P O Box 2678	43	LARRY DAWES	20	BROOKLYN	1983	MARCH
Portland, Oregon 97208						
(503) 289-3866						

Southern Region Coordinator
 Sababa ALIM
 P O Box 11187
 Atlanta, Georgia 30310
 (404) 753-5228

Midwest Region Coordinator
 Conrad Worms
 8714 S Harper
 Chicago, Illinois 60619
 (312) 268-7500

Eastern Region Coordinator
 Min. Michael Amon-Ra
 415 Atlantic Avenue
 Brooklyn, New York 11217
 (212) 825-8292

Jitu Wausil
 National Coordinator

NATIONAL BLACK UNITED FRONT
 INVESTIGATION UNIT/LEGAL

Samuel Walker

Forward Together - BACKWARD NEVER !

BLACKS AND HISPANICS KILLED BY N.Y.P.D. JUNE 1979 to MARCH 1983

1.	Peter Funches	35	Bronx	1979, June
2.	Benilla Nicholas	30	New Rochelle	1979, June
3.	Emery Robinson	18	Bronx	1979, July
4.	Louis Rodrigues	?	Bronx	1979, July
5.	Ariuro Reyes	17	Bronx	1979, August
6.	Elizabeth Mangum	35	Brooklyn	1979, August
7.	James McRee	48	Brooklyn	1979, September
8.	Louis Baez	29	Brooklyn	1979, August
9.	Herbert Johnson	35	Brooklyn	1979, September
10.	Darryl Walker	17	Orange, N.J.	1979, October
11.	John Davis, Jr.	28	Queens	1979, November
12.	Willie Harper	?	Brooklyn	1979, December
13.	Curtis Garvey	?	Brooklyn	1979, December
14.	Jay Parker	?	Queens	1980, February
15.	Abdul Hadd	26	Bronx	1980, February
16.	Sonny Evans	?	Brooklyn	1980, April
17.	Edward Quinonez	20	Brooklyn	1980, April
18.	Ralph Tarantino	28	Brooklyn	1980, August
19.	Edward Lewis	18	Brooklyn	1980, October
20.	Kenneth Gamble	19	Brooklyn	1980, October
21.	Michael Furse	16	Brooklyn	1980, June
22.	Marman Charles	33	Brooklyn	1980
23.	Joey Chino Mandez	17	Bronx	1981, February
24.	Manuel Hernandez	?	Brooklyn	1981, February
25.	Robert Green	42	Bronx	1981, April
26.	Sylvester Ellis	17	Brooklyn	1981, April
27.	Joseph Wolanski*	25	Brooklyn	1981, February
28.	Edward Fonesca*	21	Long Island	1981 March
29.	Robert Enderbee*	22	Bronx	1981, March
30.	Donald Wright	19	Bronx	1981, January
31.	Joseph Fitzpatrick	18		1981
32.	Gary Becton	26	Brooklyn	1981, September
33.	Mackenzie Desir	14	Brooklyn	1981, September
34.	Boaerger Gomez	18		1981, June
35.	Richard Sirignano		Queens	July 3, 1982
36.	Jose Rodriguez	16	Staten Island	1981
37.	Alfredo DeJesus	20	Brooklyn	November 1, 1982
38.	Juan Ruiz	32		November 31, 1982
39.	Henry Woodley	23	Brooklyn	January 9, 1983
40.	Patrick Mason	5	Stanton Ca.	March, 1983
41.	Martin Clancy Jr.	18	Coram, L. I.	1983
42.	Clarence Jenkins	53	Bronx	February 21, 1983
43.	Anthony Wright	20	Harlem, N.Y.	March 1, 1983
44.	Larry Dawes	20	Brooklyn	March 15, 1983

FROM 1957 TO 1983 OVER 42 KILLINGS BY THE N.Y.P.D.

OVER A 1500% INCREASE

The period of the great depression in the 30's and immediately following World War II (1946) unleashed an epidemic of racist violence in America that prompted William L. Patterson and other civil rights activists of the day to publish the historic document "We Charge Genocide" which enumerates the various acts of racist violence against Blacks over a 20 year period.

From Miami to Michigan, from New York to California, tensions have risen and protests waged as police officers have killed Blacks with impunity. These killings throughout the nation, has clearly indicated that policemen have a mandate to shoot-to-kill Black citizens and don't have to worry about being accountable for their action.

Rev. Herbert Daughtry

After Beating



Comments from
Police Brutality Investigation Unit Chairman

Because of the seriousness of the problem and the widespread concern that exist in the Black and Hispanic community, it is belatedly coming to the attention of the public at large that many more people are killed by the police than there are police killed in the line of duty, and that a sizeable number of the citizen deaths at the hands of the police are neither legally nor morally justified. Although in theory police regulations covering the right of the officer to use deadly force are more limited than the criminal law, in actuality there is little indication that the great majority of departments stringently enforce those rules. In practice, there is overwhelming evidence that the system, including police, prosecutors and courts, functions to protect police, prosecutors and courts, functions to protect police officers who have killed citizens. Moreover, there is strong evidence to indicate that many of these killings and their legal justification are the result of racism.

In addition to the police investigation of a homicide committed by a police officer, the official language used in describing such incidents to the news media is intended to imply justification and necessity. The wording, "deadly force" is used in such a context that it is interpreted as being legitimately necessary. By contrast, the killing of a police officer is referred to as "violence" or "murder" and therefore illegal. The funeral services of the officer receive full

media coverage with special attention directed to the "grieving widow", or the "fatherless children," but seldom does the dead citizen or his family, even in situations where it is determined that the citizen had committed no offense, receive the same attention from public officials, the police or the news media.

An additional factor which tends to promote public acceptance of killings by police officers is that responsible officials such as police chiefs, coroners, prosecutors, judges, etc. deliberately mislead the public by their statements and actions involving such investigations. One of the most commonly used tactics of the prosecutor when faced with a situation where there are demands for action following a questionable killing by a police officer is to submit the case to a grand jury.

The great majority of such hearings result in the grand jury refusing to indict the officer. The prosecutor is then "off the hook." He can take the public position that he carried out his sworn duty and presented the case to the grand jury and that they ruled against him by their actions. The public does not know, however, what evidence and what witnesses the prosecutor put before the grand jury in presenting his case. When pressed as to these details, the prosecutor/district attorney is prone to point out that by law jury proceedings are secret, and that as an officer of the

court he is obligated to respect that secrecy and therefore cannot comment on any of the specifics of the case.

This system, which provides an institutional escape route for both police and prosecutor, has a well documented record of non-action. The prosecutor, in defending his presentation of the case to the grand jury, stated, "When a policeman comes in and swears on a Bible, you're going to believe him. You can't abuse the trust in him."

There has been a recent out cry for the return of the death penalty in New York by such Politicians as Mayor Koch and Queens D.A. Santucci, dispute proof that it serves no deterrent to crime. Numerous studies fail to support the myth that our murder of the defendant prevents other murders. Governor Carey has repeatedly vetoed the bill for the death penalty stating "We cannot foster respect for human life while giving the state the license to destroy it." We Blacks and Latinos should not and will not support the efforts of any Legislative body seeking to legalize their rights to kill and destroy us. In this city, where 90% of those incarcerated are Black and Latinos. The death penalty is inhumane and serves no deterrent to further murder, serves no true revenge and is not conducive to any form of rehabilitation.

Continued on page 11

Publisher's Statement...

In an effort to focus mass public attention in the African community to acts of police harassment and brutality, it is the hope of PBIU that the community will come forward and make "public servants" (POLICE) accountable to the people they *allegedly* represent.

Part of the problem of police brutality and harassment in the African community seems to stem from our "powerlessness" and in many cases our acceptance of such a role.

African-Americans contribute as much as any other national group to

supporting law-enforcement, but we are isolated when it comes to "individual" abuses of police authority.

Responsible community members should acquaint themselves with the successes or failures of their local precincts. They should know the administrators of the precincts (ranking officers).

Responsible community should monitor the function of police sponsored community services for youth, the elderly, etc. The tax dollars of the African-American community go in part

to public service, i.e., public transportation, institutions, officials, and law enforcement. The role of law enforcement is to protect and secure our homes, property, and our lives. It is foolish to blindly support any institution whose employees have shown continuous disregard for life and dignity as it relates to African-Americans.

Community groups such as blockwatchers, civic groups, etc. must come together, first and foremost in *your* community!

100-100000

100-100000

By Dave Walker

Hugh Carey, Governor
State of New York
Albany, New York

Dear Mr. Carey:

There have been many shootings and deaths of Black and Latino by the N.Y.P.D. between the years of 1973-1980. Many cases were considered "justified" by the courts as well as the Police Department, but just as many were questionable circumstances.

Among the questionable cases are the following:

last case: not shot - 2-10-80

1. Clifford Glover 10 yrs. old Killed 4/28/75
2. Claude Reese 14 yrs. old Killed 1975
3. Randy Evans 15 yrs. old Killed 11/27/76
4. Walter Williams 27 yrs. old Killed 2/14/77
5. Frank Thompson 18 yrs. old Killed 1977
6. Arthur Miller 35 yrs. old Killed 6/11/78
7. Peter Funches Killed 6/78
8. Nicholas Benilla Killed 6/78
9. Emory Robinson Killed 7/78
10. Louis Rodriguez Killed 7/78
11. Elizabeth Mangum Killed 8/79
12. James McRae Killed 8/79
13. Herbert Johnson Killed 9/79
14. Darryl Walker Killed 10/79
15. John Davis, Jr. Killed 11/79
16. William Harper Killed 12/79
17. Curtis Garvey Killed 12/79
18. Jay Parker Killed 2/80
19. Abdul Hadi Killed 2/80
20. Sonny Evans Killed 4/80
21. Edwin Quinones Killed 4/80-shot in the chest at distance of five (5) feet.
Killed 6/16/80-shot in the head and back.
Killed 8/79
22. Michael Furse
23. Luis Baez

The white officer is always acquitted and his murder labeled as "justified". According to Sgt. Hargrove, former President of the Guardian Association, there has never been a situation where a white officer has been convicted of the shooting of a Black or Latino in the courts. The white officer believes he will not be convicted of homicide of a Black or Latino in America. Inspector (Frank Herron of the Equal Opportunity Unit does not believe that cultural or environmental differences exist between the white officers and the community in which they serve, but do not live.) If inspector Herron's belief is true, then it would not be necessary for Mario Merola, the Bronx D.A. to feel that the trial of Officer Durkin was biased and prejudicial. It would not have been necessary to ask the Appellate Division to remove Justice Walsh from this controversial case, nor would Justice Walsh feel it necessary for the New York and Bronx Bar Associations or the Appellate Division to review the conviction of Durkin and the conviction of Walsh. How are we, Black or Latino, to deal with police officers who do not have police officers as their neighbors? How are we, Black or Latino, to deal with police officers who are not a constitutional threat to us, but not to incriminate themselves or their fellow officers who do not have used excessive force

against our brothers, sisters, parents or friends, causing death? This shows the value that whites place on the lives of Black, Latinos, and other minorities.

The chairman of the Civilian Complaint Review Board, William Johnson, maintains that there are "very few" complaints alleging misconduct by off-duty cops, but it is very obvious that the CCRB does not act when the complaint is from a minority. In a case reported to the CCRB months ago, there is still no notification concerning the finding by CCRB on its action. Yet when the complainant is white, CCRB worked swiftly to recommend that the offending officer be indicted. We feel that Mr. Johnson and the CCRB unit is not sympathetic to the rights of the Black and Latino community. We feel that the present CCRB should be dissolved, because of its ineffectuality and bias, and that it be replaced by a citizen review board.

We as Black and Latinos can not afford to have the integrity of our number by false, dumb white policemen and

Yours truly yours,
 Isaac Walker, Clerk
 N.Y.C. of the Black United Front

LIST OF POLICE BEATINGS

NAME OF VICTIM	DATE	DATE OF BEATING	PCT	AGE	SEX	ADDRESS	BOROUGH	OFFICERS	ATTORNEY	COURT-PART
Terry, Andre		1982	TA	23	M		Queens			
Thomas, Frank		1982	28	16	M		Manhattan			
Wells, Brian		1982	MAN NO	74	M		Bklyn			
Winnings, Lee		1983	28	32	M		Manhattan			
Wright, Ernest		1983	70	50	M		Bklyn			
Edwards, George		1983	105	33	M		Queens			
Harris, Yolande		1983	75	32	F		Harlem			
Humphill, James		1983	71	40	M		Bklyn			
Jenkins, Victor		1983	79	23	M		Bklyn			
Lopez, Cipriano		1983	7A	34	M		N.Y.			
Woodley, Rene		1983	25	20	F		N.Y.			
M ^{rs} Chan, Curtis		1983	79	17	M		Bklyn			
Taunton, Keith		1983	HA	19	M		Bklyn			
Johnson, David		1983	79	32	M		Bklyn			
Tutley, Willie		1983	103	46	M		Queens			
Pishchok, Norman		1983	113	26	M		Queens			
M ^{rs} Rae, Aileen C.		1983	67		F		Bklyn			
Woods, Kenneth		1983	28		M		Manhattan			
Russell, Harris		1983	78	17	M		Bklyn			
Rev. Ang, Daniel		19								

LIST OF POLICE BEATINGS

NAME O.	CRIME	DATE OF INCIDENT	PCT	AGE	SEX	ADDRESS	BEAT	OFFICERS	ATTORNEY	COURT-PART
William, Robert		1982	78	24	M		Bklyn			
Lopez, Tony		1982	112	31	M		Queens			
Robinson, Tom		1982		19	M		Bklyn			
Lopez, Norbert		1982		31	M		Bklyn			
Sprinkle, Tyrone		1982		16	M		Bklyn			
Fluyst, Donald		1982	81	25	M		Bklyn			
Shufford, James		1982	TA	20	M		Bklyn			
Owens, Elizabeth		1982	67	33	F		Bklyn			
Richardson, Vera		1982	79	15	M		Bklyn			
Green, Lailah		1982	75	30	F		Bklyn			
Johnsons, John		1982	28		M		Nyc			
Phillips, Francis		1982	67				Bklyn			
Grant, John		1982	77	42	MP		Bklyn			
Casper, Debra Harris		1982	HA	28	F		Bklyn			
Larde, Herbert Joe		1982	mid No.	31	M		Bklyn			
Mrs. Rachel Truitt		1982	71	22	M		Bklyn			
Morris, Grandlyn		1982	77	31	F		Bklyn			
Mansley, David		1982	84	30	M		Bklyn			
Riley, Edward		1982	77	25	M		Bklyn			
Lopez, Robert		1982	Ann	31	M		Bklyn			
Spurway, Peter		1982	113 103	35	M		Queens			

LIST OF POLICE BEATINGS

NAME	DATE	DATE OF INCIDENT	PCT	AGE	SEX	ADDRESS	BOROUGHS	OFFICERS	ATTORNEY	COURT-PART
Jones, Derrick		1981		18	M		Bklyn			
Harley, David		1981	77		M		Bklyn			
Hopkins, David		1981	71	22	F		Bklyn			
Devin, Cardinal		1981	77	48	M		Bklyn			
Johnson, Tom		1981	77	17	M		Bklyn			
Jenkins, George B.		1981	78	37	M		Bklyn			
King, Keith Gregory		1981	7A	18	M		Bklyn			
Kelman, Wilhelmina		1981	79		F		Bklyn			
Watts, Donald		1981	79		M		Bklyn			
Taylor, Sally		1981	DPD	17	F		Bklyn			
Zachry, Leonard		1981	67	22	M		Bklyn			
Johnson, Cheryl		1981	77	30	F		Bklyn			
Benton, Edmund		1981	77	18	M		Bklyn			
Phillips, Benjamin		1981	69	32	M		Bklyn			
Bennett, Richard		1981	34	40	M		Bklyn			
Green, Eddie		1981	79		M		Bklyn			
Benton, Edmund		1981	84	18	M		Bklyn			
Simmons, Rose		1981	42		F		Bronx			
Alexander, Ole		1981	78		F		Bklyn			
H. Russell, Stuart		1981	7	28	M		NYC			
Hopkins, Bernard		1981	71		M		Bklyn			

LIST OF POLICE BEATINGS

NAME	CASE #	DATE OF INCIDENT	PCT	AGE	SEX	AD. PAGE	BEATINGS	OFFICERS	ATTORNEY	COURT-CART
Day, Derek		1980	78		M		Bklyn			
Jones, Derrick		1980	67	59	M		Bklyn			
Richard, Lewis		1980	71	19	M		Bklyn			
Knight, Wayne		1980	TA	19	M		Bklyn			
Swain, Henry		1980	73	13	M		Bklyn			
M ^c Clubb, Samuel		1980			M		N.Y.C.			
Langley, Robert		1980	77	30	M		Jersey City			
Perce, Sam		1980	77	45	M		Bklyn			
Mason, Donald		1980	77	30	M		Bklyn			
Jones, Robert		1980	77	30	M		Bklyn			
Wright, Jimmy		1980	77	16	M		Bklyn			
Jones, Gregory		1980	84	17	M		Bklyn			
Ross, Barbara		1980		27	F		Bklyn			
Baraka, Annie										
Rosado, Stella		1982			F					
Wright, Loren		1982			F		Bklyn			
Thomas, Darryl					M		N.Y.C.			
Capt. Eric Lee				21	M					
Hester, Marsha		1981	50	23	F		Bronx			
Smith, Velma		1981	28	66	F		N.Y.C.			
Palmer, Alice		1981	TA 898	37	F		Bronx			

LIST OF POLICE BEATINGS

	CASE #	DATE OF INCIDENT	PCT	AC		PROPERTY	OFFICERS	ATTORNEY	COURT PART
Earley, Leon a		1970		38	F	N. Y. N.Y.			
King, Charles		1978	77 th	54	M	Bklyn			
Jones, Cleveland (Jama)		1978	77 th		M	N. Y. C.			
Shapman, Emma		1979			F	Bklyn			
Maynard, Daniel		1979	75 th	17	M	Bklyn			
Blair, Vera		1979	43 rd		F	Queens			
Murray, Dennis		1979	42		F	Queens			
Sider, Louis		1980	TA	16	M	Bklyn			
Hammond, Walter		1980	81		M	Bklyn			
Walter, Eric		1980	60	23	M	Bklyn			
Jones, Quincy		1980	77		F	Bklyn			
David, Martin		1980	69	19	M	Bklyn			
Burrill, Marvin		1980	77		M	Bklyn			
Evans and Marano		1980	77	55	F	Bklyn	(Quincy Jones)		
Foster, Dorothy		1980	77	55	F	Bklyn			
Hoke, Marsha		1980		25	F	Bronx			
Patterson, Lisa		1980		16	F	Bronx			
Smith, Lawrence		1980			F	Bronx			
Marshall, Melia		1980	25		M	Bronx			
Wynn, Derrick		1980	61	15	M	Bklyn			
Perry, Rodney		1980	79		M	Bklyn			

SHOOTINGS

NAME OF VICTIM	CASE #	DATE OF	AGE	SEX	RACE	ADDRESS	BOROUGH	OFFICE	AGENCY	COURT-PART	COURT HEARING	DATE & DISPOSITION OF CASE
Bonaville, Emilio		1983	59	M	20		Mantoloking					
Bonaville, Victor		1983	"	M	43		"					
Hou, Robert		1983					Bonon					
Polight, Eric		1982	67	M	16		Bklyn					
Wakefield, Joseph		1982	Emp	M	19		Bklyn					
Thornhill, Louis	article # 69	1982		M	31		Bklyn					
Jacobs, Jeffrey		1982	23	M	23		Queens					
Henry, Winston	article # 68	1982		M	19		Bklyn					
Diaz, Richard		1981	Sutter	M	17		Bklyn					
Stalman, John		1982	Emp	M	21		Bklyn					
Mugelbach, Thomas		1982	Emp	M	21		Bklyn					
Johnson, David		1981	State	M	35		Bklyn					
Callahan, Susan		1983	62	M	22		Queens					
Callahan, Philip		1982	Utica	M	30		Bklyn					
Lansery, Jeffrey		1982	Man	M	27		Bklyn					
Unidentified	article # 31	1981	Comm	M			Bklyn					
Unidentified	article # 25	1981		M	20		Mantoloking					
Dwight, New		1981		M	25		Queens					
Thompson, Samuel		1980		M	19		Bklyn					
Trachone, Peter		1983		M	25		Bonon					
Handler, John		1982	Island	M	20		Queens					

Shooting

NAME OF VICTIM	CASE #	DATE OF INCIDENT	DOB	AGE	SEX	ADDRESS	BOROUGH	OFFICER	ATTORNEY	COURT-PART	COURT HEARING	DATE & DISPOSITION OF CASE
Brechen, James		1981	75	21	M		Bklyn					
Wickel, Rudolph		1982		44	M		Bklyn					
Perry, Roland		1982		32	M		Brox					
Zamora, Pedro		1982	unavailable	22	M		Bklyn					
unidentified		1982		14	M		Bklyn					
Lopez Rodriguez		1983	HA		M		Brox					
Smith, Charles		1983	unavailable	30	M		Brox					
Jimmie, Modeste		1982	Bklyn		M		Bklyn					
Perez, Raymond		1982	HA	21	M		Manh					
Matas, Joseph		1982	HA	26	M		Manh					
Morgan, Anthony		1981	unavailable	25	M		Manh					
Roberts, Charles		1981	unavailable	73	M		Manh					
DeLeon, Gregory		1983	unavailable	26	M		Bklyn					
unidentified		1983	unavailable		M		Queens					
Wright, Reggie		1983	unavailable	21	M		Bklyn					
Withrow, Gary		1983	74	26	M		Manhatten					
Forte, Bill		1983	43rd	32	M		Brox					
Johnson, Gary		1983	unavailable	19	M		Brox					
Majera, Edward		1983	unavailable	18	M		Brox					
Luina, Jerry Luis		1983		35	M		Brox					
unavailable Smith, Patrick		1983	7A	22	M	Manhatten	Manhatten					

CASES FOR 1983

LIST OF POLICE KILLINGS

NAME OF VICTIM	CASE #	DATE OF INCIDENT	PCI	AGE	SEX	RACE	BOROUGH	OFFICERS	ATTORNEY	CHARGE	DATE OF 1st COURT HEARING	DATE & DISPOSITION OF CASE
Garbey, Aldo		1982		41	M		Bklyn					
Glen Nelson		1982		25	M		L.I.					
Thomas Marasa		1983		24	M		Queens					
Zina Cesiro		1981		23	M		BKlyn					
Identified		1982		20			Bklyn					
Shen, Kee		1981		25	M		Queens					
Anthony Hankman		1981		30	M		Queens					
Randolph Goodknecht		1982		22	M		Queens					
Steven Zedra		1982		25	M		Queens					
Nathan Prater		1983		29	M		Bronx					
Ernie Johnson		1983		22	M		Bronx					
Juan Rodriguez		1981			M							
Phillip Meathie		1981		31	M		Bklyn					
Mustafa Kebab		1982		27	M		Queens					
Ruth Alston		1981		39	F		Bronx					
William Harvey		1982		38	M		N. Y. C.					
Michael Fucci		1980		16	M		Bklyn					
Norman Charles		1980		33	M		Bklyn					
Joey Chino Manday		1981		17	M		Bronx					
Manuel Hernandez		1981			M		Bklyn					

CASES FOR 1983

LIST OF POLICE KILLINGS

NAME OF VICTIM	CASE #	DATE OF INCIDENT	PCT	AGE	SEX	RACE	BIRTHPLACE	OFFICERS	ATTORNEY	COURT	DATE OF 1st COURT HEARING	DATE & DISPOSITION OF CASE
Jose Rodriguez		1981		16			S.I.					
Alfredo De Jesus		1982		20			BKlyn					
Juan Ruiz		1982		32								
Henry Woodley		1983		23			BKlyn					
Martin (Lance) Jr		1983		18			Curam					
Clarence Jenkins		1983		33			Bronx					
Anthony Wright		1983		26			Haitian NY					
Larry Duurs		1985		20			BKlyn					
John Pastore Jr		1981		22			Manh					
Kenneth Thompson		1983		23			NY					
Richard Abba		1983		23			Juven					
Joseph Fitzpatrick		1981		18			L.I.					
Ruggero, Anthony		1982		25			S.I.					
Vito Aiello		1982		24			S.I.					
John Brabham		1977		22			BKlyn					
Stephen Sargent		1981		28			BKlyn					
Augustine Miniz		1981		18			BKlyn					
Anthony Montemurro		1981		28			BKlyn					
Emmanuel Perez		1981		14			S.I.					
William Collins		1981		29			L.I.					

CASES FOR 1983

LIST OF POLICE KILLINGS

NAME OF VICTIM	CASE #	DATE OF INCIDENT	PCT	AGE	SEX	ADDRESS	BOROUGH	OFFICERS	ATTORNEY	COURT-PART	DATE OF 1st COURT HEARING	DATE & DISPOSITION OF CASE
Robert Green		1981		42	M		Bronx					
Joseph Elia		1981		17	M		Bklyn					
Joseph Woland		1981		25	M		Bklyn					
Edward Fonseca		1981		22	M		Bronx					
Donald Wright		1981		19	M		Bronx					
Joseph Fitzpatrick		1981			M							
Harry Rector		1981		26	M		Bklyn					
Michael Dean		1981		14	M		Bklyn					
Boazey, James		1981		18	M							
Richard Deignan		1982		20	M							
Charles Lewis		1981		38	M		Bronx					
Mr. Fadden, James		1981		4	M		Bronx					
Merilyn Minnick		1980		39	M		Bronx					
Modulo, Domingo		1980		28	M		Bronx					
Richard John Alford		1981		49	M		Bronx					
Richard Lewis		1981		35	M		Bronx					
David Lewis		1982		26	M		Bronx					
Joseph James				27	M		Supervisory Unit by 400					
Robert James		1981		48	M		Bronx					
Letchman, Elvira		1982		35	M		Manhattan					

CASES FOR 1983

LIST OF POLICE KILLINGS

NAME OF VICTIM	CASE #	DATE OF INCIDENT	PCT	AGE	SEX	ADDRESS	BOROUGH	OFFICERS	ATTORNEY	COURT-CASE	DATE OF 1st COURT HEARING	DATE & DISPOSITION OF CASE
Peter Ferraro		1971		35			Bronx					
Genilla N. ...		1974		30			N.Y.					
Ernie Robinson		1973		18			Bronx					
Wesley Richards		1974		?			Bronx					
Timothy ...		1974		17			Bronx					
Elizabeth Mangione		1974		35			BKlyn					
James McLee		1971		48			BKlyn					
Miss B ...		1970		29			BKlyn					
Herbert Johnson		1970		35			BKlyn					
Justin ...		1974		17			N.J.					
John Davis Jr		1973		28			Queens					
Willie Harper		1974		?			BKlyn					
Curtis Garvey		1974		?			BKlyn					
Ray Park Jr		1980		15			Queens					
Abdul Hadi		1980		26			Bronx					
Senny Evans		1980		?			BKlyn					
Edward ...		1980		20			BKlyn					
Alph ...		1980		28			BKlyn					
Edward Lewis		1980		18			BKlyn					
Kenneth ...		1980		18			BKlyn					

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ONLY THE NEWS THAT'S FIT TO PRINT
FOR THE PEOPLE. BY THE PEOPLE. WITH THE PEOPLE.



★★★★★
FINAL

LOCAL LEADERS SPEAK OUT AGAINST RACISM, VIOLENCE

PAGE 6



TENACITY AND RESPECT TRIUMPH After a brutal and characteristically unjust beating at the hands of NYC police, Reverend Lee Johnson is shown here with his wife and child at the Mother's Day service at Brooklyn's Concord Baptist Church. Rev. Lee realizes, as do many Black men of purpose, the importance of paying respect and tribute to Black women and to continue to come back against all odds!

LOCAL LEADERS SPEAK OUT AGAINST RACISM, VIOLENCE

BY AVA MERRITT

In the past year, unprovoked acts of violence against Blacks, perpetrated by white citizens and police, have caused great concern among local religious, community, and political leaders in the Black Community.

The latest of these acts occurred on April 30 when, according to Reverend Lee Johnson, he was first apprehended by police outside of Sylvia's restaurant, a Harlem landmark. He was dragged out of his vehicle which he shared with two other friends, thrown into a police van, and repeatedly struck on the way to the police station, where upon arrival, he was again beaten by policemen.

Just days before that in the Bensonhurst section of Brooklyn, three Blacks coming from work, entered a neighborhood store and were confronted with racial slurs. As they left the store they were set upon with bricks and bottles, the result being all three men had to receive treatment at Coney Island Hospital for injuries. One of these victims had to be admitted.

What is the cause of these acts of violence being perpetrated upon Blacks? We asked a number of religious, community and political leaders for their reactions regarding the growing and unprovoked acts of police brutality and mob violence against Black citizens:

Mayor Koch:

Well, whatever violence is taking place in the city whether it's white against Black or Black against white or Black against Black or white against white, it has to be con-

demned. And, if it involves the element of racial violence than it has to be even more condemned. Now, from our point of view the way we handle it, or try to, whenever there is



Mayor Ed Koch

an incident involving racial violence, we make a special effort to apprehend the individuals involved, and then assure that the district attorneys and the courts are alerted to the fact that this is a case that must be given special attention so that in the event of a conviction the person is given the most stringent sentencing permissible under the law.

On Lee Johnson: Well, that is now being investigated by several agencies. The police department has the civilian police complaint board where the

complaint there is being pursued. There will be an investigation by the Human Rights Commission which I have requested them to make. That's under Chairman Isiah Robinson, and I don't know what the facts are. Just as it would be inappropriate, indeed improper, for me to assume in any case involving the alleged police brutality that the person making the complaint was making it up, it is just as inappropriate for me to assume that the cop was not doing his duty but engaging in a violation of the law, and I wouldn't make such an assumption in either case until there has been an investigation, which is now pending.

Do you think if violence against minorities is increasing, it would affect your re-election?

Well, let me say that I believe that Blacks and whites had at the top of

their agenda ending violence of any kind. And you know 76 percent of the victims of crime in the city of New York are minorities. And, overwhelmingly, the people who assault those victims also happen to be minorities. It doesn't make any difference as it relates to the law. Everybody is equal before the law. Whether you are a Black or white criminal, you have to be treated exactly the same. And whether you are a Black or white victim, you have to be treated exactly the same. So it's my job, irrespective of politics, and there will be some who will seek to use any matter in a political way. But irrespective of politics, it's my job to root out criminality as best I can. And, if you examine the situation over the last several years, there have been very few.

In fact, I don't know of any recent case other than the current one of

Reverend Johnson involving the police.

You should understand that I get lots of letters and I have not received letters as it relates to police brutality allegations in a number of years. From legislators I haven't received any, and they would be the first to get in touch with me, or from the public. Seven and half million people are out there. So I believe very few incidents, but one incident is too many if it occurs.

There's violence in every city. We had last year something like 180 murders. They were not racially motivated so far as we know. Obviously, we had a recent case, that of Turk's. And, there who happened is the police found seven alleged perpetrators and one of them was tried and convicted and given a sentence of 5-15 years, and a peditiously.

Continued on page

RACISM, VIOLENCE

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NEWS

You have to understand, there is a difference between murder and manslaughter—a difference in the standard of proof. Murder means willfully premeditated, intention to kill. The jury makes that determination, not you, and not me. And, I suspect that on the jury there were Black people, because almost every jury in Brooklyn has Black people on it. I just don't know, but I assume because that's what happens. I was not on that jury. And, a jury made that determination. Shall we quarrel with that jury? I don't know.

15 years. That's a long time isn't it? I happen, by the way, to be for the death penalty for murder. It's not true that he will be out in five years. If he's good he will be eligible for parole, and hopefully denied. I hope he serves his whole term. If he's good, it will be ten years. If he's anyway disruptive, then it will be 15 years. :



Lloyd Williams, Pres.
Uptown Chamber Of Commerce

LLOYD WILLIAMS, President Uptown Chamber Of Commerce:

Certainly the increased instances of violence against Blacks in this city is disturbing. I think it is a product of a number of factors; the political climate, and the political leadership or the lack of the same, which is coming forth from City Hall. In addition to that, I feel that it is directly attributed to the economic climate where unemployment is of such large proportions in all ethnic communities of New York, and therefore Blacks and Hispanics are conceived in negative and competitive terms.

Violence against the minority groups in America has always grown in direct proportion to unemployment and economic problems. Historically, it has always been the same. It has not always been against Blacks, but historically when there is tremendous unemployment and an economic crisis, violence increases against those

groups who have the least to offer economically, and who are seen to be competitors for jobs.

The solution...For the Federal government, or more importantly for President Reagan to be more sensitive to the problems created by unemployment which in Black and Hispanic communities is approximately a minimum 35 percent across the board. And, for there to be some massive programs to revitalize the cities which would employ minorities in greater numbers.

In addition, there is a need for the unions to drop some of their racist policies and start admitting Black and Hispanic people into the unions in greater numbers, or at least in numbers reflective of their representation in New York City, which I might add is 50 percent.

There is also a need for Black and Hispanic communities to be more protective of their own people, and more supportive, when they are approached negatively or attacked.

Lastly, I think there is a need for a better climate to be coming forth from City Hall that says that violence against minorities will not be tolerated, nor will excuses be made for these instances of violence.

For the Mayor not to know the type of alleged violence perpetrated against that minister happens against Black people every day, in unlimited numbers, in New York City, and does not make the front page of the newspapers, is incredible for me to believe. :



Rev. Lee Johnson

Rev. Lee Johnson, victim of police brutality:

In regard to the question of present violence against minority people, and Black people in particular, it is perpetrated primarily because of the color of people's skin. Black people have suffered a great deal and I think it results from a sense of disrespect for people of color. There are people who have not yet found out that Black people are human beings

and they have a sense of integrity, and a sense of identity that must be respected.

In regard to what can be done about it, the first thing should be to protest against it, and protest (non-violent), and the second is that political figures should begin to focus their attention on this issue, and use their political power to bring about change so that all citizens can feel a sense of equality within this city.

We are facing a situation of racial warfare. First we should begin to consciously be aware of our numbers as a people within this United States of America. By that I mean we must look at our numbers nationally, in the state, and local areas. Also, we should check what I consider our artillery, meaning our mental artillery since we are engaged in warfare that is racial, we must begin to strengthen our minds. I think we should prepare ourselves physically, that is

to be clear of all intoxicating beverages, and drugs. I think that we should be spiritually tuned, and should look at our financial situation. I also believe we should take a look at our power source, our family units, churches, political associations, and our fraternal brother-and-sisterhoods within this country, to begin to come together and bring about the social change that is needed where Black people can walk together in this country, with their heads up high and know we are a people that cannot be turned back, or around, for we have rights that should not be violated and we should demand freedom, equality and justice.

When I first came to this city, I became a victim of crime, and then I became a victim of police brutality, and so New York has more or less brought to my attention that what I had thought had dissipated is not really a sense of change, but simply a sliding under the rug of truth. Now that the persons who are coming over to do the cleaning up that I thought had been done, they have found some dirt under the rug. But this time the cleaners are of a new generation, and this is a new day and a new time, and we cannot afford to digress but to progress. We can do it. We have more young people who are more or less more educated today than ever before. We have more of an awareness of how important it is to take a look back to see where we came from, a present look at where we are, so we will know where we're going. □

Elizabeth Holtzman
Brooklyn District Attorney

**Elizabeth Holtzman,
Brooklyn District
Attorney**

(Statement given by Neil Strella)

I'm very disturbed at any kind of racially motivated act that occurs in Brooklyn. And one such incident is one too many.

My office will vigorously prosecute persons criminally responsible for any such act, because we must make it plain, that we must not, and will not, tolerate such attacks.



Rev. Al Sharpton

Rev. Al Sharpton:

I think first of all that the climate has been set for violence perpetrated against Blacks by the activities of the local and national administration. They have gone on visible record, trying to eliminate all kinds of Black and Latino people from the chancellor issue that we fought, all the way to the death of Affirmative Action in the private sector.

So, what it has caused is for whites on a lower income, and grass roots level to resent the presence of Black people since they have shown that it is not a national and city process to eliminate the presence of Black power. When you have a white structure decision, it is only expressed more violently by those that we used to consider white trash.

Because they do not have the political power to dismiss us, they use brute force. The real culprits are those who sit in the city halls, state houses, and white house, who have

created a furor against Black and Latino people that is being expressed by their grass roots people with violent situations.

The pressure has to be put on those city, state, and federal houses, that they must use maximum legal penalties. They must not let a Bova walk away with just a few years. They must maximize what they can do, because not only are they committing a crime against a person, but a crime against a people, and this is a crime that should be given the highest penalty that the law can prescribe.

We must also organize ourselves, to defend ourselves. □



Congressman Ed Towns

Congressman Ed Towns: *I think that the violence being perpetrated against Blacks, first of all is wrong.*

We need to establish a race relations council in the city of New York, which would include every ethnic group, and also the major organizations which are responsible for human, and civil rights should be a part of that. I think that if we would do that, we would be able to understand each other a lot better, and maybe be able to solve some of our problems. However, I am also a firm believer that our problems stem from the lack of jobs, and lack of training, that we are facing in our city today.

Out of this council I think would come a greater understanding of one's cultural and religious background, and hope that it would make it possible for us to live in peace and tranquility together. []



Rev. Calvin Butts

Rev. Calvin Butts: *I think the recent violence in this city gives us further evidence that New York is a much more polarized*

city (racially), than many of us believe. It further demonstrates that the leadership of this city has been unable to unite this city.

We need to encourage greater participation in the electoral process, so that we can change the political climate, and unite our city.

City Comptroller
J. Harrison Goldin

CITY COMPTROLLER, J. HARRISON GOLDIN:

The acts of violence against Blacks are outrageous. I condemn them and I deplore them as I think any decent and fair minded citizen of New York would. And, while we need more police vigilance, and that's why I fought for more funding for cops in our budget, we cannot put a policeman on every corner.

What we need, therefore, is much improved inter-group relations, and leadership at the highest levels of government that encourages cooperation and friendship among different peoples, that speaks out strongly against racism; and that stands for brotherhood and harmony. []



Rev. Gardner C. Taylor

Rev. Gardner C. Taylor: *I believe that there is a developing intensity of violence against Black people. This city is rapidly becoming the most bigoted city in America, north or south.*

The mayor, political, and religious leaders are all called upon to hold up again, before this city, a vision of what it should be.

The solution of this matter lies with Black people in the use of the strength of our numbers, through the ballot and economics. We have the answer, it is a question of whether or not we use it. □

RACISM, VIOLENCE

Continued from page 11



Rev. Pastor Paul Johnson

Rev. Pastor Paul Johnson: *Well, number one, there is a lack of leadership from the national level. From the White House down, they should speak out and condemn racism. Racism now has become rampant in every city, every village, every state, in every hamlet in New York City, and throughout this nation. The President, Mr. Reagan, has refused to come out and speak on moral issues and to lend his office, and the prestige of his office, to what is right.*

Race polarization in America now is as high if not higher than it was in 1865.

It's for Blacks particularly to mass themselves and register to vote, and the vote puts the fear of God into those who are in power. You must remember the whites who are in power are professional people. Eighty percent of our state legislatures throughout this nation are either lawyers, accountants, or have professional degrees. They make laws and perpetrate laws on the basis of their level, and those who are not as sophisticated suffer from these laws. Until we get the vote to let them know we are here they will have little or no regard for us as human beings.

White America seems to want to have genocide in the Black communities throughout this land and country.

Blacks in particular, must single out these Black opportunists, and get someone (a Black) who is sensitive to the Black needs, because there are many of us Blacks who are not sensitive to Black needs.

In closing, it is apparent that minority politicians will use all of these incidents as rallying points to unseat Mayor Koch in the 1985 mayoral elections. Many minority organizations are conducting massive voter registration drives. And, local minority politicians have been meeting to discuss a coalition of minority organizations that would combine their resources in backing the strongest possible minority candidate to campaign against Mayor Koch in the 1985 elections. □

Ada Merrill

VICTIM'S ACCOUNT OF POLICE BRUTALITY

Last week *Big Red* reported an incident of police brutality in Harlem, against Rev. Lee Johnson who is in the city attending the Union Theological Seminary and serving at Brooklyn's Concord Baptist Church.

After his release from law enforcement officials, Rev. Johnson gave the following account of his incident:

Approximately 7:33 p.m. Saturday, April 30, 1983, I was stopped by a police van on Lenox Avenue, between 126th & 127th Streets. My vehicle was occupied by three Black males, Roderick Mitchell, a business analyst in Manhattan, and a Columbia University, and UCLA alumnus; Al Bradley of Los Angeles, also a UCLA alumnus; and myself, a UCLA alumnus, Union Theological Seminary graduate student, and a Baptist minister of The Concord Baptist Church in Brooklyn.

Upon being stopped, my vehicle was approached by a white male police officer, Gary Messina. This officer demanded of me my driver's license, vehicle registration, and insurance card. Upon his demand I indicated to Officer Messina that I had two of the items, but needed to open the door of my vehicle to get to them for I was unable to get to my wallet. Officer Messina stated that I wasn't permitted to open the door to get to them. At which time he locked the door of my vehicle. I then asked Officer Messina why I was not permitted to open the door to get to my wallet. He stated in a very obtuse and offensive language "Goddamit because I said so." I replied by asking the officer what I had done, he did not reply to this question, however, he demanded of me with the same foulness, "Just give me your goddam license and registration."

At this time, I stated to Officer Messina that it seemed as though he had not been an officer for a long period of time for he seemed not to know how to approach citizens, for I was a clergyman, and maybe he did not realize it. After this statement Officer Messina aggressively unlocked the door of my vehicle, opened it and attempted to hit me. This action by the officer caused me to retreat to the center of my vehicle, to prevent him from striking me in the face. Unable to reach my face, Officer Messina grabbed my left leg and began pulling me from the vehicle, unable to do so, he took out his police flashlight and began hitting me on my left leg several times on the outer knee joint in a fiery madness.

By this time my left leg was bent as Officer Messina grabbed and twisted it pulling me toward the rear of

the vehicle. I was then pulled away from the vehicle, hit by Officer Joseph Teller with a night stick, while being handcuffed and slammed between the open door and the body of the vehicle. While being turned toward the police van I noticed that Officer Teller had removed his pistol and was pointing it toward the bystanders in the area. By this time several police were on the scene. I was pulled into the police van and told that I was under arrest, never receiving any Miranda rights. While handcuffed I was taken away from the scene.

In route to the 28th precinct I stated to Officer Teller, that his conscience was going to kill him because he had made a mistake hitting the wrong person for the wrong reason. Officer Teller asked me if I was trying to threaten him, then removed one of his hands from the steering wheel and punched me in the left side of my face, while I was handcuffed.

We approached the station, and Officer Teller left the vehicle from the driver's side of the van, appearing to be waiting for Officer Messina. The officer, who was in the passenger seat, who had remained silent during this trip to the station, was asked by me, what in the world was wrong with Teller. Maybe I can talk with you. You seem to be the only one calm around here. He replied, "I was not there." I said to him, maybe you can tell me what I've done to merit this. Upon hearing this statement, Officer Teller intervened and replied, "All you had to do was get out of the car and give him your goddam license and registration." I said to the Officer, whose name I do not know, that it was exactly what I wanted to do initially.

About that time another van pulled up with my friend Roderick Mitchell in it, then I was taken into the 28th precinct to the front desk. Upon standing at the desk one of the night officers placed in front of me an ink pen. This ink pen had the symbol of the Christian cross on it. The officer, while placing this pen in front of me stated in a mock fashion, "I don't believe in that shit anyway, Reverend." I stated to him that I was not interested in whether he believed anything, all I wanted was that someone would act like a mature man.

After this statement Officer Teller replied, "You don't pay no taxes anyway." At this time I was taken away from the desk into a stairwell by Officers Messiner and Teller, the arresting officers.

In the stairwell, I was beaten. Officer Messina took his thumb and finger and closed my throat while Officer Teller commenced beating me on the distal ends of

my face and saying, "Nigger we're going to teach you a lesson." This statement was made several times, each time I was hit in the face, while I was handcuffed. Officer Messina's thumb and finger were still tightly gripped around my throat causing my head to hit a concrete wall. During this beating in the stairwell, I was being brought up a flight of stairs. At the same time, Officer Messina continued to apply pressure closing my throat as they moved me up the stairs.

We finally reached a room, that had several tables, one desk and a few chairs, as well as a cell. I was placed in this cell handcuffed, and my throat released. Yet Officer Teller, after Officer Messina had left the cell, commenced punching me in the stomach and head violently saying, "You scumbag, I'm going to teach you a lesson nigger." Then he punched me in my face and stomach several times causing me to bend over. I was then pushed to the bench in the cell. Officer Teller was not satisfied because he began kicking me in the genital area and on the shins of my leg and said, "When you open your mouth nigger you had better say Sir." Then he left the cell. I was still conscious, and could hear the groans of my friend as they brought him up the stairs. They told him that he "had better keep his goddam mouth closed, and not say anything to me." We both remained quiet as they talked among themselves.

I could hear one of the officers saying that the weather had caused the Blacks to become uneasy. During this time I asked my friend if he was ok. It was a moment when we were left alone, and I knelt in prayer. Upon their return, the officers began questioning us for information. We were asked our birthdate, place of birth, and whether we indulged in any drugs. After the information was given, I was taken by Officer Messina out of the cell, and, again, he took his thumb and finger and placed them around my throat and asked me if I was ready to cooperate. After he released my throat I asked how he could expect anyone to cooperate when he has been beaten and treated other than like a human being. Officer Messina removed the handcuffs and proceeded to fingerprint me. After fingerprinting, I was placed back in the cell. After the fingerprinting of my friend, we waited until release was granted at approximately 9:20 p.m.

I received three vehicle summons from Officer Messina, and never received a copy of an arrest report, therefore I am still at wonder as to why I was arrested and brutally beaten.

Black Minister Is Said to Stall Brutality Case

**Will Take His Charges
to Another Agency**

By LEONARD BUDER

Police Commissioner Robert J. McGuire said yesterday that a department investigation into allegations that a black Baptist minister had been beaten by two white police officers who reputedly made abusive remarks about his race and religion had been "stymied" by the minister's refusal to cooperate.

Mary DeBourbon, a spokesman for the Manhattan District Attorney's office said yesterday that the office was also investigating the charges that the police had beaten the minister and a companion. She said such investigations were always conducted "whenever there are serious allegations of this nature."

Commissioner McGuire said the minister, the Rev. Lee Johnson, a graduate student at the Union Theological Seminary and a minister at the Concord Baptist Church in Brooklyn, had turned down requests that he make himself available for questioning by the department's Civilian Complaint Review Board.

C. Vernon Mason, the lawyer for Mr. Johnson and another man who also said he had been beaten during the incident said both men had no confidence in the review board and intended to ask for an investigation by the State Division of Human Rights.

"If you study the history of the Civilian Complaint Review Board you find that it is nothing but a rubber stamp to justify police misconduct," Mr. Mason said.

No Official Complaint

Although Mr. Johnson had made no official complaint to the board, Mr. McGuire said, the department itself had initiated an investigation by the board. "But we are stymied if we do not have a victim, a complaining witness," Mr. McGuire said.

"I find that statement hard to believe," Mr. Mason said in an interview later. The lawyer said that the Police Department was supposed to have "the capacity to investigate crimes."

The reputed incident occurred the evening of April 30 as the minister and a companion, Roderick Mitchell, were driving in Harlem. Mr. Johnson's car was stopped, the police said, because it had no front license plate.

At a May 5 news conference, Mr. Johnson charged that the officers made derogatory racial and religious remarks and struck him with a flashlight and a nightstick. Mr. Johnson said the officers then took him and Mr. Mitchell in handcuffs to the 28th Precinct station house, where he said they were beaten and jailed for two hours.

At the time, a police spokesman, Alice T. McGillicon, said the arresting officers reported that Mr. Johnson had refused to show his driver's license and registration, resisted arrest and used "loud and abusive language." She said yesterday that some force was used to compel Mr. Johnson to leave the car but that the officers have denied beating or abusing him.

Mr. Johnson has been charged with disorderly conduct, obstruction and resisting arrest and three vehicular violations.

NY TIMES

5/21/83

How could it ever happen here?

HE HAD the names of the two officers and those names and all of the details of the horrible story that he kept repeating yesterday were locked in the front of his mind.

"One of the officers was named Messina," he said, "and the other one was named Teller. I'll never forget Teller," he said. "He was just filled, so filled with hate. He just kept calling me nigger, nigger, nigger."

He said it was the policeman whose name was Teller who did most of the beating.

"The other cop, Messina, he had me by the throat and Teller, he was the one who did most of the beating. He kept saying: 'Nigger, we're going to teach you a lesson you won't forget,' and I don't know how many times he hit me."

HE SAID THAT ONE COP held him and that the other beat him and he said that this happened in a stairwell inside the 28th Precinct stationhouse on



**EARL
CALDWELL**

Eighth Ave. and 122d St. in Harlem. And that was not all.

"Then, they put me in a cell and Teller, he stayed there and began to kick me, he just kept kicking." He leaned over and pulled up the leg of the trousers he was wearing and just beneath his kneecap, the scars and scabs were there.

"This officer, Teller, he told me: 'Nigger, you are going to learn that from now on, when you open your mouth, you better say sir first.'"

The details of the horrible story were repeated again and again yesterday and they came from the Rev. Lee Johnson, a student at the Union Theological Seminary and an assistant minister at the Concord Baptist Church in Brooklyn.

In the morning yesterday Johnson stood with a crowd of ministers and the president of the seminary at the Abyssinian Baptist Church in Harlem and he told his horrible story there.

IN THE AFTERNOON, HE SAT alongside a lawyer in an office downtown on Broadway and he repeated the story. It goes back to Harlem and early in the evening last Saturday.

The way that Johnson tells the story, it was a clear-cut case of police brutality. He said he was with two friends who had been classmates when he was a

student at the University of California at Los Angeles. He said that the three of them were riding in a car he was driving, a Toyota, on Lenox Ave. in Harlem when he noticed flashing lights from a police van behind him.

"I saw the lights and I pulled over to the curb," he said. He said that one of the officers, Messina, asked for his license, and he said he told the officer he needed to get out of the car because he was too cramped in the bucket seat to reach his wallet.

"The cop said no," Johnson said.

He said he asked the officer why he should not get out of the car and he said the policeman swore at him and said he should do as he was told.

T TOLD HIM THAT OBVIOUSLY he must be new on the force because he didn't know how to approach citizens. It must have touched off something because he opened the door and came in and tried to punch me. I moved over and then he began to beat me on the leg with a flashlight."

Johnson is 32 years old. He is short and his afro hair recedes from his forehead, and yesterday, as he told his story, his voice was soft and he measured his

See CALDWELL Page 30

WELL FROM PAGE FOUR

pulled him from the car and to the police van.

of it was happening on the a's, which is one of Harlem's ts, and it did not take long for

pulled a gun," the young

just when he was put in the van, "I told him (the cop), your conscience is going to kill you because you hit the wrong person for the wrong reason." He said that got him another beating inside the vehicle.

AT THE PRECINCT, HE SAID that the desk officer took a cross that was on the top of a pen and shoved it in his face. He said the cop told him: "I don't believe in that anyway, reverend."

From the desk, he said, he was taken to the stairwell, where he said he was beaten, and from there to the cell. He said the beating had been so severe that once he was free, he had to go to St. Luke's Hospital at 113th St. and Amsterdam Ave. for treatment.

At the 28th Precinct yesterday, a lieutenant told the story another way. He said that the minister was arrested because he became abusive. He said the officers used force because the minister resisted arrest and was inciting the crowd on the street.

"Was he beaten in the stationhouse?" the lieutenant was asked.

"We don't do that," he said.

The lieutenant said that the two officers involved were not assigned to the 28th. "They were from a tactical patrol unit," he said.

C. VERNON MASON, THE LAWYER who sat beside Lee Johnson in the afternoon yesterday, said that this case is different. "Because we have witnesses," he said. "We have good witnesses, people from Sylvia's and they saw what happened and they are coming forward."

Mason did not stop there. "Imagine," he said, "this is a minister from Concord Baptist Church. From one of the largest, most prestigious churches in the city and this happens to him. Can you imagine this happening to a Jewish rabbi or a Catholic priest downtown on Fifth Ave? Can you imagine what the crowd there would have done?"

In the morning yesterday, Donald Shriver, who is president of the Union Theological Seminary, was at the Abyssinian Baptist Church and he stood with the Rev. Calvin Butts, associate minister at Abyssinian, and a number of other ministers and they called for the immediate suspension of the officers who were involved.

"THIS REALLY WORRIES ME," Butts said. "Not just the fact that he (Johnson) was black and a minister, but what worries me, too, is this officer holding up the cross and cursing. It worries me because that's fascism and the Fascists have no

regard for religion. If this slips by, it gives even more of a license for the police to continue these attacks."

And yesterday, Butts in Harlem and the lawyer, Mason, who was downtown, spoke again of the dangerous atmosphere that is rising in the city. "And nobody is speaking out. Nobody is saying that we are not going to tolerate this kind of behavior in New York," Mason said.

"I'm from Arkansas, from Little Rock, and this is the kind of thing that we had in the worst days of the old South and now it's happening here in New York."

"The top," Butts said. "The tone is set by the leadership at the top. It's a bad scene. The ministers are very angry about it. We've gone to (Police Commissioner Robert) McGuire about this before, but nothing happens. Nothing. At the top, nobody is saying anything."

"If we had a mayor who was sensitive to all of the people it would be different," Mason said. "But there is never any official response. . . ." It keeps coming back to the mayor, who is the one at the top, and yesterday, the horrible story that the Rev. Lee Johnson told became one more part of the issue of 1985, which is the election year.

Call police attack 'racist ritual'

TWO WHITE rookie cops - nicknamed "Devil's Angels" after the "ritualistic" beating two weeks ago of a Black clergyman on a Harlem street - should face the full rigors of the law and be dismissed from the New York City Police Department for what church leaders and Black community activists are calling "a vicious and racially motivated attack" against "a man of God."

Saying that he can only "feel shame, despair and outrage" for an alleged police attack on the Rev. Lee Johnson, Rev. Donald W. Shriver, the white head of Manhattan's 150-year-old Union Theological Seminary, vowed that the institution "will bend every effort, use whatever influence and resources it has available...to make sure that the officers, who have demonstrated such hatred, contempt, and fear in their attack" on Johnson be fired from the police force.

Asserting also that the church and its ministers are now under attack, Rev. Calvin O. Butts, executive minister of Abyssinian Baptist Church in Harlem, called on Manhattan District Attorney Robert Morgenthau to launch a criminal investigation.

"The effect on the Black community cannot be adequately documented but it is one of such complete mental and spiritual destructiveness that the scars will always remain."

Roderick B. Mitchell, a victim of New York City police brutality.

BY PETER NOEL

A graduate student at the seminary and an assistant minister of Concord Baptist Church in Brooklyn, Johnson, 32, and companion Roderick Mitchell, a financial analyst, said that around 7:30 p.m. on April 30 the car in which they were driving was stopped for alleged traffic violations on Lenox Avenue between 125th and 126th Streets.

Also in the car was Al Bradley another friend and visitor from Los Angeles. The three men, all belonging to the University of California of Los Angeles (UCLA) Alumni Association, were on their way to dinner at Sylvia's Restaurant, a popular soul food joint on the avenue.

Johnson said that one officer, identified only as Messina, approached the car and demanded his driver's licence, vehicle registration and insurance card. After telling Messina that he needed to open his car door to get to the papers the suspicious cop locked the door on Rev. Johnson's side prohibiting him from leaving the car.

When Johnson asked why he couldn't open the door Messina reportedly remarked "in very obtuse and offensive language": "God damned because I said so."

The Black minister said he received no reply when he asked if he had done anything wrong. A baffled Johnson queried the unusual police procedure informing Messina that he was a clergyman and telling the policeman "he seemed not to know how to approach citizens."

Livid with rage Messina reportedly yanked at the door and tried desperately to punch the minister in the face.

"Unable to reach my face officer Messina grabbed my left leg and began pulling me from the vehicle." Unsuccessful, Johnson said Messina whipped out his flashlight, dealt him several blows on the knee, and twisted the leg in a further attempt

ject him from the car. Messina's partner, identified only as Tellers, according to the minister, managed to pull him from the car and began beating Johnson with a nightstick and slamming him against the car while he was still handcuffed.

Fearing reprisals from screaming witnesses Tellers, according to Johnson, drew his gun to control a standoff by some bystanders until a backup squad arrived on the scene.

Johnson was whisked away and enroute to the 28th precinct the minister remarked to Tellers that his "conscience was going to kill him" for the unprovoked assault.

"Tellers asked me if I was trying to threaten him and removing one hand from the steering wheel punched me, while still handcuffed, in the left side of my face."

At the precinct Johnson said he felt as though he was going through hell when an unidentified desk officer took out a pen with the symbol of a christian cross attached to it. Then as though he was going through "some kind of racist ritual" the officer placed the cross before the minister and reportedly remarked: "I don't believe in that shit anyway, reverend."

Johnson said that his statement admonishing the officer to "act like a mature man" was met with the assertion from Tellers: "You don't pay taxes, anyway."

The minister said he was then taken to a stairwell by Messina and Tellers and beaten.

"Officer Messina took his thumb and closed my throat while officer tellers beat me on the right side of my face saying, 'Nigger, we are going to teach you a lesson.'" Taken to a cell Tellers "commenced punching me in the stomach and head violently."

"You scumbag," the policeman reportedly told Johnson, "I am going to teach you a lesson, nigger." The minister said he keeled over from blows to the stomach and groin and could hear the "racist

the stairwell and beaten by an officer Petriello who had accused Mitchell of "taking a swing" at him.

"Before I could protest and explain that I was only trying to get his attention, Petriello began hitting me in the back, sides and chest with his fists, while cursing me. He called me a 'Goddam nigger,' and a 'scuzzball.'

Rev. Johnson said he overheard one of the officers saying "that the weather and caused Blacks to become uneasy." "The two imprisoned Blacks then fell to their knees and prayed.

After the men denied that they had used drugs Messina reportedly pressed his thumb against the minister's throat and asked him if he was ready to cooperate.

Johnson retorted that the officer should not expect any cooperation from someone he had beaten and treated "other than like a human being."

The men were fingerprinted returned to

(Continued Page 9)

command" from his assailant: "When you open your mouth, nigger, you had better say sir."

Johnson's terrified companion Roderick Mitchell who was arrested also was thrown into the same cell and advised to "keep his mouth shut."

Mitchell told the Challenge that he was "treated with the basest police behavior imaginable." He said he too was taken to

— Devil cops

(From Page 3)

the cell and released at approximately 9:20 p.m., 2½ hours after their encounter with a "racist ritual." Johnson, who was treated at St. Luke's Hospital for unspecified injuries and released, received three summonses for "not having a picture on his licence," a missing front plate and an unspecified charge.

Mitchell said that bruises on his arms back and chest were not serious enough to warrant medical attention.

In a scathing denunciation of the attack the president of the theological seminary where Johnson maintains an apartment with his wife and baby daughter, said he was outraged at the treatment of "this young man who was threatened, insulted, humiliated and beaten by the police of this city."

"I feel shame," said a disturbed Rev. Shriver, "that my institution, which had invited this young man to join its community, is unable to assure him the protection of life, limb and dignity by police."

"I feel despair that yet again another Black person in this city has been subjected to unlawful violence carried out by those appointed to uphold the law."

Rev. Shriver pointed out that "there is no question that because Johnson is Black it was assumed that he was a troublemaker...that his civil and human rights could be denied him and that he could be physically injured with impunity."

He blasted the officers' conduct as "unprofessional, unmoral and inexcusable."

Charles Barren head of Manhattan's Black United Front - which has compiled hundreds of cases of police acts of brutality against Blacks and Hispanics - said he was not shocked by the attack.

"It matters not," he asserts, "if you are a doctor, lawyer or a playwright. If your face is Black you become a victim of police lawlessness."

Civil rights attorney C. Vernon Mason, retained by Rev. Johnson, blasted the "callous and indifferent way" in which top brass at the 28th precinct said they would conduct a formal investigation. Mason said that authorities refused to log a counter-complaint of police brutality by Rev. Johnson against the two officers.

"They were asking us all kinds of questions like, 'Do you have witnesses,' and telling us, 'Go over to the Civilian Complaint Review Board.'"

Mason described the board as "inefficient" declaring that the possibility of an indictment of the cops' actions remains in doubt "because all they ever do is talk to the officers and talk back to you."

Mason said he intends to take the case to the "highest" in order to "get some court to issue a landmark ruling on police brutality in this city."

Said Banton: "We have been down this road before; to the police commis-

sioner, grand juries, but still, no true bills. The constitution tells us to go to the federal government. But they tell you, 'Not enough evidence,' although we bought corpses filled with bullets."

Rev. Butts lamented: "On several occasions we have asked (police) commissioner Robert McGuire to investigate the incidents of police brutality in the Black communities of our city

(But) our concerns appear to have fallen on deaf ears."

The minister's companion, Mitchell, said he would seek psychiatric help to cure himself of the "intolerable mental anguish" he suffered at the hands of 11 assailants. He said that prior to the event his exposure to "deviant police behavior" had been limited to second-

hand news accounts and conversations with victims or witnesses to such acts.

"While law and order is a noble goal," he noted, "law and order without justice is a criminal and tyrannical act against the people."

Both men were given desk appearance tickets returnable March 18.

CHECK IT OUT WITH JITU WESUI
KOCH'S BLACKS LITTLE HOPE



Last week, following on the heels of naked racism employed by Mayor Ed Koch in the struggle against a Black man, Dr. Thomas Minter, to be selected public school chancellor, a big fuss was made over appointments of Blacks to administrative positions within the Mayor's cabinet. We wonder aloud, in silence, why all of the hullabaloo? If the current crop of Blacks employed by City Hall are any indication of what future Koch appointees will be like, I for one would rather they all remain lily white.

With people like Ron Gault, current Commissioner of Employment David Jones, a Deputy Mayor and Thomas D. Hemans, Executive Director of the New York City Youth Board, all Koch water bearers to the Black community it is no small wonder that our people are catching the short end of the stick.

None of the Koch appointees have a base in the

varied Black communities of New York City. None have even held elective office or have been in any way accountable to Black folks. They are, as what we use to say, "whitefolks niggers."

Therefore, they can function in their appointed offices as affirmative action statistics, while performing acts that daily rape our community. We cannot apply the standard "brother" rhetoric or they will never pay a penalty for their crimes. For a clearer example of how these turncoats function let's examine the present set-up of the New York City Youth Board.

The New York City Youth Board, was founded in late 1950's as an Agency to provide programs and activities for poor youth trapped in the City's ghetto neighborhoods. During the decade of the 50's Black youth were destroying themselves by engaging in gang warfare almost daily. In the sixties, the Youth

Board functioned as the Agency that provided band-aids whenever, the blood of urban rioting began to spill forth. By the late seventies and early 80's, when the City's youth needed it most, the Youth Board had been allowed to become a base for mismanagement, political patronage and racial discrimination. This fact is all the more blatant at the top of the Youth Board's structure, where Executive Director Thomas D. Hemans sits.

Hemans was once one of us. I remember, Tommy Hemans, Hemans, from Brownsville, Brooklyn, a basketball star and graduate of Thomas Jefferson High School. He played his basketball at Niagara University and worked summers as a parkman in the playgrounds of New York City. I was one of those youth that Tom taught how to improve their basketball game during the summer break from school. In those days, Tom Hemans worked in the Black community to help youth. Today, Tom Hemans is downtown and youth in the ghettos of New York City are being shortchanged by his cover up at the New York City Youth Board.

Continued on page 8

JITU/CONTINUED FROM PAGE 7

Youth Board monies are being squandered paying high cost consultant firms to produce absolutely nothing. PMSSI, a consultant firm, received more than 100,000 dollars for recommending ways for a more functional Agency. A second firm, SWIRI received more than \$50,000 to revise forms

and contracts for the Agency and the list goes on. Little of the work done by these firms was even used and in far too many instances, Youth Board staffers ended up doing the actual work. Consultant contracts are part of the political payoff procedure in this town. I suspect, these consultant firms were

probably owned/operates by Koch campaign workers.

Money spent for non-productive consultant firms might have been used to open night centers in public schools and sponsor sports tournaments for inner city youth who have nothing to do but congregate on ghetto street corners day and night.

Part. _____ County of WEST YORK

THE PEOPLE OF THE STATE OF NEW YORK
 vs
 1. LOUI JOHNSON (A)
 2. _____
 3. _____
 4. _____
 DEFENDANT

STATE OF NEW YORK }
 COUNTY OF WEST YORK } SS.:

311044119

P.O. TELLER 15263 of WEST YORK NEW YORK NY
 Address County State
 being duly sworn, deposes and says that on 4/30/85 at about 1140
 at LOCK AVENUE AND 127TH STREET WEST YORK, State of New York,
 Address City

the defendant committed the offenses of:
 A. PL 209.30 RESISTING ARREST
 B. PL 199.05 OBSTRUCTING GOVERNMENTAL ADMINISTRATION
 C. PL 243.20 DISORDERLY CONDUCT
 D. _____

under the following circumstances: ~~deponent~~ DEPOSED THAT THE DEFENDANT WITH
 INTENT TO CAUSE PUBLIC INCONVENIENCE, ANNOYANCE OR ALARM OR NEGLIGENTLY
 CREATE A RISK THEREOF ENGAGED IN FIGHTING AND THREATENING BEHAVIOR IN THAT
 DEFENDANT REFUSED TO GIVE DEPOSENT HIS LICENSE AFTER BEING STOPPED FOR
 DRIVING WITHOUT A PROPER LICENSE PLATE AND DID THROUGH DEPOSENT, SAYING,
 "WELL GET YOU FOR THIS." DEPOSENT FURTHER STATED THAT DEFENDANT STRUGGLED
 WITH DEPOSENT AND P.O. HESSIRA AND REFUSED TO BE HANDCUFFED, THEREBY IN-
 TENTIONALLY ATTEMPTING TO PREVENT DEPOSENT FROM EFFECTING AN AUTHORIZED
 ARREST OF DEFENDANT.

P.O. Teller
 Deponent

Sworn to before me on 2/11 19 85
 Judge

MISDEMEANOR COMPLAINT
 MISDEMEANOR INFORMATION

Part _____, County of NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK	
vs.	
1	RODERICK HITCHELL
2	II-27
3	
4	
DEFENDANTS	

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

3NU44121

PO ANGELO J. PETRILLO 13511 of NEW YORK NEW YORK
Address County State
being duly sworn, deposes and says that on 4/30/83 at about 1950
of 127TH AND LENOX AVENUE NEW YORK NY, State of New York,
Address County

the defendant committed the offenses of:

- A. PL. 205.30 RESISTING ARREST
- ~~B. PL. 240.03 INCITING TO RIOT~~
- C. PL. 240.03 INCITING TO RIOT
- D. PL. 240.20 DISORDERLY CONDUCT

under the following circumstances: Deponent states that the defendant with intent to ~~ca~~ cause public inconvenience, annoyance or alarm or recklessly created risk thereof engaged in tumultuous and threatening behavior in that defendant was inciting a crowd of approximately 75 people to prevent deponent and other police officers from effecting an arrest by yelling, "DON'T LET THEM TAKE THE BRONX, LETS GET THEM",

deponent further states that ~~deponent~~ defendant engaged in the aforementioned conduct which was of a kind likely to create public alarm.

deponent states that defendant intentionally attempted to prevent deponent from effecting an authorized arrest of defendant by refusing to be handcuffed and by poking at deponent.

edax

Sworn to before me on 5/2 19 82,
Judge St. Hano

PO Jy TBA
Deponent

MISDEMEANOR COMPLAINT
MISDEMEANOR INFORMATION

DEFENSE ATTORNEY

↑
**NEW
 VOICES
 FOR
 HARLEM**

FOR IMMEDIATE RELEASE

On Saturday, April 30th, 1983 at approximately 7:30 p.m., on the East side of Lenox Avenue, between 126th and 127th Streets the Rev. Lee Johnson, an assistant minister at the Concord Baptist Church of Christ, Brooklyn, New York, and a student at Union Theological Seminary was attacked and brutally beaten by two white New York City police officers. Rev. Johnson, a black minister, was handcuffed and beaten on Lenox Avenue, in the stairwell of the 28th Precinct - 123rd Street and 8th Avenue - and in a jail cell at the precinct. Rev. Johnson was kicked in the groin, and sustained bruises to his legs, shoulders, face and head. He was treated for injuries at St. Luke's Hospital - 113th St. & Amsterdam Avenue.

At the Precinct, Rev. Johnson said that one of the desk officers held a Christian Cross in front of his face and said, in a mocking fashion, "I don't believe in that shit anyway, Reverend." When Rev. Johnson asked to be treated fairly, Officer Teller said, "You don't pay taxes anyway." After this, Rev. Johnson was beat again. Mr. Roderick Mitchell, a financial analyst with Celanese Corporation, was also brutalized by the police officers.

We view this incident, and several others like it involving not only white police attacks against blacks, but also white civilian attacks against blacks, Willie Turks, Marion Manigault, et.al, to be the result of a hostile climate against blacks created by the flippant and arrogant attitude of Mayor Edward Koch toward the black community. Mr. Koch has stopped at nothing to insult and display disrespect for blacks in New York City. The public school Chancellorship being the last in a long line of events.

Edward Koch is not alone in his insensitivity. On several occasions we have asked Commissioner Robert McGuire to investigate the incidents of police brutality in the black communities of our City. We have asked that the number of black police officers be increased in our communities to erase the South Africa syndrome we observe each day. Our concerns appear to have fallen on deaf ears.

Today, we demand that officers Messina and Teller be suspended without pay pending a complete investigation of this matter. We also call on Mr. Robert Morgenthau, the Manhattan District Attorney, to conduct a criminal investigation regarding the attack on Rev. Johnson.

The Church and its ministers are now under attack. Will this administration stop at nothing to destroy blacks in New York City? Apartheid live in Harlem and it must be destroyed.

The Press is invited to meet with Rev. Lee Johnson, President Donald Shriver of Union Theological Seminary, Rev. Calvin Butts of Abyssinian Baptist Church - Thursday, May 5, 1983 at 10:00 a. m. in the Blue Room.

Contact: Rev. Calvin Butts - 862-7474
 Abyssinian Baptist Church
 132 West 138th Street
 NYC

NEW YORK Amsterdam News

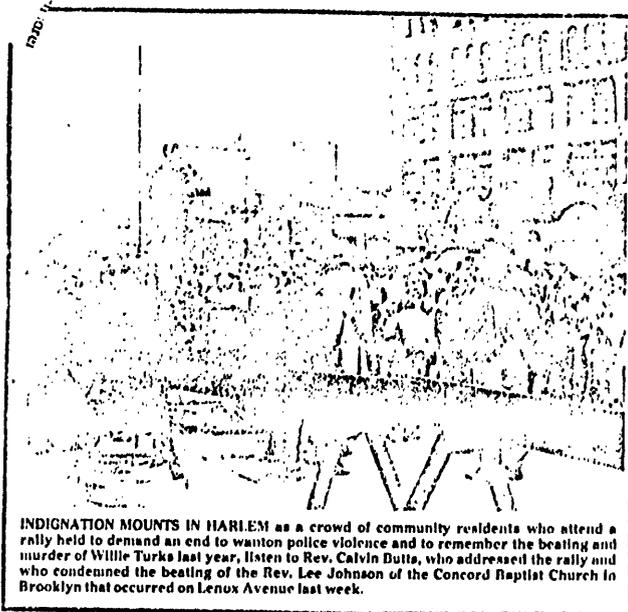
VOL. 74—NO. 20

SATURDAY, MAY 14, 1983

The new Black view

35¢ - Outside NYC - 40¢
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Pastor: Cops beat us without mercy



INDIGNATION MOUNTS IN HARLEM as a crowd of community residents who attend a rally held to demand an end to wanton police violence and to remember the beating and murder of Willie Turks last year, listen to Rev. Calvin Butts, who addressed the rally and who condemned the beating of the Rev. Lee Johnson of the Concord Baptist Church in Brooklyn that occurred on Lenox Avenue last week.

Koch says he doubts beatings

By PETER NOEL

Mayor Koch this week questioned the story of a Black minister who said that he and a companion had been brutally beaten by two white cops on a Harlem street and in the 28th precinct station house after they were pulled over for alleged traffic violations.

"I find it certainly possible, but nevertheless strange, that in the heart of Harlem two white cops would intentionally, in violation of the law, harass a minister," Koch was quoted as saying Sunday.

The skeptical mayor observed that the allegation that the minister had been beaten in a Harlem precinct with a large number of Black police assigned "has to be examined."

The mayor's remarks were swiftly rebutted by the Rev. Calvin O. Butts, executive minister of the Abyssinian Baptist Church in Harlem.

"We view this incident and several others like it involving attacks against Blacks not only by white police but also by white civilian, to be the result of a hostile climate against (us) created by the flippant and arrogant attitude of Mayor Koch, who has stopped at nothing to insult and display disrespect for Blacks in New York City."

Asserting also that the church and its ministers are now under attack, Rev. Butts called on Manhattan District Attorney Robert Morgenthau to launch a criminal

(Continued on Page 12)

Johnson

(Continued from Page 1) investigation.

Union Theological

A graduate student at the Seminary and an assistant minister of Concord Baptist Church in Brooklyn, Rev. Lee Johnson, 32, and coachman, Roderick Mitchell, a financial analyst, said that around 7:30 p.m. on April 30 the car in which they were driving was stopped for alleged traffic violations on Lenox Avenue between 125th and 126th Streets.

Also in the car was Al Bradley, another friend, visiting from Los Angeles. The three men, all belonging to the University of California at Los Angeles (UCLA) alumni association, were on their way to dinner at Sylvia's Restaurant on Lenox Avenue.

Johnson said that one officer, identified only as Messina, approached the car and demanded his driver's license, vehicle registration, and insurance card. The suspicious Messina, after Johnson told him that he needed to open his car door to get to his papers, locked the door on Rev. Johnson's side prohibiting him from leaving the car.

Johnson said that when he asked why he couldn't open the door Messina replied, "God damned because I said so."

Johnson said the cops did not answer him when he asked them if he had done anything wrong. He said he queried Messina's procedure, informing

Messina that he was a clergyman and telling the policeman "he seemed not to know how to approach citizens."

Johnson charged that Messina, then "livid with rage," yanked at the door and tried to punch him in the face.

"Unable to reach my face Officer Messina grabbed my left leg and began pulling me from the vehicle." Unsuccessful, Johnson said Messina whipped out his flashlight, dealt him several blows on the knee, and twisted the leg in a further attempt to pull him from the car. Messina's partner, identified only as Tellers, according to the minister, did manage to pull him from the car and later beat him with a nightstick after he had been handcuffed.

Tellers, according to Johnson, drew his gun to control what he said was a threatening crowd of bystanders until more police arrived.

Johnson said that as they were driving to the 28th precinct he told Tellers that his "conscience was going to kill him" for the unprovoked assault.

Tellers asked me if I was trying to threaten him and then, taking one hand from the steering wheel punched me in the left side of my face.

At the station house Johnson said he felt as though he was going through hell when an unidentified desk officer took out a pen with the

cross attached to it. Then as though he was going through "some kind of racist ritual" the officer placed the cross before the minister and reportedly remarked: "I don't believe in that shit anyway, Reverend."

Johnson said that when he admonished the officer to "act like a mature man," officer Tellers exclaimed, "You don't pay taxes, anyway."

The minister said Messina and Tellers took him to a stairwell where they beat him.

Johnson's terrified companion, Roderick Mitchell, was also arrested and thrown into the same cell and advised to "keep his mouth shut."

Mitchell told the Amsterdam that he was "treated with the basest police behavior imaginable." He said he too was taken to the stairwell and beaten by an officer Petriello who had accused Mitchell of "taking a swing" at him.

"Before I could protest and explain that I was only trying to get his attention, Petriello began hitting me in the back, sides, and chest with his fists, while cursing me."

After being fingerprinted, the men were released at approximately 9:20 p.m. Johnson, who was treated at St. Lukes Hospital for unspecified injuries and released, received summonses for "not having a picture on his license" and a missing front plate.

Mitchell said that bruises on his arms back

and chest were not serious enough to warrant medical attention.

The Rev. Donald W. Shriver, president of the theological seminary where Johnson maintains an apartment with his wife and baby daughter, said he was outraged at the treatment of "this young man who was threatened, insulted, humiliated and beaten by the police of this city."

"I feel shame that my institution, which had invited this young man to join its community, is unable to assure him the protection of life, limb and dignity by police."

"I feel despair and yet again a Black person in this city has been subjected to unlawful violence carried out by those appointed to uphold the law."

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Charles Barron head of Manhattan's Black United Front, which has compiled hundreds of cases of alleged police acts of brutality against Blacks and Hispanics, said he was not shocked by the attack.

"It matters not if you are a doctor, lawyer or a playwright, if your face is Black you become a victim of police lawlessness," Barron said.

Civil rights attorney C. Vernon Mason, retained by Rev. Johnson, blasted the "callous and indifferent way" in which top brass at the 28th precinct said they would conduct a formal investigation.

Mason said that authorities refused to log a counter complaint of police brutality by Rev. Johnson against the two officers.

"They were asking us all kinds of questions like, 'Do you have witnesses?' and telling us, 'Go over to the Civilian Complaint Review Board.'" Mason called the board "inefficient" and said that the possibility of an indictment of the cops actions remains in doubt

"because all they ever do is talk to the officers and talk back to you."

Mason said he intends to take the case as high as necessary to get "some court to issue a landmark ruling on police brutality in this city."

Said Barron: "We have been down this road before: to the police commissioner, grand juries, but still, no true bills. The constitution tells us to go to the federal government. But

they tell you, 'Not enough evidence.' although we bought them corpses filled with bullets."

Rev. Butts lamented: "On several occasions we have asked (police) commissioner Robert McGuire to investigate the incidents of police brutality in the Black communities of our city. (But) our concerns appear to have fallen on deaf ears."

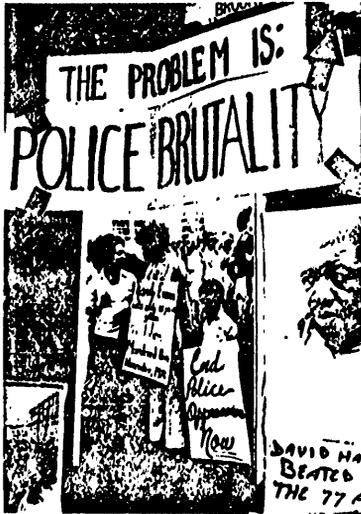
NATIONAL BLACK UNITED FRONT

Police Brutality Investigation Unit



Summer 1983

—QUARTERLY REPORT—



"The fate of the Black community, of Black people, is in your hands. The police run wild only because you let them. Every Black man, woman, and child must join the fight to end police terror in the Black community. If we fail to organize and develop the capacity to protect ourselves, the police will continue to shoot down our children, beat down our women, and destroy our men. They will continue to see "Shiny Objects", "Something that looked like a gun", or "Thought their lives were in danger" and then "justifiably" kill us!

We can turn this around with unity and self-determination. If we do not stand and take action, this period in history will record a race of cowards, who failed to recognize their true strength and destiny, to live freely as a powerful and respected people. WE CAN WIN!"

Forward Ever, Backward Never!

Michael Amos-Ka
Chairperson New York
Black United Front

Message from Rev. Herbert Daughtry...

Chairman of the National Black United Front (Quotes from *Seize The Future*, Two speeches by Rev. Herbert Daughtry)

"Need I warn you that the struggle is long and there will be no easy victories. The enemy is formidable and history teaches that tyrants do not yield an inch without a struggle. They will not relinquish their privileged positions by words alone or by moral importunities or by the pleasing qualities of the oppressed but they must be pushed, shoved, knocked and even then they go forth scuffling, scratching, and clawing until the last."



THE SOLUTION IS:
EDUCATE!!
ORGANIZE!!!

"But before we despair, let me give you a word of hope. We have chosen the side of justice and on our side is a revolutionary movement which is shaking the world - a revolutionary movement that is shaking the foundation of old systems; a movement that is breaking the chains of imperialism, facism and neo-colonialism; a movement that is destroying capitalism and racism; a movement that is writing the obituary of the oppressive regimes in Latin America and digging the graves of exploitive systems in Africa".

Rev. Herbert Daughtry
National Chairman

BLACKS AND HISPANICS KILLED BY N.Y.P.D. JUNE 1979 to MARCH 1983

1. Peter Funches	35	Bronx	1979, June
2. Benilia Nicholas	30	New Rochelle	1979, June
3. Emery Robinson	18	Bronx	1979, July
4. Louis Rodriguez	?	Bronx	1979, July
5. Arturo Reyes	17	Bronx	1979, August
6. Elizabeth Mangum	35	Brooklyn	1979, August
7. James McRee	48	Brooklyn	1979, September
8. Louie Baez	29	Brooklyn	1979, August
9. Herbert Johnson	35	Brooklyn	1979, September
10. Darryl Walker	17	Orange, N.J.	1979, October
11. John Davis, Jr.	28	Queens	1979, November
12. Willie Harper	?	Brooklyn	1979, December
13. Curtis Carvey	?	Brooklyn	1979, December
14. Jay Parker	15	Queens	1980, February
15. Abdul Hadi	26	Bronx	1980, February
16. Sonny Evans	?	Brooklyn	1980, April
17. Edward Quinonez	20	Brooklyn	1980, April
18. Ralph Taranfino	28	Brooklyn	1980, August
19. Edward Lewis	18	Brooklyn	1980, October
20. Kenneth Gamble	19	Brooklyn	1980, October
21. Michael Furse	16	Brooklyn	1980, June
22. Herman Charles	33	Brooklyn	1980
23. Joey Chino Mandez	17	Bronx	1981, February
24. Manuel Hernandez	?	Brooklyn	1981, February
25. Robert Green	42	Bronx	1981, April
26. Sylvester Ellis	17	Brooklyn	1981, April
27. Joseph Wolanski*	25	Brooklyn	1981, February
28. Edward Fonesca*	21	Long Island	1981 March
29. Robert Endersbee*	22	Bronx	1981, March
30. Donald Wright	19	Bronx	1981, January
31. Joseph Fitzpatrick	18		1981
32. Gary Beeton	26	Brooklyn	1981, September
33. Mackenzie Deslr	14	Brooklyn	1981, September
34. Boarragan Gomez	18		1981, June
35. Richard Sirignano		Queens	July 3, 1982
36. Joee Rodriguez	16	Staten Island	1981
37. Alfredo DeJesus	20	Brooklyn	November 1, 1982
38. Juan Ruiz	32		November 31, 1982
39. Henry Woodley	23	Brooklyn	January 9, 1983
40. Patrick Mason	5	Stanton Ca.	March, 1983
41. Martin Clancy Jr.	18	Coram, L.I.	1983
42. Clarence Jenkins	53	Bronx	February 21, 1983
43. Anthony Wright	20	Harlem, N.Y.	March 1, 1983
44. Larry Dawes	20	Brooklyn	March 15, 1983

FROM 1957 TO 1983 OVER 42 KILLINGS BY THE N.Y.P.D.

OVER A 1500% INCREASE

The period of the great depression in the 30's and immediately following World War II (1946) unleashed an epidemic of racist violence in America that prompted William L. Patterson and other civil rights activists of the day to publish the historic document "We Charge Genocide" which enumerates the various acts of racist violence against Blacks over a 20 year period.

From Miami to Michigan, from New York to California, tensions have risen and protests waged as police officers have killed Blacks with impunity. These killings throughout the nation, has clearly indicated that policemen have a mandate to shoot-to-kill Black citizens and don't have to worry about being accountable for their action.

Rev. Herbert Daughtry

After Beating



 Comments from

Police Brutality Investigation Unit Chairman

Because of the seriousness of the problem and the widespread concern that exist in the Black and Hispanic community, it is belatedly coming to the attention of the public at large that many more people are killed by the police than there are police killed in the line of duty, and that a sizeable number of the citizen deaths at the hands of the police are neither legally nor morally justified. Although in theory police regulations covering the right of the officer to use deadly force are more limittive than the criminal law, in actuality there is little indication that the great majority of departments stringently enforce those rules. In practice, there is overwhelming evidence that the system, including police, prosecutors and courts, functions to protect police, prosecutors and courts, functions to protect police officers who have killed citizens. Moreover, there is strong evidence to indicate that many of these killings and their legal justification are the result of racism.

In addition to the police investigation of a homicide committed by a police officer, the official language used in describing such incidents to the news media is intended to imply justification and necessity. The wording, "deadly force" is used in such a context that it is interpreted as being legitimately necessary. By contrast, the killing of a police officer is referred to as "violence" or "murder" and therefore illegal. The funeral services of the officer receive full

media coverage with special attention directed to the "grieving widow", or the "fatherless children," but seldom does the dead citizen or his family, even in situations where it is determined that the citizen had committed no offense, receive the same attention from public officials, the police or the news media.

An additional factor which tends to promote public acceptance of killings by police officers is that responsible officials such as police chiefs, coroners, prosecutors, judges, etc. deliberately mislead the public by their statements and actions involving such investigations. One of the most commonly used tactics of the prosecutor when faced with a situation where there are demands for action following a questionable killing by a police officer is to submit the case to a grand jury.

The great majority of such hearings result in the grand jury refusing to indict the officer. The prosecutor is then "off the hook." He can take the public position that he carried out his sworn duty and presented the case to the grand jury and that they ruled against him by their actions. The public does not know, however, what evidence and what witnesses the prosecutor put before the grand jury in presenting his case. When pressed as to these details, the prosecutor/district attorney is prone to point out that by law jury proceedings are secret, and that as an officer of the

court he is obligated to respect that secrecy and therefore cannot comment on any of the specifics of the case.

This system, which provides an institutional escape route for both police and prosecutor, has a well documented record of non-action. The prosecutor, in defending his presentation of the case to the grand jury, stated, "When a policeman comes in and swears on a Bible, you're going to believe him. You can't abuse the trust in him."

There has been a recent out cry for 'return of the death penalty in New York by such Politicians as Mayor Koch and Queens D.A. Santucci, dispute proof that it serves no deterrent to crime. Numerous studies fails to support the myth that our murder of the defendant prevents other murders. Governor Carey has repeatedly vetoed the bill for the death penalty stating "We cannot foster respect for human life while giving the state the license to destroy it". We Blacks and Latinos should not and will not support the efforts of any Legislative body seeking to *legalize* their rights to kill and destroy us. In this city, where 90% of those incarcerated are Black and Latinos. The death penalty is inhumane and serves no deterrent to further murder, serves no true revenge and is not conducive to any form of rehabilitation.

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Publisher's Statement...

In an effort to focus mass public attention in the African community to acts of police harassment and brutality, it is the hope of PBIU that the community will come forward and make "public servants" (POLICE) accountable to the people they *allegedly* represent.

Part of the problem of police brutality and harassment in the African community seems to stem from our "powerlessness" and in many cases our acceptance of such a role.

African-Americans contribute as much as any other national group to

supporting law-enforcement, but we are isolated when it comes to "individual" abuses of police authority.

Responsible community members should acquaint themselves with the successes or failures of their local precincts. They should know the administrators of the precincts (ranking officers).

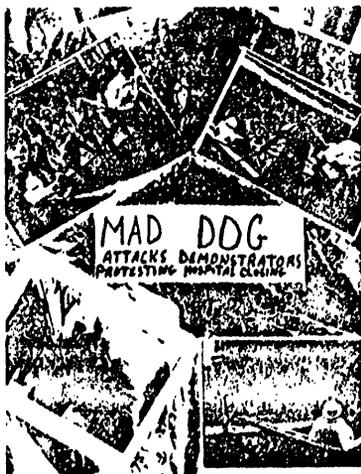
Responsible community should monitor the function of police sponsored community services for youth, the elderly, etc. The tax dollars of the African-American community go in part

to public service, i.e., public transportation, institutions, officials, and law enforcement. The role of law enforcement is to protect and secure our homes, property, and our lives. It is foolish to blindly support any institution whose employees have shown continuous disregard for life and dignity as it relates to African-Americans.

Community groups such as blockwatchers, civic groups, etc. must come together, first and foremost in *your community!*

**National Black United Front
4th Convention
July 21-24, 1983**

**ADU
ADU
Portland, Oregon**



Community residents and supporters were brutally beaten for demonstrating in an attempt to stop the closing of Hydenham Hospital. Here, you can clearly judge who are the mad dogs!

P.B.I.U. Position Paper On Police Brutality

Crime and police brutality is a direct and indirect result of *poverty, unemployment and racism* within the Black community.

Police violence is on the rise

The Police Brutality Investigation Unit was formed as a recognition that police brutality is a growing trend. We need to understand why the Black community is so often the victim of police brutality and in order to more effectively fight this problem the Black community needs to understand the role of the public civil servant (police) and that it is the Black community's money which helps to buy the weapons and the bullets that are being unleashed and cause numerous fatalities in our communities.

Citing incidents of police brutality nationally, despite the struggles for justice, police terror and murder continues, and has a distinct impact on Blacks and other people of color.

Essential function of the police:

"Police violence not simply a problem of individual, racist cops."

Police brutality in the Black community is not just a problem of racist whites in the police department. Black police also participate in the violence. However, white police are most often associated with police brutality in our community.

Police brutality is rooted in the basic role and function of the police in this society, to serve and protect the type of order that has been prescribed by law, the laws of a system that does not function in the interest of Black people.

In the course of this struggle, it has become obvious that fundamental changes must take place in the system as a whole.

There are many demands that can be presently won, which in almost all cases are concessions that the system makes. The system operates off the logic that there are no problems fundamental to how it works. Therefore, all real gains

that are substantial are the result of pressure, the pressure inherent in mass movements demanding fundamental changes.

Reaganomics captures the precise character of police brutality today

While the Black community has always been subjected to violence and terror, in the current period there is a sharp intensification of systematic violence from the police. The rise in police violence is occurring to help contain the growing anger in the community as hardship and racism intensifies.

The United States is in an economic and political crisis and is losing ground all over the world as national liberation struggles advance. While the U.S. is faced with economic crisis of unprecedented proportions since the great depression, it is pouring money into war machines to protect corporate profits, while all poor people are beginning to suffer more. Clearly the worst of the crisis in general falls on people of color, Black people in particular with the brunt of the cuts in social services, the worst of unemployment, and ideological physical attacks as the racist atmosphere increases are directed towards the Black community. This is very much a part of the racialized character that wealth and poverty has always had in this society.

The U.S. is attempting to win sympathy and support for its policies in a concentrated way among whites, by patriotic propaganda and attempting to blame economic crisis on "lazy welfare cheats" a code name for "lazy Blacks."

The government has learned lessons from the 1960's and early 1970's rebellions, and is preparing to suppress

Continued on page 8

SUPPORT THE B.U.F.

Letter to the Editor,

Howard W. Worley/
Haja Watu Amka

On March 7, 1983 I was arrested inside the Chock Full 'O Nuts Restaurant as a result of a scuffle with a middle-aged Caucasian male. I was removed from the scene of the incident by police and taken to the 84th Pct. at approximately 1:40 p.m. I was held in a detention cell for a few hours and then moved to another cell in the rear of the area where I had been. My shoelaces, belt, suspenders were removed and I was locked in. Later that day I was taken to Central Booking.

Before being taken to Central Booking, I do not recall that I was handcuffed the entire time that I was in the second cell, taking my shoelaces, belt, suspenders really was not necessary since my hands were handcuffed behind my back. The cuffs were tight enough to cut off circulation and to cause superficial wounds on my wrists. According to the arresting officer, a patrolman Betz #2353 at 8:30 p.m., March 7, 1983 I caused injury to him and he had to be treated at

Long Island College Hospital. This is an outright lie.

Officer Betz was responsible for a vicious attack instigated by himself and assisted by as many as 8 officers. I was struck on my head with a club and was pulled to the ground face down in such a manner that my arms were outstretched, my legs were held and someone was kneeling or standing on my back.

I suddenly felt a hand squeezing my throat (on left side slightly below jawline), I felt myself losing consciousness and I screamed, "Someone help me, they're choking me".

I believe in all sincerity that had I not cried out I would have died there. After the beating I was placed in a cell with myself and a young brother about 18 years old. I was handcuffed to a pipe or bench. I was then taken from 84th Pct./Central Booking to 79th Pct. to await court the following day, the 8th of March.

I was shuttled from one holding pen to another while waiting for court. It was alleged that I refused to be fingerprinted, another outright lie.

On the 8th, I was taken to the Brooklyn House of Detention where I stayed overnight. On March 9, 1983 I went to night court and was released pending arraignment.

Some of my property is missing and I have filed a complaint with the Civilian Complaint Review Board and police investigations from internal affairs have been in touch with me in the presence of the Unit Chairperson, Dave Walker. I.A.D. Interview 28th March 83 at 451A Nostrand Avenue, Brooklyn, New York.

Remarks from police during the beating, "He's rolling his eyes."

Officer Betz #2353 referred to me as "scum."

●●●CRIME●●●

"The Causes"

Considering the abnormally high level of Black unemployment and the inhumane social condition forced on most Blacks. It is not at all unusual that some Black individuals turn to crime. What is unusual under the circumstances, and worthy of long thought, is that most Blacks of all ages and social conditions are decent, law abiding people. We as Black people are simply exposed more often to environments that have produced high levels of social frustration and social disorder in all groups. Crime has reached a critical level that threatens our existence as a people. It is a threat to our youth, women, senior citizens, values and institutions.

"Racism and Oppression"

Racism and oppression in America today is less vocal but still vigorous. The effect works its cancer in ways that crush the spirit of Black youngsters, by imbuing some Black people with a sense of

self-hatred of predetermined failure and powerlessness. It dictates substandard housing, poor health care, and embarrassingly high unemployment rate, inadequate police protection and a justice system which is weighted heavily against the poor.

Black people are angry. Their anger internalized and long simmering, finds its outlet in aggression in criminal activity in the community and in unbridled attack upon the nearest person—often a family member or friend. Blacks seek to become a part of the white mainstream, and obtain so-called manhood by turning to physical brutality and petty crimes against one another. Violence can be a potent drug for the oppressed person. Reacting to the futility of his life, the individual derives an ultimate sense of power when he holds the fate of another human being in his hands.

The kinds of frustration that result from being unable to find a job will find an outlet in aggression against one's wife or husband or other loved one. It's a very important thing to look at, in terms

of material goods being standards by which people measure their existence and their sense of being as well as themselves.

When legitimate roads to personal achievement and material rewards are blocked or narrowed, whether by poor education, the unavailability of all but the menial jobs, or other obstacles on the path of upward mobility, Blacks like other ethnic underclasses, often resort to illegal means, be it prostitution, fencing stolen goods, or drug trafficking. But, unlike the experience of most ethnic immigrants who have moved upward in American society, Blacks have remained locked on the bottom. Generation after generation.

The problem of controlling crime in the ghetto is primarily one of changing the conditions, which tend to breed widespread violence rather than one of reforming the individual criminal. Yet the tendency has been, in terms of ghetto crimes, to concentrate on imprisonment of individuals rather than to seek to destroy the community, roots of crime itself and behind and beneath all of the crimes in the ghetto is the specter of employment, broken families and poor education. Clearly, then incidents of

Continued on page 8

PBIU Position Paper...*Continued from page 6*

and undercut any resistance to this intensified oppression.

At the most sophisticated national levels, the government is lifting surveillance restrictions on FBI/CIA officials, establishing "Early Warning Systems" and training police department personnel in "Urban Control."

"Anti-crime" code word for an open season on Black people

The "anti-crime" campaign is the main way the government is moving to exert greater control over the Black community and is a major ideological attack, as an acceptable justification for open police brutality. The concrete development of this repressive apparatus is exemplified by the facts that police departments are being strengthened because restrictions on police are being lifted. Courts are being signaled to give stiffer sentences, make it harder to get parole and the death penalty is being reinstated. With prison budgets rapidly increasing, new prisons are being built.

Crime is indeed on the rise, especially in the Black and other minority communities, where Blacks are the main ones victimized by crime. Crime makes the Black community extremely vulnerable to police abuse and provides legitimate reasons for increased police patrol.

Whites don't notice when police kill and even parts of the Black community become silenced. To effectively fight police brutality we need to address the issues of crime in the Black community. Despite all claims of police, they certainly don't act effectively against crime in the Black community. Drug traffic is allowed to flourish, there is an inadequate response to victims of crime and officials can't seem to differentiate criminals from non-criminals. Indeed the police are the perpetrators of murder in our community.

Most crime is the result of the perpetual unemployment and poverty that is forced on the community, rotten educational systems, lack of job training programs, and our limited options. Crime has an important relationship to unemployment where the U.S. profit system needs a pool of unemployed and underemployed workers to depress the wages of workers which weakens the capacity to working people. Full employment is not profitable from the vantage point of the exploiting class. In this society, who is employed and who isn't is

by and large determined racially and organized racially. Black people and other minorities in this country have been historically the ones brought in to do the worst work and then dumped whenever necessary. This is the function the Black community is locked into. This is the source of the perpetual poverty that forces people into crime!

We can't accept this current notion of "anti-crime," and this position paper is an attempt to point to the conditions that give rise to crime. The role of the police in forcing people to accept these conditions should not be tolerated.

Which way forward for the struggle against police brutality

Such a direction points this struggle towards fundamentally challenging the system that gives rise to police brutality and impoverishment.

We need to recognize that the struggle against police brutality ultimately cannot be won simply through legal struggles to bring individual police to justice or out of the police force and into jails. The source of police violence goes deep into the structure of U.S. society. We need to address those economic and social conditions that make our community so vulnerable to police violence. We must fight for jobs and social services as an integral part of the struggle against police terror in our communities.

Educational work among people is critical. We must attack and break down the "anti-crime" propaganda of the police, government that silences the Black community and wins the active support for police brutality among whites. No struggle against police brutality can be successful if this mentality continues to dominate the thinking of U.S. people as a whole. We need to do educational work that explains what kind of system set up these conditions and *begin to build an effective network of resistance that is politically clear and united.*

Police terror and murder is one of the most blatant, extreme violations of all standards of democracy and decency. It ever violates the laws of this racist society. We need to fight for justice in all incidents of police terror. We need to utilize the laws and courts whenever possible. We need to work with any persons willing to take a stand against such outrage.

The struggle against police brutality must become a critical means of organizing against this racist system as whole and not simply be a series of isolated and disconnected battles.

WE ARE ENGAGED IN A STRUGGLE TO MAKE THE POLICE AND THE LAW ACCOUNTABLE TO THE NEEDS OF THE BLACK COMMUNITY.**Crime...***Continued from page 7*

crime and violence can not be wholly dismissed as isolated examples of inherent criminal tendencies, rather institutional racism, coupled with years of oppression, can be summoned to trace the causes of black crime.

"Hard Drugs"

It is estimated that heroin users commit about 19% of all property crime in the U.S., according to the Drug Enforcement Administration. They commit about 100,000 robberies, larcenoses or auto thefts each day, plus an undetermined amount of crime involving bad checks and credit cards. This cost society about \$10 million per day. Additional costs are generated by some 111,221 addicts, (out of a total of 450,000) who participate in federal treatment programs. Blacks comprise 48% of that total.

Addicts who are unable to support their habits by jobs, public assistance, friends or family, resort to crime. Their primary victims are those in closest proximity-family members and neighbors.

In a study on crime and drugs conducted in five inner cities using a population of 1000 with Blacks comprising 80%, Conrad Mauge of ARTC describes the heterogeneous addict population by dividing it into three groups. It includes:

a) the non-criminal (addict who had been arrested, 17%)

b) the criminal addict who had been arrested after the onset of addiction 28%

c) the addict-criminal who had been arrested prior to addiction (55%)

Violent felonies dominated in the later category with assault, robbery and weapon possession the greatest, followed by the theft and property felonies.

These cities wage a continuous battle to halt drug-related crimes. However, drugs continue to flow into Black communities and crime is rampant. The problem of drugs is a plight caused by

Continued on page 9

Henry Woodley - Another Case of Police Brutality¹

Within the first nine days of this year, the life of an innocent young Black man was taken by the N.Y. Police Department. The killing of the 23 year old Henry Woodley was an act of cold-blooded, racist murder. This killing by the police is not a mere isolated incident. The slightest examination will reveal that there is a growing nationwide trend of innocent Black people being attacked by the police.

This increasing trend of police brutality is linked very directly to the larger effort to coerce and intimidate the Black community to bare the brunt of the present economic and political crisis that faces the U.S.

The Facts of Henry Woodley's Murder

On early Sunday morning, January 9th, Henry Woodley, along with his sister and girlfriend, were walking along Fifth Avenue between 114th and 115th streets, in the Martin Luther King, Jr. Tower housing projects when five thugs attacked them and attempted to rob Woodley. The commotion brought residents to their windows as Woodley attempted to defend himself. The thugs wrestled Woodley to the ground.

Woodley's sister then ran for help from the P.S. Area 5 Housing Police, located just across the street. As off-duty Sgt. Gary Commer arrives to the scene, Woodley was broken away from his attackers.

Sgt. Commer, without a uniform or identifying himself, takes his revolver, aims it at Woodley and fires once. Woodley looking stunned as he endures the bullet amidst the screams by his sister and neighbors that, "you've shot the wrong one," is then shot again by Sgt. Commer. Walking over Woodley, who is now on the ground, Sgt. Commer fires yet another shot hitting Woodley a third time. As an expert, Sgt. Commer landed all three rounds in Woodley, two in the chest and one in the heart.

"As other officers arrived on the scene, they put their arms around Sgt. Commer's shoulders, as if congratulating him for a job well done, and walked him into the precinct house," witnesses said.

Conflicting reports from Police Chief Hamilton Robinson, who came to address a community protest meeting or

several hundred people, denied that there was any evidence of misconduct on the part of Sgt. Commer. The Police Chief said that Woodley was chasing some people with a knife. He was not sure if it was a mugging or a gang fight. However, no knife was ever found.

This is a clear example of a police cover-up, with no concern for the community or its victims. This brutality on the part of the police must be challenged; anyone could be next! There is no logical justification for the shooting of Woodley at all, let alone shooting him three times.

Not An Isolated Incident

The murder of Henry Woodley is one in an epidemic of killings by the police in the past few years. In New York City alone, from June 1979 to September 1981, a twenty month period, there were thirty-four killings of Black and Hispanic people by the N.Y. Police Department. Nationally in the past three years, there has been a tremendous increase in racist police terror - particularly against Black people: in Milwaukee, thousands marched to protest the police killing of Ernest Lacey; in Memphis the unwarranted killings (all shot in the head point blank) of seven Black religious members; in Los Angeles the series of killings of Black people while being held in the custody of the L.A. police Department prompted legal suits; in Arizona the killing and harassment of a Black religious group; in New Orleans the recent indictment (filmed on 60 Minutes) of several police officers for the murder of five Black people; in Miami the murders by the Miami Police Department that sparked two rebellions in the past year and a half; in Oakland, Ca., Chicago, Boston, Oregon, and so forth, there have been large community protests over the killing of Black people by the police. Wherever Black people are concentrated, so is police brutality. The trend cannot be denied - in the U.S. today there is an unprecedented upsurge of brutal police attacks on Black and other people of color.

Why Is Police Brutality On The Rise

Presently the U.S. is in a tremendous economic crisis. This crisis is mainly the result of a system that is irrational, where

profit is placed above the human welfare of people, a system that strives to maximize the profits of the wealthy at all costs. This irrationality has been challenged internationally by third world countries that are rising up and taking over their political economies to determine their own destinies, free of U.S. exploitation.

Crime...

Continued from page 8

society's ills. Crime is perpetuated in this system, until such time as there is a camaraderie between all supportive agencies like the *indical, welfare* and community-based organizations we will be plagued with this problem. If we attack the problem that attributes to drug abuse, we can then eliminate the effects-crime.

"Urbanization and Family Breakdown"

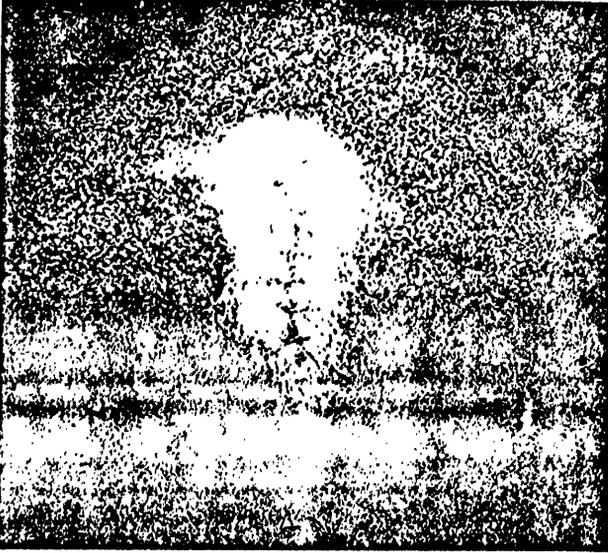
The problems of crowded housing, family breakdowns and urban decadence are responsible for the high crime rate. Urbanization creates a climate for crime by breaking up the extended families that were once a prime source of financial and psychological support for Blacks in the rural south. Black urban neighborhoods are congested with pool halls, store front social clubs and community organizations, not to mention the scattered cliques hanging out near the bars and playgrounds. This diversity can contribute to crime. Unemployment has been established as the major problem affecting young Blacks in the urban cities. Poverty and joblessness are directly linked to the dramatic upsurge in crime. The only solution to crime is jobs and better social conditions.

**ATTEND
BUF RALLY**

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tuesday night
7 pm • 966 fulton st
brooklyn

for information call 596-1991



Brutal attack in 1981 against community resident.

Required 35 stitches to close head and face wounds.



Chairperson's Statement...*Continued from page 4*

1. Become part of precinct councils (don't be intimidated) and don't be indoctrinated. Join so you can effect their functioning to serve the community.
2. When you witness a police officer acting suspiciously RECORD badge no. or vehicle no. and time and location. It is not necessary to intervene to do this.
3. Use your camera and tape recorder to document incidents when possible.
4. If you are involved in any incidents get names of witness and addresses.
5. Organize on your block, neighbor watching neighbor protectively. Exchange emergency contact telephone numbers.
6. Join an organized group committed to serving the community, such as The Black United Front and call on them any time you are to meet with any police officials and attend meetings.
7. Never give information or anything without a witness.
8. When you read articles in the print media or hear statements on radio/TV that do not accurately lift up the facts, you should write or call in protest, let your view be known.



What to do if you are a victim of police brutality

- 1) obtain officer(s) name, badge no., precinct no.
- 2) note date, time, place of incident
- 3) If injuries - have them treated at nearest hospital
- 4) have pictures taken of injuries
- 5) obtain name, address, telephone no., (home, job) of witness

What to do if you witness police brutality

- 1) obtain name, badge no., precinct no., of officer(s)
- 2) obtain squad car no. and description of officer(s)
- 3) note time, date, place of occurrence

Once you have obtained all necessary information, call P.B.I.U. Hot Line number. We will assist you and help you or file a complaint for you. Hot Line number is 789-1862 or 596-1991.

Please leave your name, home telephone number and work number. An investigator will contact you.

You have rights...

- 1) If the police knock at your door and ask to come into your home you do not have to let them in unless they have a warrant that has been signed by a judge.
- 2) You may, but you have the right not to answer any questions except who you are, your age, and where you live.
- 3) You do not have to answer any questions, sign any statements, or appear in any lineups without having your lawyer with you after you are arrested.
- 4) If at any time the police abuse or mistreat you at any stage of their investigation - from the time you were stopped - remember the badge numbers of the officers and what they looked like. You should then phone the P.B.I.U. Unit.

Black United Front Police Brutality Investigation Unit

638-0811 or 596-1991

**24 Hour Hot Line Number
789-1862**

Demand End To Police Brutality In Harlem! Call For Dismissal Of Civilian Complaint Review Bd.

By Allean Easton

Angry Black leaders met last week at Sylvia's to demand that Governor Cuomo and Mayor Koch call a halt to the rising number of police assaults on Blacks in Harlem.

Present at the press conference were civil rights attorney C. Vernon Mason, Kenneth Woods, the most recent victim of a police attack, Mrs. Hazel Dukes, president of the NAACP branches in New York State, Rev. Calvin Butts, activist pastor of Abyssinian Baptist Church. Rev. Lee

Johnson, another recent victim of police attacks, members of The Black United Front and Harlem Core representatives.

Mason who is the defense attorney for Woods declared, "An epidemic other than AIDS is occurring in New

(Continued on Page 3)

NEW YORK VOICE
SAT, JUNE 18, 1988

Police Brutality

(Continued from Page 1)

York. There is an epidemic of police brutality and killings. If the Mayor can't do anything about it or the Governor, then we as Black folk can do it."

Latest Victim Testifies

Woods, the co-owner of the world famous Sylvia's Restaurant at 328 Lenox, and son of Herbert and Sylvia Woods, described the incident that took place on Tuesday, June 7, at his restaurant where he was responding to a call about a fire in back of the restaurant. He told how police officer Paul Dellaconta abused him verbally and physically.

After Woods' emotionally filled testimony, Mrs. Dukes said with tears in her eyes, "I am a mother of a Black son. Our children and our community, are victims. First a Vietnam war, and now a war on our children by white police officers. Its just too much."

"I felt the same hurt and pain that this brother is feeling and my pain grows within me," said Rev. Lee Johnson as he addressed the press.

Seek Board's Dismissal

The leaders called for the dismissal of the Civilian Complaint Review

Board, Mason charged that federal investigations are absolutely necessary. Mayor Koch expressed his doubts about the attacks by the officers from the 28th Precinct several weeks ago after Rev. Johnson's attack.

When the New York Voice contacted the Mayor's office, Anne Putnam, a spokesperson for the Mayor said, "The Mayor is aware of the incident and he is aware that a complaint has been filed with the Civilian Complaint Review Board. The mayor feels that it would be inappropriate for him to comment until the investigation is completed."

Woods was told at the Complaint Review Board that the police officer would only be penalized for a week without salary.

the New York Voice phoned the Civilian Complaint Review Board, and was told to contact Sgt. Sweeney of the Public Information Bureau of the Police Department. Sgt. Sweeney replied, "A complaint was received and it is being investigated."

NEW YORK VOICE

SAT JUNE 15, 1983

Black United Front In Action

BLACK

American
By Paul L. Young

March 20th thru March 26th, 1980

"We want the government to pull the stops on a thorough investigation of the police department," said Rev. Herbert D. Daughtry, leader of Brooklyn's Black United Front.

Daughtry and about 50 supporters had gathered last Wednesday, Ash Wednesday, at the Federal Courthouse in Brooklyn, to protest to the U.S. District Attorney 14 killings of Black and Latino civilians since last June.

"We are angered and thoroughly outraged," said Daughtry. "Obviously, something is terribly, terribly wrong." Specifically, Daughtry had come to see Edward R. Korman, U.S. Attorney for New York's Eastern District, to demand Federal government assistance in suspending two police officers involved in the death of Jay Parker, a policeman's son and honor student shot in the back in Queens earlier this month; indicting the officers in Federal court on Civil Rights violations; and inflating a widespread investigation of police violence against Blacks and Latinos in New York City.

Saying that he and the mainly Black group that had gathered to protest the killings were taxpayers and simply wanted to hear what their public servant (Korman) had to say, Daughtry led a group of about 40 people to Korman's office on the fifth floor.

They were met by an apparently very upset secretary who said she "didn't know what the situation was," and by a Federal marshal. "I'm sorry," the marshal said to the group, "but no one will be coming in here, so step to the elevators and go right back

No one moved, and at that moment another marshal entered the room, a cross traced in charcoal on his forehead. He passed through and the first marshal left the room, his stride indicating he was gathering support.

"Don't worry, just relax," said Daughtry to the secretary. "Everything's going to be all right. I'm taking the blame for everything that's happening today."

The marshal reappeared and directed the crowd, which included television cameramen and a couple of documentary filmmakers covering Daughtry, to the second-floor courtroom. He said Korman would speak to them there. One of Daughtry's aides sent a scout ahead to the second floor. "We're just making sure the second floor is real," he said.

When the bulk of the crowd arrived in the room, marshals were already in place and restricted them to the area behind the spectators' partition, leaving clear the space before the bench usually filled by lawyers and their clients. Daughtry moved to the other side of the partition to address the group, and was grabbed by a marshal, who told him to stay where he was. A shouting match

ensued between two marshals. Daughtry and one of his party, evidently a bodyguard. Other marshals were called and Daughtry told the people assembled. "We didn't come anticipating any confrontation. We came here as citizens to demand why policemen keep killing Blacks and Latinos. Stay calm," he cautioned the group. "Whatever they're going to do, let them do it. This is as good a place as any to go down."

When Korman appeared a few minutes later, he was visibly unnerved by the size of the crowd and the circumstances, but calmly explained that the Federal government only brings indictments "when there is a reasonable belief we're going to get a conviction, not necessarily because of their understandable frustration in the Black community."

Korman continued that an FBI investigation into the Parker killing was underway and "affirmative steps" had been taken to keep Black community leaders informed of its progress.

"We're not talking about an isolated instance now," Daughtry countered. "We're talking about 14 people killed since June. What about going on record saying 'Yes, we need a government investigation of the New York City Police Department?'"

"That's a question that's more adequately addressed by the Civil Rights Division of the Department of Justice," Korman said.

Then Daughtry suggested, as had been done in other cases

suspected a pattern of Federal violations, that undercover agents be assigned to work within the Police Department.

"I will consider and forward your request to Washington," replied Korman, and ignoring some spectators' questions and demands that he stay to reach an agreement with the group, he walked from the room.

"This is the first time I've carried the fight to Federal grounds," Daughtry told the crowd who decided to stay to await Korman's return. He didn't.

While Daughtry and his supporters sat in the courtroom, Korman spoke of the possibility of indictments against the officers in the Parker case. "You have to show that this is something more than that an officer used his gun five seconds too soon. There's a fairly strict burden of proof.

"I feel the frustration of the Black community. I'm white and I feel it. But I can't indict someone unless I feel in good conscience that we can meet the strict burden of proof required and get a conviction."

Two days before the Daughtry-Korman confrontation, as if to confirm that a pattern of police violence against minority civilians does exist. Abdul Haddid, a Muslim street salesman, was shot and killed by police in the Bronx. According to three eyewitnesses, he was shot after being handcuffed, and remained handcuffed after being shot. "Like

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▶ REV HERBERT DAUGHTRY, BLACK UNITED FRONT
415 ATLANTIC AVE
BROOKLYN NY 11217

19TH APRIL 1979

DEAR SIR:

WE AGAIN POINT TO A GLILD-UP OF EVIDENCE THAT MANDATES THAT THE COMMISSION ON CIVIL RIGHTS OF U.S. JUSTICE DEPARTMENT PERFORMA PUBLIC INTENSIVE INVESTIGATION OF THE NEW YORK CITY POLICE DEPARTMENT AND THE DISTRICT ATTORNEY'S OFFICES IN THE FOLLOWING COUNTIES; RICHMOND, QUEENS, NEW YORK, KINGS AND BRONX. WE CHARGE THAT THE CIVIL AND HUMAN RIGHTS OF BLACKS, HISPANICS AND THE POOR CITIZENS ARE BEING VIOLATED DAILY BY THE POLICE DEPARTMENT AND THE ACCOMPANYING DISTRICT ATTORNEY OFFICES.

WE FILED A REQUEST FOR A SIMILAR INVESTIGATION IN JULY OF 1978 FOLLOWING THE DEATH OF ARTHUR MILLER AT THE HANDS OF THE N.Y.C. POLICE AND THE BRUTAL BEATING OF VICTOR RHODES BY OVER THIRTY MEMBERS OF THE HASIDIC JEWISH COMMUNITY. SINCE THAT TIME THE ABUSES AND BRUTALITY OF THE N.Y.C. POLICE HAS CONTINUED AND THE BEATINGS AND COVER UPS BY HASIDIC JEWS AND OTHER BANDS OF WHITE TERRORIST HAS CONTINUED WITHOUT INVESTIGATION BY ANY LEVEL OF GOVERNMENT.

THE LATES ABUSE OF POLICE POWER IN NEW YORK CITY IS MANIFESTED BY THE CASE AGAINST A YOUNG MAN, RONALD SINGLETON, AND THE HANDLING OF THE CASE BY CRIMINAL COURT JUDGE BRUCE WRIGHT. JUDGE BRUCE WRIGHT HAS BEEN ATTACKED BY THE PATROLMENS BENEVOLENT ASSOCIATION HEAD, THE POLICE COMMISSIONER AND THE MAYOR BECAUSE OF HIS REFUSAL TO CHARGE EXCESSIVE BAIL. THE DEFENDENT RONALD SINGLETON, A 30 YEAR OLD BLACK MAN

HAS SEEN THE FACT CHANGE SEVERAL TIMES. LET HIS ALLEGED VICTIM WAS STABBED WITH A BOTTLE AND THEN A KNIFE.

INITIALLY HE WAS ARRESTED 20 FEET AWAY FROM THE VICTIM AND NOW WE HAS MORE THAN A BLOCK AWAY. ALSO IT HAS BEEN DOCUMENTED THAT YOUNG SINGLETON WAS BRUTALLY BEATEN AT THE TIME OF HIS ARREST AND HAD TO BE TAKEN TO A HOSPITAL FOR MEDICAL ATTENTION. WE FEEL THAT ALL OF THIS ACTIONS ARE INDICATIVE THAT A POLICE COVER-UP OF THIS CASE IS IN THE MAKINGS.

THE WARM AND HOT WEATHER BEASON IN THE NEW YORK AREA IS FAST APPROACHING. FOR OUR PEOPLE THIS PERIOD IS SYMBOLIC OF MASSIVE POLICE BRUTALITY AND MURDER. IF THE BLACK CITIZENS OF OUR CITY ARE TO RECEIVE MINIMAL PROTECTION OF THEIR CIVIL RIGHTS AN IMMEDIATE FEDERAL INVESTIGATION?F THE NEW YORK POLICE

DEPARTMENT IS ABSOLUTELY NECESSARY;
WE DEMAND NO LESS

▶ THANK YOU

SINCERELY

REV HERBERT DAUGHTRY

BLACK UNITED FRONT

415 ATLANTIC AVE BROOKLYN NY 11217

10:12 EST

MGH00MP MGH

AMSTERDAM NEWS
OCTOBER 7, 1978

3,000 people march on City Hall

PHOTO BY CLARENCE BROWN
LENS PHOTOGRAPH



A cry for power, justice

By J. ZANGRA BROWNE

A cry for justice and an end to Mayor Koch's "repressive policies" against Blacks, Hispanic and the poor were echoed during a citywide demonstration last Thursday afternoon at City Hall.

Led by the Rev. Herbert Daughtry, the controversial Brooklyn preacher along with Ouse J. Williams, Jr., head of the Association of Black Social Workers, and Actor Ouse Davis, the protesters march in record number to make their point loud and clear.

"We are tired of the arrogance, insensitivity and disrespect by this city's racist Mayor. He has failed to address himself to the needs of our Black and Hispanic

communities," the marchers echoed. The protesters assembled as early as 10 a.m. at the House of the Lord Church on Atlantic Ave., Brooklyn, where Rev.

The anti-Koch rally; the Gault apartment; and the Curry-Daryea race — read Bryant Rollins' analysis. Page A-4

Daughtry is the pastor to begin the long march across Brooklyn Bridge to City Hall.

Chanting "we're fired up, we won't take it no more, and enough is enough," the marchers arrived at City Hall at about

12:30 p.m. waving the red, green and black Liberation Flag.

After circling City Hall for about 30 minutes, where they were met by some 500 police officers, the demonstrators sent a 10-man delegation to place a list of demands on the door.

A List of Demands

When asked if they want to see the Mayor, Rev. Daughtry snapped "We're not interested in seeing Mayor Koch. We only want to leave our demands in the name of our people and God."

Among the demands were the allocation of "unemployed Blacks and Hispanics," the suspension or dismissal of police officers involved in the incident in Crown

Heights in which civic leader Arthur Miller was choked to death.

Also the ouster of Blanche Bernstein as the City's Human Resources Commission-

For photo highlights of the march see page C-3.

er, and changes in housing programs and the school system "to meet the real needs of the Black and Hispanic communities.

Williams, one of the leaders in the march said if Mayor Koch doesn't do right, his group will put him on the unemployment line when he comes up for re-election.

"Mayor Koch will have to start singing a song to the Hispanic Jews in Brooklyn and tell them to do right. He will also have to sing to Blanche Bernstein, who doesn't have regards for Black folks, and he still has to sing a song to bring some jobs to our people."

"Until he starts to do this kind of singing," Williams continued, "I will continue to fight him."

Ouse Davis said the bottom line of the matter is the continued war between the haves and the have-nots. "This is a period of confrontation. The people are angry and we are on the march," Davis told the cheering crowd.



Statement By Ambassador Dramane Ouattara

Executive Secretary Of The Organization Of African Unity

To Like It Is/WABC-TV, Tuesday June 27, 1978

The Organization of African Unity was founded in May of 1963, making our representative group fifteen years old this year. Originally conceived as an Organization whose prime consideration was geared to support the effort of its members for their economic developments and to aid and assist in the decolonization process of still dependent territories, in recent years the OAU has moved resolutely to maximize support and defend the struggles of African People—primarily those at home in Africa, but, whenever possible, those outside of their original historical homeland as well.

Because the OAU has existed for over a decade and a half, and because our Organization has a Mission attached to the United Nations in New York, we have had a unique advantage of being at the center of communications in the United States, allowing us to become instantly aware of both the progress and problems that occur daily within the particular country.

One of the biggest problems that have affected Black People both in Africa and outside of the Mother continent (particularly those within the United States) is the problem of racism—a peculiar, vicious type of racism that often causes the death of Black People simply because they happen to be residing in a society that has a prevailing feature, an obvious and ugly feature we might add, while supremacist elements in control of various governmental institutions and administrative agencies.

It is a world renowned fact that although there is today growing amounts of evidence to support the premise that African People arrived in the western hemisphere in general and the continent of North America in particular long before Columbus' alleged discovery, the majority of African People within the United States today are descendants of those African forebears who were victimized by the European slave trade in Africa four centuries ago, and last year the televisive production of "Roots" reminded millions of people who might have tended to forget.

It is also a well known fact that precisely because of this "legacy" of the slave trade, that people of African descent within the United States have had to experience both discrimination to block their advancement and, too many times, brutal death at the hands of lynch mobs and individual racist who cannot stand to see America purge itself of this negative type of social behavior that wishes to permanently maintain a certain type of social structure based on white domination. Because of this, Europeans who have recently immigrated to this country are more readily accepted in a great many cases over African Americans whose labor and genius helped to lay the foundation for the development of the enormous wealth of the United States.

Racial discrimination, harassment and brutality against Black People in the United States is not an abstract concept to representatives of African countries. Students, businessmen, diplomats and others from Africa have experienced racism first hand throughout this country. Indeed, it has been brought to

our attention that this very fact—the discrimination that affected representatives from Africa—played a critical but unpublished role in the U.S. government giving tacit support to the Civil Rights movement, hoping to avoid further U.S. embarrassment caused by reckless international incidents provoked by diabolical facts.

Nevertheless, racism is still a dominant feature in the United States, especially racism against Black People—which, to us, is tantamount to racism against Africa. This is a fact that greatly saddens and bewilders many of us in the African diplomatic community. At a time when demands for the respect of "Human Rights" has become the much heralded theme of the new U.S. Administration, and moreover this new policy, we are often told, claims to be addressing itself directly to individual African states and liberation movements, we cannot help but notice that the same old pattern of denial of "human rights" regarding those residents of African descent within the U.S. still continues. And when one takes into account the fact that the U.S. celebrated its 200th birthday two years ago whereas the majority of African states are not yet twenty years out of a bitter colonial rule, this inconsistency is particularly hypocritical.

In this latter regard, the recent killing of Arthur Miller, an outstanding community leader in the Crown Heights section of Brooklyn, during a generally acknowledged unprovoked attack by, according to press reports, over fifteen New York City policemen on June 14th, literally sickens our stomach. On the following day, the occurrence of a similar incident when a young man, Victor Rhodes, only sixteen years old, was nearly lynched and beaten into a coma by, perhaps, "over fifty members of the Hasidic community" acting as vigilantes in close connection with the N.Y. Police Department) also causes us great concern. That these two incidents happened on the eve of the second anniversary of the slaughter of hundreds of students in Soweto and other townships in South Africa, further dramatized to us how similar is the desperate plight of Black People both in the United States of America and what used to be called the Union of South Africa.

Because of the nature of Arthur Miller's death at the hands of police, it has been likened to the death of the late Steve Biko. Since the whitewashed by BOSS, the Bureau of Special Services of the Police Department of New York.

That Arthur Miller's tragic death was initially triggered off by the simple attempt to issue an undue traffic ticket, and the fact that the OAU has been made aware of several instances where members of the African diplomatic corps have themselves, too, been threatened by New York policemen also ostensibly issuing such traffic tickets, helps to make us even more apprehensive of the unfortunate situation that Mr. Miller found himself in.

Moreover, the additional fact that, on June 22nd, another Black businessman from the same area, Mr. Charles King, was also physically abused by still another New York City policeman, shows us that rather than scaling down its hostility towards the Black community, the so called law enforcement authorities seem to be escalating its attack. With the Black community, especially the youth, already disappointed and disgruntled because of an employment, and the legendary "hot summer" months now upon us, one can only wonder if this whole unfortunate scenario is more other than a ploy to set up a violent confrontation with young Blacks versus the police. We dread to contemplate a Sharpsville, Massacre or a Soweto Uprising (and its subsequent near genocidal aftermath) taking place in New York City just as we regret such atrocities happening in Africa. Will it take a tragedy of such proportions for higher authorities to step in and remove the cause?

The OAU in its own concern for the masses of African People the World over takes this extraordinary step in speaking out in defense of the human rights of our Brothers and Sisters in Brooklyn in particular but the U.S. in general to warn all those who wish to teach Africa about "Human Rights" to first give us a concrete example in your relationship with those citizens of African origin who are residing under your jurisdiction. It would stand to reason that if the U.S. Human Rights campaign is truly sincere, and is to be taken seriously by anyone, that such justice should be meted out to those still incarcerated in the infamous "Whittington Ten" case, that Joan Little should not be subjected to further humiliation, that by our joblessness and behavior modification programs in the U.S. prison system be curtailed, and a host of other abuses that the Black community has complained about for so long be equally abolished.

For over fifty years now, since before the highpoints of the Civil Rights Movement, Black People in the U.S. have been seeking their support for their Brothers and Sisters struggling to regain their human rights and dignity in Mother Africa. At this time, Mother Africa is voicing its concern and support for our brethren trying to gain their due respect in their pursuit of life, liberty and happiness against the omnipresent forces of racism and reaction who continue to retard their progress, and the overall progress towards equality for all that reside within the United States of America.

THE Black American

VOL. 17 NO. 30

JULY 20th, THRU. JULY 26th, 1978

CITY EDITION

50¢

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Your Human Rights statements on behalf of Ginzburg, Scharansky and other Soviet dissidents have a hollow ring in the Black community, especially in Crown Heights at this time.

We are charging the Hassidic Jews, in collusion with the City of New York, with violating the Human Rights of Black people in Crown Heights, Brooklyn.

Since there is strong belief that there is sufficient evidence regarding the violation of the human rights of the aforementioned group, many prestigious organizations and persons have written to the Justice Department requesting a Federal investigation.

In addition, H.E. Oronogene Quattara, Secretary of the Organization of African Unity made an appeal for justice on behalf of Black people in Crown Heights. In his statement of June 26, 1978 he highlighted the similarity of Steve Biko's death, the death of Arthur Miller and the vicious attack of the Hassidic Jews on a 16 year old youth named Victor Rhodes.

It does seem that your Human Rights pronouncements are reserved for the Jews in Russia. It is not the first time you have been approached regarding violation of Human Rights of Black citizens in the U.S.A. However, the importunities have always fallen on deaf ears.

For example, the most flagrant disregard of Black people's rights, the case of the Wilmington Ten, does not merit a response from you, while any alleged mistreatment of Jews in Russia evokes a frenzy of activity from yourself to almost every facet of government.

Let me refer to another case. Randolph Evans was a 15 year old Black kid who was killed on November 27, 1976 by a Patrolman named Robert Turney. In November, 1977, Turney was acquitted by reason of insanity, a clear example of a miscarriage of Justice.

We brought the matter to U.S. Attorney, David Trager demanding an investigation into the violation of Randolph Evans' civil rights. We were promised that there would be a decision by the 1st of March, 1978. At this point, we have heard nothing.

An endless list of abuses by both the Police Department and the Hassidic Jews make it imperative that there be a Federal intervention.

We entreat you, Sir, if you are truly concerned with Human Rights, to address yourself to the plight of Black people with particular emphasis on Crown Heights. Otherwise, it will become necessary for us to carry our grievances to the United Nations to obtain a hearing before an impartial world body.

Enclosed is an excerpt from Dr. Veronal Cave's letter to the Justice Department.

We look forward to hearing from you in this regard.

Yours sincerely,
Rev. Herbert Daughtry
Written in behalf of
The United Black Front

The following statement has the full endorsement of the Black United Front of Crown Heights:

The Black Community Council of Crown Heights is at this time officially calling on the United States Department of Justice to investigate the following.

1. Violation of our civil rights by former Mayor Beane and other high ranking New York City officials which they split the community in two.

2. Forcing non-Hassidic merchants to close their stores on the Jewish Sabbath.

3. Lack of adequate police protection for the Black community while the Hassidic community is closely guarded 24 hours daily.

4. The closing of streets on the Jewish Sabbath and special Hassidic days.

5. Though the Hassidic comprises less than 10% of the population, they have over 50% representation on Community Planning Board #9.

6. The death of Community Leader Arthur Miller by police.

7. The savage beating of 16-year old Victor Rhodes by a gang of Hassidic.

8. The senseless beating of Charles King, a businessman, by police.

9. The arbitrary assault of Blacks by the Crown Heights Patrol of the Hassidic Jews.

10. The takeover of the 1st floor of the 77th precinct by an angry mob of Hassidic, demanding the release of three innocent Blacks.

11. Hassidic purchasing homes ostensibly for religious purposes in an effort to avoid taxes, this cheating nearly bankrupt New York City.

12. The use of homes, as the residential block of President St. between Kew-Forest and 135th York Avenues by the Hassidic as a multiple dwelling which is in violation of the city ordinance.



601

May 10, 1978

Mr. Robert McGuire
Police Commissioner
1 Police Plaza
New York, NY 10007

Dear Commissioner McGuire:

At our first meeting on February 5, 1978, you agreed to the formation of a task force and monthly meetings. Since that time, we have had one additional meeting. I talked to Deputy Commissioner Perry regarding this matter and at this point, we have received no satisfactory response.

We wish to hear from you on your agreement. It is important to us to know whether or not you plan to keep your commitments.

Yours sincerely,

Rev. Herbert Daughtry
Chairman, Coalition of Concerned
Leaders and Citizens to Save Our Youth

HD/vr

NATIONAL BLACK UNITED FRONT



Mailing Address 415 Atlantic Avenue
 Brooklyn, New York 11217
 (212) 596-1991 625-8292 638-0811

Rev. Herbert Daughtry
 Chairperson

Hon. Herndon
 Secretary

Elsie Dillahunt
 Treasurer

March 11, 1983

Western Region Coordinator
 Ron Herndon
 Portland Black United Front
 P.O. Box 3978
 Portland, Oregon 97208
 (503) 289 3366

Honorable Governor Mario Cuomo
 Executive Chambers
 Albany, New York 12224

Southern Region Coordinator
 Sebaba Akili
 P.O. Box 11157
 Atlanta, Georgia 30310
 (404) 753 5228

Dear Governor Cuomo:

On behalf of The National Black United Front representing the Black Community I am writing to urge that you appoint a Special Prosecutor to investigate the proliferation of violence to which Black people are subjected.

Midwest Region Coordinator
 Conrad Worrell
 8714 S Harper
 Chicago, Illinois 60619
 (312) 268 7500

The recent verdict by the Grand Jury in the Willie Turks murder case underscored again the double standard of the judiciary system. It was a case in which 15-20 Whites attacked three (3) respectable Blackmen, killing one, irreparably injuring another and one of the convicted defendants received a verdict of Second Degree Manslaughter and will receive 5-15 years.

Eastern Region Coordinator
 Min. Michael Amon-Ra
 415 Atlantic Avenue
 Brooklyn, New York 11217
 (212) 825 8292

But, the murder of Willie Turks is not an isolated incident. There have been reported instances of racist attacks all across the City of New York. These attacks are not confined to the hoodlum element. There have been numerous cases in which the Police have assaulted and killed Black people under the most suspicious circumstances.

Jitu Wausil
 National Coordinator

Assemblyman Roger Green is a case in point. He was in his automobile when a man banged his vehicle. When Mr. Green came out of his vehicle and accosted the man it was a Policeman. Had it not been an Assemblyman it would have been another case of vicious beating or even killing by the Police. There are too many other instances to relate in this letter. The research has already been done and there is ample documentation to support the need for a Special Prosecutor.

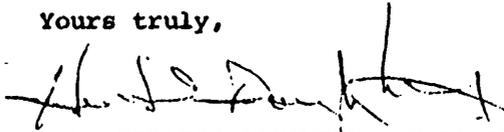
Moreover, I wish to call to your attention that in 1981, the Black & Puerto Rican Legislative Caucus after Statewide

Forward Together - BACKWARD NEVER !

Hearings on racist violence recommended that the Governor appoint a Special Prosecutor to investigate the racist attacks.

Be it far from me to remind you of the overwhelming support you recieved from Black people during your campaign for Governor. I am sure, by now, you have grown weary of hearing this statement of fact. But, surely one who has received such support cannot help but be responsive to the needs of the supporters. What need is more important than the need for protection and security?

Yours truly,



REV. HERBERT DAUGHTRY, CHAIRMAN
NATIONAL BLACK UNITED FRONT

HD:aa



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

January 25, 1978

Reverend Herbert Daughtry
House of the Lord Church
415 Atlantic Avenue
Bronx, New York 11217

Dear Reverend Daughtry:

I spoke with U.S. Attorney David Trager yesterday with respect to the matter mentioned in my letter of January 18th which I am enclosing. He has advised me that he is pursuing the investigation of the matter, and is having the transcript of the original trial carefully analyzed to see whether a second action would lie. While he would meet with you and anyone else on this matter if you requested it, he believes that it would be better that you await his decision as to whether to initiate a federal action, and if you are not satisfied with his decision that you then arrange to meet with him and, of course, the community's right to pursue the matter further at that time with the U.S. Attorney General would remain unimpaired. He is also interviewing medical witnesses whose testimony bears upon the case.

I asked him when he thought his decision would be made and he advised that he expected it to be no later than early March. I hope this information is helpful.

All the best.

Sincerely,

A handwritten signature in black ink, appearing to read "E. I. Koch".

Edward I. Koch
MAYOR

January 18, 1978

Mr. David G. Trager
United States Attorney
Federal Building
Brooklyn, New York 11201

Dear David:

I was visited this week by several persons who believe that more should be done in the Torsney case than has been done. I was provided with a copy of the December 13th letter sent to you by the Black and Puerto Rican Legislative Caucus, as well as your response of December 19th. This is a matter which concerns me as I know it does you, and I am interested in knowing what, if any, action your office can take under the Federal Civil Rights Laws notwithstanding the earlier state court verdict. Whatever advice you can provide me with on this matter would be most helpful in preparing my own response to those who have concern on this subject.

All the best.

Sincerely,

Edward I. Koch

DATE: January 17, 1978
FROM: The Coalition of Concerned Community Leaders and Citizens to Save Our Youth
415 Atlantic Avenue
Brooklyn, New York 11217
Rev. Herbert Daughtry

FOR IMMEDIATE RELEASE

The Coalition of Concerned Community Leaders and Citizens to Save Our Youth, has called this News Conference to report on the meeting with Mayor Koch.

On January 1, 1978, the above named group conducted a demonstration at Mayor Koch's Inauguration at the Brooklyn Museum to dramatize the outrage the coalition felt regarding the Torsney decision, and to invite all people of decency to join them in urging the Mayor to act on the coalition's demands. Mayor Koch promised the coalition that he would meet with them in 10 days.

On Thursday, January 12, 1978, a delegation of the coalition consisting of Rev. Herbert Daughtry, Jitu Weusi, Assemblyman Al Vann, Samuel Penn, Bill Banks, Eman Saraj Bahhaj, Mrs. Karen Daughtry, and Mrs. Brannon, met with the Mayor, Deputy Mayor Basil Patterson, Locicero, Herb Richman, and David Dinkins.

The Coalition placed before the Mayor, three areas of concern:

1. Immediate indictment of Patrolman Torsney by the United States Attorney General for violation of Civil Rights of Randolph Evans.
2. Task force of reputable community residents with subpoena power appointed by the Mayor to investigate racism in the New York City Police Department.
3. Formation of a committee representing all segments of the city to develop a comprehensive program to redirect the energies of all youth.

To these demands, the Mayor replied that since he had just appointed a Police Commissioner, he would not want to do anything that could be interpreted as a lack of confidence in his appointment.

He suggested that we meet with Commissioner Robert McGuire and if we were still unsatisfied, he would be available for further discussion.

Regarding the Commission on youth; the Mayor said that consideration had already been given to that idea and welcomed whatever suggestions we had to offer.

He also said that he would write the U.S. Attorney urging an investigation into the Torsney case.

The coalition felt that the meeting was friendly and that the Mayor would give serious and sincere attention to the unresolved questions.

We hope that this Torsney affair will be speedily concluded and that we can get on with the business of building better relationships out of which can emerge a better city, and without which, only an intensification of hostility can be expected.

The experience of the past has taught us to be pessimistic regarding the sincerity and determination of the best elected and appointed officials. Historically, however just and reasonable our demands have been, the resolve of the most well meaning has withered in the face of the feeblest opposition.

In fact, our present predicament, and the mood of the country testifies to the truth of the above statement. After centuries, this nation still has not delivered on its promise to its black citizens.

Therefore, we have decided to continue the boycott of the Downtown Stores.

For further information, please call:

596-1991 or 625-8292 - Rev. Herbert Daughtry

636-9400 - Mr. Les Campbell (Jitu Weusi)

#--#--#--#

COALITION OF CONCERNED COMMUNITY LEADERS
AND CITIZENS TO SAVE OUR YOUTH

TO: Members of the Coordinating Council

RE: Minutes of Meeting with Mayor Ed Koch

DATE: Thursday, January 12, 1978

Present: Rev. Herbert Daughtry, Assemblyman Al Vann, Bros. Jitr Weisu, Sam Pinn and Bill Banks; Mrs. Brannon and Mrs. Daughtry - From the Coalition - Iman Seraj Wajjah

Mayor Ed Koch, Deputy Mayor Basil Patterson, City Clerk David Dinkins, Messrs, John Lucicero and Herb Richman - from the Mayor's office.

The meeting was opened by Rev. Daughtry. In his opening remarks he noted the cordiality with which he had been spoken to by members of the Koch administration. Introductions were made. He continued by mentioning that he understood Mayor Koch to be on record as stating that he was not beholding to any person or group. "Our credentials are similar. We have no loyalty to anyone but God, our consciences and of course, our people."

At this point he proceeded to say that there were three demands which were held over from the previous administration which demand our consideration. "We hope that they demand yours." He then briefly touched on the three demands and told who would elaborate on each.

1. A task force with community representation to investigate the institutional racism in the Police Department and the police brutality visited upon the people of the black community.

An indictment by the U.S. Attorney on the violation of the civil rights of Randy Evans and Department Hearings to look into the dismissal of Patrolman Torsney .

A commission which will explore ways to channel the energy of our youth into positive directions.

After this each person elaborated on his given area as follows:

Sam Pinn - Task Force to investigate Police Department

Mr. Pinn stated in his opening remarks that we feel it is important that the Mayor appoint a commission or task force to investigate police violence and institutional racism. It is also important that said task force have supeona power.

He pointed out that over the years, blacks have been brutalized and shot down in the streets and the perpetrators have not been brought to justice.

He further expounded that since 1968 twenty six (26) youth under the age of 21 were shot by police with no successful prosecution of these cases. The attitudes have to be changed and it was the feeling of the Coalition that a task force will bring forth recommendations which will go into ending these acts in the black community.

Mr. Pinn related that when Mayor Beame was in office at the time of Randy Evans' death, he promised that he would do this but it was never done. He ended his presentation by stating that it is important that a task force be appointed.

Al Vann - U.S. Attorney & Departmental Hearings

Al Vann then stated that there were two aspects to be presented for the Mayor's consideration.

He mentioned that we had been in touch with the U.S. Attorney with regard to the possible indictment of Torsney on the violation of Randy Evans' civil rights. He asked whether the Mayor had received a copy of his letter which was written as Chairman of the Black and Puerto Rican Legislative Caucus and said that we would welcome his supporting us in this connection.

Secondly, he stated that we have seen to it that several civilian complaints have been lodged against Torsney. We understand that this will serve to stop any action regarding his pension application.

He further stated that we are also deeply concerned that departmental hearings be held in this case as was done when Patrolman Shea killed Clifford Glover. Again he stated that Koch's support of these demands was important.

Jitu Weusi - Youth Commission

Bro Jitu began by saying that there must be some preventive measures taken. The present policies of agencies dealing with youth are so inconsistent and in disarray that situations are created for the youth to be murdered.

He pointed out that there are neighborhood youth corps youngsters prosecuting themselves to get jobs.

Therefore, there needs to be, under this administration some type of youth commission composed of educators, community folk, businessmen etc coming together to formulate policy for future direction of the youth of New York City.

Mayor Koch

The Mayor then responded by saying the following:

We have entered into a new administration with a new police commissioner. I am told of his history of good race relations. He stated that he

is a much more sympathetic police commissioner. He stated that you can't mandate love but you can mandate respect. He further stated that the law will be carried out in this town.

He also said that although the trial had been completed and Torsney had been acquitted and could not be tried over, there were still however, the departmental hearings.

He also said that he would not want to appoint a task force over the new police commissioner. He felt that he ought to be given a chance to do his job. "If the police commissioner does not do the job, I will remove him and perhaps appoint a task force to see that the new police commissioner does his job."

In responding to the David Trager letter, he stated that he had not seen it. However, if given a copy of the letter, he would write to Trager stating that these are the allegations and urge him to investigate. He assured us that an injustice will not be extended.

With regard to the commission on youth, the Mayor stated that upon taking office only 12 days ago, his first action was to begin to look closely at these programs.

At this point, Basil Patterson interrupted and asked to speak. He cited instances of black youth who are continuously being killed. There are problems in the police department of white cops shooting black cops.

He mentioned that the new Police Commissioner is sympathetic to finding ways to screen the police department. At present there is no screening done. Basil said that McGuire had gone on record as being willing to tackle the P.B.A. on issues where he thinks he is right.

Basil continued by stating that these are responsible leaders in the community. He had been out in the community and worked with many of them. He felt that it was a good idea to have people from the community give the benefit of their years of experience. Some administrations may not have had the privilege of this wisdom.

Finally, he said, that if there was another such incident such as Randy Evans, etc. there was sure to be rioting in the streets. He urged the Mayor to deal with this group because the next time there would be another group to deal with since this group of responsible leaders will not be back. Perhaps another would, but they would not come to see him. Indeed, they would not come the way this group had come.

At this point, Rev. Daughtry pointed out that one of the reasons why there had not been a violent outbreak in the community was that the coalition had provided a viable, alternative. We had utilized the economic route. People could vent their hostility by carrying signs, demonstrating, picketing.

He continued by saying that when we talked about a panel we don't see that as a vehicle to supercede the police commissioner, but rather a vehicle that could assist him and perhaps undergird him.

Emam Wahhaj spoke at this time. He said to the Mayor that we are not a threat to you. Privately people are outraged. We need to reach deeper into looking at real things you can do. Black people don't really think that you care.

Mrs. Brannon, said that she had watched these things trailing on for years. Promises had been made but nothing had been done. When the verdict came through there was an uproar in her community. She said that she talked to many of the youth and tried to reason with them. Her feeling is that something must come out of this.

Bill Banks said that he felt the panel was crucial and that the problem of youth unemployment needed to be addressed.

John Vicissaro stated that it was their intention to appoint such a panel within the next 30 days.

It was reiterated that we needed to leave with something positive to tell our people.

Basil stated that he felt that it was positive that the Police Commissioner wanted to meet with the Coalition.

Koch stated that he felt that when the agencies were revamped, there would be more jobs for youth. He made it clear that New York could not, at this time, give a job to everyone but that there would be more jobs for youth once the money were used properly.

Jitu stated that he felt that the answer was not to give more jobs. He pointed out that it was a vicious cycle and that policy needed to be talked about. There are countries poorer than the U.S. that have been able to motivate their youth because there is direction. Eight years ago there were certainly enough jobs but there will still corruption and inequities.

Koch said that we have to find the morality to deal with this.

Rev. Daughtry raised the question of whether we were confusing the two issues at hand i.e. the task force and the youth commission. He also informed the Mayor that there had been another group which had met with Mayor Beame around this case and their credibility was destroyed because they did not relate to the community. He said that we have established a reporting system and are obligated to report to the community. He also repeated that the police investigation was crucial.

Koch said that he would not tell his Police Commissioner how to do his job.

Basil stated that the meeting with the Police Commissioner will take place in the coming week. It was pointed out that Rev. Daughtry is the contact person.

David Dinkins told the Mayor that his group, The Black Elected Democrats has joined with Al Van (The Black and Puerto Rican Legislative Caucus) and the Coalition.

Koch said that he will send a letter to Trager as mentioned earlier. Jitu asked the Mayor if there was some step that he (the Mayor) could take that would demonstrate to the black community that he cared.

Koch went back over the things that he would do. He would see to it that there was a meeting with the new Police Commissioner. He would support the new Police Commissioner in carrying out his job regarding the Departmental hearings. He would send a letter to Trager and would release a copy of that same letter to the news media. He would also give some thought to the establishment of a commission for youth which they had already thought about doing within the next 30 days.

Jitu again asked, "What can you do"? He continued by suggesting a story released to the media with a TORSNEY headline.

Someone came in and announced that the people had arrived for the next meeting.

Koch went back to discuss the youth commission further. He said that he will use the Community Planning Boards and ask them to have one person from each of the 59 to sit on a panel to redirect the energies of our youth.

At this point there was an outcry against using the Community Planning Boards because, as pointed out by Al Vann, there is no guarantee that you will get the kind of expertise that you need to accomplish the goal.

Koch said that he would try to find the best way to deal with the situation.

Rev. Daughtry said that if the problem was of the proportion that we agreed it was, then it must be handled promptly.

A young lady came into the room and asked whether the yellow envelope she was holding was for a person whose name she called. Everyone said there was no one in this meeting by that name. It was obvious that it was time for Koch's next meeting.

John Viciffero said, "Thank you gentlemen" and the meeting was adjourned. Mayor Koch arose from his chair and shook hands with all who were present.

Mr. CONYERS. Before we go to the next witness, I have been advised that we now have a special visitor in the form of the Reverend Jesse Jackson.

[Applause. Audience chanting "Run, Jesse, run."]

Mr. CONYERS. The subcommittee will come to order.

We welcome the Reverend Jesse Jackson, recently returned from a trip. We appreciate his having joined us at this proceeding.

Our next witness is the staff attorney for the New York Civil Liberties Union. Attorney Richard Emery has worked diligently in police violence cases, and he is our next witness.

If you can find the right microphone, Attorney Emery, we welcome your prepared testimony. And as soon as everyone has taken their seats and order is restored, we will allow you to begin.

Will the subcommittee come to order. Will everyone here on the main floor take their seats or remove themselves. Let us continue to have the excellent order that has been the hallmark of these hearings so far.

Attorney Emery, welcome to the subcommittee.

TESTIMONY OF RICHARD EMERY, STAFF ATTORNEY, NEW YORK CIVIL LIBERTIES UNION

Mr. EMERY. Thank you, Congressman Conyers.

The NYCLU thanks Congressman Conyers and the rest of his associates from the House who have invited testimony on the crucial issue of police abuse. We have, over the past 20 years now, handled police abuse cases, addressed legislation to the issue of police abuse and educated the public as best we were able on the issue of police abuse. It is of the highest priority to the New York Civil Liberties Union.

In the last 6 years, I personally have represented numerous plaintiffs in police abuse cases and done what I could in a small way to redress the problems of police abuse. In that capacity, I have represented people, and I might say these people have almost been uniformly black, Hispanic, gay or other minority.

I have represented people who were choked, who were beaten with night sticks, who were kicked while they were on the ground, who were smothered, who had a police .38 placed, in one case, in his mouth, who had fingers broken, who had dental plates broken, who had their prosthetic devices, a prosthetic leg destroyed, women who were strip-searched in public areas of police precincts and numerous people who were insulted, including not only racial epithets but insults which said, "Go on to the CCRB and complain; we don't care. They won't do anything to us."

These cases involved many police officers from every borough, and they obviously troubled me over the course of my representation of my clients, not only the cases I handled but the hundreds and hundreds of cases which I had to turn away and which the NYCLU had to turn away where similar stories that no doubt were true were also told.

What I did, and what members of the staff at the NYCLU did, was search for alternatives to the individual representation of people who complained about police abuse. We decided—we observed that it was a systemic and endemic problem in New York—

not something a couple of lawyers either at the Puerto Rican Legal Defense Fund or the New York Civil Liberties Union, or like Vernon Mason, who you will hear from later—not something a couple of lawyers can do anything about. This is a systemic and endemic problem rooted in the New York City and presumably other police forces around the Nation.

So what we tried to do is we tried to search for alternatives to individual representation of plaintiffs. In that regard, we dealt with prosecutors in many localities. We dealt with the civilian complaint review board. In the process of dealing with the civilian complaint review board, I personally reviewed more than 15,000 civilian complaint review board complaints. I read them all. And what I saw was a pattern of police abuse that reinforced my belief that this was a systemic, endemic problem.

The pattern that I observed included such actions as abuse of, in many, many instances—let's say more than 100 instances of those 15,000—complaints of pregnant women; abuse of, of course, arrested persons, persons who came into the custody of police officers; but, more significantly, systematic abuse of bystanders to arrests, people who were only watching arrests or questioning arrests; and people who called the police for help, people who were seeking assistance from the police were routinely abused.

Finally, we dealt with the police themselves in seeking to redress this systemic and endemic problem. From those three sources, as you can expect, hearing what you have heard today, we got no satisfaction or, I might say, very little satisfaction. However, the process of looking to these sources for alternatives to the individual representation of people who complained led us to conclude that, in fact, in New York police abuse is accepted and it is tolerated at all but the highest levels of the department and of the governmental structure. It is accepted and tolerated specifically in many, many precincts and in many, many units of the police force where there is an atmosphere among supervisory police officials that allows officers to get in their licks. [Applause.]

As Reverend Daughtry alluded earlier, it is tolerated in much the same way that police corruption was tolerated in the early 1970's. And I think it is instructive for this committee, for this group of esteemed Congressmen, to look to that experience, the experience of police corruption in New York with respect to devising solutions to the current police abuse problem.

The fact is that in the early 1970's, the problem of police corruption was addressed largely through Federal intervention. Federal intervention is again needed to address the problem in New York of police abuse. Presumably, that is why you are here.

Now, why is Federal intervention needed? And I will be brief. Federal intervention is needed because local prosecutors simply do not effectively prosecute police cases even in the few cases when they want to. They can't. They have a conflict of interest. They work on a day-to-day basis with the police. The police know how to manipulate the grand juries, and the local prosecutors have no expertise in prosecuting police. It takes an expert to prosecute a police case.

What about Federal authorities as they presently exist? Federal authorities as they presently exist have not prosecuted any police

case in any memory that anyone that I talked to about this matter can conjure up. Federal authorities have other things on their mind, and they simply do not prosecute police abuse.

Well, what about this thing called the civilian complaint review board? Well, we all know and we have heard over and over again that the civilian complaint review board is more likely to be called a "Civilian Coverup Review Board." [Applause.]

The civilian complaint review board is a sham, and it simply doesn't work.

Well, then, what about the internal affairs division of the police department? They were very effective in the effort against police corruption. The fact is, the internal affairs division of the police department simply doesn't have enough person power and simply has too much of an obligation to stem continuing police corruption to be devoted to police abuse.

Finally, what about the lawsuits that people bring as a result of police abuse? All the lawsuits do is line up the city and the Police Department and the Corporation Counsel's office against the person who complained of police abuse. They never then look at the police officer who committed that police abuse, because to do so would be to subject the city to liability, to money damages. So they defend the abusing police officer instead of looking to their own in a way of disciplining their own.

Consequently, since each of these institutions which we would hope would address police abuse have failed to do so, because of their other obligations, because of their conflict of interest and because of their close ties to the Police Department, we now have to look to the Federal authorities for remedies.

Briefly, the remedies that the NYCLU would begin to suggest that you consider are: an expansion of the criminal civil rights statutes, which now limit Federal prosecutors to either a 1-year sentence or a 10-year sentence, and limit thereby all the discretion which avid expert prosecutors need to fashion prosecutorial cases to the individual circumstances of a particular police abuse event.

Second, special Federal prosecutors like those that were appointed during the era of police corruption in the early seventies have to join with special State prosecutors to assure that independent prosecutions in police abuse cases take place. We have not seen an independent prosecution even in the most serious cases of obvious police abuse, let alone in the close case that call for obvious expertise and judgment. There are very, very few that have been successful that are not independent prosecutions.

Finally, the Federal Government must look for more financial incentives to local police departments, to the New York City Police Department, to integrate the New York City Police Department, to force the New York City Police Department, through financial incentives, to set up independent review mechanisms, to attempt to bring the community, through financial incentives of the Federal Government, into the precincts, bring community representatives into the precincts to oversee the operations of the police on a day-to-day basis. [Applause.]

Mr. EMERY. That can include the kind of video tape procedures which we saw in Texas that revealed police abuse right in front of the sergeant's desk and was broadcast on national television. I

guarantee you, if you put video tape in New York City precincts, you would have similar national broadcasts of police abuse.

Finally, we have to devise—and the Federal Government can be key in this—a method of creating supervisory responsibility for the line officer's conduct when he or she comes in contact with New York City citizens. The supervisors have to be responsible for restraining their personnel. They have to be held accountable just as if they were the line officers, because the supervisors create the climate; they create the atmosphere that fosters police abuse.

I would say to you that there is no way that we can have a law-abiding society until the police abide by the law. [Applause.]

Regrettably, it is going to be up to the Federal Government to force the New York City police on the street in their everyday activities to abide by the law.

Thank you very much. And if you have any questions, I will be happy to answer them.

Mr. CONYERS. We don't have any questions. But I want you to know that the National American Civil Liberties Union has been working with our subcommittee in Washington in the form of John Shattuck and Wade Henderson, the black and white lawyer alliance at the national level, that we need to bring together to help fashion these bold remedies that you suggest. And I think that the time has come that we can't listen to all of these unbelievably stark complaints and not fashion remedies that are appropriate to these solutions. Otherwise, these hearings will be held every 5 years or 10 years and will keep surfacing more complaints with no solutions.

I think the time has come for the consideration of Federal intervention. We need to hear from a lot more witnesses, but I think when we have our final hearings on the remedies we would like you and your national lawyers, and ACLU has led the way in creating the environment for the civil rights movement. You know, if we didn't have the right to free speech, to picket, to march, to demonstrate, we wouldn't have been able to accomplish the civil rights legislation.

The American Civil Liberties Union has been leading in that fight for as long as I can remember, and I congratulate you here in New York who have again done your share and shouldered so ably this incredible legal burden of trying to defend the hundreds, if not thousands, of people who have sought out your help. You have our congratulations and continued support.

Congressman Rangel.

Mr. RANGEL. Thank you for your testimony.

The mayor of the city of New York points out with great pride his civil rights record as relates to fighting racism in the South. Have you in the New York Civil Liberties Union had the opportunity to share your findings with the police commissioner or with the mayor of the city of New York?

Mr. EMERY. I personally have had an ongoing dialog with the police commissioner on a range of issues that affect civil liberties, which have primarily concentrated on police abuse. We have talked on many occasions especially with the deputy commissioner, Ken Conboy, about these and other matters. We have debated this issue several times on television and on the radio. We have sug-

gested to him the type of reforms that we are suggesting to you now to be self-initiated at the local level.

Regrettably, that has not occurred to our satisfaction. We hope it still will occur. We still hope that the good faith of some public officials will be translated into institutional reform.

Now, the mayor himself—it is an interesting sideline—was a volunteer attorney at the New York Civil Liberties Union in the early 1960's, and the mayor himself—in fact, we have a card in our files of volunteer attorneys that says: "Edward Koch interested in doing police abuse cases." So we have hopes that somewhere way back there down in the psyche of the mayor we will get a response, and we hope and think we will.

Mr. RANGEL. Well, really I just wanted to reinforce the record. There are so many people in the city of New York that can't see the parallel as to why the U.S. Congress has a responsibility to protect the constitutional rights of people who happen to be in local and State political subdivisions. It is all right for Conyers and his committee to go to Mississippi, Alabama, and Georgia, but somehow editorial writers get upset when the rights of black folks and Latinos in the urban communities up North ask for congressional protection.

I think that an organization with the international reputation that you have earned and enjoyed can come to hearings here, in Washington, and point out that you have exhausted every administrative and legal way that you could in order to protect the rights of people against the abuse by New York City police. And perhaps some of the editorial writers might find some justification rather than seek the motivation of the Members of the Congress for the size of the hall in which we are having the hearing, and try to find some answers to these very serious problems.

Thank you for your testimony.

Mr. EMERY. Congressman Rangel, I would only say, in response to that, that the time has come for Federal intervention in the New York City police abuse problem. It is just the same as intervention in Mississippi or Alabama when minorities are abused. Minorities and others are being abused in New York in just the same way, and something has to be done about it. Hopefully, this committee and others at the Federal level will see fit to do so.

Mr. RANGEL. Thank you.

[Prepared statement of Richard Emery follows:]

NYCLU

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FOR IMMEDIATE RELEASE
Monday, September 19, 1983

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NYCLU CALLS FOR SPECIAL STATE PROSECUTOR ON POLICE BRUTALITY

The New York Civil Liberties Union today called for the reform of the New York Police Department's Civilian Complaint Review Board, which it termed an "abject failure," and urged the appointment of a special state prosecutor to investigate police abuse cases. The NYCLU's proposal was made in testimony by NYCLU Staff Attorney Richard Emery in a hearing at the State Armory in Harlem before a special subcommittee of the House Judiciary Committee investigating police abuse in New York City.

"There is no question that serious police abuse continues in this city," Emery testified before the subcommittee. "Unjustified use of deadly force all too often results in unwarranted killings and maimings at the hands of police officers, and physical abuse during the arrest and jailing process is a frequent form of summary punishment."

Emery criticized as seriously deficient the existing internal police department mechanisms for investigations of police abuse and criticized the lack of vigor in the prosecution of police abuse cases. He called on the federal government to increase its jurisdiction over police abuse.

In addition to its proposal for an independent state prosecutor to eliminate the local District Attorney's "conflict

of interest" in police abuse cases, the NYCLU urged expanded jurisdiction of the Police Department Internal Affairs Division, increased restraint and stress training for police officers and expanded federal civil rights remedies.

Emery termed the subcommittee's hearings "an urgently needed response to a loss of confidence in the police, especially on the part of minority group citizens." "Unless reforms are undertaken soon," he warned, "the widening gulf between minorities and the police in New York City could have explosive consequences."



New York Civil Liberties Union, 84 Fifth Avenue, New York, N.Y. 10011. Telephone (212) 924-7800

September 19, 1983

TESTIMONY OF RICHARD EMERY ON
BEHALF OF THE NEW YORK CIVIL
LIBERTIES UNION BEFORE THE
HOUSE JUDICIARY SUBCOMMITTEE
INVESTIGATING POLICE ABUSE

My name is Richard Emery and I am testifying today on behalf of the New York Civil Liberties Union. I am a staff counsel at the NYCLU and I have specialized in police abuse cases. On behalf of the 25,000 members of the NYCLU I wish to thank the subcommittee for this opportunity to offer our experience and opinions on how to control police abuse in New York. We hope our testimony will aid the subcommittee in its task.

Since the middle sixties, the NYCLU has devoted a substantial portion of its litigative, legislative and educational program to the issue of police abuse. For instance, we have undertaken litigation to control the massive spying operation of the City police in the early 70's as well as the pervasive practice of groundless arrests of bystanders who complain about or merely observe police street operations. We have repeatedly filed cases to control police at public demonstrations. We have represented the victims of police shootings. We have sued on behalf of numerous victims of false arrests, police beatings, strip-searches, and unlawful detentions, recovering large money

judgments for victims against the Department and its officers. We lobbied in favor of a Civilian Review Board which was defeated in a 1966 referendum. We have successfully opposed legislation which would further indemnify police officers against liability for police abuse. And we are constantly attempting to educate the public at large in our assessment of the Department, as well as the other governmental institutions which are charged with responding to police abuse.

Our purpose here today is not to document the extent and nature of this abuse. Others at this hearing will testify forcefully on the factual predicate for these hearings. The defense of the City officials notwithstanding, there can be no question whatsoever that two serious forms of police abuse exist in New York City. First, and most serious, is the use of deadly force which all too often results in wholly unwarranted killings or maimings at the hands of police officers. Second, is the frequent resort to physical abuse during the arrest and jailing process by police officers, which amounts to an unjustifiable infliction of summary punishment.

The NYCLU's focus today is on the abject failure of the institutional mechanisms designed to respond to each type of abuse.

There are essentially six responses to police abuse under our present administrative and statutory scheme for redress:

1. Prosecution by county district attorneys;
2. Prosecution by federal authorities;
3. The Internal Affairs Division (hereafter I.A.D.) of the Department;
4. The Civilian Complaint Review Board (hereafter C.C.R.B.) of the Department; and
5. Lawsuits in state and federal court.

In their present form, none of the above work. None is viable as a means of redressing either of the two broad categories of abuse. None, as each is presently employed, effectively deters officers from engaging in abuse. In fact, because each is an exercise in wasted resources and human effort, a forceful argument can be made that these mechanisms encourage abuse by their widely acknowledged ineffectiveness.

1. Prosecutions for police abuse are rare. In most cases of police abuse, prosecutors do not even present the facts to grand juries. In the few cases that are presented, instead of "making a case" by presenting only the incriminating evidence to grand juries, as is normally done in criminal cases, in police cases, prosecutors also present the facts which tend to exonerate the officers.

On many occasions these presentations are so biased in favor of the accused officers that a finding of no true bill is pre-ordained. Thus, instead of serving as an arm of the prosecutor in its normal role, in police abuse cases the grand jury provides a device to take the political "heat" for

not indicting. Since its process is secret, the grand jury's unreviewable actions are a convenient method of avoiding criticism and responsibility for tolerating police abuse.

Were all sides of a case presented to grand juries in every criminal case, perhaps there would be fewer complaints generally about such proceedings. But when such presentations are employed selectively to exonerate, when they would otherwise result in an indictment, the grand jury process becomes a vivid demonstration of prosecutorial procedure which favors the police.

The tendency for prosecutors to favor the police is to be expected given the reliance prosecutors must place on the police. The prosecutorial agencies and the Department are intertwined in an ongoing symbiotic relationship which fosters and perpetuates a natural prosecutorial bias in favor of police officers. The day-to-day operations of each of these agencies are so interdependent that expecting local prosecutors to point the finger at the police in any but the most egregious cases is simply naive.

Thus, it is unrealistic to expect prosecutors to "make cases" against police officers before grand juries. In the few cases in which an indictment is returned, it is too often the case that the prosecutions at trial are lax. For instance, special techniques are required to obtain testimony from police against their brethren. Unlike non-police cases, this problem predictably inhibits a vigorous,

skillful, and independent presentation by the prosecutor's office which depends so heavily on the Police Department and individual officers for its day-to-day operations.

As a consequence we see time and time again, no true bill in police shootings and beatings, and acquittals in the few cases where the evidence was so overwhelming that an indictment was obtained. Police officers, on the beat know that the chance of being prosecuted, even if they come under investigation, is next to nil. Thus, though officers might be deterred by the prospect of such prosecutions if that prospect were realistic, they also know that under the present system they will remain untouched.

2. Prosecution by federal authorities is, of course, very rare as a response even to systemic police abuse. Some federal prosecutorial investigations have taken place in New York; however, there have been no recent instances of full fledged federal prosecutions in any case. Not even police shootings have caused federal authorities to initiate proceedings, even though such investigations would presumably be conducted by the Federal Bureau of Investigation and, therefore, unbiased.

In part, I am told, the hesitancy to conduct such prosecutions is a result of the limited penalties and options provided by 18 U.S.C. 241 and 242. Cases where death occurs may draw a life sentence; however, the most common cases where civil rights are denied by the use of excessive force without the use of deadly force, are limited to a one year penalty.

Thus, federal prosecutors do not see such crimes as high priority. For these reasons as well as the natural tendency to allow the state criminal justice system to run its course, no federal prosecutions for physical police abuse have been undertaken in New York in recent times. As, such federal criminal civil rights remedies are simply not an effective deterrent to police abuse here.

3. The Internal Affairs Division (I.A.D.) is probably the most effective deterrent available against certain forms of police abuse; however, it is regrettable that the sort of police misconduct which I.A.D. addresses, for the most part, rarely falls within the category of either abuse of deadly force or imposition of summary punishment through excessive force.

I.A.D. concentrates on police corruption which keeps this bureau's hands full. It is rare when its resources are devoted to investigating physical abuse by officers. When this does occur, it takes an order from the top of the Department or a strong referral by a prosecutor to focus I.A.D. on a physical abuse case. In shootings cases, I.A.D. usually defers to the firearms review board, another limited internal review system, or a grand jury investigation by prosecutors.

The strength of I.A.D. is that it is profoundly feared by the line officer. After the reformulation of I.A.D. in the wake of Serpico and the Knapp Commission, its effectiveness as an elite investigative body within the

Department is respected. Its weakness, however, outweighs its strength on the issue of physical abuse. Officers know it is rarely used to address such allegations and, therefore, it is not an effective deterrent in this area. Moreover, to the outside world, it is merely internal review, not commensurate with an official sanction akin to a prosecution.

In the end, it is simply not a significant factor in controlling physical police abuse.

4. The Civilian Complaint Review Board is the most prominent disgrace of the Department. It is an agency which functions merely to cover up police abuse, though its supposed mission is to redress it. It is a waste of money and manpower for the following reasons.

The C.C.R.B. is run by the Department's employees, relying on police officers to investigate complaints made against their brethren. The only aspect of its operations which is "civilian" is the people who complain. Though its name implies independence, there is no evidence of anything but total bias in favor of the officers who engage in physical abuse of persons they arrest and investigate.

Unlike I.A.D., the C.C.R.B. has not developed an elite corps of dedicated investigators who will root out a case against a brother officer. It is our experience that investigators at the C.C.R.B. are surly, unresponsive, and skeptical toward most complainants. They are among the least career oriented officers. C.C.R.B. seems to be a backwater assignment. The result is that investigators do not resolve

the inevitable conflicts between the reports of officers and complainants; rather, they simply require corroboration of complainants but rarely, if ever, of officers. Moreover, during the investigation process, my clients have been harassed by nasty investigators who telephoned early in the morning and late at night. Thus, more often than not, inadequate and biased investigations are presented to a board of police employees who, in all but four per cent of the cases, find for the police officer.

C.C.R.B. procedures encourage complainants to file their complaints at the very precinct where the officer who abused them works. There, it is often the case that clerks who are friends of the officers make them wait and, generally, make the process onerous. When the C.C.R.B. investigator does finally respond, the complainant must traipse to Park Avenue South and wait until investigators have finished their coffee or bull sessions. Even when the complaints are taken, they are rarely investigated beyond ascertaining the officer's version of the story. Unbiased witnesses are not often called, unless the complainant brings them in or makes them available by telephone. This is usually difficult, for unbiased witnesses are rarely friends or relatives.

In a typical recent case a professor of dentistry was beaten. He presented the C.C.R.B. with photographs, medical records, and a witness. Nevertheless, the C.C.R.B. found the case unsubstantiated based on the officers' stories.

Subsequently, the professor complained to a prominent New York County Deputy District Attorney who investigated and found the complaint substantiated. He recommended that the C.C.R.B. re-evaluate the case, but the C.C.R.B. persisted in not taking action.

Under the circumstances, it makes little sense to rely upon C.C.R.B. statistics. They amount to little more than a shoddy cover-up of police abuse. About 200 out of 5000 cases are substantiated each year. Given the procedures described above, this paltry figure is not surprising. It is even more of a disgrace, however, when one considers that the persons who are most often abused -- ghetto residents -- almost never complain to the C.C.R.B. They know it is useless. Thus, the four per cent discipline rate is an extremely suspect statistic. The sorry fact is that if this agency did even a barely adequate job in fulfilling its mandate, it would receive many more complaints than it does.

The best confirmation of the accusations I have levelled at the C.C.R.B. is the attitude of police on the beat toward the C.C.R.B. Unlike I.A.D., cops on the job could not care less whether a C.C.R.B. complaint is filed against them. For instance, it is common for officers to taunt their victims by encouraging them to file C.C.R.B. complaints. They know their chance of being found guilty are minuscule and that even if they are convicted, little or no punishment will be

imposed. To them this agency is a joke. The Department should acknowledge it as a fraud and disgrace.

5. Lawsuits for civil rights violations and tort are available to the victims of police abuse. Regrettably, however, such suits have the effect of pitting the victim of abuse against the entire City legal structure, which is statutorily bound to represent the Department and the officer. This process, along with extensive indemnification of the officer for any compensatory damages assessed, effectively forecloses disciplinary or prosecutorial action against an offending officer. Once a lawsuit is filed, in all but the most obvious and egregious cases, the Department and City "draw the wagons in a circle." In the process, the offending officer often escapes unscathed.

Lawsuits do serve the function of compensating victims, usually many years after the event and after trying and humiliating pre-trial and trial processes. The effect on officers on the beat, however, is minimal. Every officer knows that the City or the Police Benevolent Association will provide a lawyer and that the municipal law virtually always indemnified for all but punitive damages. Such damages are rarely assessed and are only available in federal court. Furthermore, officers know that once the lawsuit is filed, disciplinary action is much less likely, since such discipline may constitute an admission of liability in the pending legal proceedings.

Finally, though it is clear that officers would like to avoid lawsuits, they also know that few lawyers will take any cases but those where permanent damage can be proven. Thus beatings, false arrest and unlawful detention are rarely deterred by litigation. In the few cases that do get filed, it is usually the middle class that can obtain counsel; therefore, minorities and the poor remain fair game. In any event, in virtually every case where litigation is pursued, the bureaucracy rallies behind the police officer rather than making a dispassionate assessment of his conduct.

Conclusion and Proposals

After working on police abuse cases in New York City for six years and drawing on the experience of others at the NYCLU over the last 20 years, it seems clear that police abuse of both the deadly and excessive force varieties remain present at an unacceptable level. Police still view themselves as the only civilizing force in a Fort Apache atmosphere. They feel that they must back one another, right or wrong, and they often feel free to impose summary punishment because they view the criminal justice system as failing to do so. Officers still suffer from weighty personal frustrations which manifest themselves in violent actions against innocent victims with whom they come in contact. Though all citizens who value their safety must rely on the police, all who are aware of how police often operate should fear them and give them a

berth. Obviously, this is no way for public servants to treat their public.

Racial, ethnic, and gender integration of the police force is salutary. It has the effect of breaking down the "old boy" network on the force, thereby encouraging reporting of misdeeds by fellow officers. However, this process of intra-squad and precinct accountability has a long way to go.

More significant for the immediate future would be the following reforms:

1. Appoint and staff with independent investigators a statewide special prosecutor to concentrate on police abuse. This power is available to the Governor under Article IV, Section 3 of the State Constitution and Section 68(8) of the State Executive Law. The NYCLU and former United States Attorney Edward Korman of the Eastern District have publicly called for such a reform. Only in this way will the independence and sophistication be developed to prosecute properly offending police officers.

2. Expand the range of civil rights remedies available to federal prosecutors so that not only the most egregious cases will get attention. Federal proceedings should reach the full range of civil rights violations engaged in by state and city police. Thus, new expanded federal legislation is required.

3. Replace the wasteful and useless present C.C.R.B. with a city agency staffed by independent investigators and controlled by civilians who view their function as stemming police abuse.

4. Expand I.A.D. jurisdiction within the Department to physical police abuse, focusing the resources of internal agency disciplinary procedures on the problem of physical abuse.

5. Hold accountable precinct captains, lieutenants, and sergeants for abuse by the line officers assigned to them. These supervisory officials create the climate which permits and in some cases fosters, abuse in their units and precincts. They must understand that they are directly responsible for the use of excessive force by their officers.

6. Train police officers more thoroughly about the syndrome which leads to abuse. Regularly test officers for stress and educate them in tolerance by rewarding them for displays of restraint as well as for splashy heroics. Over the long run, require more education for police officers and increased salary and professional status levels commensurate with the responsibility police officers have for society's most intractable problems.

We applaud the Subcommittee's commitment to this issue of national significance. In New York, at least, we believe that the reforms we have urged above are critical to restoring public confidence in the Police Department. Especially in the minority community, that lack of public confidence could have explosive consequences as it has in other American cities. We believe immediate Congressional action is necessary and appropriate. We stand ready to assist the committee on a continuing basis on this issue.

Mr. CONYERS. Our next witness is the attorney C. Vernon Mason, a graduate of Morehouse College, and a Columbia Law School graduate, whose practice is in mostly civil rights cases and who was in our very first visit that we had in Washington, D.C., and he is accompanied by Rev. Ben Chavis of the United Church of Christ, who now comes to the witness table with him.

Reverend Chavis, Attorney Mason, welcome to the subcommittee. We know of your work. You may introduce anyone else that may have accompanied you and you may begin your testimony in your own way.

TESTIMONY OF C. VERNON MASON, NEW YORK CITY; ACCOMPANIED BY KATHERINE WELLS; REV. OLLIE WELLS; REV. CHARLES COBB; LARRY PEOPLES; LAMONT HEYWARD; KENNETH WOODS; LILLIAN LONG; LINDA WOLFE; AL BRADLEY; RODERICK MITCHELL; LEE JOHNSON; REV. BEN CHAVIS, UNITED CHURCH OF CHRIST, COMMISSION FOR RACIAL JUSTICE; ACCOMPANIED BY CLAYTON JONES; LORNA EARL; AND JEROME EARL

Mr. MASON. Thank you, Congressman Conyers.

I would like to submit a statement, Congressman Rangel. There are several witnesses here that I would ask to speak briefly. We are going to try to limit it to 2 minutes.

May I introduce specifically Rev. Dr. Charles Cobb, who will also come to the table, of the United Church of Christ.

Mr. CONYERS. We can remember when we were working to get his associates released from a Federal penitentiary for daring to bring a Martin Luther King holiday bill and it was an exercise in the South which started Rev. Ben Chavis' international career in the struggle. We are glad to see him here continuing to fight and in good health and determined as ever that we can turn this monster around.

We welcome you all to the subcommittee hearing.

Mr. MASON. Thank you again, Congressman Conyers.

On my left is Mrs. Katherine Wells, and to her left is Rev. Ollie Wells, and behind me there are also several other witnesses that we will ask if you have the time to hear briefly.

Congressman Conyers, I would like to thank the subcommittee for coming to New York. I think this is a historic moment, September 19, 1983. I have been engaged in this struggle since 1972. As a matter of fact, the first case I had was a man who worked with the EOC, a 55-year-old black man who was beaten up at the Holland Tunnel. That man's name is Yancy Thomas. He has been in hospitals since 1973 as a result of being brutalized by white police officers.

What I would like to say is, everybody has covered the CCRB, they have covered the New York City Police Department—what I would like to concentrate on, and ask the question. Does a person who is head of a policy group have the Federal or State and local right to ignore 2 million people?

Congressman Conyers, I grew up in Arkansas in a little town called Marion, Ark., near a plantation, so I understand plantations very well and maybe when Ed Koch was in the South, maybe he

saw some plantations too. What is happening to New York City right now is a plantation political mentality.

Mayor Koch has decided that he can with impunity, kick us—2 million people—in our behinds and still be mayor of 6 million using tools such as the Daily News, using tools such as the New York Post, and using 25,000 police officers—90 percent of whom are white. I understand very well where he is coming from. There are crackers in the North and crackers in the South and he is still a cracker and I understand that very well.

I am going to be very brief, this man had the temerity when you were bringing hearings here in July to call us black red-necks. I think he picked that up from the South too. He called us black red-necks and he said we were like Hitler because we were making false accusation.

I am going to say publicly, Congressman Conyers, because I think it is very important, I am married, have three children, and I want to say to black New York, Latino, Puerto Rican New York, Asian New York, this day, September 19, 1983, as Brother Jesse Jackson is putting his life on the line running for President, we are not afraid any more. I want Mayor Koch to understand very clearly, we do intend to take care of some political business in New York City. We do intend very seriously to deal with this as a political issue because we are not going to sit year after year hearing the brothers, sisters, grandmothers, those grandfathers, those mothers, those fathers, asking. Why did they kill my son? Why did they kill my father? Why did they kill my mother?

One sister was killed in Harlem 2 years ago on New Year's Day, her daughter wanted to go to law school but a white police officer decided to administer a death sentence on the streets of Harlem. About 2 weeks earlier, a police officer decided to administer the death sentence to a young black man named Donald Wright.

I am here this afternoon to speak for those people because their bodies are in the grave now, they cannot decide whether or not to boycott this hearing, they can't be here, they cannot make any decision as to whether attendance is catering to the white racism of New York City and decide they are not going to dignify the hearing by coming.

I want to thank you for being here. It is very important, symbolic, very important for black persons to understand in New York—I understand the South and decided, after I went to Columbia Law School, I am not going to be scared any more, I am going to stay here, I am not going anywhere, we will take care of what ever business we need to take care of in New York City.

I am not sounding lawyer-like but I think it is important that Ed Koch, who professes to be, as a matter of fact I think he said something in his testimony about minority people are a central part of his constituency. Ed Koch is surrounded by white males, make no mistake about that, make no mistake about the fact that out of 25 people in his administration only one is black. He is in charge of jails. That is a matter of record.

Ed Koch has decided that he will not come to these hearings, but I think, as you indicated earlier, Congressman Rangel, you heard it, Judge Crockett heard it, other people heard it, the voice of the

people will be heard. He can call this a political rally, he can call it a circus. The only clown who is not here is him.

I want to thank you for your kindness. I know you are trying to get everybody in. What I would like to do is ask each of the witnesses to limit themselves to 2 minutes just to paint a picture of what is happening in New York over the last several years.

Again, it is an historical occasion for you to be here and I think it is high time the people understand that we have gone to the police department, that we have gone to the grand jury, we have gone to district attorneys, and now we are going to the people. We have gone through the routes and, as Congressman Rangel said, exhausted every administrative and other remedy that we had.

The only alternative we have is what black folks have done historically and that is call on the Federal Government and it is a wonder that we are able to call on a person who has had the same kind of experience. I am very proud of that because I wonder who he felt we should have called on. He said you shouldn't be here, certainly we shouldn't be called on to deal with police brutality.

We certainly thank you for that.

[Prepared statement of C. Vernon Mason follows:]

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TESTIMONY OF C. VERNON MASON, ESQ.
Counsel to Ad-Hoc Committee Against Police Racial Violence

WE HAVE COME OVER A WAY THAT
WITH TEARS HAS BEEN WATERED
WE HAVE COME TREADING OUR PATHS
THRO' THE BLOOD OF THE SLAUGHTERED

"Lift Every Voice and Sing"

As the Subcommittee is aware, some 6,000 men, women and children were shot to death by police nationally in the ten year period of 1969 to 1979. In 1976, while courts sentenced but 233 people to death and executed none, policemen killed approximately 590 people nationally. In the period of 1973 to 1983 some 2,000 minority citizens have been killed by police. A disproportionate number of police shooting victims were Blacks--with the Justice Department reporting the percentage at 45%. Another report estimates that 50% of the civilians killed between 1970 and 1976 were Black males, while Black males are but 6% of the U.S. population (the total Black population being 12%). In cities with a sizable Black population, more than 70% of police shooting deaths have been found to be of Blacks.

Blacks in this country are being subjected to those acts of extralegal "justice" which are part of the history of this country which for many years resulted in the lynchings of our people. And yet a study conducted revealed that the national conviction rate in police caused deaths is but 0.2%. As well, less than 1% of all killings by police are ruled unjustifiable by police department, according to a 1975 study, although at least 25.50% of the victims were found to be unarmed.

This must be seen in contrast to a conviction rate of 62% of those civilians identified in killing law enforcement officers. When the number of those who were killed on the spot, died in custody, or as a result of suicide, is added, the percentage leaps to 78% for those who are involved in killing law enforcement officials.

A study conducted in 1980 by Dr. Garry A. Mendez, Jr. of the National Urban League of New York City, of 54 of the nation's 59 cities with populations over 250,000 found no correlation between the rate of arrest of Blacks and the shooting rate, not even where violent arrests (v. property crime) statistics were separated and compared. Nor were

assaults on police officers correlative to police shootings. The conclusion drawn by Dr. Mendez after this study (the only one done of such magnitude), was that the best predictor of police shootings is race.

But of course, we are here to discuss New York City. I can hear my professors at Morehouse College and Columbia Law School asking "What are the facts?" For it is there that we must begin.

We would concur with Dr. Mendez that the best predictor of police shootings is race. In fact, during the trial of the white police officer who shot and killed 10 year old Clifford Glover in 1973, when asked if he was not able to distinguish between a 10 year old boy and a male robbery suspect who he claimed to have been seeking, he responded:

"Your honor, all I saw was the color of his skin."

This officer was acquitted of all criminal charges.

Information which we have gathered--which is incomplete--reveals that the following 67 Black and Hispanic persons have been killed by police in New York City since 1957:

7/3/57	Russell Corely, 18
6/27/58	Michael Sims, 19
4/1/60	Raymond Galloway, 17
2/18/64	Frank Rodriguez, 18
7/18/64	James Powell, 15
9/18/64	Robert Owens, 20
10/14/65	Harry Boynton, 20
11/27/65	George Foley, 18
8/27/65	Larry Jackson, 17
9/4/67	Richard Ross, 14
9/4/67	Oscar Soles, 14
12/4/71	Jerome Good, 18
8/14/72	Ricky Bodden, 11
11/1/72	Charles Williams, 20
3/28/83	Phillip Sadler, 17
4/28/73	Clifford Glover, 10
4/ /73	Jonn Brabham, 22
/ /74	Claude Reese, 14
11/27/76	Randy Evans, 15
2/14/77	Walter Williams, 27
/ /77	Frank Thompson, 18
6/14/78	Arthur Miller, 35
6/ /79	Peter Funches, 35
6/ /79	Benilla Nicholas, 30
7/ /79	Emery Robinson, 18
7/ /79	Louis Rodriques
8/ /79	Arturo Reyes, 17

8/ /79	Elizabeth Magnum, 35
8/ /79	Louis Baez, 29
9/ /79	James McRee, 48
9/ /79	Herbert Johnson, 35
10/ /79	Darryl Walker, 17
11/ /79	John Davis, Jr., 28
12/ /79	Willie Harper
12/ /79	Curtis Garvey
2/ /80	Jay Parker, 15
2/ /80	Abdul Hadi, ?6
4/ /80	Sonny Evans
4/ /80	Edward Quinones
6/ /80	Michael Furse, 16
/ /80	Maman Charles
8/ /80	Ralph Tarantino, 28
10/18/80	Edward Ricky Lewis, 18
10/18/80	Kenneth Gamble, 19
12/30/80	Donald Wright, 19
1/1/81	Ruth Alston, 40
2/ /81	Joey Chino Mendez, 17
2/ /81	Manuel Hernandez
2/ /81	Joseph Wolanski, 25
3/ /81	Edward Fonseca, 21
3/ /81	Robert Endersbee, 22
4/ /81	Robert Green, 42
4/ /81	Sylvester Ellis, 17
/ /81	Joseph Fitzpatrick, 18
/ /81	Camerou Dashiell, 28
9/ /81	Gary Becton, 26
9/ /81	Mackenzie Desir, 14
/ /82	name to be provided by testimony from Dave Walker, Black United Front, Police Brutality Investigation Unit
/ /82	same as above
/ /82	same as above
/ /82	same as above
1/9/83	Henry Woodley, Jr., 23
3/15/83	Larry Dawes, 19
/ /83	name to be provided by testimony from Dave Walker
/ /83	same as above
/ /83	same as above
/ /83	same as above

Although certain factual data is missing at this time, it can be seen that 45 of these deaths occurred since 1979. Mayor Koch admits that 22 of the total 67 killings were of a "questionable nature." We believe they are all "questionable."

A rough estimate of the median age of these victims, reveals it to be approximately 21 years of age. As the aunt of Donald Wright, aged 19, who was shot in cold blood by a police officer in front of a Harlem shoe store said, "Black children are becoming an endangered species."

As our children, our sisters, brother, mothers, grandmothers, fathers and grandfathers are being slain, and police officers are being absolved of responsibility of wrongdoing, the political leader of this City--Mayor Edward I. Koch--has questioned the reasoning of this Subcommittee to conduct these hearings. He has likened this most serious proceeding to a basketball game, indicating that his administration would put on a "full court press" to refute allegations of police brutality against minorities.

Moreover, Mayor Koch stated on May 9, 1983:

"If you look at this city, which is roughly 50% minority and 50% white, there are very few incidents involving racial controversy. There are some, but contrast us with major cities across the country. We have very few by comparison."

Mayor Koch has further stated that the incidents of police use of deadly force is far less in New York City than in Philadelphia, Detroit, and some other major cities.

Our first response to such a statement is that in a situation where what is at issue is the wrongful loss of life of citizens of the City of New York, numbers are not relevant. One wrongful shooting is too many. Additionally, we would note that Philadelphia has the infamous reputation of being the only city in the United States to ever be sued by the U.S. Department of Justice for allegations of a pervasive pattern of police abuse. Surely, we in New York do not wish to be compared with this. If (and I do not concede this point) incidents of excessive force and deadly force by the police are fewer in New York City than in Philadelphia, what exactly is being postulated here? Are these our guidelines: to be better than a city with a reputation of being one of the worst bastions of police violence in the United States? We believe police brutality and wrongful police shootings of citizens, particularly minority citizens, must cease everywhere. But is in New York that we reside, rear our families and vest our future, and it is here that our primary concern must lie.

WHAT'D YOU GET, BLACK BOY
 WHEN THEY KNOCKED YOU
 DOWN IN THE GUTTER,
 AND THEY KICKED YOUR TEETH
 OUT
 AND THEY BROKE YOUR SKULL
 WITH CLUBS
 AND THEY BASHED YOUR
 STOMACH IN?

"The Crisis" August 1943

In a recent incident, Reverend Lee Johnson, a graduate student at Union Theological Seminary, and his companion, Roderick Mitchell, reported that they had been beaten by two white police officers of the 28 Precinct in Harlem. Notably, one of the officers has a record of use of force in 33% of the arrests he has made since 2/25/82. In fact, five days before the incident with Rev. Johnson, this officer had been involved in an incident where a young man's nose was so shattered as to require reconstructive surgery.

However, Mayor Koch, prior to any investigation into the allegations made by Reverend Johnson and Mr. Mitchell, which eyewitnesses had confirmed, inferred that he did not believe the allegation that they had been beaten, and I quote:

"The incident happened in Harlem (with) two white cops. I find it certainly possible, but nevertheless strange, that in the heart of Harlem two white cops would intentionally, in violation of the law, harass a minister. It's possible. It could have happened. I'm not passing judgment.

"...the police precinct is in Harlem and has a large number of black police officers. The allegation is that he was beaten up and racially harassed. Now it's possible it could have happened, but again, in a police precinct filled with large numbers of black officers? This all has to be examined."

It is worth noting here, that it is a complete fallacy that the 28 Precinct has large numbers of Black officers. In fact, the entire New York City Police Department, has but between 1% and 10% Black officers (percentage ranges depending on rank), as will be delved into further in this statement.

Additionally, although it is in predominantly white communities that Black civilians are attacked, beaten and killed by white civilians, it is in Black communities--Harlem, Bushwick, Bedford-Stuyvesant, etc.--where Black people are beaten and killed by police officers. Factual data on the 67 Black and Hispanic people who have died as a result of police shootings substantiates this. Thus, in contrast to the Mayor's perceptions, of course Black communities are exactly where white officers intentionally and in violation of the law, might well harass a minister. Where else?

While the City Administration may not perceive or believe that there are serious problems between the police force in this city and the minority population, it is interesting to take note of how the citizens of this City feel concerning the matter.

The Report of the National Advisory Commission on Civil Disorders (The Kerner Commission) published in 1968 stated:

"In 1964, a New York Times study of Harlem showed that 43% of those questioned believed in the existence of police brutality. In 1965, a nationwide Gallup poll found that 35% of Negro men believed there was police brutality in their areas; 7% of white men thought so. In 1966, a survey conducted for the Senate Subcommittee on Executive Reorganization found that 60% of Watts Negroes aged 15-19 believed there was some police brutality. Half said they had witnessed such conduct. A University of California at Los Angeles study of the Watts area found that...74% (of Negro males) believed police use unnecessary force in making arrests. In 1967, an Urban League study of the Detroit riot area found that 82% believed there was some form of police brutality."

The Commission further stated:

"To some Negroes police have come to symbolize white power, white racism and white repression. And the fact is that many police do reflect and express these white attitudes. The atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and in a double standard of justice and protection—one for Negroes and one for whites."

As a University of California criminologist contends, "police have one trigger finger for whites and another for Blacks."

The Sourcebook of Criminal Justice Statistics of 1978 revealed that in 1975 minority people in the United States viewed police more negatively than whites, rating police performance "good" only one half as often as whites; using the rating "poor" twice as often.

The Community Relations Service (created by the 1964 Civil Rights Act) noted a steady increase in the number of complaints it received from minorities alleging use of excessive force by the police.

A comparison of the first six months of fiscal year 1979 to 1980 showed an increase of 142% in C.R.S. cases involving allegations of excessive use of force by the police.

As a July, 1980 statement by the U.S. Commission on Civil Rights noted:

"Within minority communities, the perception that police abuse of authority is discriminatory is reinforced by national statistics which show that disproportionately large numbers of minority civilians are victims of brutality and use of deadly force."

On May 23, 1983 an ecumenical survey was begun, endorsed by Harlem United Methodist Ministers, and based at the St. Mark's United Methodist Church (although not a program of that congregation). Although only just begun, the responses they are receiving regarding use of force by the police are quite revealing. Thus far, some responses are as follows: one older male, 52 years of age is disgusted, stating that the police always harass him and beat young men since he can remember. A 30 year old woman stated she witnessed a beating where the police had not even asked the young man in the incident to move on, but merely hit him. An 18 year woman claims constant harassment and beating of Black men by police, including personal friends of hers. The overall response of when police should use force is 1) during a riot; and 2) subduing an armed, violently resisting man. Hopefully this project will receive continued funding, in order to aid in obtaining much needed statistics and facts from the Black community in New York concerning this issue.

As Patrick Murphy, former Police Chief of New York City and Detroit; First Administrator of L.E.A.A., and President of the Police Foundation for the last ten years, testified on June 16, 1983 at the Congressional Oversight Hearing on Police Use of Deadly Force:

"Where citizens are disaffected from the police, in cities where citizens don't trust the police, the source of citizen disaffection invariably is the misuse of force, particularly deadly force."

William T. Johnson, Executive Director/Assistant Commissioner of the New York City Civilian Complaint Review Board during the period 1973-1983 advised me, his conclusion after ten years in the C.C.R.B. was that Black people in the City do not trust the police. Mr. Johnson further stated that when a Black person is brutalized by the police, e.g. an officer from the 28 Precinct, that Black person surely will not go to that same precinct to register a complaint about the treatment received.

As Patrick Murphy testified, and I would concur:

"...The most powerful people in policing in the United States are mayors, mayors....the mayor who appoints the chief of course does set policy. He sets the tone. And he certainly can hold his police chief and his police department accountable."

As Howard Gary, City Manager, Miami, Florida testified at the same hearing:

"the police department reflects the leadership...and if you set the tone, everybody down below understands that's going to be the tone."

Here in New York City too a tone has indeed been set. The tone is one where Gino Bova, one of fifteen white youth who brutally beat Black transit worker Willie Turks to death in Brooklyn is acquitted of murder and found guilty of only manslaughter. Where young Victor Moses, son of Reverend Dr. John Moses of Brooklyn, is beaten so brutally on his way to take a court officers civil service examination by white youth in Brooklyn, that he was comatose for days; yet his attackers received but a six month sentence in a juvenile detention facility and an order to write an essay on Black history.

A tone is set in this City where my client, Lamont Heywood was beaten and tortured in September, 1981 by white police officers who called him "nigger" and proceeded to place an electrical revolving brush in his mouth among other atrocities--yet the officers were not indicted. Edward Ricky Lewis and Kenny Gamble were gunned down by white police officers who then began singing "another one bites the dust" in October, 1980 in a situation where, as one eyewitness put it, "they didn't have a chance, they (the police) just opened fire." Yet no indictment was handed down against the officers.

On New Year's Day, 1981, Mary Wilson and Helen Allen had to tell their niece that her mother -- 40 year old Ruth Alston--had been shot to death by a white police officer in Harlem. Yet the officer was not indicted. Most recently, Henry Woodley, Jr., 23 years old, was shot to death by an off-duty white Housing Police Sergeant, amid cries of "You've shot the wrong one. You've shot the wrong one." The officer has not been indicted. Indeed the tone is set, when Larry Dawes, aged 19, is killed by two white police officers who rammed their patrol car into Larry's moped and ran him and his friend Corey Gibson under a parked car and then proceeded to beat them both. Corey suffered a fractured leg and required five stitches to his chin. Yet neither officer has been indicted. Larry Peoples was thrown on the ground, a gun held to his head by white police officers (see photograph in New York Post 2/18/83) and severely beaten, while his infant son was left unattended in his van on a cold winter day, in a case of false arrest.

Yet none of these officers have been indicted. Yes, a tone has been set where Herbert K. Woods, co-proprietor of Sylvia's Restaurant in Harlem is struck so hard from behind that his glasses fell to the ground and shattered, and told by a white police officer, "None of you motherfuckers ain't shit. All of you are the God damn same." Yet the officer has not been indicted. In fact, on June 18, 1983 William Watson, a 27 year old man who has been a Transit worker for four and one half years, was told by a white transit police officer that he didn't "give a fuck" who Watson worked for. When Watson informed the officer that his brother was a police officer, the transit police officer replied "I don't like that nigger any way." The officer then offered his gun to another officer, and suggested that he fight Watson. Although Watson has suffered injuries as a result of the beating received, including nerve damage to his hand, the officer has not been indicted.

A tone has surely been set in a city where, in the eleven years in which I have been practicing law, I cannot recall a single criminal conviction of a white police officer for killing a Black citizen. That tone is that free reign exists for racial violence and police use of deadly force against our minority citizens.

So while the City Administration issues statements that this Subcommittee hearing will stir up "discontent" in the Black community, it must be understood as City Manager Gary (Miami) stated:

"to the degree that we ever lose sight of this mandate ["to insure domestic tranquility while affording equal opportunity and protection for all"] we can expect an equal or greater reaction from those segments of our communities who feel disenfranchised or oppressed by those sworn to protect and serve."

Discontent is already present in our communities as we witness members of our communities becoming more and more frequent victims of wanton police violence. As Raymond Fauntroy, President of Greater Miami/Dade County Branch of the Southern Christian Leadership Conference testified on June 16, 1983:

"The Black community is not violent. It reacts violently to violence heaped upon it."

This point must be re-emphasized. We in New York City have been extremely patient in the face of Black people being subjected to disparate applications of deadly force, influenced not by, as City Manager Gary stated, "what is morally correct but what is locally conceived."

As Reverend Dr. Calvin O. Butts, III will testify, the Black Clergy in this City has been attempting to meet with Police Commissioner McGuire for over a year, but Comm. McGuire has refused to set a meeting. Church, community and civic leaders have written innumerable letters and have met with District Attorney Robert Morgenthau, New York County, regarding the consistent inability to secure indictments and/or convictions against police officers. Even media people, such as Joe Nicholson of the New York Post wrote District Attorney Morgenthau requesting that "justice be done" with reference to the 1981 torture of Lamont Heywood. Yet the officers were not brought to justice.

As Rhonda Nager, then Director of Public Information under the Office of the Brooklyn District Attorney stated in 1980 regarding the massacre which resulted in the deaths of Ricky Lewis and Eddie Gamble:

"It is not always within the power of the prosecution to do what's right."

We ask why not?

The only mechanism which exists in New York City to handle complaints of excessive use of force by police is the Civilian Complaint Review Board. There has been consistent opposition for the last twenty (20) years to efforts to make this Board a truly "civilian" complaint Board. As Congressman Fred Samuels, Harlem Democrat stated recently, the current board "is a waste. It's part of the system. You don't bite the hand that feeds you. You don't send the fox to watch the chickens."

Of the 3,048 complaints reviewed by the Board in 1981, 2,944 were unsubstantiated by the Board. The 104 (3%) which were substantiated resulted in disciplinary action, ranging from formal charges to mere loss of one or more day's pay.* The number of complaints in 1982 (4,106) was 33% higher than those of the prior year.

However, these statistics are not surprising, as the seven members of the Board are all employed by the Police Department, and are appointed by the Police Commissioner. All the investigators are police officers. In some selected cases, the Commissioner will order the Board to divest itself of jurisdiction and the cases are then turned over to the Internal Affairs Division of the Police Department, without even being investigated by the Board.

Moreover, a finding from the Board is but a recommendation, which the Police Commissioner can reject if he so chooses. The Board only handles complaints made directly to it, despite the fact that there are Police Department records of every instance where a police officer discharges a weapon. Said records are unavailable to the public and are not used by the Civilian Complaint Review Board. In fact a print-out exists in the Police Department which includes all cases where a police officer admits using force in his arrest report, yet these are not reported to the Board.

As Eileen Luna-Gordinier of the Berkeley Police Review Commission discussed at the June 16th hearings held in Washington, D.C., their commission is the foremost example of the concept of citizen control. In a situation where police officers know that the only review

*In 1982 there was but one dismissal, the circumstances of which are unknown.

process to which they may be subjected is one of their own people, they soon learn that they can act with virtual impunity. The interrelated roles of police and prosecutors constitute an inherent conflict of interest which prevents the impartial review of charges brought against law enforcement officers who perpetrate psychological and physical abuse upon citizens.

Unlike the New York City Civilian Complaint Review Board, the Berkeley Police Review Commission includes an evidentiary hearing where all parties are present; the meetings are open to the public; the press and other interested parties are encouraged to attend; witnesses are heard first-hand by decision makers and are subject to cross-examination, which maximizes the possibility of ascertaining the truth. Citizen judges are free to function in an independent fashion, and are not subject to any reprisals internally or externally from the police department for, as an example, substantiating a claim by a citizen of brutality by an officer.

Such hearings provide balance, credibility and objectivity and serve as a deterrent to officers, states Ms. Luna-Cordinier. Most significantly, the Berkeley Commission has jurisdiction over police policy, practices and regulations. As the Kerner Commission noted:

"It is essential that the complaint system not only operate effectively, but that the community perceive the system as fair, thorough, quick, and worthy of public trust."

"A properly administered complaint review system serves both the special professional interests of the police and the general interests of the community. As a disciplinary device, it can promote and maintain desired standards of conduct among police officers by punishing--and thereby deterring--aberrant behavior. Just as important, it can provide satisfaction to those civilians who are adversely affected by police misconduct."

It is also important to take note of some other factors which are at play in New York City at this time. The unfortunate fact is that the New York City Police Department is largely segregated. Of a force of approximately 23,000, only approximately 10% are Black of officers and detectives; 6% among sergeants; 2% among lieutenants; and a sorrowful 1% among those hold rank of captains and above. Similarly, among the top 25 city officials in the Koch Administration, the only Black is Benjamin Ward, Commissioner of the Department of Corrections. In fact, the New York City Police Department was sued for employment discrimination by the Puerto Rican Legal Defense Fund and the NAACP Legal Defense Fund.

The report of the Florida Advisory Committee to the U.S. Commission on Civil Rights entitled "Policed by the White Male Minority" issued in 1976 emphasized the importance of having a police force which reflected the racial and cultural composition of the public it serves.

In a city such as New York, with a minority population of at least 50-55%, where people of all races, ethnic and national origins come to live, it is but a further perpetuation of the institutionalized racism endemic to this city that the police department is predominantly white.

Another significant factor at play is the political power police organizations wield. Police organizations such as the Patrolmen's Benevolent Association sanction political candidates, often quite conservative ones. Police chiefs and police officers sometimes even run for office themselves. As Patrick Murphy stated:

"...And although the police do have certain kinds of political power--and my bias is I believe police unions have more political power than police chiefs---..."

The P.B.A. is one of the most powerful political organizations in the City of New York. In none of the instances in which deaths have occurred at the hands of police officers has the P.B.A. spoken out against brutality or excessive use of force. In the infrequent instances in which police officers have been indicted, generally the P.B.A. retains counsel to represent them and supports the officer. The P.B.A. wields a tremendous influence over the Mayor and the Police Commissioner and the Department as a whole. The P.B.A. has not supported efforts to desegregate the New York City Police Department, and they were in the forefront of the resistance to the efforts to establish an independent civilian complaint review board.

The Sunday News Magazine of April 24, 1983, in an article entitled "The Police and the Review Board: Round Two" explains the history of the struggle in this City to change the Civilian Complaint Review Board as follows. Mayor Lindsay tried to remake the board, and the incumbent police commissioner refused to follow Lindsay's advice, and was subsequently fired. When Lindsay appointed a more amiable replacement and installed his own civilian dominated board, the P.B.A. "roared that the entire Police Department was about to go down the tubes." The dispute was pushed onto the November 1966 ballot in the form of a referendum, and the headlines read: "Police Swing 2 Clubs at the Review Board;" "PBA Chief Says Commies Battle to Keep Review." Largely due to the tremendous resources--financial and otherwise--of the P.B.A., the referendum was defeated.

Finally, there is the sad fact that no adequate statistics are even maintained on excessive use of force by the police, nor of deaths caused by it. As Patrick Murphy noted in his June 16th testimony, and as the U.S. Commission on Civil Rights noted in 1980, there are inadequate statistics maintained. The only statistics which exist at all are through the National Center for Health Statistics, and those are widely estimated to be as much as 50% under-estimated. Thus, the only count made available through the federal government fails to even give a true dimension of the problem we are faced with. In 1983 this situation still exists, despite the recommendation of the July 1980 Commission report that:

"the FBI be directed to collect, compile and make available statistics and information regarding assaults on and shootings of civilians by law enforcement officers, and that the data be reported, analyzed by city, circumstance and characteristic of parties involved."

In fact, when a Dade County Grand Jury was attempting to investigate whether research studies existed which "isolate and identify characteristics likely to be shared by officers who have used deadly force in an unjustified manner" they found "unfortunately the answer to the question is no." The Grand Jury further noted:

"We are quite surprised to find that so little has been done in this area. The amount of money spent on military research in this country is phenomenal and the amount spent on research in business is also enormous. Yet the percentage of the police budget in this country that is spent on research can best be described as pitiful."

The point can be made no clearer than Patrick Murphy made it in his testimony on June 16th:

"It became apparent to everyone during the past year that when necessary, government could trace across the country the location of packages of capsuled pain relievers. I believe the federal government has at least as great an obligation to be able to collect and report accurately the rates of police shootings which result in many hundreds of fatalities and injuries each year."

In sum, it is quite apparent that steps toward fundamental change need to be immediately instituted in New York City to stem the rising tide of racially motivated violence and wanton police brutality and shootings. To quote City Manager Howard Gary (Miami):

"Change should not be dictated by the tragedy of civil disturbance or the horror of a wrongful death. It should result from a national recognition of what is morally right and legally sound.

According to Patrick Murphy, who was Chief of Police in both New York and Detroit, "prudence and persuasion can be as effective as the threat of deadly force." Clearly effective training and effective departmental policy is mandated toward this end.

Racism inside and outside of the New York City Police Department must cease being sanctioned so that the department may serve the communities whose interests they are supposed to protect.

Record keeping must begin on a national and local level so that we may begin to properly oversee those areas where serious problems exist, and reach a resolution.

A truly representative Civilian Complaint Review Board must be formed which can function in a fair, objective, and independent fashion.

Most importantly, those in high positions of power must let filter down the knowledge that brutality against and random shootings of Black people will no longer be tolerated. In cities such as Atlanta, Georgia; Newark, New Jersey; Gary, Indiana; Birmingham, Alabama; and Detroit, Michigan, such actions have resulted in an incredible decline in the number of deaths caused by police, and in the strengthening of relations between the police forces and the communities they serve.

Prosecutors must make known that police officers will be brought to justice, tried and convicted, just as any other citizen, for excessive use of force, and that they are no longer members of an exclusive sector of society which is exempt from such sanctions.

"The police have unique power. They are the only representatives of governmental authority who in the ordinary course of events are legally permitted to arrest citizens and use physical force against them. Other agencies of state power rely upon request, persuasion, public opinion, custody and legal and judicial processes to gain compliance rules and laws. Only the police can use firearms to compel the citizen to obey. The police are also in a special category in that they are sworn to enforce the law at all times, on or off duty in most jurisdictions, so that their power to arrest citizens and their access to firearms is constant and legal."

Police Homicide in a Democracy,
Kobler, v. 31, n. 1, Winter
1975, p. 163

The authority bestowed upon police officers is one in which society maintains a covenant, which is that the use of deadly force must only occur when and where no alternative exists and it is absolutely necessitated. In New York City this covenant has been continually violated, with the seeming sanction of those who are in a position of power to demand its enforcement.

It is in this context, where city officials are turning their backs on the most fundamental of all rights of Black people: to be free of racial violence, that we request federal intervention.

Historically, racially motivated violence has been one of the principal means used in order to deny Black people their freedom. Such acts of violence, take different forms: random violence (such as the killing of Willie Turks or the beating of Victor Moses by white youth); or violence engaged in by organizations such as the Ku Klux Klan; or violence engaged in by municipal agencies such as the New York City Police Department. All such violence is condemned by the Wartime Amendments to the United States Constitution, specifically the Thirteenth, Fourteenth and Fifteenth Amendments as well as subsequently enacted federal statutes.

The two federal statutes which are most relevant to the issue of police misconduct are 18 U.S.C. §241 and §242. These statutes, which were passed during the Reconstruction era, were designed to ensure application of the Fourteenth Amendment in particular. Pursuant to these statutes, it is unlawful to conspire against or, while acting under color of state law, to deprive individuals of rights to which they are entitled under the U.S. Constitution.

The incidents of police brutality and police shootings share few common characteristics other than that they are racially motivated and the victims are disproportionately minority citizens. The New York Times reported on December 1, 1980 that many Black people believe the "series of violent incidents against Blacks is a result of a national conspiracy to terrorize and kill them."

There is a growing concern within the Black community that the acceleration of racially motivated violence, without concurrent sanctions against those who perpetrate it, is a conscious attempt to undermine the civil rights gains of the 1960's, and to return Black citizens to a status which is, in essence, that of a disenfranchised sector of society.

There is an imperative need for federal presence in areas such as New York City where recurring racially motivated police crimes are taking place. Such intervention has a significant historical precedent.

Both during Reconstruction (1836-1877) and during the 1960's and 1970's, the role played by the federal government in counteracting racial violence was crucial to keeping such acts of violence to a minimum. Conversely, the absence of federal governmental action contributed significantly to the growth of racial violence in the late 1880's.

The stance of President Johnson in early 1866 of opposing any federal laws to protect freedmen, and preferring to leave the matter to the states, was the beginning of a fatal course which would cripple Black progress for almost a century. As Frederick Douglass stated at the time: "You enfranchise your enemies and disenfranchise your friends." By summer of 1866 riots in Memphis and New Orleans had left hundreds dead or wounded.

"The downfall of the Negro-white governments of the South was inevitable since Negroes had few guns, little land, and less governmental protection. Organized violence was the main weapon of those who sought to restore the old order."

Katz, Eyewitness: The Negro in American History, 1967

* * *

"How many black men and women were beaten, flogged, mutilated and murdered in the first years of emancipation will never be known. Nor could any accurate body count or statistical breakdown reveal the barbaric savagery and depravity that so frequently characterized the assaults made on freedmen."

Litwack, Been the Storm So Long, The Aftermath of Slavery, 1979

The Thirteenth Amendment, enacted, in the words of the entire Court in the historic Civil Rights Cases of 1833, 109 U.S. 3, 20 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'."

The recognition of the sweeping commands of the Thirteenth Amendment was reaffirmed in the pre-Civil War decision of Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856) and in Jones v. Alfred Mayer Company, 392 U.S. 409. Thus, the Thirteenth Amendment not only rejected slavery, but the overall doctrine of white superiority. See "The Constitutional Right of Negro Freedom," 21 Rutgers L. Rev., 387 (1967).

Prior to the passage of the Thirteenth Amendment, legal and moral standards by which white people conducted themselves in relation to each other, were allowed to be utterly disregarded with respect to Black people. The Wartime Amendments imposed an affirmative duty upon the national government to eradicate all actions which operated to preserve the 'badges and incidents' of slavery.

Out of the hearings of the Joint Congressional Committee on Reconstruction, which convened in December 1885, emerged the Fourteenth and Fifteenth Amendments, and a battery of federal civil and criminal statutes, designed to provide massive federal protection to Black people. At the heart of these hearings was the recognition of the driving need to provide physical protection for Blacks to counteract the terror to which they were being subjected, and to require the states either to give effective guarantees for the maintenance of law or accept direct federal intervention due to their failure to provide necessary physical protection to Blacks.

18 U.S.C. §241, §242, 42 U.S.C. §§1981 through 1989, and the statutes enacted during the 1960's, 18 U.S.C. §245 and 42 U.S.C. §1971, all provide the fullest repudiation of the rationalizations which seek to excuse federal inaction against the rising tide of racially motivated violence.

In United States v. Price, 383 U.S. 787 (1966) Justice Abe Fortas concluded for a unanimous Supreme Court that the language of §241:

"embraces all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States."
[emphasis in the original text].

* * *

"We cannot doubt that the purpose and effect of Section 241 was to reach assaults upon rights under the entire Constitution, including the Thirteenth, Fourteenth and Fifteenth Amendments, and not merely under part of it."

(383 U.S. at 800, 805)

In the late 1960's the 90th Congress enacted 18 U.S.C. §245 which determined that federal action was authorized where a victim, although not personally engaged in a federally protected activity, was victimized for the purpose of discouraging a person or class from taking part in such activity. This eliminated any doubts about federal power to punish overtly private actions which interfere with Fourteenth Amendment rights, and to remedy the deficiency of §241 by allowing federal prosecution of individuals who were acting alone, not in concert with others, to deprive citizens of their constitutional rights. The statute contains no jurisdictional prerequisite for its invocation that victims of racial violence be engaged in specifically federally protected conduct.

Additionally, there exists authority for massive federal civil action, particularly 42 U.S.C. §1971, as well as 42 U.S.C. §§1983 and 1985. In fact these statutes were the basis of a sweeping federal injunction in 1965 entitled The United States Against the Original Knights of the Ku Klux Klan, 250 F.Supp. 330 (E.D. La. 1965, 3 judge court).

Racial violence which permeated our society during the post-Reconstruction era and again in the early stages of the Civil Rights Movement in the 1960's has, unfortunately returned with a vengeance today. The legislative history of §§245, 241 and 242 is indicative of the fact that Congress, both in the 1830's and in the 1960's, well understood the intimidating effect of violence against Black people, and also knew full well that random racist violence, which goes unchecked, sends out a clear message: minority people are not citizens of these United States, they have no rights and they should not exist.

This very message was decisively rejected by the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments, which declared that Black people are to be protected by the power of the federal government in the exercise of rights to which every citizen is entitled.

The Department has absolute authority to intervene in New York City, to bring where necessary, criminal prosecution and/or sweeping injunctive relief, pursuant to §§1971, 1981 through 1989 of Title 42.

Any suggestion that racially motivated violence, even shooting deaths directed at minority people is not a basis for federal intervention, totally ignores the commands of the Wartime Amendments. The life and liberty of Black people must be protected.

A final point is relative to the specific need for change of the criminal civil rights statutes (§§241 and 242). As they now read, proof is required that an officer, under color of law, in the exercise of his authority, intentionally deprived a person of his or her constitutional rights. While courts have not so narrowly construed this to mean that an officer, when using deadly force, actually must go through an articulation of the Fourteenth Amendment in the thought process at play, the burden of proving specific intent is a difficult one to meet. Such a burden means the requirement of proof of the intentional deprivation of constitutional rights, rather than a mere criminal negligence requirement, or one of reckless use of deadly force.

Moreover, there are only misdemeanor penalties involved in the violations of these statutes, unless a death results. A change which would make assault with a deadly weapon, under color of law, a felony offense is certainly a prerequisite to effective use of these remedies.

It is necessary that the statutes, originally developed over one hundred years ago, be revised consistent with the developments, both of language and substance, of the time which has passed since their inception, to allow them to become as available and effective remedy as State criminal prosecutions.

Dr. Martin Luther King, Jr. had a dream. Though "we have tread thro' the path of the blood of the slaughtered," our faith remains strong.

I thank you.

Mr. MASON. Mrs. Wells was attacked by a white police officer when she was 4 months pregnant. She is the wife of Reverend Wells of the Union Baptist Church.

TESTIMONY OF KATHERINE WELLS

Mrs. WELLS. I am certainly glad to have this opportunity to finally tell what happened to me. It was a sad and very disturbing time for me.

I was following my husband in my automobile onto the entrance of the West Side Highway at 57th and 12th Avenue. It was being patrolled by a police officer at that time directing the traffic, and he waved my husband through. I proceeded up to the stop sign, then he waved me through also.

As I started going through, all of a sudden he ran in front of my car and reached his hand in the window and grabbed me by the neck and clothes and started pulling me out of the car. I was screaming and hollering by that time. The passenger I had in the car, and I couldn't understand what was going on. I asked him what was the matter and he said, just pull over, and started to abuse me, cussing me and yelling and screaming and carrying on, asking me didn't I see his hand up to stop me and why did I go through the light.

At that time I was shaking. I couldn't understand what was going on. I said I am going to pull up behind my husband, then I am going to stop. I tried to take off. Again he reached into the window and started to grabbing me by my clothes and slamming me up against the steering wheel and pushing me back against the seat.

When I continued to move with the automobile, he was hanging in the window, and I finally stopped behind my husband. The young lady in the car and I were both screaming for my husband. He ran back to the car and physically separated the police officer from me. And he was just hanging in there, saying all I want to do is get the keys, so he said. My husband told him, tell her what you want, don't put your hand on her, you don't have to handle her. I can understand very well what is being said. Tell me what you want, don't put your hands on her.

He reached into the window, in the car window again, pushed me up against the seat and snatched the keys from the ignition, saying he didn't want me to get away. I wasn't trying to get away. I was merely trying to do what he wanted me to do. If he would have told me what to do I would have done it. I was taken to the Harlem Hospital and sedated because I was so upset with what happened, and I threatened to miscarry, then the baby came 2 months early, and you don't know what I went through that year, behind all that had happened with just this incident with the police officer.

I am glad to tell this at last because I don't want this to happen to any other pregnant person. They feel they can do what they want to do with an individual just because they are wearing a uniform, and have a badge, and I want justice for what has happened.

Nothing has been done that I am aware of at this point. We did write a letter to the CCR and have gotten no response since 1978 to date.

Mr. MASON. The next person to speak is Larry Peoples. His mother is here to accompany him. She is not going to testify, she is a contributing editor of "Essence" magazine.

TESTIMONY OF LARRY PEOPLES

Mr. PEOPLES. Hello, Congressmen. I thank you all for coming out today.

My name is Larry Peoples, and I would like to talk about my experience with the police department.

On February 17, at approximately 1 p.m. in the afternoon, I was going shopping with my baby, who was 12 months at that time. I had gotten in the van on the block I live on and saw some white men running with guns, about 20, 25 white men running with guns; so I put my son down because I thought there might be some shooting. After about 5 minutes, I didn't hear any gunshots, I got back into the driver's seat. A white officer pointed a gun at my face, told me to get out of the van.

All right, I got out of the van, he was approaching me, and he said to me, lie down on the ground, I am going to blow your ——— head off.

I look at him, I said calm down, I am not a criminal. He seemed upset, so I laid down on the ground and he walked over to me and said, ———, you are going to jail. He stamped down on the right side of my face. At that moment it didn't even make sense to me why he was choosing to treat me this way. At that time about three other white officers joined in and began to kick me while I was on the ground. I even remembered saying to one of the officers, "If you believed in God you wouldn't be treating me like this." Right then a white officer kicked me in the left eye while I was still on the ground.

Then, after they handcuffed me on the ground, picked me up, the white officer walked over to me and hit me twice in the groin with a blackjack. I buckled, and as soon as I straightened up there were two officers getting into my van.

One officer grabbed my son by his snowsuit and started undressing him, looking for drugs. Another officer started going through his bag, pulling out diapers and things, and I asked the officers, "What this is about, why are you treating my son like this?" They said, "Shut up and be cool."

"You almost blowed my head off and you tell me to be cool." They decided they were going to put me in a van for several hours. I said to one of the officers, "Are you arresting me? What are you arresting me for?" He turned around and he said, "Shut the ——— up, boy. You call me sir, unless I give you permission to call me sir you shut the ——— up, I will break your face."

So I said OK, I am in the van handcuffed. I stayed in there for several hours.

Another officer got in the van. I said to him, "I can't believe you are arresting me for nothing." He turned around and said, "Sounds good to me." So they decided they were going to take me, they put me in an overcrowded cell for several hours. While I was in the cell there they were bringing in the drugs and money and guns. Because they busted some friend, one of the cops decided he was

going to check out one of the guns, and he pointed it at my head while I was in the cell and started playing Russian roulette for a minute or so. I looked him dead in the eye.

Mr. CONYERS. Did they pull the trigger?

Mr. PEOPLES. Yes.

Mr. CONYERS. How many times?

Mr. PEOPLES. I think about three, three times.

At that time my lawyer had come and I was explaining to him what had happened, and I was complimenting the cops on a good business that day, and I tried to explain to them about my situation. I said, however, I am willing to accept the fact I was a victim of circumstances, I have never been arrested, I don't even have a record, and at this point all I want to do is go home to my family.

So three white officers looked at me and said, "It is not that easy." I said it is not that easy, you do all this and tell me that it's not that easy. I got booked for selling drugs but now I am being charged with assaulting a police officer, putting him in the hospital, a cop I never even touched, resisting arrest, and I go to trial on Thursday.

I would like to say thank you.

Mr. MASON. Lamont Heyward.

Before Lamont Heyward testifies, I would like to indicate that what happened to him was so vicious that a writer from the "New York Post" wrote Robert Morgenthau asking them to intercede on his behalf. Lamont Heyward worked in a training program to be a New York City police officer. He now works for the housing authority.

TESTIMONY OF LAMONT HEYWARD

Mr. HEYWARD. Thank you, ladies and gentlemen, members of the committee.

I am going to be very brief.

My name is Lamont Heyward, married and a resident of Queens. I am presently employed by New York City Housing Authority, and I was previously employed by New York City Police Department.

On September 15, 1981, I was coming home from a health club. While waiting for a connecting bus going uptown, four white men jumped out of a car and one yelled out, "Hey, nigger, come here." At that point I was grabbed by men who were wearing jeans and sneakers. My gold chain was ripped off my neck and I was thrown in the back of a car, with my hands bound behind my back.

I was beaten in the head and face area, in which one of the men was hitting me in the face with a gun. I was also beaten in the knees and the back of the head with a flashlight. It was not until then I realized it was the police. No one ever said why I was arrested.

I was beaten going to the precinct, and once in the precinct I was taken upstairs, thrown in a chair. One of the officers went behind me and returned holding a metal rotating brush with a wooden handle on it. This brush was placed in my mouth. I was asked to sign my name to a confession to a robbery. I refused, so I was beaten some more. Then I was asked to sign my name to a rape

confession. I refused and was beaten again. I also was asked to sign a confession to a shooting. Again I refused.

During the beating my hands were handcuffed behind me. I never knew what the charges were until I was before the judge.

Attorney Vernon Mason and I spoke to New York City "Post" reporter Joe Nicholson, who sent a letter to District Attorney Robert Morgenthau, requesting an investigation of the incident. The charges were dismissed and I am presently filing charges against NYCPD and the city of New York.

Mr. MASON. Thank you.

Mr. CONYERS. Thank you very much.

Mr. MASON. Herbert Kenneth Woods.

Our next witness is Larry Kenneth Woods. Mr. Woods is one of the owners of Sylvia's Restaurant and the restaurant has been in Harlem for the last 20 years. Most of the people who live in Harlem—including Republican, Vice President Bush ate there when he came to Harlem campaigning.

Most of the politicians and Congressman Rangel, everyone else knows Sylvia's, this is a family-owned business by people from the South that came here, who have been operating that restaurant for about 20 years.

Mr. CONYERS. So does the subcommittee chairman.

Mr. MASON. Thank you.

TESTIMONY OF HERBERT KENNETH WOODS

Mr. WOODS. Hello, Congressman Rangel, and other congressmen.

My name is Herbert K. Woods. I am a coowner of Sylvia's Restaurant.

As Attorney Mason said, it would be kind of hard for me to keep going over this story. But for the past year we have been knowing several crimes that have been committed by white cops on blacks in the neighborhood, especially in front of the restaurant.

On April 30, Reverend Johnson was on his way to patronize our business when him and two companions were brutally beaten by white officers. Ironically, about a month later, a similar incident happened to me, about 12:30 at night; it was June 7. I came to the restaurant to investigate a fire over the restaurant in one of the tenant's apartment. When I pulled up to the restaurant, I approached the officers, Officer Paul Delcanto, he was sitting in a patrolman's car. I just went up to him, I said, "Officer, my name is Kenneth Woods, I am owner of the restaurant. Is there anybody hurt or is the fire very severe?"

Before I could finish my statement, he came out saying, "——, get the —— out of here." I said again, "Officer, I am one of the owners. I want to find out whether anyone is injured." Again he said, "——, get the —— out of here and move that ——."

So by that time I was really concerned about whether anyone was hurt or whether the fire had spread down into the restaurant, so I turned to walk away, back toward my car. I was looking up at the ladder to see whether the firemen were bringing anyone down, and I didn't hear Delcanto get out of the car. All of a sudden I am grabbed from behind by my collar and spinned around and knocked on the side of the head, knocking my glasses off causing

them to break, and I was really in so much shock then I said, what is the problem, officers. He said, "——, shut the —— up." He automatically handcuffed me from behind. I am still wondering why he is doing this to me, so I didn't rebel or anything because my main concern was whether anyone was hurt and I was just thinking about the fire.

His partner was staring in amazement at what Delcanto was doing to me, so he put me into the patrol car, his partner drove my car to the precinct.

On the way going to the precinct, again I asked Officer Delcanto, "Officer, I don't mean no harm, could you at least tell me whether anyone was injured or whether the fire was very severe." Then he said: "—— you are damn right, the whole —— is burned down." Then he said: "You know, none of you —— ain't no good, you are all the same." He paused for a second, he said, "—— if you open your —— mouth again I am going to put my foot up your —— ——," so I am still not rebelling or anything because I was still concentrating on what was happening at the restaurant.

I was thinking I wanted to call my parents to let them know what was going on with the fire, and here I am going down. I am coming to investigate a fire at my place of business and I am on my way to the precinct now, that quick for nothing.

So when we got to the precinct, I didn't say anything, I am still handcuffed from behind. We bypassed the sergeant's desk, we were sitting down, he throws me into the seat and asks me for my identification. So I was still handcuffed from behind, so I had to give him my registration and driver's license while still handcuffed. So that is the only question he asked me.

My father came in shortly after and my cousin but they weren't allowed to see me. We were in the corridor. So, Delcanto just got all the information, he wrote up some forms, and handed me three summons, one said double parking, the other one said obstructing traffic, and the third said disorderly conduct, when the only disorderly conduct was his.

So, this happened to me, it was a frightening experience, but it didn't hit me until when I was released and I walked out of the precinct. When I walked out of the precinct, everything hit me about what had happened, how I was victimized, abused, and didn't do anything to receive that kind of treatment.

I started thinking about what happened. It just happened to Reverend Johnson—to turn around and happen to me—so there has to be some kind of conspiracy going on, especially right there in that community and right in front of the restaurant, I mean several incidents have happened.

Mr. CONYERS. Attorney Mason, I want to express to all of the witnesses that you have presented how deeply moved Congressman Rangel and I are about the courage it takes for a man or woman to come before the committee and expose these demeaning, embarrassing, horrible incidents that take your manhood and your womanhood away from you. To have to come before a committee and put this on a congressional record for all time takes a special kind of courage, and I think that we here all ought to acknowledge that that courage resides in those men and women, the Reverend and his wife; who have chosen to come so that some others may be

spared. They have come and revealed all of these kinds of things that have happened to them.

Mr. RANGEL. I would like to join in his remarks and say that here we find a pastor of a very well-known church, his bereaved wife and mother of his children, a businessman of a restaurant, that have to use a congressional hearing in order to air their grievances.

When you take a look at our community throughout the five boroughs, and think how many people could never really reach the stature in life that you have, and you have no recourse, can you imagine what the other people are going through, without jobs, without any help, with police records, and they too find themselves the victim.

So, I want to join in with the chairman in saying that you should not have to go through this, but God knows that what you are doing today is to prevent other people from having to do it, and we certainly appreciate your presence.

Mr. MASON. Thank you.

Again, as I said, we will move very quickly. I have two other incidents, or perhaps three—one of which concerns me very greatly—and I will say this for the record because I do not think in the present circumstances that this very courageous female black officer can testify, having been told by the police department and Maguire, PBA, if she testifies there will be reprisals.

I think it is important though to point out there are attorneys here, Brother Jones, Brother Maddox, and other people that are here, and her story is so poignant because this black woman police officer was arrested by four white officers for impersonating a police officer, and they left her child on the sidewalk after they had arrested her.

I can assure you that when you return here to Brooklyn, that we would have gone to court if necessary because I understand something about the first amendment and the right to counsel, and I am not going to have Maguire, who heads up 23,000 people, telling 2 million people how they ought to conduct themselves and they cannot appear before your committee when they have vital information to give you, so we will make certain—if necessary, we will go to court to make certain she will testify next time you come here.

There are two other incidents, one of which involved an entire family of 11 people, only 2 people here are going to testify, but it was significant because one of the women who was hit was pregnant. The other woman worked for the transit authority and was beaten by the transit authority.

I would like to call Linda Wolfe and Lillian Long.

Linda Wolfe is to my left. She is a housewife, her husband drives a truck. Lillian Long is to my furthest left. She works for the New York City Transit Authority.

I would like Lillian Long to tell the story.

TESTIMONY OF LILLIAN LONG

Mrs. LONG. My name is Lillian Long. I am an employee of the Manhattan and Bronx Surface Transit Operating Authority, a segment of the New York City Transit Authority.

I am here to present eyewitness testimony, not alleged but to unquestionable police violence, gross misconduct, and brutality.

On the morning of Saturday September 13, a family group of approximately 11 people, myself included, entered the 42d Street train station located on 8th Avenue and 42d Street. Our group temporarily separated when those of us with tokens entered the turnstiles, those without stood on line to purchase, my cousin Miss Wolfe and two other members of our family boarded, descended the staircase and boarded and awaiting the northbound train. While we were doing this, we called to the remainder of our family to hurry along. I believe it was 42d Street, 8th Avenue.

Although it was very early in the morning, it was far from being isolated, and I say this because there were a number of other people coming down the stairs, and holding the doors presumably waiting for members of their party to board the same train. In the car in which I was in, there was a man who was bodily obstructing the car door calling to his companions. Two white transit police officers walked past this man and walked straight up to my cousin and began to harass her verbally about getting in or out.

She immediately replied, we will get out since the rest of our family had not joined us yet and she started to leave the car. One of the officers pushed her in with his hand and told her to get in. She said again, we would get out in order not to separate our group. It was then this white police officer grabbed her by the front of her clothes and yanked her out of the car. This man who was holding the door jumped back into the train, the doors closed, and the train proceeded out of the station.

I started screaming. I started screaming, I banged on the door, let me out, stop the train. Somebody pulled the emergency cord because the train came to a screeching halt, and the conductor started walking back. I stopped him, I virtually begged him to let me out, I told him they have got my cousin. There was a commotion on the platform, please let me out. He stopped the car, I ran down the platform, and I saw this 5-foot, 125-pound cousin spread out. Her face, her head, her neck was covered with blood.

Mr. MASON. I have heard the story a number of times.

Mrs. LONG. I saw two white cops standing on her arms. She was outstretched, one of them was beating her with a billy club, the other one was kicking her in the side. I looked into their faces and they were red, the faces were livid, they were contorted with fury. I believe that they would have killed her on the spot if they had a green light to beat her and there was a crowd forming and they were saying, stop, stop, it's a woman, stop.

Then the cop closest to me pulled out a walkie-talkie and called a 1013, which in layman's language means a police officer in distress, a police officer in trouble, a police officer needs assistance, his life is in danger.

In a matter of seconds they came out of the woodwork. Cops were everywhere. They came down the stairs, they came off the plat-

form, there were canine teams. I think I saw one black face among them.

By this time another cousin who was pregnant, her 15-year-old daughter and her brother, was being handcuffed and dragged up the stairs. The cops grabbed my cousin by the front of her hair, yanked her up, handcuffed her, and started to drag her up the stairs behind the whole troop of officers.

I looked for the only black face I could find and pulled my pass and tried to identify myself. I told him I was an eyewitness and employee. He told me to follow him, he would see what he could do. He took me in the holding facility and this black police officer approached his white sergeant and told him he had an employee and eyewitness. He was directed to get a statement from me, which he did. He presented it to his white sergeant.

I was called in and the white sergeant looked at me and told that I would be arrested. When I inquired why he told me for interfering and he put me in the holding cell with my cousin, my pregnant cousin and her 15-year-old daughter.

For the next 15 or 20 minutes they paraded up and down this facility, they were calling us every kind of nigger in the books, and just, you know, getting together, I don't know what they were doing. So my cousin, several were injured, I requested medical assistance; they ignored me, and she was bleeding from her mouth, she had lumps on her head, and blood all over her clothes and she was a mess.

So finally they decided to call an ambulance, and then they had a discussion with the two ambulance attendants whether she could be treated on the spot or was it truly necessary for her to be taken to a hospital. After they looked at her, she had an open wound, they decided it was necessary for her to go to the hospital.

Mr. MASON. Thank you, Mrs. Long.

Mr. Conyers, I would like to indicate that the shirt that her cousin Linda Wolfe had on is to your left. She has had a jacket on at the same time which was covered with more blood than you see on the shirt, and she was treated at the hospital, she was hurt so severely that the hospital record indicated she was unable to sign the hospital report. And they were charged with resisting arrest, disorderly conduct, and those kinds of charges.

Congressman, I would like to ask if you would accept approximately 60 complaints that we received this morning at the table outside from persons who came to this hearing. I know that you are unable to hear those persons at this time. I would like to submit those complaints.

Mr. CONYERS. Without objection we will accept those documents into the record.

Mr. MASON. Thank you.

Also, my written statement that I prepared I would like to submit also.

Finally, I would like for you to hear the two other persons that I know we don't have time for; Pamela Jones, I would like for you to hear Reverend Johnson's case.

I think as far as the black community was concerned, we have been working this—as I said, myself personally—for 11 years. We have been working on this issue for several years; ministers have

been involved in this issue. As a matter of fact, the ministers that have been involved in dealing with this have been from the black clergy.

I would like for you to hear Al Bradley, who flew up here from Los Angeles, because he was here, he was one of the persons with Reverend Johnson and they have all attended and graduated from UCLA; Roderick Mitchell, a financial analyst with Celanese, who got an M.B.A. from Columbia University; Reverend Johnson, graduated from UCLA, and is a first-year student in the Union Theological Seminary and is also a minister.

I would like for you to hear that story because that was the story that persons felt that if you attack black ministers you will attack anybody. And even after that happened, I would like to indicate this because what it indicated to me from the South is that, you don't have any home training; somebody has not been telling you something.

And I say that because the first thing that Koch said when this came out was—his profound ignorance of the black community in New York was so devastating, and because he has all these white males advising him—he said about a black minister that the black minister who had talked about being brutalized, after he had to go to the VA hospital, with blood coming out in his urine, after being brutally assaulted in front of several witnesses in Sylvia's Restaurant, he said that the black minister was lying. And I think for most of us who have a belief, and for most of you who feel very strongly about our black ministers, that was the straw that broke the camel's back.

What it indicated to us is that we had a dangerous person who was the head of the largest city in the country, who had no understanding whatsoever of not only us as a people but our culture, because one thing you do not do, it would be like him calling Mrs. Wells the wife of Reverend Wells, a liar and she is 4 months pregnant, almost miscarried.

What I think it would have been very important for Koch to do is to come up here—I don't know if we are going to have hearings, but he certainly should have come up here and had some of his white male aides come up here to hear what is going on, because we are 2 million people.

I would like for you to hear that story, we will be brief, but I think it is important to understand, as Malcolm said, you get a Ph.D., as far as persons like Koch, you who call us black rednecks, as far as a person like him you are still a nigger.

Mr. CONYERS. Welcome to the hearing.

Mr. MASON. Congressman Conyers, this is Al Bradley, who flew up from Los Angeles because he knew the importance of being here today, and Roderick Mitchell, and also Reverend Lee Johnson.

TESTIMONY OF AL BRADLEY

Mr. BRADLEY. Congressman, I have been asked to return to Harlem to give my eyewitness account of the totally racist attack on two citizens of New York City by members of the New York Police Department, an attack that has been, as Attorney Mason referred, called by the mayor of the City as possible, but doubtful.

I am here to certify that it was not only possible, it was realistic. I was there that day.

On the evening of April 30, at approximately 7:35, I was a passenger in a vehicle that was stopped by a New York police van supposedly because the front license plate was missing. We were never told that at the time.

Two white officers approached the car, one on the driver's side, and one on the passenger side, and requested that the driver, Reverend Johnson, produce identification, insurance, things of that nature.

Reverend Johnson said, "OK," but informed the officer who was on the driver's side that these materials were located in his jogging suit and requested his permission to get out of the car to produce it.

For some reason, this caused Officer Messino to go berserk. I don't know if it was a black man refusing to obey a demand or what. Someone mentioned earlier there were probably drugs and alcohol involved with police officers on duty.

We don't know. However, he cursed him and immediately locked his door. Mr. Johnson informed the officer that he was not a criminal, that none of us were criminals, that he was a minister in this community, to which Officer Messino replied, "I don't give a ——— who you are."

Once again, he said, "Give me your license right now." Once again, Reverend Johnson asked him to please, if he could get out and produce it. Officer Messino then snatched open the car door and began beating Reverend Johnson with a flashlight.

At this point, Rodney Mitchell and myself got out of the car to go around and see what was the problem or what was wrong with this man. By the time we reached the other side of the car, Officer Taylor, Messino's partner, had joined in trying to force Reverend Johnson out of the car.

This force took the shape of actually one pulling his head and the other one beating him on the leg and trying to pull him out of a Datsun. Due to their inability as police officers to physically remove him, what resulted was with Reverend Johnson's head continually getting banged into the top of the car.

This must have happened five or six times. Also, the clothing he was wearing was ripped off of him by one officer as they attempted to pull him out of the car.

During this time, or about this time, someone must have placed a call that there were some problems going on and about 10 other police cars began zooming down Lenox Avenue, coming down the sidewalk, coming down the other side of the avenue.

People were spilling on to the sidewalk, shouting, "Why are you beating this man? Why are you beating this man? He didn't do anything." The two original officers were oblivious to their questions, and oblivious to ours, and then forcibly pulled Reverend Johnson by his feet, whereupon at this time, his head was bleeding and he was somewhat in a daze from the actions that had preceded.

They pulled him out into the street. Now, remember, all of this occurred because Reverend Johnson asked could he please get out

of the car to produce his license. What ensued was that they actually pulled him out of the car, which is ridiculous.

At this point, there were maybe 150, 200 people who had gathered around. That was a Saturday evening on 127th and Lenox, and it was the first warm day of the spring, and there were a lot of people on the avenue.

They were milling around, however, because of the action of the police. All we had seen at the time was one person in a car getting beat by policemen, so, of course, everyone was curious and somewhat upset that this was occurring.

The arriving policeman had no idea what had occurred. They arrived to attempt to rescue, pushing people around and telling them to stay out of the way. Rodney Mitchell and I attempted to question one officer as to why they were being so forceful and he pulled a gun and pointed it at our heads and told us not to interfere with police work.

At that point, they had finally apprehended Reverend Johnson and handcuffed him and placed him in a van. Once again, Mr. Mitchell attempted to question a police officer as to the whereabouts and the why of this type of activity.

Mr. MASON. Congressman, I would like now for you to hear from Rodney Mitchell.

TESTIMONY OF RODERICK MITCHELL

Mr. MITCHELL. Mr. Chairman and members of the Harlem community, I would like to make one thing perfectly clear before I begin my statement. Let it be known that I am extremely saddened to be here today, that when I listen to my brothers and sisters and the brutality that they have suffered at the hands of the policemen, when I listen to the sister of how her family was brutally beaten up and when I listen to what happened with Brother Larry Dawes and his friends, and when I listen to how a Reverend's wife that was pregnant and beaten up and abused by the policemen of New York, my soul is not at rest, and my heart is heavy, and my spirit is filled with all of the anger that would be expected of someone that has been handcuffed, cursed, and beaten.

Let it be known all over the world, Mr. Chairman, that I, Roderick Mitchell, sitting here before you, do not take it lightly that I and my friends were humiliated publicly, beaten down on the ground like animals and treated with such ruthlessness and brutal language that even now, I wake up at night praying to God that I can be instrumental in bringing about change in the New York City Police Department.

Let it be known, Mr. Chairman, that I am so filled with hatred against the systematic and racist infrastructure of the New York City Police Department that pervades my community of New York that my intellect has been working overtime thinking of ways to bring about fundamental change.

Yes, Mr. Chairman, I hate, but my hatred is not against the small, insignificant individuals like the police that beat me up, but it is against the spiritual wickedness in high places and it is to this matter that I would like to focus my comments.

Police brutality against the poor people generally and black people in particular is allowed to dwell in New York City. I know, because I am the victim of that brutality and it is the systematic and conscious effort on the part of the certain policemen in the New York City Police Department to establish law and order in the black communities through violent and physical intimidation.

While law and order is a noble goal, law and order without justice is a criminal and tyrannical act against the people.

Let us remember that Adolf Hitler established law and order, but at what cost? Prior to April 30, my exposure to deviant police behavior had been limited to secondhand news accounts and conversations with people in the community that were victims and witnesses to such acts of brutality, but as in most cases, however, an incident can only be appreciated through personal experience.

Unfortunately, the story I am about to relate is an example of a frequently occurring act on the black community, and it cannot be adequately documented, but it is one of such mental and spiritual destructiveness that the scars will always remain.

Now, I am going to skip the initial part of what happened to me because that was already talked about, but I want to talk about what happened to me after I was arrested, simply because I asked the policeman on the scene why were they treating Reverend Johnson with such brutality.

He ignored my question and grabbed me as if I was an animal. He handcuffed me and he threw me into the van. He cursed me and his other two partners took me to the 28th precinct along with Reverend Johnson.

I was taken inside and treated like a dog. I was handcuffed all the time, and I was taken to a stairwell. I was kicked. I was beaten. I was knocked down in the stairwell. I was called a nigger. I was called scuzzbag. I was called every kind of ——— anything you want to think of, and anything else that you don't want to think of.

I am here to tell you, Mr. Chairman, that I don't like it and it doesn't set well in my soul, because even when I listen to other brothers and sisters, that the same thing has happened to and that the acts have been much more brutal and the things that have happened to me, my question becomes, what does a victim of such brutality have as an alternative?

Because the question becomes, in my case, that if you ask a policeman why are you treating someone like this, if you try to get a badge number, if you try to follow so-called procedure as recommended by the police department, you are endangering your life, also.

It just doesn't work. You do not interfere with a policeman's work. As a victim of brutality, I can speak with the forceful truthfulness as to the total dehumanizing effect of brutality.

Mr. Chairman, just for a moment, place yourself in the position of being a victim of police misconduct and compassionately empathize with the trials and tribulations that one must go through.

Even being here today before you is a traumatic experience. Mr. Chairman, I don't enjoy coming before you today telling the world that I was beaten up and cursed out. You must understand that while the physical beating is bad enough, and in and of itself the

true impact of the decision does not soak in until after the incident is over.

Mr. Chairman, I want you to know that as our first step, we as oppressed people of New York City are here to let anyone and everyone know who is listening that we will no longer tolerate Gestapo action on the part of the agents of racism or corrupt policemen.

This is not a request. This is not a petition. This is not even a demand. This is a fact. We cannot allow police to continue to protect or to turn their backs on criminals in our community and overpolice our good citizenry. It is imperative that we, the citizens of our communities become community activists.

We will police the police if necessary and remove those politicians from office that cavalierly disregard our demands and replace them with people who have an ear to our community.

Mr. Chairman, I leave for you to follow the recommendations which I feel will change the tenor of police attitudes and actions in our communities. Let us liberally require that police who work in our community also live in our community.

Let us abolish the current civilian complaint review board and start all over from the beginning. Instead of having a citywide complaint review board, let us implement local complaint review boards in each precinct composed of religious and social leaders and police to deal with community-specific police relations.

Limit the political activities of the police benevolent association so that in the future, politicians would no longer be intimidated by police. We do not want a police state in our communities. We want a democratic state in which police have no divine privilege. Let us provide extended legal services for victims of brutality.

Let us ruthlessly prosecute the policemen that are found to verbally or physically abuse people in our community and dismiss them and socially castrate them.

Finally, Mr. Chairman, let us intensify the efforts of nonpolice groups to have access to the records of those policemen who are found to have a history of insensitivity to our community. Thank you.

Mr. MASON. Mr. Chairman, we do appreciate your patience. We know that the time is going. Now, I would like for you to hear Reverend Johnson. In a sense, we feel helpless, but we don't intend to stay helpless, and I just want to say how much we appreciate your being here.

You don't know how important that is. Instead of characterizing this as a circus, those, if they had intelligence, would have credited you in stopping an insurrection in New York City and you should be commended rather than criticized for the fact that you came here.

There are goals, as Roderick Mitchell said. We are here to deal with principalities and persons who are wicked in high places. But I do want to thank you for being here and coming here to us. I would like you to hear Reverend Johnson, and I think we have one other person who will be very brief, but again, we want to thank you.

Mr. CONYERS. Reverend Johnson, we welcome you on behalf of the subcommittee.

TESTIMONY OF REV. LEE JOHNSON

Reverend JOHNSON. Mr. Chairman, I would like to ask, what are we going to do? I have heard statistics, 23,000 against the 2 million. What are we going to do? Black people of New York, what are we going to do?

Mr. Chairman, can truth and justice be friends? I will tell my story. I am not here with any hatred, anger, or bitterness. I am here because of the will of God. I am here because I have been a victim of police brutality.

I am here because I can articulate racism to the utmost.

Mr. Chairman, it is true. It is unquestionable. It is irrefutable. It is without a shadow of a doubt that police brutality and racism exist in New York City. My brothers and sisters who live in the city, I am asking you today, what are we going to do?

If we do not come together now and change this city, it will die. It will die. It will die. Racism is a social evil. Racism killed Dr. King. Brothers and sisters, what are we going to do?

What are we going to do?

Mr. Chairman, can truth and justice be friends? I am tired of living in a society where I cannot be a human being, where I cannot even be a man. But I refuse to die less than a human being.

I came here today because I believe that God is on my side. I come here today because I have decided that the social evil of racism must die. I come here today because I have felt it. I come here today because I have experienced it. I come here today because I know what it is.

Seventeen years in the South, living on a plantation in Louisiana, brothers and sisters, what are we going to do? This is 1983, not 1800. Brothers and sisters, what are we going to do?

On April 30, I was stopped by two white police officers. I was approached in a very rude, intimidating, and authoritarian manner. I am a citizen of this city. I am a black clergyman. I have served for the State of New York Department of Corrections as the community chaplain.

I have served as a New York City Department of Juvenile Justice counselor and chaplain. I am a member of KAPPA Alpha Psi Fraternity, Inc. I am a Prince Hall Mason. I am here to fight racism. I am here to fight brutality. I am here to bring about social change in this city.

Mr. Chairman, on April 30, I was brutalized. The details have already been typewritten. The details have already been publicized, but the fact of the matter is can truth and justice be friends?

Mr. Chairman, on that particular day, it began a new era in my life. I have a 22-month-old daughter. I have a lovely wife. I am a black man, and I will stand as a black man and I will die as a black man and I will live as a black man because I am black in my heart, in my soul and in my mind.

Because I believe now is the time. Mr. Chairman, I know 20 years ago, you may not have been the chairman, but I believe now is the time. I believe Rev. Jesse Jackson, now is the time. I believe now is the time because we realize that they are not going to give us anything, we must demand what we want and get it.

On that day, Mr. Chairman, having gone to UCLA, having the blessed privilege of having what one considers in this society an opportunity to deal with upward mobility, having been deluded by the concept of hope that to have an education means that you might be somebody, to have had the God-blessed privilege to go on further to graduate school at Union Theological Seminary, one of the finest theological seminaries in the world, yet on April 30, I became a nothing.

I became a nobody. But I want you to know I want everybody in here to know I have not been demeaned. I have not been destroyed, but I have gained power that comes from up on high and I will not be destroyed.

I will not be moved because God is on my side.

Mr. CONYERS. Reverend, I am going to express on behalf of the subcommittee our deepest appreciation not only for your testimony, but also for the moving eloquence of those who spoke before you, the brother that came in from across the country, all of you here have created an undeniable record here that I think makes this perhaps the most important hearing on police violence that has ever taken place in American history.

We are going to reproduce this record. This is not an afternoon event that will be left to be recorded by television or newspapers. These hearings will be reproduced verbatim with all the submitted documents and testimony so that they will form a final record in the struggle of black people in New York and in America to overthrow the tyranny of police violence that has controlled us ever since slavery.

We are now saying no more. We are hearing it in many voices and in many ways. So I want to thank attorney Mason and all of you, the ministers and everyone that have come here today, and we can conclude. We must rush.

The hour grows very near, and we have a few more witnesses that are required to come before us before this panel concludes. But this is not the last hearing. There will be as many hearings as is necessary in New York to make this record complete so that no one in America can question whether racism exists, whether police violence is a fact of life for many black people.

Mr. CONYERS. With great pleasure I welcome my friend to the witness table.

TESTIMONY OF REV. BEN CHAVIS, UNITED CHURCH OF CHRIST, COMMISSION FOR RACIAL JUSTICE, ACCOMPANIED BY CHARLES COBB, EXECUTIVE DIRECTOR OF THE UNITED CHURCH OF CHRIST COMMISSION ON RACIAL JUSTICE; CLAYTON JONES, ATTORNEY; AND LORNA AND JEROME EARLY

Mr. CONYERS. Thank you.

The subcommittee notes that Rev. Jesse Jackson is taking his leave. We appreciate very much his visit to the hearing room today and we appreciate the cooperation of all you who have been here for so many, many hours.

The committee will come to order. We will recognize Rev. Ben Chavis. Attorney Clayton Jones as well has resumed his position at the table.

Reverend CHAVIS. Along with Dr. Charles Cobb, the executive director of United Church of Christ Commission on Racial Justice. Joining us also is Clayton Jones, to whom I will yield part of my time.

I will be very brief. We have submitted written testimony.

Mr. CONYERS. Without objection, that testimony entitled "Racially Motivated Violence in America" will be incorporated into the record at this point.

[Prepared material of the United Church of Christ follows:]

Racially Motivated Violence In America

Published by
United Church of Christ



COMMISSION FOR RACIAL JUSTICE

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PREFACE

by Charles E. Cobb



In June of 1981 during the 13th General Synod of the United Church of Christ, the Commission for Racial Justice brought before the delegates a Pronouncement calling attention to *Increased Racial Violence Against Blacks in America*. This Pronouncement which was unanimously adopted called on the church through its Agencies, Instrumentalities, Conferences, Associations, local churches and related institutions and organizations to reaffirm their commitment to advocating for the rights of the victims and potential victims of racial violence.

It was only fitting that the Commission raise this important issue before the church, for the Commission was actually created by the United Church of Christ in 1963 when the nation was witnessing the most deprived form of racially motivated violence. Five Alabama children had been killed by a bomb while attending Sunday school, and Medgar Evers had been assassinated. During this time we relegated such vicious attacks, to those states below the Mason Dixon line such as Mississippi and Alabama. Many thought that the Klan was a thing of the South. Today we find that nothing could be further from the truth. It is this drastic increase in incidents of racially motivated violence that has captured the focus of the Commission and the Church.

In keeping with the Pronouncement of the 13th General Synod the Commission for Racial Justice began to develop a national community and church based program designed to explore

causes of and remedies to racially motivated violence.

Our initial step in implementing this programmatic process was to inquire into the causes of racially motivated violence, the state of the law as it relates to racially motivated violence with a particular emphasis on the enforcement process, and documentation of specific incidents of racially motivated violence. We wanted to pursue this inquiry in a form wherein the participants could actively engage in dialogue around this issue and develop strategies for action. Therefore together with the Rutgers University School of Law in Newark, New Jersey, we sponsored a National Conference on Racially Motivated Violence in America. We brought together experts in law, Community Organization, Sociology, Religion and History to explore strategies to confront and reduce the glaring increase of incidents of racially motivated violence sweeping the nation.

The Commission for Racial Justice is dedicated to increasing the involvement of the 1.75 million member United Church of Christ in the continuing struggle for racial justice.

This publication is the report of the first National Conference on Racially Motivated Violence in America held at Rutgers Law School on April 15-16, 1982. It is our firm hope that this publication will be utilized by both the legal, religious, and academic communities to effectively challenge and resolve this growing national epidemic.

CONFERENCE ON RACIALLY MOTIVATED VIOLENCE

OPENING SESSION

Oliver Quinn:

We want to welcome you to the National Conference on Racially Motivated Violence in America, sponsored by the United Church of Christ Commission for Racial Justice and Rutgers University School of Law in Newark. This evening we have the honor of having Dr. Ben Chavis address us. Dr. Chavis is the Deputy Director of the United Church of Christ Commission for Racial Justice. He is a graduate of the University of North Carolina and received his doctorate from Duke University. Dr. Chavis is one of the Wilming-

ton Ten, and while incarcerated produced a series of Psalms of liberation. He has also published an *American Political Prisoner calls for Human Rights*. He has been involved in the Civil Rights struggle from the age of twelve and has paid the ultimate price for exercising rights guaranteed by the First, Thirteenth, Fourteenth, Fifteenth amendments, and only after 10 years of court battle did the United States Fourth Circuit Court of Appeals see fit to overturn his conviction. I give you Dr. Benjamin Chavis.



OPENING ADDRESS

Benjamin Chavis:

Thank you very much. I'm very happy to have this opportunity to share with you for a few moments some of the concerns that I have on the question of racially motivated violence but more specifically to try and share a perspective on the struggle for Black liberation in the year 1982. You know it's a bold proposition to even hold a conference on racially motivated violence in America,

because this conference would not end tomorrow evening, this week or even this year. So much of the lives of Black people in this country is an experience of violence, not only the violence from police and the Ku Klux Klan, but a violence from living in a violent society that predetermines that Black people should suffer and always be on the bottom of the economic ladder.

I begin my remarks tonight on a very serious note. The truth of the matter is that there are more victims of racially motivated violence in 1982 than there were in 1962, 1952, or 1942. The burden is on us to do something about it and therefore I salute the organizers of this conference. I'm sort of saluting in house because I bring you greetings from the United Church of Christ Commission for Racial Justice, one of the sponsors of this conference.

I believe that we should begin this conference with the issue of the struggle for Black liberation because we believe it is important to view all of the same issues affecting the Black community within the proper historical, socio-economic and political context. We further believe that our response to the rapid increase in racial violence perpetrated on the Black community and other minority communities must be a response beyond mere reaction but must include, most importantly, a proactive analysis and plan not only to eliminate the problem but also to move the struggle for Black liberation a progressive step forward. I guess I could begin by describing 1982 as a time when not only are there unprecedented numbers of Black people who have been the victims statistically of racially motivated violence, but I'd like to expand our definition of the victims of racially motivated violence. There are literally entire Black communities behind bars: men, women, and children. To me that is an institu-

lionalized example and manifestation of the increase in racially motivated violence. The so-called criminal justice system is appropriately named. It is a criminal system. It is anti-thetical to talk about criminal justice even though many of you in the room are involved in trying to reform the so-called criminal justice system. As we try to reform that system and to make that system just for non-criminals, we find that it is very difficult in the absence of being involved in an overall struggle to transform society at large. This is why we want to talk about the struggle for Black liberation, the struggle to transform America from an unjust situation to a just situation, from an exploitative situation to a nonexploitative situation. History will bear out that as soon as those who are oppressed, particularly in this society organize themselves and attempt to stand up for what is right, somehow the powers that be, come down on them. You see I was cautioned before coming in tonight, they said, "Now, Ben, you are on State territory." I know I'm not in the church tonight and I know that I'm supposed to separate the church from the state, but I think that it's the responsibility of those of us in the church to speak to the state and those who work for the state and to call into serious question the actions of the state when it is diametrically opposed to the existence of our people. I believe that we need lawyers, we need people in the legal field who are committed to being freedom fighters, who are committed to using their skills and their resources to transform the system. And I would much rather talk about transforming than reforming.

I do not think you can reform a racist system, I think those of us who know the system must transform it progressively. I think and I hope that during the workshops tomorrow that we just don't come out with some resolutions that only react to the Ku Klux Klan. We must have a plan that involves the masses of our people, those of us just in this room will not be able to stop the increase of racially motivated violence, but if we go back and tap the bases of our communities we can not only stop it, we can eliminate it. Beyond that, we can transform the United States of America. Transformation of this society is only going to come about through a protracted struggle, and that involves doing some non-traditional things. I think one of the reasons I was asked to begin these remarks tonight was in order for me to suggest some of the non-traditional ways to change America. I think that what we need to do fundamentally is not only make an analysis and find out the causes, we already know what some of the factors are contributing to an increase in racially motivated violence.

Certainly, the racism that has been around for a long time is a primary factor. Reaganism is another primary factor. I don't like to talk about Reaganomics, because that term implies that

there is some kind of economic theory involved. In fact, there is no such thing as Reaganomics. There is Reaganism which is racism. I think that the build-up in the nuclear arsenal is an increase in racially motivated violence. The Supreme Court is no longer a place where people can look for the judicial branch of government to intervene when the Executive and the Congressional branches step out of line, are out of balance, or exceed their powers. In fact, I think it's fair to say in 1982 that we live in a time when the executive branch of government and the legislative branch of government along with the judicial branch of government are in the same camp. I think that they have always been in the same camp but it hasn't always been as manifest in the past. People have taken the cheets off, they don't need to wear them anymore. There is just as much of a Ku Klux Klan mentality operating in my hometown in Oxford, North Carolina as it is operating in the White House, as it is operating in the Supreme Court of the United States, and in the Congress of the United States. Congress has adopted Reagan's politics and so they cannot be excused.

I make a lot of speeches in the black community and I always ask brothers and sisters, what's the number one problem facing our people? Nine out of ten, somebody who is from the Black middle class responds with "inflation and balancing the budget." We must balance the budget. However, I think if the budget was balanced there would be even more racially motivated violence. I think that the system is dis-functional, and we must admit that. I know lawyers are trained to be advocates but I think we have to go beyond advocacy. We have to move into a role of being the organizers of those who are oppressed, the organizers of those who are victimized, because it is only when we build a mass-based movement in this country are we really posing the potential to those who are in power to stop their policies, and really it goes beyond stopping their policies, we have to take them out of office. The two party system is not going to take them out of office. I see Arthur Kinoy here, who is involved in building an alternative party. I see my brothers from the National Black Independent Political Party here in New Jersey who are involved in building that Party and I am working with them. I believe that we have to build alternative political structures in this society that can put pressure on those who enforce Reaganism and racism and those who allow an increase in racially motivated violence to occur.

Let me deal with a case history. Why is it that at no time in the history of this country has a prosecutor ever been arrested and indicted for the abuse of the prosecutorial office? One of the things we learned in the Wilmington Ten Case, was that the prosecutor in this country not only has immunity but has unbridled power. In fact, the criminal justice system has been used and it con-

tinues to be used violently against those who would transform this system into a just system. You might remember in 1970 and 1971 during the height of the Nixon administration, that there were calls for law and order. Nixon and Spiro Agnew were running all over the country calling for law and order. Law and order was a code phrase really for keeping the movement in check—keeping the civil rights movement in check, the freedom movement in check, and keeping the peace movement in check. Thus assuring that those who dared to do some progressive things in the 1950's would dare not to attempt to do them in the 1970's, if they did then the full arm of so-called law and order would come down on them.

Racially motivated violence was committed against George Jackson, racially motivated violence was committed against the R.N.A. in Mississippi. Racially motivated violence was committed against the Wilmington Ten, the Charlotte Three and it was committed against Angela Davis. Racially motivated violence was committed against Fred Hampton and Mark Clark while they were asleep in Chicago. Why? Not because they were breaking the law, it was because these brothers and sisters were actually organizing people to transform society. And the full arm of the so-called law came down on them to maintain the status quo. So I think when we talk about stopping the increase of racially motivated violence, I hope we dare to go to the real core, I hope we dare to penetrate the surface areas in terms of what might be the causes, the factors and go to the root of the problem. America is the problem. The United States of America is the problem. Let us not talk about a decrease in racially motivated violence inside the United States if we are not also talking about decreasing racially motivated violence outside the United States in the third world. So much of the violence on Third world people emanates from our society. American foreign policy emanates out of its domestic policy. The reason why this nation is in favor of moving closer to the racist apartheid regime in South Africa—if you listen to the speeches that Botha makes, he says clearly that they intend to keep the rising African masses down now by establishing a pseudo-middle class in South Africa. But he is again looking into the American experience to try to figure out a way to keep the masses of African people down.

And therefore I think that in our deliberation let us be mindful that this problem of racially motivated violence is not just a local problem, it is not just a state problem, but a world wide problem. The Third world, the poor and oppressed of this land are on the move for liberation and I think we need to celebrate this and because they are on the move for liberation, there is a direct increase in violence upon them to thwart that

liberation movement. And those of us who support Black liberation in the United States cannot talk about that seriously without supporting Black liberation in the Caribbean, in Latin America, in the Middle East, in South Africa and throughout the world. I'm not saying that's the only liberation struggle alive. But out of my own history and culture I must say that that has to be my particular priority. We know that we are going to have to build coalitions, yet, coalitions must be built from a position of strength and not from a position of weakness. Too often that's what happened in 1970, people tried to build coalitions from a position of weakness. Folks thought, well if we join together, although I may be weak over here in my community if I join with some folks then we'll have some strength. It never happened. But if you bring some strength to a coalition, then that coalition will in fact be strong.

What we have to do, I hope out of this conference, is to concretely assess those parts of the country where there is some effective struggle against racially motivated violence. If I didn't learn anything else from the Wilmington Ten case, I learned that if you are going to struggle against this system you have to employ both legal and extra-legal maneuvers. Legal and extra-legal strategies and those legal and extra-legal maneuvers must be linked and must be planned. We need a long range plan. We just can't jump out here and just react every time the Klan burns a cross. We just can't let them determine even the momentum of the struggle against the increase in racially motivated violence. But we must have a long range plan of action and strategy, and carry it out.

And I believe that given some points of the Wilmington Ten case, is that's what happened to the Wilmington Ten case. It took us ten years. But we knew that no court in this land would think about giving the Wilmington Ten even the semblance of justice until we built a mass-based movement. So while our lawyers did the legal work, legal analysis, and brief preparation, organizations like the United Church of Christ Commission for Racial Justice, the National Alliance and other organizations built that mass movement; and in the end we were able to win what I could call a victory.

Now before I close, let me say that in Wilmington, N.C. which is something I rarely do on the advice on my attorney, so I won't go and get myself re-indicted and re-arrested. But for the sake of this conference on racially motivated violence, I think you should know. In 1970 and 1971, a group of Black students were only asking for some sense of fairness in the school system. They were only asking for a less racist policy in the administration of the schools in Wilmington, N.C. What I would consider a minimum struggle mushroomed into a struggle for the survival of the

entire Black community in Wilmington, which forced them to take some very significant positions when it came to the increase in racially motivated violence. Because we dared to meet nightly at a local Black church in Wilmington, the Klan and group called the (ROWP) the Rights of White People, organized a coalition and sent messages to the church that if we didn't stop meeting they were going to shoot up the church and from where I come you know to take the Klan threats seriously.

We asked the Chief of Police, whose name was Williamson, for some law and order, explaining that he had a statutory responsibility to give police protection to this community.

The chief smiled and chuckled and said, he couldn't do that, in fact, he asked Rev. Templeton to close the church and he asked me to leave town. We declined to do both, but not without going back to the church and holding a vote. Almost unanimously, the people in the church voted to stay, they said they were not going to let the Ku Klux Klan run them out of their church. They had been run out of everywhere else, and they were not going to let them run them out of their own community, and they decided to take a stand.

A lot of untruths have been told about what happened. What happened was that the brothers and sisters began to sing a lot of freedom songs. A lot of people in the community began to come and have all night vigils at the church. That was sort of a witness against the impending threat of violence. Sure enough on Wednesday, February 3, at around 7:00 p.m. the violence started, armed carloads of vigilantes rode by in the pick-up trucks and shot at the church. Several people were wounded that night.

The incident happened in February, 1971. No one was arrested. We decided to stay in Wilmington through the Commission for Racial Justice and organize in voter registration and political education. Since many of the students had been permanently expelled from school, we decided to set up our own independent school in the community.

I think that's the real reason the Wilmington Ten were arrested one year later, because we stayed there and organized. And over that year we significantly decreased the incidence of racially motivated violence, but only to the extent that we had control of our community. In fact, my basic proposition tonight is that, if you want to stop violence period, not only racially motivated violence, if you want to stop violence, you have to get the community organized where the violence

takes place. The Ku Klux Klan aren't going to go into a community that's organized.

I think that the handwriting is on the wall to end in a Biblical sense. We must not only read, understand and make an analysis of the kind of times we're living in, but we must also be bold enough and courageous enough to go back into our communities and organize people who share our perspectives to bring about this transformation. The struggle involves sacrifice, the struggle involves pain but the truth of the matter is a lot of brothers and sisters are going through pain and suffering anyway. I would much rather catch difficulty in life because I'm struggling for my freedom, rather than catch difficulty in life because I'm just laying back aloof to what's happening in my community.

One of the dangers that I see in the struggle today is that too many middle class Black people think they have migrated out of the struggle and that is a very big danger. As a minister, I know God is with us in this struggle and if you don't believe in God, God is going to be with you anyway. What we need to do is to be clear as to where we're going and how we're going to get there and then have a vision of the kind of society that we want to take place as we transform the present one. I'm committed to that and I'm sure that many of you are committed to that. Racially motivated violence in the United States of America must not only be an unacceptable proposition, but it must be eliminated through our struggle to transform this society into a just place to live for all people regardless of their race and regardless of their socio-economic status. If we would do our homework here in the United States of America, the whole world would benefit. People around the world realize that their ability to struggle in their own geographical context will be greatly aided if we build a struggle here.

The struggle for Black liberation is alive; it is not dead, and to the extent that we make progressive movements forward, it's going to help everybody else. There hasn't been one thing gained by the Black people in this country that hasn't benefited all people, and that's something that must be continuously taught. Because one of the things that a racist atmosphere does is try to pit people against one another so they won't see the real enemy. We must forge ahead and hope that those in the progressive community will support that struggle but allow us to have the self-determination to determine our own leadership, our own goals, and our own methodology. May God bless you.

**REMARKS OF
 REPRESENTATIVE JOHN CONYERS, JR.
 CHAIRMAN, HOUSE JUDICIARY SUBCOMMITTEE ON CRIMINAL JUSTICE
 BEFORE THE
 NATIONAL CONFERENCE ON RACIALLY MOTIVATED VIOLENCE
 NEWARK, NEW JERSEY**



I am happy to be here in Newark at the First National Conference on racially motivated violence. The organizers of the conference have gathered together an outstanding array of experts to discuss the nature and scope of the problem confronting our society, as well as, the efforts being undertaken to deal with that problem. They will also, I am certain, suggest things that can be done in order to make those efforts more effective.

The only way to begin to attack a very large problem, particularly the kind of dangerous and growing problem that the increase in racially motivated violence presents, is to break that problem down into pieces and attack it bit by bit. As things begin to move, effective communication between those involved in the many small assaults can coordinate them into a large frontal attack with every chance for success.

When you pick up your morning paper or turn on your radio to read, to hear of attacks on Black citizens, and you begin to perceive a trend towards this type of lawlessness, you probably go

down a mental checklist of entities from which you expect a response. As you run down your list, sooner or later you determine that a Congressional response is necessary and appropriate. Indeed, it is.

Over a 12-month period beginning in December, 1980, as Chairman of, first, the House Judiciary Subcommittee on Crime, and then the Subcommittee on Criminal Justice, I held four hearings on the subject of increasing violence against minorities. The purpose of these hearings was to examine the nature, causes, and extent of racial violence, the adequacy of local, state and federal law enforcement efforts, and the steps that could be taken to prevent further violence in the future. These hearings were not designed as an inquiry into activities engaged in as a part of an exercise of constitutional rights protected by the First Amendment, but were an exploration of those activities that fall outside the parameters of the law.

A number of distinguished citizens from across the nation appeared before the Subcommittee to present testimony and have statements entered into the record. Indeed, many of today's panel came forward to share their knowledge and experience with us.

There are currently as a part of our nation's laws four federal criminal provisions under which violations of civil rights can be punished. These *criminal* provisions entitle the United States Government to seek fines and jail terms for violators. Federal *Civil* provisions permit a victim or the victim's survivors to sue in Federal court for money or injunctive relief, that is a court order prohibiting the wrongful conduct in the future.

The operative federal criminal provisions are found in Title 18 of the United States Code, Sections 241, 242 and 245, and in Title 42 of the Code, Section 3631. We can go through each of these very briefly.

Section 242 makes it a crime for a person (who for the sake of clarity we'll call the "wrongdoer") who acts under "Color of Law" (That is, acts by virtue of power or authority conferred by law), to deprive another (who we'll call the "victim") of the opportunity to exercise a right which is secured or protected by the Constitution or laws of the United States. For the crime to be established, the wrongdoer must intend to violate a specific and definite right of the victim.

Let me illustrate this by using the fact alleged in a case recently brought by Federal authorities. On May 3, 1980 one Ricky Earl Simerly (the victim) was arrested in Knoxville, Tennessee, and held in the Blount County Jail in the custody of Officer James W. Hall (The wrongdoer). During the period of custody, the wrongdoer assaulted the victim inflicting upon the victim a broken jaw and causing the victim to be hospitalized for nine days. Now it has been established that a person who is in official custody has a constitutional right to be free from assault, and it is also established that a law enforcement officer who has custody of a prisoner is acting under "color of law." Therefore, a Federal Grand Jury was able to allege that the wrongdoer violated Section 242 of Title 18 of the United States Code. If convicted, the wrongdoer could receive a maximum penalty of one year in jail and a \$1,000 fine.

Section 241 of Title 18 of the United States Code makes it a crime for two or more wrongdoers to conspire to injure, oppress, threaten or intimidate a victim in the free exercise or enjoyment of, or because of the free enjoyment of, rights or privileges secured or protected by the Constitution or laws of the United States. Section 241 also makes it a crime for two or more wrongdoers to go in disguise on the highway onto a victim's premises in order to prevent or hinder a victim's free exercise or enjoyment of a secured right or privilege. It's easy to see why this is considered a "Ku Klux Klan Statute." An illustration: In the famous case of *United States v. Guest* which, incidentally, was argued for the government by Thurgood Marshall, who was then the Solicitor General of the United States, six persons were indicted for conspiring to interfere with rights guaranteed to Black citizens under the Constitution's Equal Protection Clause by various violent means. The violent means alleged included cross burnings, threatening with guns, beating and shooting people, and killing people. Section 241 carries a maximum penalty of 10 years imprisonment and a \$10,000 fine unless death results, in which case the maximum imprisonment is for life or any term of years.

Sections 245 and 3631 make it a crime to use force or threats to interfere with the exercise of certain rights. Keeping in mind that this is a very loose description of the provisions, Sections 245 and 3631 protect voters, candidates, jurors and participants in programs and activities administered by the United States or receiving Federal Financial assistance. When an attack is racially motivated, Sections 245 and 3631 protect public school students, jurors, travellers, participants in federal activities, programs or employment, those who would seek to enjoy lunch counters, inns, ports, arenas or other facilities which serve the public, and finally, sellers, buyers, renters and occupants of dwellings. An illustration: On March

17th of this year Federal Grand Jury indictments came down against four white men charged with firebombing a home of a Black family that had moved into a predominantly white neighborhood in Cleveland, Ohio. The fair housing right violation is obvious. Also obvious is the conspiracy which makes an additional charge under Section 241 possible. Both Section 245 and 3631 have the same punishment scheme. A "basic" violation carries a maximum penalty of one year imprisonment and a \$1,000 fine. If bodily injury results, however, the maximum penalty is 10 years imprisonment and a \$10,000 fine. And if death results the maximum imprisonment is for life for any term of years.

No one who has ever worked with the Federal Criminal Provisions punishing violators of civil rights would be heard to say that they are perfectly satisfied with them. The point, however, is that these provisions are on the books, available for enforcement by a willing Department of Justice. My Subcommittee's hearings on racially motivated violence were in part begun, then, to emphasize the need to make full use of existing laws. The hearings, however, served other, equally important purposes.

The hearings served to clarify the context in which incidents of racially motivated violence should be examined. The hearings created a record which proves very useful in dealing with Justice Department Officials and examining administration decisions. The hearing drew much needed attention to the problem, its scope, and the range of persons and organizations that are concerned and involved, and they underscore our refusal to tolerate an intolerable situation.

America of the 80's is a very crime conscious nation. Daily discussion of rising crime rates and expressed concern that our children must grow up in a society into which violence is lightly woven, is almost a national pastime. A nation that deplores crime *must* deplore racially motivated violence. Simple but true: Racially motivated violence is crime; it comprises a portion of that violent atmosphere that all citizens, whether black, white, brown or yellow, claim to hate.

The hearing testimonies helped take us from the comfortable position assumed by too many Americans that racially motivated is the innocuous expression of some kind of ideological disagreement to the painful reality that cross burnings, sniper attacks and the stalking and shooting of civil rights leaders constitutes a flaunting of the laws of the land.

Also simple but true: We reap the fruit of the seeds we have sown. In condoning racially motivated violence, we condone crime, and in the condoning crime of the planting of bombs, the violent disruption of marches and random firings through the windows of homes, we are left with a society

In which no one, Black or white, can feel truly safe. This is the context in which incidents of racially motivated violence should be examined.

The convening of a Congressional hearing often marks a historical moment, for in the space of a few hours you can find knowledge and experience ranging from Dr. Mary F. Berry of the U.S. Commission of Civil Rights, to Professor Arthur Kinoy of Rutgers Law School, to Dr. Kenneth B. Clark, to Professor William Alatyne of Duke University Law School, to Steven Winter of the NAACP Legal Defense and Education Fund all present in one room. We heard from political officials like the Governor of Maryland and the County Executive of Montgomery County, Maryland, and from organizations like the National Conference of Black Lawyers, the International Association of Official Human Rights Agencies, the Police Foundation, the National Alliance Against Racism and Political Repression, the Anti-Defamation League of B'Nai B'rith, and the Center for Constitutional Rights. We received testimony from Drew Days, the Assistant Attorney General in charge of the Civil Rights Division of the United States Department of Justice under the Carter Administration, and from William Bradford Reynolds who holds that same position in the Reagan Administration. The experts come, make their oral presentations, respond to the questions and submit written statements. All of this becomes part of the hearing record.

Obviously, then, a hearing is a tremendously valuable resource tool. Through it, the Subcommittee can educate itself and others. A specific example is appropriate here. On November 12, 1981, Professor William Van Alatyne presented testimony which detailed the ways in which members of the Ku Klux Klan and the Nazi party could be prosecuted for the slayings of five Communist Workers Party members in Greensboro, North Carolina in 1979, under the Federal Civil Rights provisions discussed earlier. Professor Van Alatyne discussed each of Sections 241, 242 and 245, explaining their application to the case. This statement, and the points contained therein, were forwarded to the Civil Rights Division, which was investigating the incident, and was discussed at a meeting with Assistant Attorney General William B. Reynolds when the Justice Department Greensboro investigation appeared to bog down. The hearing record enabled us to refute suggestions that there was no basis for Federal prosecution in the Greensboro incident. A Federal Grand Jury investigation was finally convened in Greensboro on March 22nd of this year.

The hearing record also includes several suggestions for changes in Sections 241 and 242 in order to make it easier to prosecute and obtain convictions under those provisions. This testimony will be invaluable, for example, in ensuring that any criminal code revision legislation

reported out of my Subcommittee will include necessary and appropriate changes in those laws.

Many hearing statements pointed out that the presumed connection between our declining economy and the rise of racially motivated violence is genuine. Professor M. Harvey Brenner of the Johns Hopkins University testified at our hearings that the national and regional economic situations, especially the unemployment rates, represent the dominant influence on violence against minorities, as well as on violence in the United States in general. In his report, entitled, "Violence Against Minorities, and Criminal Aggression, as Related to National Economic Distress and High Unemployment Rates," Professor Brenner states that "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 great hatred and violence directed toward others—especially those minorities which are traditional scapegoats and subjects of pejorative stereotyping." The hearing record thus confirms and documents our suspicions, and, in this case, the hearings provide an additional basis for alarm at the administration's economic policies which serve to press the marginal and the oppressed more and more tightly to the wall.

Our hearings served another function beyond pointing out racially motivated violence as a facet of the rising crime problem we claim to deplore and providing a record from which facts and advice can be drawn. The very examination of this problem constitutes resistance, and resistance is of the utmost importance. Witness after witness compared these times to comparable periods of our nation's history when racially motivated violence rose as the economy and national humanitarian standards sank. Prompt and firm resistance to the frightening and destructive trend towards racially motivated violence is required if that trend is to be slowed and turned.

The establishment of the National Association for the Advancement of Colored People 70 years ago was, in part, a response to a similar period of deteriorating race relations and rising racially motivated crime. This time we are fortunate in that we already perceive the means and have established the organizations through which we can make ourselves heard.

I am glad to have had this opportunity to get together with you and bring you up-to-date on the piece of the problem I have under attack. What I do, what you do, what each of the distinguished panels gathered today does, constitutes those many bit by bit attacks necessary for the solution of our large problem. This conference is vital in

that our coming here gives an opportunity to set up all-important communication between our small, separate assaults. The Conference will

indeed have been a great success if we are able to establish such lines of communication.

**RACIALLY MOTIVATED VIOLENCE IN AMERICA
OPENING STATEMENTS**



Dean Simmons:

Thank you Oliver. Mr. Quinn is not only an alumna of this school, he's a former member of the administration. When I looked over the program, as I sat up in my office this morning, I thought what a dreadful way to have to spend a Saturday morning, but it would be irresponsible and in fact I believe we have no choice, but to spend this Saturday morning discussing this topic because in light of the facts that confront us, not to attempt to do something about racially motivated violence in the United States would be irresponsible. Last night someone commented that it appeared curious that a State University Law School and a religious institution would join together in sponsoring this conference. I see nothing unusual about that, the wall of separation

between the church and the state does not suggest that there are not shared concerns that the church and state, expressed through its educational institutions, are not equally concerned. What we do today, I hope will be adequate testimony to the common interests of the two groups. There are many panels that have been planned for you, I'm not going to intrude upon the important substance of this conference much further. I do want to recognize the efforts of one colleague in the audience who is too modest and I believe too shy to take a bow unless someone pointed the spotlight upon him. In order to run a conference of this sort, it requires not just the intellectual talent that goes into selecting speakers and presenting papers, it also requires a great deal of organizational effort, a great deal of midnight effort, a great deal of arm twisting, and imagination. Professor Charles Jones is the lynch pin that's held this operation together from my perspective at Rutgers. I'm sure that Dr. Cobb will be able to identify others from the United Church of Christ who have served as well. The one short coming of the program with us is a reflection of the harsh reality of the world in which we live. The time is probably our most valuable resource, unfortunately there are 8 competing programs each from my perspective of equal importance and equal merit and I would like to be at all of them, and I'm sure you would like to be. To cover all the important topics, it is necessary that simultaneous workshops be run. That in part is the function of the closing plenary session. I hope that you all stay until the very last hour, so that we can compare notes and take advantage of the discussion and the proposals which have come forth in sessions that each of us may not have been able to attend, because there are competing sessions. Rutgers Law School has a long tradition of commitment to social justice and racial justice, and I think that this conference is simply another step in what I hope is a path to effectuating those goals to make our society less violent, and most certainly less racist. Thank you for allowing us to serve as the host in the physical sense, for this conference. I'll let Dr. Cobb speak about the spiritual hopes of the conference now, thank you.



Dr. Cobb:

Thank you Brother Oliver, Dean Simmons, my brothers and sisters. The Commission for Racial Justice welcomes you here this morning to begin what I believe to be one of the most serious discussions that could possibly take place at this point in time. A lot of effort has gone into the preparation as is always the case, when you attempt to put on a happening such as this, and I am pleased with my staff, Travis Francis and Fred Brooks, graduates of this school. On behalf of the United Church of Christ, I welcome you. The Black brothers and sisters all over this country who are experiencing racially motivated violence perpetrated upon and within the Black community welcome you.

It was in 1963 that the Commission began. In 1963, there was little need to be concerned about the violence we perpetrated upon ourselves, for at that time most of the violence came from outside by those persons who felt that justice, equality of opportunity in employment, housing, education, politics, etc. were meant only for them, and not for the Black community. Medgar Evers was ruthlessly cut down as he returned to his home one night. Five children were blasted into the arms of their creator, while attending Sunday School, in Birmingham Alabama. Bull Connors had loosed his dogs and turned his fire hoses against those of us who would march for freedom, justice and dignity. Now, in more recent years, we are faced with a new phenomena wherein within our com-

munity we are wreaking violence upon ourselves. The extended family concept handed down from our African heritage, when we took care of, and protected one another, has faded, almost to the point of non-existence. Now I'm of the notion that this fact must be faced squarely by this conference and that strategies to deal with it must be developed. Not by any stretch of the imagination, however, must this be the focal point of this gathering, for the theme of this conference is *Racially Motivated Violence in America*.

Everywhere one turns there is growing evidence of its escalation, sustaining a pattern that was set many years ago, by those whose perception of the Black community was just a minute degree above that of animals. The problem now is that the violence spreads across so much more than the physical. It includes economic, political, unemployment violence, educational, psychological violence, and emotional violence. The tragedy is that at this very point in time, covert and sometimes overt the perpetrator of this violence is the Federal government itself and its many departments and agencies including the present occupant of the White House. The only thing that can be said is that the overtress is now exposed, while in previous administrations, we were lulled into the false belief that there was empathy, and that there was commitment in the Oval office. Reflections have brought me to return to an earlier belief of mine, which is, that oftentimes the worst enemy of our struggle for justice, equality and freedom has been the so-called liberal. They have been our biggest problem.

This conference has not been called to bemoan or spend time and energies in just recounting, but to get down to the real business of analyzing, delineating, formalizing and strategizing on ways in which Black communities can themselves be instruments of ridding forever this escalation of violence within and upon it. This will and has taken some doing, for the perpetrators are many and they are formidable. They are to be found everywhere: Madison Ave., Wall Street, Capitol Hill, Twin Towers, Governor's Mansions, State Legislatures, City Councils and Main Street U.S.A. They sit as leaders of this nation, heads of the Justice Department, Mayors, Governors, City Councilors, magnates of industrial and corporate America, they are also godfathers of criminal America, that ply our communities with mind altering drugs. Make no mistake about it, the enemy is not a 97 pound weakling, but a many-tentacled giant that is slowly but surely strangling the Black community out of existence. Be that as it may, we are not without resources. We have resources of mind, body and spirit. We are not impoverished and *all* of the much that we have, must be employed in this undertaking, not the least of which is coming together like this to apply our capable minds in solving the problem.

We're not short on body; we're not short on spirit. So not the least of which, is coming together like this to apply our minds to the situation. Next is the pooling of our resources. It's absolutely foolish to say that the enemy of our people is going to make available the resources for his own destruction, absolutely foolish. We are going to have to provide the necessary resources ourselves. We have it, 140+ billion dollars is the gross national earnings of the Black community every year. We need to apply some of these resources in addressing the problems that confront our communities. We have thirty million Black people in this country and I tell you thirty million people who are organized and can be mobilized, have the ability to confront and to destroy those that would destroy them. Let's not talk about being short on people. The enemy knows this, that's what this feverish effort is about, to remind us that in another decade the greatest minority in the national community will be Hispanic. What do they think we're going to be doing? They try to remind us, that we won't be the predominant minority in this country after 1990. That's a lot of hoping and so what? Let's put together a kind of coalition that the monster would not dare confront.

I know that with thirty million people there isn't a product producing industry in this country, that we could not bring to its knees with just one week of boycotting. Just choose where you are going to spend some portion of that 140+ billion dollars. Coca Cola just signed an agreement with Jesse Jackson. We don't need Jesse to come and start that kind of thinking and doing in the communities where we live. We can do it ourselves, he has shown us how. Thirty million people can make a difference. There are many congressional districts whose elections we could determine, with a collective use of the ballot. The enemy is big, and strong but he can be had.

I have been allied with Rutgers Law School for a number of years. One of my staff persons Irv Joyner, established the relationship some years ago, when he prevailed the Commission to fund the Southern Summer Law Project. Irv subsequently went on to attend and graduate from this school. He established an Intern program in the Commission using seniors. Larry Rand was one of them, Fred Brooks was another. Inspired, Travis Francis already on the staff at the Commission attended and graduated from this school. My brother was a lawyer, his son is a lawyer, and his son, my grand nephew is a lawyer. Even after I finished and had gone into a career in the ministry. But I just couldn't swing it, because I was too involved. This was not really a bad idea, for at the time, we were of the notion and actually there was some evidence that the law could be responsive to the struggle for justice, if we just knew how to use it. Subsequent years have proven

this to be a limited notion because there is no question that the application of the law by courts and by judges have a diminished concern for justice, and a mounting determination to protect the system. I know because I fought almost ten long years to free Ben Chavis and nine other persons known as the Wilmington 10, while the courts in North Carolina conspired. Judges even twisted evidence to protect the system. Actually, the law honestly and morally interpreted and applied is really not far from the goals of our Christian faith, because both should be foremost concerned with dignity, justice opportunity and the maximum fulfillment of God's crown of creation—human persons. That's what both should be concerned with, but you know, and I know, that both have fallen short, the law and the church. Therefore, this effort to bring together the church and legal minds in a law school setting is a step in the right direction, a step that pleases God Himself. That's why we're over here. We could have had this in the First Congregational Church, or we could have had it even at 105 Madison Ave., or the Prince George Hotel. We could have had it anywhere, but we're here. I believe what we're doing is a step in the right direction we're bringing the church, legal and social minds together, to talk about a difficult problem that the Black and other minority communities are facing today. Therefore, let our thinking together in these hours have as its bottom line, that which God loves most, men, women and children of this earth. If that is not our bottom line, then this has been an exercise in futility and our being together has been in vain.

Oliver Quinn:

As Dr. Cobb indicated, there exists in America today serious threats of violence, harassment and infringement on legal and personal rights. As citizens we've come today to develop specific strategies for addressing this problem. The problem primarily comes from three sources, individuals, some of whom act randomly and some of whom act systematically, from hate groups, whose presence and level of activities seem to be increasing over recent years, and from law enforcement personnel, who appear more frequently to be victimizing those who they are duty bound to protect. The purpose of this conference is not merely to try to identify the causes of the problems. What we're here to do and what we need your assistance in, is the development of realistic, practical and sound strategies for addressing the problem. The problem is multifaceted, and there is no one solution. In that context, we've structured this conference, through a series of plenary sessions and workshops. The first plenary session will define the types of actions that we're categorizing as racially motivated violence. We will discuss their

causes, from an historical perspective, an economic perspective, and a political perspective. Two sets of workshops will be conducted. Each workshop will consist of brief comments by panelists, followed by open discussions of issues raised. It's critical to the success of this conference that there be open and free dialogue in these discussions. We cannot allow our end to make us ignore an analysis of the means that we define. Criticism is key to this conference, and participants must feel free to openly participate

and to be critical where they feel it's necessary. Responses to those criticisms should be constructive, and not merely rhetorical issues such as the constitutionality of certain strategies, the cost factor, the overall prospects for effective implementation. Following workshops there will be a closing plenary session followed by closing remarks, by a nationally renowned constitutional lawyer and professor of Rutgers Law School, Arthur Kinoy.



Racially Motivated Violence In America

Opening Plenary

Causes and Nature

MODERATOR

Dr. Charles E. Cobb is the Executive Director of the United Church of Christ Commission for Racial Justice. Prior to assuming the executive responsibilities of the Commission, he was pastor of St. John's Congregational Church in Springfield, Massachusetts. Dr. Cobb received his

Bachelor of Divinity from Howard University and his Master of Sacred Theology from Boston University. Dr. Cobb is the former managing editor for the Charlotte Edition of the Carolina Times and airs a weekly radio and newspaper commentary entitled, "Civil Rights Journal."

PANELISTS

Dr. John Anthony Scott is a member of the National Humanities Faculty and Secretary of the Committee on History in the Classroom and presently teaches at Rutgers University. He received his Bachelors and his Masters Degrees from Oxford University in England. He has written biographies on Harriet Beecher Stowe and Anne Francis Kendall.



Dr. Jonathan Rubenstein is the author of "City Police" published in 1973. He received his Ph.D. from Harvard University. He formerly worked as a reporter with the Philadelphia Evening Bulletin. Dr. Rubenstein served as Research Director for the Center on Research on Institutions and Social Policy.

Dr. Elsie Scott is a former staff person of the Commission for Racial Justice. She received her Bachelors Degree from the University of Iowa, and her doctorate from Atlanta University. She is the president of the National Congress of Black Political Scientists. Currently she is a research associate and assistant professor at Howard University in the Dept. of Urban Studies. Dr. Scott published a paper on "Violence Against Blacks in America, a preliminary study."





Dr. Harvey Brenner is a professor at Johns Hopkins University School of Hygiene and Public Health. He has served as a consultant for the World Health Organization's office of Mental Health in Geneva, the National Institute of Mental Health and the House Judiciary Committee.

Dr. Mary Frances Berry is a Commissioner and Vice-Chair of the U.S. Commission on Civil Rights. She is the former U.S. Assistant Secretary for Education in the Department of Health, Education and Welfare. She has published "Black Resistance, White Law", "History of Constitutional Racism in America", and "Military Necessity and Civil Rights Policy." She is now Professor of History and Law and a Senior Fellow in the Institute for the Study of Educational Policy at Howard University in Washington, D.C.



RACIALLY MOTIVATED VIOLENCE CONFERENCE

PLENARY SESSION

CAUSES AND NATURE

Dr. Charles E. Cobb:

We come now to the first of our plenary panel discussions on the causes and nature of racially motivated violence. We are fortunate to have with us today such able persons to discuss this topic and to share with us the thinking for the rest of the afternoon. Dr. Anthony Scott is presently teaching at Rutgers University and is the author of *Hard Trials on My Way*. He received his Bachelors and Masters Degrees from Oxford University in England. Dr. Scott has written biographies on Harriet Beecher Stowe and Anne Francis Kendall. He has done research for the Center for Constitutional Rights; and has organized for the A. Phillip Randolph Institute.

Dr. Jonathan Rubenstein, the second of our panellists, is the author of *City Police* published in 1973. He has been a member of the History Department at Harvard University where he received his Ph.D. He's also a former reporter with the Philadelphia Evening Bulletin. Dr. Rubenstein has been the recipient of grants and fellowships from the Guggenheim Foundation, Ford Foundation and the Law Enforcement Assistance Administration. Dr. Rubenstein has also served as Research Director for the Center for Research on Institutions and Social Policy.

Dr. Elsie Scott is a former member of the Commission for Racial Justice Staff, and a very close and dear friend. She received her Bachelors Degree from the University of Iowa, and her doctorate from Atlanta University. Dr. Scott is currently a research associate and assistant professor at Howard University in the Department of Urban Studies. She is the president of the National Congress of Black Political Scientists. She has taught at Rutgers graduate school of Criminal Justice, and has published a paper on *Violence Against Blacks, A Preliminary Study*, in the Urban Research Review. She has also worked with various community groups around the issue

of community crime prevention, and is the former editor of *Criminal Justice Issues*.

Dr. Harvey Brenner is a professor at Johns Hopkins University School of Hygiene and Public Health. Dr. Brenner is also the coordinator for Health Policy Studies at the University's Center for Metropolitan Planning and Research. He has worked as a consultant for, the World Health Organization's office of Mental Health in Geneva, the National Institute of Mental Health and the House Judiciary Committee. Dr. Brenner has advanced several theories as to the problems of increased racially motivated violence against minorities and suggested a direct relationship between racially motivated violence and economics, some of which he will share with us today.

Dr. Mary Francis Berry is the former U.S. Assistant Secretary for Education in the Department of Health, Education and Welfare. She is now professor of History and law and a Senior Fellow in the Institute for Study of Educational Policy at Howard University. She also serves as a Commissioner and Vice-Chair of the U.S. Commission on Civil Rights. As Assistant Secretary for Education, Dr. Berry administered an annual budget of nearly 13 billion dollars and gave general supervision to the National Institute of Education and Post Secondary Education, the Institute of Museum Services and the National Center for Education. She received her Masters Degree at Howard University, a doctorate in History and law degree from the University of Michigan Law School. Dr. Berry has published *Black Resistance White Law, History of Constitutional Racism in America, and Military Necessity and Civil Rights Policy*. Dr. Berry has been outstanding in the struggle that we have been in for so many years.

These are the folks who are going to share their vast knowledge and experience, and we are indeed fortunate to have them. So let us begin.

REMARKS BY JOHN ANTHONY SCOTT NATIONAL CONFERENCE ON RACIALLY MOTIVATED VIOLENCE

The points which I wish to make this morning are developed in greater detail in my article, "The Origins and Development of the KKK as a Badge of Slavery, which is available from the Center for Constitutional Rights, for whom it was prepared in connection with current anti-Klan litigation.

1. We may learn something about the significance of racially motivated violence, and ways to cope with this, from a study of the origins of the Klan and of similar racist groups.
2. The Klan had its origins in the county and city patrols of slavery days which were the masters'

primary resource for the enforcement both of slave labor and of segregation.

It is important to stress that segregation was not merely a badge of slavery, but its very essence. There is no way to compel labor from a person unless you can isolate him from the surrounding society and pin him down, both day and night, in the place where his forced labor is to be performed.

There is no way that you can control flight and check rebelliousness, unless you can pin the slave down at all times in the fields and the quarters where his every activity may be supervised.

We are saying, therefore, not that slavery is the same as segregation, but that segregation was an aspect of slavery as inseparable from this institution as the image of Jefferson on one side of a nickel and the image of Monticello on the other. To have one side of a nickel, you also have to have the other side, too. You cannot separate them.

3. These county and city patrols were part of the south's state militia system. They were organized upon a permanent footing; this meant that the South, insofar as slavery was concerned, was in a permanent state of war; it was an armed camp. The use of force in this way to compel segregation and to control the slaves was regarded by the slave owners as a top priority:

On the whole, the courts refused to go behind or to examine the atrocious acts of violence which the patrols committed against slaves, both on and off the plantations.

The reasoning of the courts was that state security overrode the private ownership interest in intact property. Patrols, in other words, might kill or maim slaves with impunity because this was part of the system of organized terror and violence which security demanded.

But we note—which is important for understanding racism today—this meant that the courts gave unlimited license for the commission of acts of violence against slaves based simply and solely upon the color of the skin. It is this license to maim and kill based upon skin color that has become a deep-rooted racist tradition in this country, and that has its origins in slavery times and in the requirements of the slavery system.

4. This was both arbitrary violence and organized terror—the two concepts, when you think about it, are in actuality closely related. If we ask why there were no large-scale slave uprisings in the South in the century before emancipation, the existence of the county and city patrols would have to be one of the important ingredients of an answer. And we know too, that an awareness of this system of organized terror was a factor in John Brown's reasoning: for large scale revolts to occur in the South, in his view, organization and weapons must come from the outside.

5. Defeat in 1865 and the policy of Andrew Johnson to restore the slaveholders to power as completely and as rapidly as possible (April to December 1865) heightened the determination of slaveowners to thrust the Black people back into a state of subordination resembling that which had existed before.

The patrol system had been shattered by the military crises of 1864-1865. Now, in the last months of 1865 and in 1866, the system was reconstituted. This spelled the unleashing of a reign of terror without precedent in this country's history—a reign of terror that was both organized and arbitrary.

6. The purpose of the reign of terror (1865-1866) was

- (a) to freeze the Blacks to the plantations by inculcating fear that movement would mean death;
- (b) to compel them, again by fear of mutilation or death, to accept whatever labor terms or contracts the employer offered;
- (c) by intimidation and assassination to destroy the new political initiatives that Black people were taking after 1865 in terms of equal rights, land ownership and voting rights;
- (d) to utilize poor whites and veterans as agents of arbitrary and vengeful violence against blacks and thereby to heighten the political reality of a reign of terror.

7. All of this is a central reason for Congress' revision from Presidential reconstruction and for Congress' insistence upon making a fresh start with a program which if it did nothing else, would provide for Black people the minimal essential guarantees of personal security. But because after 1867 the Army was back in the South, and Black militias were also organizing, the county patrols changed their form, but not their purpose. 1868-1871 was the heyday of the counterrevolutionary Klan type groups:

They were now secret and conspiratorial—the cowards could no longer murder in the open without fear of arrest and retribution (though in some places where the opposition was not organized, they continued to do just that).

They rode at night, and they covered their faces with masks.

They add new objectives to the old ones—to assassinate Black political leaders, to undercut the right to vote, to overthrow the Reconstruction governments themselves.

Thus from 1868 on, we note a second wave of unprecedented racial violence, linked with, and part of, an overall plan to reestablish slavery.

8. As the Klan was successful in state after state in securing its objectives, it went out of existence. The period of effective operation was 1868-1877; and we must grant it major responsibility for the

success of counterrevolution in the South and for the destruction of the interracial Republican regimes. Most historians have been reluctant to deal with the full political role and function of the Klan during these years. Thereby, they have contributed to the myth that slavery ended in 1865 and what came afterward had no connection with it. The key function was terror—to eliminate Blacks at the polls, to bury political gains, to paralyze political organization, to checkmate and annihilate a federal role in the South.

Dr. Jonathan Rubenstein

Following on the comments that Dr. Scott made at the opening of his remarks, if segregation is the essence of slavery in a system that existed in this country, then segregation is today the essence of racism. We have an urban society, composed of highly segmented communities, segmented on the basis of law and custom illegal law and custom concealed by newspapers and television. We have rent law, the real estate laws, manipulated in order to assure that this segregation persists. In that framework, with that reality, we have to accept the fact that we have an organization of police and courts designed to maintain order not to protect people. We have the police system which was not created to oppress Blacks in particular, yet happens to oppress Blacks in particular, Hispanics, certain kinds of young people in particular, certain kinds of motorists in particular. It was designed to maintain order.

In the 18th century, there was a great concern about controlling the expansion of London, because it was believed that the city would collapse. The earth's crust could not sustain the weight of people spreading out. The notion of the city, with its density, was an awesome thing. The police were created one hundred and fifty years ago, to control potential, what we now call, industrial violence. A series of laws, created long before Black people came to represent a significant presence in our cities, now operate to oppress them.

I will now talk about laws that receive very little attention, such as gambling laws. I thought of talking about the violence, particularly of police pressing individuals on corners, or breaking into houses, that is the substance of police violence against communities. But violence operates in a much deeper and more fundamental way around laws and customs that are often not talked about. Let me talk a little bit about gambling laws to illustrate what I think is a much more fundamental kind of violence that has to be dealt with.

In the old states of the northeast during the latter part of the 19th century, newer immigrant groups began to replace earlier immigrant groups as a politically dominant element. State legislatures passed all kinds of laws designed basically to control urban political organizations;

police, in particular, and city councils. Among those laws were anti-gambling laws designed to assure, in my opinion, that the police would always be corrupt, which they are, in the petty sense, and that they will always be vulnerable.

This had nothing to do with white people, in general. It had to do with the anti urban attitude, expressed by dominant widely controlled state legislatures after the first World War.

As the composition of cities began to change, these laws continued on the books and continued to be enforced. Lottery, policy, numbers became a kind of symbol and came to represent the characteristic gambling games of the Black community. In some quarters it was viewed as an activity that was taken away from Black people by white oppressors, to some extent that was true, although I think an exaggeration. More critical is the reality, for example, in New York City, between 1930, roughly, and 1965, that the New York City police department made thirty-five thousand arrests a year, for what is called petty gambling. I would say, after 1945, 80% of the people arrested were Black.

They were arrested to establish and to meet certain quotas the bureaucratic needs of police to cover the realities of their activities which were that they couldn't suppress gambling even if they wished to do so. I don't think that they ever had any desire to suppress gambling, but even if they had wished to do so, they could not have. The tens of thousands of people who were arrested illegally were brought before petty gambling courts.

Young assistant district attorneys, I'm sure many of them trained in this law school, learned to introduce perjured testimony into courts. Within two or three weeks of doing this work, they knew that the officers were lying, that they were giving the same rote testimony over and over again. Thousands of persons were arrested countless numbers of times, who were acting as stand-ins for more important local people in these gambling organizations.

The consequence of all of this, aside from the terrible consequences of obscene perjury, routine arrests and the illegality trivialized, made obvious a much deeper problem, a much more serious matter. It connected with the whole question of violence and control. The extensive police operation against gambling, particularly in the Black community, but other communities as well, created the opportunity for the police to have thousands of informants.

There is no urban community in the United States more thoroughly penetrated by police at all times than the Black community and largely as a consequence, initially, of anti-gambling laws. This kind of control and penetration was extended and has been extended by very traditional control

over liquor licensing and other kinds of licensing ordinances that regulate the places where people gather. This texture of routine illegality and of informants is presumably designed to assist the police to maintain order. That being their purpose, this order has at its base legal violence of police organized to be violent. They are given guns, not for the purpose of impressing people, but to kill people. This kind of violence, in the context in which we have lived, provides no security, no sense of comfort.

From the police perspective, it's not intended to. From the perspective of citizens and taxpayers, it is only presumed to do so.

There is only one way, in my opinion, that we can break out of what has become a terribly vicious cycle of violence, and successfully protest against police who kill young men in the street. We have tried through the 60's, and I think failed, to view this problem as one needing professionalization. By the injecting of the new and higher values, by sending policemen to college, we have hoped they will come out better people, and they will treat people better. It's true on an individual basis perhaps, but in the deeper sense, in the organizational sense, it's irrelevant. I think that the experience of the last twenty years, the half-hearted efforts of LEAA and other organizations to inject money and programs into urban police agencies to try to create models to limit violence, limit deadly force, create criteria under which deadly force might be used, to create civilian review boards, external review boards, all of this has failed. I think it has failed for the one very fundamental reason that it has not dealt with the issue of security. There is no group of Americans who like the police. If you question people carefully, their antagonism towards the police is very widespread. But everyone calls the police, and no one calls the police more frequently than Black people. Despite all of the complexities of those contacts, the most horrible, sad moments when households are in uproar, and people are anguished, they call the police. It really doesn't matter whether the policeman is a white person or a black person. The people who have called him don't care what that policeman has in his mind when he walks into that house. They want the police to stop something. That is the essence of the dilemma and we have not really confronted. I think the solution to the problem is both simple and elusive. That is, if segregation has got to be turned into a source of strength, literally to be ceased, we need a new system of policing in our cities, or we are going to have the kind of racism in my opinion that will dwarf things, worse than anything we have ever seen in this country since the Civil War.

In New York City surveys showing that 85% of the police polled support the death penalty.

Regardless of one's position on the death penalty as a philosophical matter, the fact that people support it is, I think, symbolic of a rage of anger that is very close to going out of control. The only opportunity we have to diffuse this kind of racism and antagonism is to try and begin to create a new form of police.

First of all, police and violence go together. Police are violent, they are supposed to be violent. The question is to what purpose, under what circumstances and conditions will we tolerate police violence?

The police who have done nothing but supervise the destruction of our cities for the last three or four decades, they are not sent into East New York, parts of Newark, or other cities to watch them burn down or watch heroin dealers deal. That wasn't planned that way. The reason it has happened that way, is that these police are not capable of doing anything else.

It may well be that the people who control them, dominate them and who determine what the state of the police force should be, and what its function ought to be and how they should patrol, are indifferent to the larger concern. But, they don't have any means available to them to bring us safety except by being more visible and therefore more vicious. The police, as they are currently organized, must operate on sight, which means a lot of hostile contacts. I don't believe that hostile contact is restricted mainly to Black communities. It's very common in many white communities. Much police violence never gets into the press. The only other way the police can operate is by information, by informants, and that is a system that is undermining political development in the community.

Now what kinds of things can we do? Enormous amounts of energy have gone into the creation of Civil Rights commissions, and Civilian Review Boards. It would be ridiculous to say that that is misplaced energy. It is not. If we have another way of dealing with this problem, we should not waste time dealing with it in this particular way. We don't, but we must also consciously deal with the realities of racism, illegality, and start recognizing that there is a need to direct energies toward community development, specifically regarding law enforcement.

I think we have to begin thinking in a very hard way about the realtering of local option laws, regarding gambling, liquor, and drugs. Our politics, particularly in New York and New Jersey, have become so polluted by heroin that there is no hope at this point for reform. It's been going on for fifty years now.

After all, the first heroin addicts were Civil War veterans, morphine addicts. It resembled conspiracy, but came about by accident after the first World War. Because of segregation, because

Black communities were places where white people could go to play, where warehouses were allowed to flourish, where speakeasys were allowed to flourish, drugs became imbedded in these communities.

It's not a simple problem. It's the worst kind of violence. Not simply the violence spawned by heroin dealing, but the violence of the heroin dealing itself. The illicit use and the absolute lack of control, the absolute disregard for the human community. The total enforcement of heroin laws whether by federal, state or by local police, is inspired by the use of undercover informants, by techniques and tactics that are so undermining of all human values. These techniques themselves spawn violence that constantly creates new violence. Until we deal very directly with these violence generating matters, I don't believe we can ever have any hope of success in reducing street crime or the deeper kind of social and cultural violence which undermine the possibilities for community development.

Dr. Elsie Scott:

I will speak briefly on what I call the new wave of violence against Blacks, focusing on the period from 1979 to 1981. I prepared a paper on that topic last month. I will try to supplement that paper with more data collected since I prepared that paper.

For the past year I have been trying to document incidents of racially motivated violence that have been perpetrated by white civilians against Blacks in this country. It has been a difficult task, to say the least, because I have been trying to chase down incidents around the country and I have been doing that through newspapers, through human relations commissions, through civil rights organizations and through trying to establish a network of people who feed me information. Therefore, I know I don't have all the incidents. I call this a preliminary finding because I'm still involved in the research.

As I mentioned, my study is limited to the area of civilian violence. I have not dealt with police violence. Jan Douglas, who is from Atlanta, is also trying to document civilian and police violence. We plan to do some cooperative things but hopefully, this type of group will be supportive of various projects going on. I've been looking at five types of incidents: homicides, assaults, arson, vandalism and cross burnings.

When we talk about racially motivated violence, we see that even some of the Black on Black crimes in the community can be labeled racially motivated.

I have documented more incidents in the year 1980, than in '79 and '81. There is only a slight increase in 1980 over 1979 and it is perhaps because I have better data from 1980, and that there is a large increase from '79 to '80 to '81. In 1980, most of the difference I have found has been

in the number of homicides, with an increase of homicides in 1980. That difference can perhaps be accounted for totally by the fact that during 1980 the police have implicated two persons in a number of cases—Joseph Christopher, in New York, and Joseph Paul Franklin travelling around the country. If we count the number of homicides and assaults in which they have been implicated, they account for the difference between the number of homicides in 1980 and the number in 1981.

I have found more cross burnings in 1979 than in any of the succeeding years. It may be that the country is moving from cross burnings, an incident some people do not consider violent, into the more violent incidents of arson, vandalism, etc.

There were more assaults and vandalism in 1981 than in the previous years. There were more incidents of racial violence in the Northeast than in any of the other regions.

I expected to find more incidents in the South. But I really don't want to draw any conclusions at this point, because I have better reporting systems in the Northeast and more people tied into my network. The other thing that I found is that in the Northeastern states we have more human relations commissions that are actively collecting data. So it is possible that the Northeastern region has not experienced more racial violence than the other regions but that the Northeast has better reporting systems.

The South and the Northeast have more reported incidents according to my study than the other regions. We know that there are more Black people living in the South than any other region. Approximately 50% of the Black population still lives in the South. So we would think that there are probably a lot more incidents in the South that we have not documented. I found in the South that more Southern cities, counties, and states really don't have active human relations commissions and even the states that have human relations commissions, don't document incidents of racial violence. They don't consider this to be important whereas, on the east coast, I found that the states and the cities and the counties are even tied into trying to document some of these incidents. Now, in some places they don't document incidents of assaults; they only document vandalism and arson. They are looking at violence connected with Blacks moving into white neighborhoods. They are focused upon the housing problem but some efforts are made to document the number of cases on the east coast. One major exception is Massachusetts. The City of Boston probably has had more incidents than any other city and it has been the city that has cooperated the least with me. They refused to give me anything. I'm not going to give up. I've now tied into Senator Kennedy's office and if I have to go up there, I think I'm going to go and try to go through their files. I

will explore Boston thoroughly.

Now, in terms of the states that I have reported and documented the most incidents are in California, New York, Maryland and Massachusetts. I have good cooperation from people in the state of Maryland and I've had good cooperation from California and that may account for the fact that these states have more reported incidents. But since Massachusetts has not cooperated at all I know Massachusetts is one of those states with a larger number of incidents.

In terms of who's being attacked, I found young people are the major victims of racial violence and these are persons nineteen or younger. Twenty-one percent were fourteen or younger, and over twenty-six percent were between the ages of fifteen and nineteen. So it appears to be an attack on our youth. Some people said that there is a conspiracy to kill our young people in this country. If you look at the homicide statistics, you'll see that there has been an increase in the number of young people being killed. I won't speculate on why this is happening. Also if you look at the sex, you'll see that attacks are mainly aimed at males and that Black males have a high victimization rate in terms of both assaults and homicide.

As to weapons, in 60% of the homicide cases and 32% of the assaults, guns were used. In 21% of the homicides and 12% of the assaults, knives were used. In the rest of the cases, there was an assortment of weapons from fists, bricks and ax handles to bow and arrows.

I've been trying to determine whether there is mob action involved in these cases. I found that in over half of the cases of homicides and assaults, there was more than one perpetrator. That has led me to conclude that in many of the cases there is an element of mob action involved. But I have not yet been able to determine whether organizations are carrying out these incidents or whether these are just groups of whites who attack Blacks.

I've been looking at the Klan involvement with the assistance of some of the organizations involved in Klan watching. I have developed a scheme to determine whether the Klan is involved in a particular incident and I've come up with four things to look for, although they are not foolproof: (1) whether Klan persons have been arrested, there haven't been any Klanswomen arrested; (2) whether the offenders identified themselves as Klansmen; (3) whether the offenders were wearing Klan type attire; and (4) whether there was any use of the KKK insignia.

This has some weaknesses because some people dressing up in robes are only pretending to be Klanspersons. There are other incidents where the Klan is involved and they don't want you to know they are involved. So the Klan often attack without wearing robes and without leaving the KKK mark. So it is impossible to determine in all

cases whether there is or is not Klan involvement. That's not really all that important. It's more important to look at whether we have mob action involved, whether it's Klan or Nazis or a local group.

I have found that in at least 20% of the cross burnings, there seems to be some Klan involvement. In at least 27.7% of the vandalism cases, there seemed to be some Klan involvement. I have found more Klan involvement in the South than in any of the other regions. Forty-two percent of the cases I have documented in the South seem to be Klan related. There is less involvement in the West, Northeast and North central regions than in the South. I have found Klan involvement in every region in various types of incidents.

It's also hard to get at motive. It seems that in most cases the attacks were prompted solely by the fact that the victim happened to be Black. There are cases like the Jimmy Campbell case in California where some whites had gone deer hunting and when they could not find a deer they decided to "kill a nigger" instead. I found that in the majority of the cases, especially the homicides and the assaults, it seems as though a Black person just happened to be passing along while whites were out and decided they would get this person, or this person happened along at the wrong time, random violence.

As for other reasons, one important one is whether Blacks had moved into, or lived in a predominantly white neighborhood. Other reasons were interracial relationships and what I call political reasons. I found that political reasons were more likely to be involved in the cross burning incidents, where the victim was involved in political activity. There were a number of cross-burnings on the lawns of people actively involved in police brutality cases, such as the Tommy Lee Hines case in Alabama.

I found more homicides being perpetrated for the reason that a Black man was married to, living with, or associated with a white woman than any single cause of any of the other five classes of incidents.

Fifty percent of the arson cases seem to have been prompted by the fact that a Black person had moved into a white community, and over 30% of the vandalism cases, seem to have been related to a Black person moving into a white community. So it seems that we still have problems years after the Supreme Court has ruled that persons can marry persons of other races. Years after restrictive covenants have been taken off the books Blacks are still being attacked because they are exercising their constitutional rights.

Who are the perpetrators of these incidents? The typical perpetrator seems to be the young white male. When I say a young white male, I'm not talking about juveniles. The Connecticut Com-

mission on Human Rights found that there is a lot of juvenile involvement. I have not found that to be the case. People are saying these are juveniles performing childish pranks and therefore we don't need to worry. This is not real racial violence, these are just bored kids. They have gotten high on marijuana and decided to go out and burn a cross. I found more juvenile involvement in the cross-burnings and the vandalism than in the serious incidents of arson, assaults and homicides. These are regularly perpetrated by adults. These are young white males in their twenties. I don't think we can dismiss this and say that it's a lot of juveniles and this is just childish play. In the assaults, where I did find juvenile involvement, there had also been adult involvement. They were being led by the adults.

In Montgomery County, Maryland, I've been working closely with the Police Department. Most of their arrests have been of juveniles, but their theory is that the juveniles were perpetrating these acts for adults. Adults know that they will get a stiffer sentence and if a juvenile is picked up, the police are going to slap him on the wrist, call the parents and send him home saying your child has been out there burning crosses in the Black community. It is now a felony to burn a cross and therefore you don't have as many adults burning crosses in Maryland. They just send their kids out to do the work. I'm now trying to look at what the criminal justice system has done and I'm looking at the homicides. I found that arrests have been made in only 50% of the racially motivated homicides. I am now trying to follow each of the homicide cases. I have written to the District Attorneys in all of the jurisdictions where I've documented homicide cases and I will have the material ready later.

Dr. Harvey Brenner:

We have heard earlier from two historians on the lengthy history. But the question arises why should it be pertinent today? Indeed, why should we be at a conference like this in the spring of 1982? What is going on if anything that is particularly unusual that brings us here to discuss this topic? Indeed why in the first place should these incidents be occurring now, and lately, in much greater force than before? We shall get a clue to this, I would suggest, when we look at other things that are going on and reports in the papers, rather steadily, of a substantial increase in the last two years, particularly in the last year, in most American cities, in very violent crime altogether. An increase in the homicide rate which is startling many criminologists. An increase in the suicide rate, an increase in the rate of admissions to mental hospitals and the use of mental health and out patient clinics and mental health centers. There is an increase in the rate of imprisonment, an increase in the rate of

pathological use of alcohol and alcohol related problems. So we don't simply have a singular confined phenomenon concerning racially associated violence. We have a very widespread network of situations which we can observe in the United States.

Is it confined to the United States? It is not. If we look across Europe today, we shall find in the last few months, in countries as well known for their racial tolerance and justice as Sweden, incidents of racial intolerance against guest workers. We shall find much the same, in a lot nastier vein, in Germany today. In the last several months reported in the newspapers, all available to us to examine, we shall find considerably higher rates again of a variety of pathologies throughout the industrialized world; including suicide, the destruction of one's self and a vast garnut of mental health related problems. That, ladies and gentlemen, is only the beginning. What we have is not only a matter of racially motivated violence, indeed it is not, I would argue, racially motivated violence, at all, it is racially targeted. It is racially directed. What does that mean? It means that it might be directed elsewhere, and indeed it is directed elsewhere also. It happens as well to be directed in particular toward minorities, especially toward Blacks in our country, and not only in our country.

What on earth is going on here? Why the recency of this? I shall suggest that it is no coincidence at all, that we are involved in the largest recession in our country since the Second World War. Professor Scott began the discussion this morning with a narration of the origins of the KKK and in particular, made a very important reference to resurgence after the Civil War of the KKK based largely on attitudes and feelings by many southerners of the humiliation and defeat that occasioned much of the destruction of their political system.

I will suggest to you that it is precisely the issue of humiliation and defeat that is the essential source of major societal stress that we see today. That is available to us to observe in many different causes of death in many different sources of social pathology and mental disorder, criminal aggression and political aggression.

I shall suggest further that most of it is not deliberate. Most of it is not political in the sense that it is throughout. As Elsie Scott pointed out, the vast majority of it is random which means that it is not targeted with much deliberation. Again what is going on here? What we have is aggression among many other responses to societal stress, particular types of aggression that manifest humiliation and defeat, and we shall talk about that, aggression directed against people who are symbolized as being historically outcasts, particularly in our country. Certainly not

confined to Blacks, but particularly Blacks are the targets.

Who are these individuals who are so humiliated and defeated? They are two kinds of people. Two significant and unfortunately growing populations in our country. They are the victims of recession.

What is recession? It is a situation of economic loss. For some it is loss of job, loss of livelihood, loss of their dignity, loss of self-esteem, loss of what their identity has meant to them in terms of the respect of their friends and families which is among the most severe sources of human stress known. For other people who have not lost, or lost yet, it is of situations of enormous threat of loss as they see around them their fellow men and women in their industry, being lost if you will, to recession, being reduced to lesser human beings than they were.

For still others, recession means as it traditionally means in the economy, the period of the most intense competition that occurs in our social system. It is the competition to stay alive economically. It is the struggle for economic survival. This is what is going on in our country, and in many other countries in the industrialized world. Under these conditions people do not behave normally. They behave in ways that we sometimes excuse, especially if we're at a distance and not victimized.

The sense of morality with which many of them grew up is abandoned, at least it's temporarily abandoned. Their sense of rage, their sense of humiliation, their sense of defeat cries out, and they go beyond themselves.

Do we have evidence for this? Very much. We can recognize over the history at least of our country in the last century, that with every recession, there occurs very predictable increases in the homicide rates ranging to about four, five, or six percent.

Predictable increases also occur in the suicide rate, in the rate of mental hospital admissions, in the rate of large scale stress related illnesses. Such as the cardio-vascular illnesses. Cardio-vascular illnesses, incidentally, kill more than half of the population. Unemployment increases by about two percent every recession, it is very predictable and very stable. Therefore, we can predict, rather properly and simply, that as the historical situation repeats itself, with massive economic loss we'll also observe racially targeted violence, hatred, and rage. Much of this rage incidentally is not targeted towards minorities. It is targeted towards helpless members of one's family, one's friends, the elderly, women, children. The rate of child abuse increases astronomically under such conditions. It is part of the patchwork, then part of a panorama of severe human stress.

Now, who shall we blame for such activity? Who is responsible for it? Let us look at when it happens and where it happens. It happens when there are heavy unemployment rates. Where does it happen? It happens particularly in those regions of a country, in parts of the world that are subject to poverty, that are subject to economic instability. I don't know how many of you saw the article in the New York Times of April 14, just a few days ago, headlined: *Mississippi Fears United States Cuts Impairs its Fiscal and Racial Gains*. I'm going to read a paragraph to you. Governor William Winter said in an interview, that "progress and race relations in Mississippi, the nation's poorest state, the state with the largest percentage of Blacks could be wiped out, if the economic disparity between Blacks and whites worsened. Race relations and economic progress have proceeded on parallel courses, each reinforcing and depending on the other." He is absolutely correct. All of those statements can be quite easily documented statistically. The state government which has an annual budget slightly above one billion dollars has computed for its two and a half million people a loss of 450 million dollars in Federal aid. Four-hundred-and-fifty million dollars in one state not counting the effects of inflation since 1980, when the state, and its residents received 5.5 billion dollars in aid from Washington. No one in high authority here has suggested that the state could ever make up the loss, and the 1982 state legislature, which adjourned this week, defeated Governor Winters' proposals for a tax increase, as you might guess.

It is hard, however, for me as a private citizen to believe that people in charge of these policies really have a sense of the overall magnitude of their impact. The first responsibility does not lie with the poor people, the distressed people who are in fact the identified perpetrators or the actors. They are the victims themselves. They are the victims often of destroying themselves. They destroy much more readily than does the Black population. They destroy those they love, they destroy their children, they destroy their wives, they destroy the people they care most about in the world. Yes, they destroy Blacks as well.

The other source of responsibility lies with the moral institutions in our country, since we're talking about our country. They are the political system and the religious system and the traditional system. These are the institutions that stand for the moral basis of this society in general. When they are silent in face of these occurrences, particularly racially targeted violence, there seems in this society to be an ascent or at least a lack of descent or at least a lack of even pointing out what is going on. So we as a society tend to accept it. These institutions, which are the main sources of support for a

stable, reasonable morality do not act. Much of the conference today as I see looking at the program will have to do with the law and what the law can do or how the law can be helped to act so as to minimize this kind of injury.

I would offer you a somewhat pessimistic view and I hope a somewhat optimistic view but for different reasons. The pessimistic view is that the law hardly ever acts as a preventative to violence. I only have to point out to you the experience of the United States which you're all too familiar with, but perhaps not so familiar with, until you travel abroad and find that the rate of violence in our cities is so many orders of magnitude above anything you would find in an industrialized country that you would hardly believe it. The law will not prevent these kinds of things from occurring. Is the law of any use at all? I would suggest that it is of enormous use but from another point entirely, from a symbolic view because it is essentially the symbolic value of people who are helpless, a symbolic value of people who are targets that underlies the basis of aggression against them. It is the situation of understanding the persons as outcasts, as less than human, as less than your brother or sister, that makes it possible for a person who feels rage to direct that rage against the target. Make no mistake, the rage will be directed against someone or something. The rage must be. There is a physiological and psychological basis to it that relieves tremendous tension and even blood pressure. There are endless clinical studies demonstrating that the question is not whether but how shall it be diffused under these tremendous conditions of stress? One thing, from a moral standpoint which our law must do, I believe, is make it impossible, at least fundamentally immoral and unethical, to direct one's aggression toward persons symbolically identified in particular ways. The law must demonstrate that it will not take aggression against them. Because this is our historical pattern. It is a very, very unfortunate cycle we have come to when the only remedy for this aggression is aggression, and that our only hope in the law in that kind of activity is to make it clear that symbolically, we as a nation do not tolerate that kind of activity. It is wrong, it is ethically illogical for people under conditions of rage to focus their anger against particular minorities. We in the United States do not allow such behavior. This is the position we must make clear.

Dr. Mary F. Berry:

As I sat here thinking, as I listened to Mr. Scott's paper on the history of racially targeted violence, and I agree with Dr. Brenner it should be called racially targeted violence, I thought about the persistence of it. In some research that I did for a book called "Black Resistance/White Law: History of Constitutional Racism in America",

published in 1971, I documented instances of racially targeted violence, from the beginning of this government until about 1968. I documented that, in part, by looking at the complaints in the Justice Department files from the beginning of the Justice Department to about 1945. And then, after that, in newspapers because the Justice Department would not let me see the files after that. It was during the Nixon administration. But, in any case, I commend both Mr. Scott and Miss Scott, who's been working on this. If they want to look at that book, they will find some documentation of the persistence of these incidents over time, and I would also suggest to Miss Scott, that if she wants documentation on what has happened since then she might look at the Justice Department Files and also the complaints that are filed with the U.S. Commission on Civil Rights.

We get about 200 complaints a month, in the criminal justice area. Many of these complaints have to do with racially targeted violence. I recognize that they would have to be verified, but at least that would give some basis for operating.

The other thing I thought about as I listened to Mr. Scott was that he described very well the activities of the states and the state militia in controlling Blacks and the violence that took place. But there was another side of that. There was the complicity of the Federal Government in the violence that took place. We always talk about the compromises in the constitution, the 35ths compromise and all the racial compromises. But, most people don't talk about Article 4 Section 4 of the Constitution which provides that the national government will come in to help the states suppress domestic violence. I maintain, as have some other scholars, that the domestic violence they were talking about, in part, was slave revolts, and that it was the U.S. Army in addition to the militia which helped to control the slaves.

When he, Mr. Scott, talked about the violence continuing after the Civil War and during Reconstruction, I pointed out in another book I wrote called *Military Necessity and Civil Rights Policy 1861-1868*, which came out in 1977, that in fact many of the Black soldiers recognized that there was the possibility of this violence and tried to keep their weapons to take home to protect themselves and their families, but the army issued an order that all Black soldiers must turn in their weapons when they went home. This was not the policy for white soldiers or for any soldiers who were in the service before that time. They all took their weapons home with them. Some of the brothers took theirs home anyway. They said they had lost them. The policy was clearly designed to leave them in a position of not being able to protect themselves, as this reign of terror took place. So, persistence is one thing that I noticed.

There is persistence also in terms of who commits the violence. As I listened to Miss Scott's

paper, I recall that in most of the instances that I reported the people who were attacked were males, and they were young people. Blacks were the victims of this violence. Most of the people who perpetrated the violence were young white males. This is historic, and is not something that's just happening now.

As to what it means, I'm not sure. As I listened to Mr. Rubenstein's paper on the police, which I found quite interesting, I remembered that in the Commission on Civil Rights, we issued two reports last year. One on police practices and Civil Rights, right after the Miami riots which was instigated in part by the acquittal in the McDuffy case, a clear instance of police violence. The other one, this year, is called "Who's Guarding the Guardians?" which is about police practices. I remember that in connection with the last report especially, which talks about the usual reforms—community review boards, the necessity for professionalization of the police, the necessity for restrictions on the use of deadly force—the report recognized that historically many of the riots, at least in this century have been set off, sparked by incidents involving the police. It is police violence which has often been the conflagration point of some of these disturbances. Not the underlying cause but the precipitating, immediately precipitating factor.

In any case, I was reminded of an ongoing correspondence I had with a police officer in a city that I will not name. As a result of these studies, he kept reminding me over and over again to be sure, and we have that in the report, to recognize that the police officer is always faced with the necessity for protecting himself, or herself, at the same time that he or she worries about not unduly or unnecessarily murdering or assaulting someone else. There is always that tension, the issue of security that you talked about.

In fact, if they could be targeted toward anyone, without more, they would not have been targeted so frequently at Blacks. I mean there must be something about the race of the person that would make them the target. I think that the persistence is because Blacks have been persistently regarded as an outgroup in this society.

As I surveyed the reasons why all the people that I had documented over this period since the beginning of our history engaged in acts of violence, to the extent that I could find out what they said about why they did it and why they kill people, it was clear that much of what's been said up here was entirely accurate. From my findings, a lot of it was about how Blacks were inferior and it didn't matter whether you killed them or not. That was always sort of an underlying theme. The other part was to intimidate them and invoke the kind of fear that some of them felt was sort of undefined. It did not have to be, Professor Bren-

ner, during hard times economically. I mean it could be during flush times, economically, in which people would kill people for other reasons. For example, when you read the quote from Governor Winter, I was reminded that in Mississippi, in June of 1978, which was before the current recession, some Ku Klux Klansmen clashed with a white minister during a protest by Civil Rights demonstrators and a Black male observer of the Department of Justice was threatened with a bicycle chain.

In the summer of 1978, in a little town, a group of white males shot at a Black college president; sixteen shots, as he sat in his car, and there were other incidents like that. My only point is that I found that this happens in good times, bad times, it really doesn't matter what's happening with the economy. It's the persistence about the inferiority, the need to maintain subordination, the need to intimidate Black folks for whatever reason. I have a hunch that this is likely to continue as long as there is a feeling that Blacks must remain subordinated and that they are an outgroup in society. I agree with Professor Brenner that you will find this in any society as long as it relates to any outgroup given similar circumstances.

On the issue of what the law can do or what we should do about all these problems, some of the things you do are in the area of attitudes. Two kinds of things, attitudes and behaviors. In the area of attitudes, what you do is to try to persuade people somehow that the lives of Black people are valuable. Whether it's productivity reasons, moral reasons, or humanitarian reasons, whatever reasons, appealing to their Christian or Judaic traditions, or whatever tradition they have. The other thing you do is to try and persuade them that they will not be threatened if they consider Black life inviolable. That, maybe, Blacks won't do anything to them. I am reminded sometimes that this is effective. I am reminded of the 1930's and one of the reasons for the decline in lynchings. A lot of it was caused by people claiming that Black males had raped white women or had wanted to rape them or something. What happened, white southern women and Black women got together and made a public issue of it and said that a chance of them being raped by a Black man was about the same chance of them being struck by lightning. They said that all over and they were not going to sit still for people claiming that someone ought to be lynched because they wanted to rape them or had tried to rape them. That was very effective.

I am reminded too of the influence of public opinion and media because in the 1920's one very influential and wealthy white woman influenced the Justice Department, in a couple of cases, to intervene. She was on a ship going across to Europe on vacation. She had a newspaper with

her and read a story about an attempted lynching and a series of lynchings in Alabama. She wrote to the President, whom she knew, saying that she was upset because on the ship all the passengers were asking her, those who weren't Americans, about the barbarism in America, and would he please call up whoever was responsible and tell them to do something to make those people stop. The President immediately sent a note over to the Justice Department that said, "Listen, I want you to do something about this issue, because we can't have people being upset like this, and Mrs. X is a very influential person." Simple things like that, sometimes publicity, media, persuading people, all of this I think can work in the area of attitudes.

I guess I'm concerned, in conferences like this, about some of the activities that have taken place around the country, with teaching more people in schools and the like to change attitudes, but, I guess I'm more interested in behavior. What I found in most of the cases was a virtual absence of the belief that there would be any prosecution or conviction if one killed somebody or assaulted someone.

This is historic, persistent, I don't mean it just happened yesterday. In fact, the belief was well founded because in most cases the state governments would not prosecute. In 1975, when I did a paper on this subject for an historical meeting, I looked through all the appellate court decisions throughout the country from reconstruction to 1974 trying to find cases where a white person had been convicted of killing someone who was Black. I didn't find any of that then. There have been some since then. I found some cases where people were charged. One could argue that I ought to go to the lower courts and see whether I could find somebody who was convicted and didn't appeal, that may have happened, but I didn't have the time to do that all over the country. In any case that was very telling. The history is that state governments until very recently have been reluctant to prosecute. The control of crimes, as we know as lawyers, is mainly a state responsibility. The federal government has had statutes on the books, which I believe, and I think that Professor Kinoy agrees with me, do provide a basis for prosecution. In fact the law has been very slow. I think that's the kindest thing I can say. The law has been very slow in moving at the Justice Department although many of us have tried over the years on this issue to prosecute. We heard at first, until 1968 when *Hodges v. United States* was overturned, we heard the argument that the law doesn't really mean what it says, and the letters that all these people got who sent in complaints to the Justice Department, eight to twelve thousand complaints a year, Black folks were sending in saying people were being

murdered or assaulted or something, either for being uppity or for supposedly raping somebody. The Justice Department sent back a standard form letter which said *Murder is not a Federal crime, see your local police*, ignoring the fact that most of the time the local police were involved in either not arresting anybody or some complicity.

They would cite a case called *Hodges v. United States*, which was decided in 1906 in which the Supreme Court said that the Civil Rights Act of 1866 did not mean what it said and could not be used. That wasn't overturned until 1968. But, in any case, since then, my understanding from listening to Assistant Attorney Generals for Civil Rights, and people from the Justice Department in various forums is that the reason why more prosecutions are not brought when the states refuse to act, and the violence is racially targeted, and there is an interference with civil rights, is, prosecution is very difficult, why waste time bringing prosecutions? If you prosecute and people are acquitted, then maybe they will do more of it and that's just too bad. So it's not only a standard Hodges type response, see your local police, it's we don't have enough staff, and prosecution is very difficult in cases like this, why don't you try a civil damage remedy and perhaps you'll be more successful at that. I would maintain that prosecution even if an acquittal comes about is better than no prosecution at all. At least folks understand that everybody knows this is illegal, and that the law is slow, but if the law is interpreted and can be made to move more expeditiously, we might change behavior whether we change attitudes or not. It's alright to change attitudes, but we must change behavior if we are to maintain the legitimacy of law.

One of the things I discovered is that in the Black community, historically, among those who commit crimes, there is a disdain for law. Part of this disdain is because they know the law is selective. That is the law can't protect somebody who's been beat up by the police or beat up by the Ku Klux Klan, then how can one believe that the law is fair? There is a question about the legitimacy of government, and the legitimacy of law as it related to them.

Justice Bushrod Washington, wrote an opinion in a case called *Corfield v. Cornell*, in 1823, in which he said that one of the things you had the right to expect from the government was that it would protect your life. The government, if it's going to be legitimate, will protect your life. I think that issue has been raised year after year, and even today, if government does have any claim to legitimacy, whatever the causes, whatever the nature of this kind of violence is, it must respond to Mr. Justice Washington's statement and make sure that the non-judicial murder of Black folk and other folk does not go unpunished. Thank you.

QUESTIONS AND ANSWERS

Dr. Charles E. Cobb:

We thank all members of the panel, they have indeed given us welcome and stimulating information. We have a few minutes in which we can engage in a few questions.

QUESTION:

Dr. Brenner, I'm curious about your view towards the 1930's. Was there an increase in the type of pathological behavior that you outlined?

Dr. Brenner:

If you look at lynchings that a Tuskegee Institute study collected from the 1880's and 1890's through to the 1960's and early 70's you will observe, statistically, it is very closely related to the recession. There is a major difference between periods that are relatively stable and prosperous in American history and the history of other countries, violence in general and racial violence in particular. If you look at the Great Depression, you will observe an unusual increase for that period well after the Civil War, in lynching behavior and an enormous increase in homicide. So large that it marks, just as the suicide rate does, the highest peak in American history during the 20th century. It is nearly predictable, as a function of changes in the economy, the single most important historical fact. Not that there aren't other historical facts, but this one tends to be the most powerful predictor. In the history of our own country, well after the Civil War, the factors that are most important from a temporal point of view have to do with major economic instability and especially the unemployment rate as it affects lower middle class white people. When one looks cross sectionally at the states of the country one finds that the poorest states are not necessarily those which have the highest proportion of Black residents, but the poorest states, at times when they happen to be the poorest states, are in the worst situation, both for violence in general and racial violence in particular. So the pattern is very thorough and very, very well established.

QUESTION:

We would like to ask the panel if their research has indicated anything about the financing of these groups? So that it's not just an individual matter or if it is, it's being used by the very powerful conservative groups. The Klan is getting money, and just as Professor Scott talked about the Ku Klux Klan, there is a political objective highly financed in the rise of these organizations.

Dr. Anthony Scott:

Very briefly, in terms of the Klan, it was extremely well financed in that first period. This is

well documented. I'd like to point out in relation to the total discussion that there was with the Klan an extremely close link, in Dr. Brenner's terms between politics and pathology. I'd remind you that in Germany, Hitler build his movement upon a highly political movement based upon the scapegoating of the Jews supported by the unemployed who were pathologically unhappy by their unemployment. So the Klan in its first years was able to exploit the connection between mass discontent and the pathology of humiliation, and frustration, and match this with their political objectives which were highly rationalized. Now I think that today there is precisely that connection between finance organization, political direction and mass pathology that constitutes the very essence of the problem that we have to deal with.

Dr. Mary Berry:

I don't want to get the discussion of the economy as it relates to violence off track. I think it would be misleading to have Black people believe that if the economy rights itself, they won't have to worry about people killing them or assaulting them or anything of that kind. My only point was that I can document lots of instances of racially targeted violence year after year after year. I'm not saying that there's no relationship, I think it's more likely that low income whites or unemployed whites will be attracted to violence prone groups during times when there are economic problems. I agree with that absolutely. I think that's more likely. I just don't want Black folk to think that's the answer. Unless you say that there has been a recession every year since the beginning of this country, and that's why it happened. For example, in Mississippi, and maybe Mississippi has been in constant recession, in the 1960's there was much more violence. I mean church bombings and murders during the Civil Rights Movement. It had to do with the Civil Rights Movement, I maintain, and the struggle for equality at the polls, and everywhere else, and not just with the state of the economy in Mississippi. I'm not discounting and I don't want this to become a squabble among scholars, about which variable is more important than what variable. I'm willing to concede that the economy does have an influence. I just don't want people to be unprotected as they go about doing what they do, because they think that's going to solve the problem, and we don't have to worry about it anymore. That's the only point I'm making.

Dr. Brenner:

I don't want to perpetrate single causes either or frighten anyone, but I can promise you that with current policies as they are in the economy, there is a good deal to be frightened of. It is the case that in no times is there a total absence of violence against any group. But, in times when

the economic policy is such, where the situation is unstable and there is a high level of unemployment, the situation's order of magnitude is greater and there is considerably more of which to be frightened. Nor do I want to indicate that there are single causes of these things. There are multiple causes. One is the stimulus to the rage that provokes the violence, and the other is the target. We must look to both of these issues if we want to come to some solution, not only one.

COMMENT:

I want to make two brief comments and to raise a question: First I think the key in the economy question is that the economy in the western world rested on the backs of the people of color. I think it's incorrect to assume that you can have the same situation in relationship to the economy that white people have. Second, I've been collecting cases as is Dr. Scott, and just wanted to share three or four things from my research. We have not cleared all our cases so she may have different ones than I do. Mine have been for the same period. I have found that in my cases approximately 40% of the incidents of life threatening violence have been directed toward women and children, which I found to be most interesting. It's also very clear, in most police cases, it's directed toward black and brown men. I've also found that whites tend not to know the people of color that they murdered. They are totally anonymous. The other thing that was very interesting which has happened traditionally is that the cases that I have looked at included whites going into the Black community to commit murder and acts of harassment. During this time in history and concerning the whole question of racial violence, no one has hooked it up to the international situation. Because of post World War II dismantling of the whole colonial era, you find folks having to deal with Africa, having to deal with new kinds of independence, and another kind of enemy. It's people of color from around the world. It's a new kind of enemy that's emerging. Why was it allowed to happen? Why has the Klan always been allowed to have para-military training centers here?

COMMENT:

I wanted also to comment about the relationship between economic crisis and devices of racial violence. The whole history of how this country has been built, built on deep exploitation, people of color and that always happens, but I think the key point when you talk about what happens in a period of crisis is the word scapegoating. Scapegoating is used as a way of diverting the attention from the real problems. At this point, scapegoating would be saying that it is welfare mothers that are the cause of your problems. It is Blacks who are taking away your jobs. It is the workers from Mexico, or whoever that they are taking the resources away from you. The Klan

is saying *they* did it to whites. It is their welfare mothers, and it's not just the Klan saying it's welfare mothers, but that is part of the whole mentality that is going through the whole system. It goes through the education, so that's what we have to address, the scapegoating.

Dr. Berry:

I figure it's two sides of the same coin. On the one hand you have the government not doing anything when Black folks are attacked, but when Black folks try to do something to liberate themselves, the government can find all kinds of reasons to intervene. That's what the book is about. The other assumption is that the law is capable of more than one interpretation which makes me a legal realist I guess, or a neo-realist as I've been called by some. I happen to believe that. As we look at the law, and what it can do, we have to realize that it's judges and folks who are interpreting the law. If what we've been saying is correct, about some of the assumptions that people have, some of the judges and some of the lawyers are some of those people. So we can assume that they have some of those assumptions too when they start making or enforcing the law. I thought that needed to be said.

Dr. Berry

Dr. Cobb, I'd like to say one more thing. I don't think it's a question of getting people not to support racially targeted violence. That's not the issue really. I don't know any politicians who say, "Let's have some more racially targeted violence." The problem is getting them to prosecute people and arrest people and change behaviors and do something about attitudes. You can do that through the political process because most politicians care mainly about being elected. I'm reminded of a book somebody sent me to read. I haven't reviewed it yet, by a sociologist, in which her thesis was that you could end racially targeted violence. Blacks could end it, the violence that was targeted against them if they were willing not to do things that were not so offensive to whites. The thesis was that the Civil Rights Struggle was fine, but that we kept pushing for things like Affirmative Action and school desegregation, and busing, and things like that. Those things infuriated people, and that what we were doing was opening ourselves up to this kind of hostility. So, what we should do is to all come out and say from now on that we don't care anymore about those issues, and what we want is whatever you people do, and then, at least, we could save our lives.

COMMENTARY:

In view of the largeness of the situation, it might sound absurd, but I'm calling for a return of the feeling of power to each individual through the church. I'm calling for the church to make a

radical call to people who believe. It seems ironic, but the very people who are in "power" in our country, are really truly powerless, because those who hate, and who scapegoat through their insecurities, are not in touch with their own power, and with God's power and with faith, they need a truly created abundance from all of us, and I think that's the irony of the world, that those who rule are truly deep down powerless, which calls

for a different slant but I wish that the church would get in there and give the radical revolutionary message of love and faith.

Dr. Charles E. Cobb:

Thank you, and I think that's a good note to call this session to a halt, and also that's the meaning of our sponsoring this step that we are taking now. We want to thank our panelists, for excellent presentations.

Racially Motivated Violence In America

State Responsibility

MODERATOR

Oliver Quinn majored in Political Science at Syracuse University. He received his J.D. degree from Rutgers Law School. Mr. Quinn served as Civil Rights attorney for the Department of Health, Education and Welfare from 1975-1977. He is the former Assistant Dean at Rutgers Law School. From 1981-1982 Mr. Quinn served as the Assistant Counsel to the Subcommittee on Criminal Justice of the U.S. House of Representatives. He has conducted several hearings on the problem of racially motivated violence. Currently he is the Executive Director of the New Jersey Association on Corrections.



PANELISTS



Eugene Thompson attended Tennessee State University and he studied law at Texas Southern University School of Law. Mr. Thompson is a member of the Concerned Legal Association, and also a member of the NAACP. Assemblyman Thompson has served on the General Assembly since 1978. Mr. Thompson is also a member of the Essex County Juvenile Conference Commission and a member of the Board of Directors, Essex County Mental Health Association.

Byron M. Baer is one of New Jersey's few full time legislators. He is widely respected for his extraordinary effectiveness in handling complex legislative projects. He has been one of the most active legislators in developing laws protecting consumers and is the only state legislator in the nation to have served on the board of the National Consumers Congress. He has also sponsored the Quality Educational Counseling Act and significant legislation in the areas of government reform, farm worker protection and environmental protection. Assemblyman Baer is chairperson of the Assembly commerce, Industry and Professions Committee. In 1980, he served as a member of the Governor's Hudson River Waterfront Study, Planning and Development Commission. He was elected to the General Assembly in 1971 and re-elected in 1973, 1977 and 1979.





Jeffrey Fogel graduated from Drew University. He received his J.D. degree from Rutgers Law School. Mr. Fogel has served on the Third Circuit Court of Appeals and the First Circuit Court of Appeals. He is a former staff attorney for the Puerto Rico Legal Project in San Juan. He was involved in litigation around the issues of civil rights and civil liberties. Mr. Fogel is presently the Director of the New Jersey American Civil Liberties Union.



**CONFERENCE ON RACIALLY MOTIVATED
VIOLENCE IN AMERICA
STATE RESPONSIBILITY**

Oliver Quinn:

My name is Oliver Quinn, and I'm the moderator for this workshop entitled *State Role in Addressing the Threat of Racially Motivated Violence*. We will discuss the various legislative initiatives, both real and proposed, that have been developed in states across the nation to address aspects of racially motivated violence. Let me introduce our panel. To my far left is Assemblyman Byron Baer from Bergen County, New Jersey; to my immediate left is Assemblyman Eugene Thompson from Essex County, New Jersey; and to my right is Jeffrey Fogel, Director of the New Jersey American Civil Liberties Union. Each panelist will give a ten to fifteen minute presentation, followed by questions and comments from the group. We will present you with some of the dynamics involved in drafting and implementing state legislation to address this problem and get your comments and input to perhaps further develop some of the models presented.

The role of the state is critical. The federal government through the Justice Department has taken the attitude, at least in their testimony before the House Judiciary Committee Subcommittees on Crime and Criminal Justice, chaired by Congressman John Conyers, during its hearings on racially motivated violence, that they have a very limited role because most of these acts are state crimes and law enforcement in these matters is a state responsibility. To a large extent the federal government has adopted a pattern of "punting" to the state on these matters. When the hearings then shifted their attention to what the states were doing, they came to discover that many states were doing nothing, and in fact, many states did not within their record keeping mechanisms, have a means of determining whether or not they had a problem of racially motivated violence. For example, it was found that several states classified cross burnings as general arson, and in determining how best to utilize their law enforcement resources, law enforcement agencies very often looked to the degree of either physical or property harm that was created by the act. Obviously, a cross burning cannot be measured in terms of its harm by the amount of property damage or the amount of physical harm, but rather by the psychological harm that it causes. It makes people uncomfortable living in their own homes, walking down their own streets, and through the hearings we tried to encourage states to reform their record keeping procedures so that they would at least be in a position to know whether or not they had a

problem in this area. We saw that as being the first step.

Many states recently have begun to draft legislation in this area, and this legislation has been the subject of quite a bit of controversy and a lot of that controversy has come from the sources that have traditionally been very supportive of the protection of civil and human rights, notably, the American Civil Liberties Union, which sees in some of these legislative initiatives an infringement on their rights that have been hard fought for and that need to be protected. What we want to do here is try to balance some of these conflicting interests since the objective is common, and see if we can develop some means to guide legislators and legislatures in enacting realistic legislation that is politically feasible, economically feasible and will be effective in terms of addressing this problem of racially motivated violence.

For our first presentation, I'm going to turn it over to Assemblyman Byron Baer from Bergen County, New Jersey.

Byron Baer:

Thank you. I am the sponsor of the legislation that's been adopted in New Jersey on so called ethnic terrorism. This legislation was initiated by me about two and a half years ago when the rising tide of violence and incidents had already become apparent, even though it had not gotten to the point that it has today. At that time there was no legislation anywhere in the country that focused on the central concept that Mr. Quinn has just described, and that is an incident like crossburning can't be measured in terms of the amount of property damage it causes, and yet up until then things of this sort, if covered in the statutes at all, were only covered under vandalism or arson, where it was a matter of property damage. I'm talking about, in this case, not the actual violence itself which I know is also a subject of the conference, but crossburnings, swastika daubing, many other types of actions which were physically largely symbolic, have not been regarded as what they really were—threats. Crossburnings, swastika daubings historically had significance where it was used as a threat and many other types of things that were occurring had symbolism in terms of threats.

There is no reason why words are clearer in their meaning than actions. It all depends; you can have words that are very vague and unclear, and actions that are very clear and vice-versa. The law elsewhere deals very severely with threats, whether one makes a bomb threat, whether one

raises threats in terms of assault or pointing a weapon, or many different forms of threats of violence where there's actually no violence perpetrated. These are dealt with very severely by the law. The law has the general view that people should be protected from the trauma and the terror that occurs from threats. In these areas, which were heavily racially or ethnically loaded, the law did not seem to provide an adequate means of dealing with and then recognizing those threats, that's what this legislation did. I suspect we may get into some back and forth, about some of the civil liberties aspects of it. These were very carefully examined, and the legislation was changed greatly in the process. I believe that the legislation really meets very high standards in terms of civil liberties. I will read some of the critical phraseology. What it basically says is that a person is guilty of a crime in the third degree in New Jersey. That's a severe level of sentencing and can be up to five years in jail. It's, I guess what in a lot of other states would be regarded as a felony of knowingly, purposely or recklessly puts, or attempts to put another in fear of bodily violence—I might say by the way that language, putting another in fear of bodily violence, although it has been objected to by some civil libertarians, it has been in the robbery statutes for generations, where you use a weapon in the perpetration of a robbery. Placing on public or private property a symbol, an object or a characterization of graffiti that exposes another to threats of violence, contempt or hatred on the basis of race, color, creed, or religion, including but not limited to a burning cross or Nazi swastika, but the critical language there is putting another in fear of bodily harm and that's what we're trying to protect.

A person is guilty of a crime in the fourth degree in what then goes on with somewhat similar language where you are damaging peoples' property, religious, educational, residential or memorial used for assembly by persons of particular race, color, creed or religion. That is the basic thrust and it seems to me, vital, that we have this protection. Not every case where a swastika or a cross burning or something like that is used comes within the standard necessarily. It does not cover every instance or we would run into a constitutional problem. Someone wants to paint a swastika out in the middle of the woods, even on public property, nobody is being terrorized by it. We're covering it, but on the other hand, it covers these situations, even on a public road where you might have a situation hypothetically somewhere out by somebody's lonely farm doesn't diminish the aspect of the situation where somebody is being terrorized knowing that they are being targeted, and it has that frightening and terrorizing aspect depending on what is happening.

People raise the question as to whether or not

kids know what they are doing. This law, like any serious law, has the means of being short-circuited by the juvenile offenders statutes and it's appropriate that that be so. I disagree with those who suggest that these incidents are only perpetrated by juveniles and it's important that for serious cases we have a strong law standing there to be used first of all as a deterrent, and secondly where it's appropriate to be used, so that you have that prosecutorial discretion. We have strong laws but it's important to protect the rights of individuals, that it be there for those types of cases and that it be a statement of policy on behalf of the public. I've been looking through some of these other bills here, that were in the packets, some of them seem very excellent. I'm excited by the success of these civil actions that we heard about in the luncheon. I think most of us knew about the case. It was a famous one. I'm very intrigued with the civil statutes that were set forth as proposed state legislation. I do want to mention something that raises certain questions now, because as I disagree with the opposition, the ACLU, there was some basis of criticism within its earliest form. We had to work the bugs out of it like any legislation. I won't deal with it from a constitutional point of view. I'm not an attorney anyway, and haven't researched that, but from a practical point of view, ask yourself if something like this is going to be decided by juries. The perception of what is racial or ethnic is going to be decided by jurors, then we have something, this sweeping disorderly persons, that could cover somebody giving someone "the finger" or making a slur to somebody passing in the street, then you have these kinds of things.

In racially charged situations occurring both from Whites to Blacks, and from Blacks to Whites, there is a subjective perception on the part of people that differs across racial lines as to how threatening something is, as to whether something is intended in this case for racial purposes, and given that Blacks are in the minority in this country, they're likely to be a minority on those juries. Do you want something like this which can be used repressively in a racially charged situation? I wonder how it would have been used in '67 where you had those types of situations throughout various cities. I wonder how it would have been used in the South, in the early 60's in the civil rights movement and many other situations. So it's a question of targeting what the key problem is and having effective legislation. How broad do you want this sweep of legislation?

Oliver Quinn:

Thank you, Assemblyman Baer.

Assemblyman Thompson:

First of all, a case that Byron just referred to as the Texas case, and I think he's correct, that it's

too broad and too sweeping and in many instances, when empanelling a jury, you'll get very few Blacks to serve on the jury, and you'll probably find that the Texas statutes reek of unfairness. I think this is important because of some of the questions that were raised earlier in reference to the Reagan administration and the conservative attitude that they've taken in the Justice Department in reference to what constitutes a course of action. That's what they're really saying. I think that the type of conservative attitude has shown us in a surrogate type of way in the state of New Jersey with Kean being the governor at this particular time.

What I would like to do is apprise you of a situation which recently occurred in New Jersey, and which I have written to our new governor, Tom Kean about. This involved the arbitrary stopping of a car driven by a Black male in this case, a member of the diplomatic corp representing an African nation, on one of our state highways. The diplomat has charged that he was subjected to abusive language and treatment by the state policeman who stopped him, and I have asked the Governor for a full investigation of this incident.

That's just another form, and the state police probably are one of the most racist outfits we have in this state. It took court action and Affirmative Action programs to get Blacks and women to even become involved. Now I understand that since I've written this letter and I'm talking to other people, there has been a systematic thing, the state police now stop Black males on highways in the state of New Jersey for any reason. What does this do? This serves two purposes: Number one, it can arrest them, but the other thing is that it serves to incorporate a very negative attitude towards state police in Black communities so we don't have any young Black men who want to join anymore. I intend to follow up on this, and get a commitment out of the governor. As far as the African Diplomat is concerned, certainly they won't have any jurisdiction over him. The problem is we've got to get a hearing from an impartial tribunal dealing with those state troopers.

Thank you.

Oliver Quinn:

That problem goes beyond state police to municipal police. The point, I think, that the Assemblyman raises is: Can the police police themselves? There is an increase at least in reported incidents of excessive use of force by police against citizens aimed at people who have been arrested by police, or under police custody, or just general citizenry who are seeking the assistance of the police, and wind up being victimized. You have a situation where you have the prosecutors who are a team with the police, who have to function as a team in their law

enforcement responsibilities all of a sudden put in a situation where they are adversaries. Can the public really have faith in that kind of temporary divorce between the police and a prosecutor, or is there a need to structure new remedies, be they blue ribbon panels or one of the legislative initiatives of Congressman Conyers, to try to make every act of police violence a federal offense, under Section 242 under the criminal code. That section governs acts under "color of law." Congressman Conyers' theory was that any action by a policeman would automatically be a federal offense.

Our next presenter is Jeffrey Fogel from the New Jersey American Civil Liberties Union.

Jeff Fogel:

Let me start off by saying that I, in particular, and the ACLU in general, share not only the concern for the question of racially motivated violence, not that it not only is a concern, but that it is something that we must join in doing something about. We must join that fight on a number of other levels. One other level we were speaking about today has to do with state legislation. A more important level may have to do with public education, and yet a more important level may have to do with enforcement of existing criminal laws that are not being enforced today. Vic McTyre alluded to this question in his address, at lunch that *the primary problem with the federal government has been, not the absence of statutory authority to enforce the mandate of the Civil War Amendments but of the lack of an inclination, for political and other reasons, to enforce those precise statutes.* We are talking about statutes that exist on a federal level and have existed for nearly a century. I know as an attorney that the federal government has not utilized those statutes for any serious enforcement mechanism. Vic alluded to the anti-Klan injunction that was issued at the request of the Justice Department in 1965, and yes, he was correct that it only came about because a number of community groups and a number of civil rights organizations had already initiated that litigation, had essentially forced the Justice Department into joining with them.

The courts, interestingly enough, the Fifth Circuit Court of Appeals, was prepared to make that action, and as Vic mentioned had even suggested to the Justice Department that it do so. We're now talking about 1965, a year when the federal government, at least in terms of its expression, had indicated that it was prepared to fulfill a mandate to secure civil rights in this country. We are now talking in the United States today, about an administration who at least vocally in terms of its enforcement mechanism, has demonstrated just the opposite. The primary concern seems to be from our perspective, the enforcement of

existing mechanisms which we feel if enforced, well, could not only be an example of the public policy, but of the federal laws that were passed because there was a valid assumption that the states were not going to enforce their own criminal laws in this area. So when we see prosecutions under the Federal Criminal Statutes, that is the Federal Civil Rights Criminal Statutes, we have seen people convicted, and receive 10 years in jail, for what under the state law would be a potential life sentence.

Now why is it that the federal government had to come in? Because the states not only did not secure convictions, but in many instances did not even bring prosecution. If the states were enforcing their laws, there wouldn't have been the need for the federal government to come in in those instances, and when the federal government did come in, it should have the authority to come in where necessary, in as strong a manner as the state could have, if the states were fulfilling their own obligations to enforce their own criminal law. I'll ask this question rhetorically, to Assemblyman Baer, because I think on one hand we share a common concern, and where we part ways is in the implementation of that concern. Let me suggest to him a question which I think goes to the thrust of some of my concerns. This is a hypothetical scenario, we are talking about a Black community in which we might have a white businessman who is notoriously racist in his or her employment practices, in services to the public, and various other ways. There was a reaction to that person, so that one night someone put, and I'll use the language of the statute, an appellation, or graffiti, on the side of that building that said, "Whitey, leave the neighborhood!"

Is that subject to prosecution under this statute? Yes. Subject to conviction under this statute? Possibly, depending on the discretion of the prosecutor which is not under the control of this statute. Depending on the nature of the jurors, which we all on this panel agree are not necessarily those that are going to enforce the civil rights of Black people in particular, in this or any other state. I asked the question rhetorically, and I think that goes to the source of some of our concern. I take another example of graffiti that says, "Whitey, go home, Whitey leave the Neighborhood, or else." Okay, some of what is covered under Assemblyman Baer's statute is already covered by our criminal laws. That is, an offer or threat to do violence to somebody else individually, or in a conspiracy, is against our criminal laws today. If it is not being enforced then the responsibility of the legislature at its initial stages is to make sure it's enforced. I was very happy to hear of Assemblyman Thompson's letter to the governor. I am aware as a citizen of this state for twenty years, that the practice of the state police on our highways has been notoriously atrocious

as it applies to Black people in particular. We have the most heavily traveled road in the United States, the New Jersey Turnpike, and everybody virtually entering New York City, either from the south or the west, which the bulk of the population of the country, is entering through the New Jersey Turnpike. If you on your travels as to the New Jersey Turnpike were to look and to see and to make a guess as to the proportional number, based on race of people, stopped by the police, there will be no question in your mind, when you finish your trip along the New Jersey Turnpike, that the New Jersey State Police are racists.

Now if that is a serious concern, and if our primary law enforcement mechanism in the state of New Jersey is racist, why are we spending time passing legislation?

Assemblyman Baer:

The text to the bill, is basically whether someone purposely, knowingly or recklessly, which as you know means with conscious disregard of the basic value of a particular thing, threatens or attempts to put another in fear of bodily violence by doing this kind of thing. I will submit to you that those kinds of things are the kinds of things that we want to cover. We can theorize about all types of hypothetical things happening, but the reality is that there are homes where people are getting crosses burned on their lawns. Those people are terrorized, they are worried that somebody is going to come back and set fire to the house. Are kids safe, what's going to happen next, maybe it's just a prank, but can I afford to take a chance? Can I leave the home alone, what if somebody really does it? That's what I think that people are entitled to be protected against. Those people have rights and when we, as we inevitably must, balance peoples' rights one against another, I think we have to view what's happening out there. Now when it comes to kids and swastikas in a synagogue, that kind of thing can go either way. Primarily it wasn't intended that something with this severity would normally be used against kids, because you have the juvenile offender statutes, as offensive as those things are, but five years is a long time.

Comment:

The other thing is that the juvenile, they still look at the juvenile judge. He can either waive, I think they call a waiver, over to an adult court, or he can try it as a juvenile case?

Baer:

Absolutely. That's the way the juvenile offenders statute works and should work. I see no reason to deal differently here, if you have a serious crime. Are you going to not enact it because occasionally a juvenile might be caught in the net and therefore you won't have an effective instrument to use against a typical situation which isn't a juvenile

and likewise which is a totally different issue. There has been feeling on the part of the legislature that sometimes there are special circumstances with a juvenile, where the context and everything in committing a murder, or something else, is so severe, they waive that thing. Okay, but that happens rarely. It's the exception and it has to be done according to the particular situation. We ought to have something that is strong and effective for use in the situations that are likely to occur.

Quinn:

Isn't it true that the individual's reaction to actions under these statutes and under most civil rights statutes like this, is not sufficient to make the act illegal. I mean all of these statutes require that a certain intent be proven. That's the classic problem with all civil rights statutes. The fact that the harm was created, be it fears brought on by somebody burning a cross, or painting a swastika; or be it employment discrimination—the reality is that Black people are not being hired for particular positions by particular employers; be it the Voting Rights Act, where the reality is that a certain move made by a legislature has the effect of diluting the voting strength of the Blacks. That, itself, is not enough to make the act illegal.

Are you suggesting that this requirement of proving intent should be waived when it comes to this type of activity, or are your comments saying that in general you are recognizing that in matters of civil rights, the harmful effect has to be what triggers the illegality if the statute is going to have usefulness at all?

Baer:

It can trigger either from intent or from the reality of the action. But, intent of course, is a very difficult thing to prove. Intent puts a very difficult burden on the prosecutor and normally you cannot prove somebody's intent when they are doing something like that because that's what is in their head. Unless as a matter of fact, there has been a conspiracy, other people are involved, somebody testifies we are planning to do this because we wanted to do thus and so. Somebody has a witness as part of the group to establish that so that it can occur primarily from the effect but it has to be not a random effect. In other words, if your action puts another in fear of bodily violence, now you say normally, these incidents don't do that. Well, I can't accept that as a generalization. It depends upon the particular incident, some incidents do, some do not. How do you differentiate between robbery and other forms of theft? Is that putting somebody in fear of violence? Juries and prosecutors have been able to deal with that for generations, and is effective whether in fact you use a gun to put someone in fear, whether you use or have a knife at somebody's throat, or

whether it's one of a number of other circumstances, and you come up behind someone and still the circumstances are enough to put them in that kind of fear.

Quinn:

I didn't say that these acts don't put people in fear, just the opposite. I said that these acts do put people in fear, but the mere fact that these people were put in fear doesn't render whatever act put them in fear illegal unless you can prove that when the perpetrator committed that act, he had the intention of putting people in fear, and that is my criticism.

Comment:

That's the way they are being prosecuted. That's the way the courts are interpreting this.

Baer:

This one hasn't been interpreted yet, it's a new bill. That key to what you are talking about deals with language that's in other statutes, and maybe I'll agree in part with what you are saying.

QUESTION:

Isn't that what purposely, knowingly, or recklessly means?

Baer:

That's not what recklessly means, and recklessly is in there even though I'm sure my good friend would rather not have it there.

Comment:

Well, I shouldn't presume, but your predecessor didn't precisely for that reason, because recklessly means if you knew that normally let's say, burning a cross on someone's lawn at midnight, standing around in a lot of hoods and white sheets, is going to put a Black family in some degree of fear, or if you should have known.

Baer:

Even if the people who were doing it, say they were doing it for a prank, you've got to prove that they weren't. Well, you don't have to prove intent, if you can prove that that's the kind of thing that can put someone in fear, that's no secret, that's well known. They were recklessly disregarding the risk of the likelihood that that would put someone in fear, you've got them on the basis of that and that's why it's there so that this would be usable.

Jeff Fogel:

A couple of quick reactions, if I might. One is I'm not prepared to rely on Assemblyman Baer's good heart in how this statute is going to be enforced, and that's what he's asking us to do. He said it will depend on the circumstances, well okay, once we get to that point, we're talking about the discretion of the prosecutor. A prosecutor recognizes that he or she is in a posi-

tion for political reasons. We don't go around looking for the best lawyers to make them prosecutors. Every prosecutor in this state is in their position for political reasons, not because of merit or good heart. Beyond that then, not only do we have a prosecutor who is going to exercise discretion whether or not to bring prosecution, how to bring prosecution, and what to say in the course of that prosecution. Then we have another problem which is the jury system. We all believe in it, and yet we have a racist jury. We are not going to get the kind of results that Assemblyman Baer may have intended by this statute, so it is not sufficient to say, to utilize Assemblyman Baer's analysis of what should happen under this statute? Another point is that in a question, say of vandalism, I have no problem with saying right now our vandalism statute will say it's a fourth degree offense. If it's under 500 dollars, it's a third degree offense. If it's over a thousand dollars, I would have no problem enhancing that penalty if it was done with the intent of intimidating or harassing somebody. To me there's nothing sacrosanct about the amount of money involved, we can have other factors that are utilized to enhance penalties and much of the concern that Assemblyman Baer has expressed today, that would be covered by the statute and could be covered under our vandalism statute by making certain that you can pass the penalty when it's done for the purpose of harassing somebody because of their race, or because of their exercise of constitutional rights. Section 241, of 18 U.S.C. briefly reads as follows:

Any two or more persons who conspire to 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, is guilty of a crime.

Is that what Assemblyman Baer is going after? Yes, in many respects. Can I live with this? Yes. Have we lived with it? Yes. What's the problem with it? It's not being enforced. What's the priority? Not to pass more legislation, but to do something. We've got a situation that we were confronted with a racially mixed couple in the Morris County area who were the subject of extreme threats and bodily violence. These were the kind of threats of violence, and actual violence, throwing stones through the window, a small pipebomb on the front yard, and so on.

Are these criminal? Yes. What can we do about them? Well, we had many conversations with the city that was involved and with the county prosecutor for this family. Is it being provided? No. Can

we force them to provide it? No. Can the Assembly, can the legislature, help us with this problem? Yes. Why aren't they addressing this problem? Another rhetorical question back to the Assemblyman, instead of the problem that I say is already addressed, I say there are higher priorities to be dealt with in this whole area, than the question of passing the law that makes it a bigger crime to put a swastika on the side of a wall, than it makes it to put some other kind of appellation on the side of the wall. I'm concerned about the problem. I think we should prioritize and go after it. What I'm saying is, let's pass a law like this on the state level, but if we do and Attorney General Kimmelman doesn't want to enforce it, what do you do about it? There is still nothing you can do about it, neither you nor I, that's why I say we might want to find some private means to either force him to do something, or allow me to bring a criminal action. Now the Georgia NAACP, I don't think this has passed, has introduced what they called the Anti-Terrorism Act, but it's not to make more criminal penalties, but to put resources into the enforcement of current laws against the kinds of ethnic and racial terrorism that was being seen. The legislature would do well to look at this and to direct our law enforcement agencies from the Attorney General all the way down to put more resources into this area so that when we have a couple in Morris Plains area being harassed and intimidated because of their race, because it's a racially mixed couple, that there are statutes on the books that will say to that police chief, that will say to that county prosecutor, that will say to the Attorney General in New Jersey, you have got to put resources into this problem. That is a higher priority, and nothing is being done about that.

QUESTION:

I'm real concerned about what we talked about, what you were speaking about earlier, that is the State Troopers in New Jersey. It has gotten increasingly worse in the last two years. I recall when Joanne Chesimard was arrested and when the breakout occurred, I was riding the New Jersey Turnpike, and I had an afro then. I had an accident and he asked me for my license and registration, and I went to get it out of my glove compartment where I usually keep my registration, and by the time I had reached this far, (she indicates) towards my glove compartment, he was on one knee; he was trembling. I mean he was as afraid of me as I was of him and if I hadn't froze, I really believe that I would have been shot. I think the situation on the New Jersey Turnpike is extremely dangerous and I am hopeful.

Racially Motivated Violence In America

Federal Responsibility



MODERATOR

Arthur Kinoy is currently a Professor of Constitutional Law at the Rutgers University Law School in Newark, New Jersey. He was one of the lawyers who represented the Mississippi Freedom Democratic Party, the Student Nonviolent Coordinating Committee, the Southern Conference Educational Fund and the Southern Christian Leadership Conference. Professor Kinoy argued the case (*Dombrowski v. Pfister*) now known as one of the landmark decisions of the Warren Court in extending

federal protection to First Amendment rights. In 1969, Professor Kinoy, along with Professor Herbert Reid of Howard Law School argued the case of (*Powell v. McCormack*) in which the Supreme Court held unconstitutional the exclusion of Adam Clayton Powell from the House of Representatives. Professor Kinoy testified before Senator John Conyer's Subcommittee of the House Judiciary Committee on the causes of racially motivated violence and the ability of the federal government to address this issue.

PANELISTS

Wade Henderson is the Legislative Counsel for the American Civil Liberties Union. Mr. Henderson received his J.D. from the Rutgers Law School. He published a book called "Implications for Affirmative Admissions after Bakke." He is the former Executive Director of the Council on Legal Educational Opportunity (CLEO). He is also the former assistant dean of the Minority Student Program, at Rutgers Law School, in Newark.



William Kaplan is an associate of the Institute of Policy Studies which is based in Washington. He has done research work on the federal budget and is a former consultant to Congressman John Conyers, Jr. Mr. Kaplan was also a labor organizer.

Daniel Rinzel is the Chief of the Criminal Section of the Civil Rights Division. He received his Bachelors Degree from Marquette University, and he received his J.D. from the University of Wisconsin Law School. Mr. Rinzel worked as staff attorney for the Wisconsin Legal Council in Madison, Wisconsin from 1968-1969. He was also a trial attorney for the Civil Rights Division for the Department of Justice from 1969-1975. Mr. Rinzel was Deputy Chief of the Special Litigation section of the Civil Rights Division and he was also Deputy Chief of the Criminal Section of the Civil Rights Division from 1978-1979.



Betty Balley is presently a staff attorney for the Center for Constitutional Rights. She received her J.D. Degree from Rutgers University Law School. She served as chairperson on the Board of Directors of the College Community Child Care Center at Brooklyn College.

**CONFERENCE ON
RACIALLY MOTIVATED VIOLENCE
FEDERAL RESPONSIBILITY**

Arthur Kinoy:

We have a very exciting and wonderful collection of people to participate in this discussion. What we have worked out among ourselves is that each member of the panel is going to open up with her or his presentation about the fundamental nature of the question that we are facing in this workshop, for a short period of time (five to ten minutes). After we hear from the five members of the panel, we are opening up to full and complete discussion. Not only questions, but ideas, concepts, from everybody. And we will try very hard—and I tell you, I rarely have the opportunity of acting like Warren Burger with a gavel, you know, to keep people quiet. I'm always on the other side of the table, being told, "Keep quiet, your time is gone." So I will try very hard to remind the members of the panel when the time is gone.

Now the first member of the panel who is going to open up with her views of this question is Dr. Mary Berry who has been introduced to all of us, and all of us know, that she is not only a professor of history and law at Howard Law School, but until very recently was the Vice-Chairperson of the United States Commission for Civil Rights, and is now a commissioner of that Commission. And let me say one thing very personally, I just cannot recommend more strongly to every one of you the books that Dr. Berry has written, and it's a tragedy in a certain sense that those books aren't required reading in every school in the country. One of the strategies I'd like to see us work out is how we get books like hers spread all over the country now, and not buried, as they are by publishers and by the failure of the universities and schools to use them. Now Dr. Berry is going to open up.

Dr. Berry:

Thank you very much, Professor Kinoy. First of all, let me say something about the comment I made this morning about the unemployment rate and its relationship to racially targeted violence. In case there was some misunderstanding on the part of some people, I did not mean to say that unemployment was not a significant social problem. And I think we'd all probably agree with that.

Specifically, I will not talk about 241, 242, 245, and what they mean. You have heard that today. I will say that the U.S. Commission on Civil Rights believes that there is a sufficient statutory base at present on the books, for the Justice Department to prosecute more vigorously cases in which there are alleged perpetrators of racially targeted or motivated violence. We recognize that the Criminal Section of the Civil Rights Division had about twenty one people; it might have more than

that now. We've been demanding that more people be assigned there, because we think that the right to be free of racially motivated murder is of the highest priority, and that with racially motivated murder, a person can enjoy no other civil right at all. In other words, if you're dead you can't seek equal opportunity to housing, or education or anything else, so that should be a major priority of the Justice Department. We have recognized and made recommendations to the Congress and to the President on changes that should be made in these statutes to strengthen them, but we have reiterated time and time again, that we think the basis is there, and in particular, we have called attention to section 245 of the code. Section 245 resulted in part from recommendations that the Commission made to the Congress, and it does not require the same standards that are required in 241, 242, and we think it should be easier to get prosecutions there. The Commission urged President Carter and has urged President Reagan to designate a member of the cabinet to lead a strong united Federal response to activities of hate groups. In other words, we believe that there should be one person in the Federal government, who is designated by the President formally, and with his support, to take leadership on focusing on a united Federal response whether it's programs or Justice Department activities. The President himself needs to make it emphatically clear that he regards this as a matter of critical importance, and that racial violence will not be condoned. So that's what we've done on the Commission, and we think that the law is there and the prosecution should go forward. Thank you very much, Professor Kinoy.

Arthur Kinoy:

Thank you Dr. Berry. And now our next panelist, who is also going to put forward his thoughts. It was very, very exciting to the organizers of the conference when we received word that Mr. Rinzel, Daniel Rinzel had agreed to come to participate with us in this discussion. Mr. Rinzel is the Chief of the Criminal Section of the Civil Rights Division of the U.S. Department of Justice. And Mr. Rinzel is here to participate with us fully in respect to the problems that we're facing in this round table. Mr. Rinzel.

Daniel Rinzel:

Thank you, Professor Kinoy. It's certainly a privilege for me to be here and to be at the table with the very distinguished and very learned people who are here. I have some hesitancy in some of my remarks because I may be taking issue with some of the things they have to say and

I would hesitate to do that, based simply on the fact that I know the reputations of the people who are here and the activities that they have been engaged in over many years, in the cause of civil rights. I'm not here as a spokesman for the Reagan Administration. I have been in the Civil Rights Division during that entire time, and I've been there through several administrations. I am here to talk to you about something that I know about and about my responsibility which is, to some degree at least, the enforcement of criminal civil rights statutes, as they pertain to racial violence situations. I want to tell you, we were challenged, by our luncheon speaker, in a very dramatic and impressive speech to tell you what we're doing. That's one of the things I want to do. So I'll start off with some numbers.

During the past year, the first year of the current administration, we indicted 51 separate criminal civil rights violations in many places around the country. That compares to, during the first year of the previous administration, 28 cases that were indicted. I think those numbers alone should put, at least to some extent, aside the concern that some people have expressed or implied that nothing is being done on the Federal level in the criminal enforcement of civil rights. This is simply not fact.

During the past month, for example, the first year of the current administration, in January, during the past month or month and a half we have indicted four racial violence cases involving seven defendants in four different states: Maryland, Washington State, Ohio and Tennessee. All of those cases involved interference with housing rights. There were fire bombings, cross burnings, etc., directed against Black families who had moved or were trying to move into White neighborhoods. We currently have planned 4 to 5 federal grand jury investigations involving incidents of racially motivated violence. I mention these numbers to you because the facts are that we are doing some things. It may not be enough, there certainly is more that can be done but I don't want to leave you with the impression that almost nothing has happened in this area, or almost nothing does happen at all. It does happen. In addition to the cases that we have brought ourselves, we have cooperated in numerous instances, with local prosecutors, and local police departments, who are investigating or have investigated or brought charges in racial violence cases. An example is the Christopher case, in Buffalo, New York, where we did a substantial amount of investigation. Substantial investigation was made available to local prosecutors, of course, of the local investigation. Unfortunately, it resulted in acquittal.

We are in fact committed and I can tell you this as someone who's been there and my career has been in the Department of Justice and that's

where I'm working now, that there is no effort to stop cases. The only word that I get from my superiors is to make more cases. The only question that they have is whether there is enough evidence to justify that. Obviously there are many incidents of racially motivated violence which go unprosecuted. And the primary reason for that from our standpoint is the inability to identify, at least by criminal standards, proof beyond a reasonable doubt of the perpetrators; that is, who done it? People who burn crosses, people who engage in sniper attacks, normally don't leave their calling cards. In most situations, it is difficult to identify, at least by proof beyond a reasonable doubt, who the perpetrators are. Secondly, there are frequently, or sometimes at least, jurisdictional difficulties. I think it is very clear that under current law, not all acts of racially motivated violence violate federal law. This is unfortunate, but it is true. I may be taking issue with Dr. Berry. I'm not sure on this point, but while we certainly are open to and interested in any additional theories, and I think the work that Professor Kinoy particularly has done on the Thirteenth Amendment theory, in the conspiracy context under 241, is valuable, and helpful. I'm not sure that I agree entirely with it, but I think that's the kind of research, the kind of ideas, that I'm particularly interested in learning about at this conference, and exchanging ideas. We don't have the final word. We don't claim to have the final knowledge in this particular area.

241 is a statute which has a lot of complexities to it, although it's quite deceptively simple on its face. 242 has somewhat similar complexities, but I think it is very clear that not all acts of racially motivated violence violate federal law. I'll give you an example. The .22 caliber killing case in Buffalo, a white person walks up to a black person on the street, .22 caliber gun concealed in a brown paper bag, and for no reason, without saying anything, no apparent motive, walks up to him and places a gun to his head and kills him. Assuming that we could show racial motivation, and I think that's certainly arguable, the question I would ask anyone here and anyone at this table is, tell me what federal statute that particular action violated. I don't think there is any. Even if we accept Professor Kinoy's theory of the Thirteenth Amendment badge of slavery, and we could arguably say you could prosecute under 241, that's a conspiracy statute. It only applies to conspiracies, and is not applied to the individual action. 245 does not apply because walking down the street is not one of the federally protected activities under 245. Consequently, I see no basis for an allegation or for claiming that in that particular factual circumstance there is federal jurisdiction. I think Congress clearly has the authority under Section 2 of the Thirteenth Amendment, to pass legislation that would make

all acts of racially motivated violence federal crimes. Congress has not, however, done so. Now, I think I'm going to go into the description of 241, 242, and 245, because I think you may be aware that there are some vagueness problems associated with those statutes. As you may be aware in criminal prosecutions, one of the ways to challenge a criminal statute is to claim the statute is void for vagueness. The statute has to specifically give notice at least in some kind of terms, to the defendant of what the crime is that he's supposed to have committed, what action he's supposed to have violated, and what action is taken that supposedly violates the statute.

241 and 242 are both rather vaguely written and the Supreme Court has read into those statutes a requirement, of specific intent, in order to overcome the vagueness problem. That means that we have to show on the federal level beyond a reasonable doubt that the person acted with specific intent which is something beyond the normal criminal intent. Similarly, because these statutes, both 241 and 242, protect all rights under the Constitution or federal laws, rather than specifying the rights as 245 does, that means the right has to have been one made under U.S. vs. Guess, the Supreme Court decision, made certain by a court interpretation or otherwise. What that means is that it's difficult, very difficult, to develop new theories of law for the first time in criminal prosecutions, under 241 or 242.

Law is made under section 1983 of Title 42, under the Civil context by private litigants, establishing new rights, and then we use those rights to prosecute under 241, and to do it initially under 241, because of the vagueness problems in criminal prosecutions, is quite difficult, if there isn't some established law and that's one of my problems with the Thirteenth Amendment, badge of Slavery theory. I think that just about covers my remarks. I am interested in hearing from other panel members, and from members of the audience, and prepared to answer and discuss.

Arthur Kinoy:

Thank you Mr. Rinzel. The next participant in the panel is Mr. Wade Henderson. Mr. Henderson is presently the Legislative Counsel in Washington of the American Civil Liberties Union, and formerly the director for a number of years of CLEO, and very important for us to mention here, a graduate of the Rutgers Law School.

Wade Henderson:

I think that was the kindest comment of all so I accept that rather warm welcome. Let me just make several observations. After the presentation this morning, and the luncheon presentation, there's very little room for additional substantive comment and since we are trying to get input from the audience, let's just highlight several points,

and then hopefully we will have some kind of good dialogue.

First, the ACLU subscribes to the policy that criminal violence directed to identifiable racial groups, is, in and of itself, an inherent violation of personal freedoms. So we feel therefore, that civil rights, civil liberties organizations, the nation as a whole, need to view this issue as a top priority. Based on our conversations this morning, there seems to be a consensus around at least three points.

First, there is general acceptance that the genesis of racially motivated and racially targeted violence can be traced to efforts to disenfranchise blacks politically and economically and to frustrate efforts to overcome the status of inferiority associated with slavery. We therefore subscribe to the policies as enunciated by Professor Kinoy, Professor Scott, and others, in the excellent paper which is included in your package detailing the constitutional and statutory basis for federal action in this area. The emphasis on the Thirteenth Amendment is crucial to any analysis and understanding of the development of an overall federal response in this area. Secondly, it is vitally important to note that we believe the Constitution provides sufficient support for full federal involvement to resolve issues related to racially targeted, or racially motivated violence. We do not accept the theory that inaction can be attributable to the need for additional statutory protection. Therefore, inaction on the part of government officials in this area can only be seen as a root for a larger concern, that has to be taken into account which we will discuss momentarily. Third, we subscribe to the idea that the role of federal enforcement in protecting rights is critical in framing issues in the protection of constitutional interests to be preserved and, ultimately, in the development of rules for meaningful deterrents. Now we believe those three points proved a reasonable framework for the development of a larger matrix of consideration of a solution in this area. Once you analyze those three points, ultimately you come to the conclusion that the federal role as defined by the Executive Branch in its operation becomes very key in this area. The Justice Department is the executive agency for enforcement responsibility in charge.

The Leadership Conference for Civil Rights, which is a coalition organization of one hundred sixty three groups, issued a report in February of this year entitled, "Without Justice", a report on the conduct of the Justice Department in 1982. It was a survey of Justice Department activities in the first year of the Reagan administration, commissioned by the executive leadership of the Leadership Conference, out of a general concern that civil rights enforcement under the new administration was arguably weaker than it has been in previous administrations. While that

statement perhaps is not justifiable on its face, the report did highlight several areas I'd like to bring to your attention.

First, the report so far as its major findings are concerned, adopted these points: That the Justice Department through the highest officials, the Attorney General as well as the head of the Civil Rights Division, have in fact begun to repudiate the Supreme Court's definitive interpretation of the Constitution and laws; and that the Justice Department has abruptly switched sides in cases pending before the Supreme Court, and announced that it would seek the overturning of Supreme Court decisions, of very recent vintage, in disregard of certainty and continuity in the law; that it sought (meaning the Department) to undermine confidence in the judiciary, by launching a sweeping attack on the Federal courts for performing their constitutional role in protecting the rights of minorities from intrusion of majority will. Further, that the department established itself as a locus of anti-civil rights activity in the federal government, reaching into other agencies, to try to curb policies deemed overly protective of civil rights. And lastly, that the department cooperated in the corruption of the legal process, by allowing its decisions to be shaped by appeals from politicians, not based on the law. Now these are the major findings of the report that assessed the Justice Department's activity in the first year of the administration. While I don't take issue at all, with anything that Mr. Rinzel has said about the number of cases currently being pursued in the area by the Justice Department, the larger issue, I think, becomes clear in that the department sets the symbolic tone for the manner in which the government as reflected through its administration is committed to rights and principles of constitutional protection. So, while we may be able to identify specific instances of very solid performance in various components of the Department in the way in which it has carried out its enforcement responsibilities, the broader context in which this has to be viewed, points to the over-riding political nature of the development of any solution in this area, and I think that's really what we are here to talk about.

Mr. Rinzel mentioned earlier that Congress under Section 2 of the Thirteenth Amendment does have the power to enact additional statutory protection in this area to extend the general protections of 241 and 242. Of course, that's true. The point remains that Congress is unlikely to act and it's unlikely to act for very specific reasons. First of all, the legislative process, as you know, is extremely cumbersome. Congress at this point is highly divided and highly charged in a political atmosphere wrestling with a broad number of issues that are highly charged and highly politicized. Currently, there is an attempt to reinstitute an omnibus criminal code-provisions of 241 and

242, that would be generally applied, updated, streamlined and made generally more efficient as statutory law. Congress is unlikely to enact a criminal code this year, and may not enact one next year, because there is division on this issue. To my knowledge, the Department has not seen fit to come forward and to recommend legislation affirmatively. If it believes that it has no basis for action under current law, that is generally the way that the Justice Department or other executive branch agencies initiate action in Congress, to correct disparities in existing law. This is the kind of role that we need to encourage the Department to take. Now, obviously that is a very political judgement, political decision, and unless the communities that are most directly affected by this current onslaught begin to analyze the manner in which the political process can be affected through their input, then we are not likely to see, in the short term at least, any major solution coming out of a federal role in this area. Now one thing we've obviously got to do is to begin organizing around this issue, and to begin raising it to priority status, even within our own organizations. The hearings that were held under Congressman Conyers, and this conference being the first, I believe, of its kind to be held nationwide, is the beginning of an overall effort toward public education. The next step then begins with political organizing and ultimately translating that concern to the agendas of organizations that we are all a part of nationwide. Thank you.

Arthur Kinoy:

Thank you, Mr. Henderson. Our next participant is going to be Ms. Betty Bailey who is a staff attorney for the Center for Constitutional Rights, and is one of the members of the team of lawyers that Victor McTye spoke of at lunch, who just achieved that, and I think all of us would agree, fantastic victory in Chattanooga. And I have to say this also, Ms. Bailey is also a graduate of the Rutgers Law School.

Betty Bailey:

Mr. Rinzel said earlier, that one of the reasons that the Justice Department is not able to prosecute some of the racial violence cases is that there isn't enough evidence, or there isn't jurisdiction. He also said something which I found a little odd, that is, that there is no right to walk down the street. It's not a federally protected right. What I'd like to do is go over a few facts about Chattanooga.

On April 19, 1980, three white men went to a Ku Klux Klan meeting, they drank a few beers, after the meeting they proceeded to collect wood and gasoline, and then they proceeded to one of the defendants by the name of Thrash. They proceeded to his house, where they picked up a gun and ammunition which they placed in the back of a red car. After that they went into the heart of the

black community in Chattanooga, Tennessee and they burned a cross. That wasn't sufficient for them. After that they rode around the block and they came back two blocks from where they had burned the cross, they emptied their shotgun pellets into the bodies of four Black women. Then they proceeded a couple of blocks further, and they emptied another set of rounds, into the car near the home of Fannie Crumsey, who was then tending her garden, and she was struck by flying glass from the pellets of the car. There was a criminal trial in the state criminal court after that, and two of the men were acquitted, one was convicted on the lesser charge and spent approximately three months in prison.

The community of Chattanooga erupted after that and there were riots. The people decided that they were not going to take that kind of action anymore. They wanted justice so they came to us along with the NAACP and we filed suit on behalf of the women. We presented evidence that this group was akin to the historical Klan whose main purpose was to perpetuate white supremacy and this was done by using violence to intimidate black people. By using methods of intimidation, such as crossburnings and the shooting of these black women, these men were carrying out the purposes of the Klan, which was much like the historical Klan. Well in that case, on February 26, 1982, a jury after only two and a half hours of deliberation returned a verdict against all of the defendants and in favor of all the plaintiffs. They were awarded \$535,000 in punitive and compensatory damages. Three days later Federal Judge Frank Wilson issued an injunction enjoining the defendants, their agents, employees, officers, members, successors, and all persons in acts of concert or participation with them from assaulting, threatening, harassing, interfering with, intimidating, attempting to intimidate any Black person from exercising what he found was a constitutional right. That constitutional right was simply the right to peacefully and lawfully assemble and use travel upon the public sidewalk, and streets and highways. Here the federal court and jury found a violation where state criminal courts failed and where the Justice Department has yet to conclude its investigation. On the contrary, the Department has indicated in the past, that it has no jurisdiction. We won a legal victory in Chattanooga, but Chattanooga also provided an example of how the failure on the part of the Justice Department to prosecute or delay the prosecution of racially motivated violence can hamper a civil prosecution. For example, our efforts to find out the full extent of the conspiracy that culminated in the April 19, shooting was constantly frustrated by Defendant William Church who was the head of the Ku Klux Klan in Chattanooga, Tennessee. Church consistently used his Fifth Amendment privilege to

prevent us from getting needed information. Example: There were additional Klan members in another car that followed the red car from which the shots were fired and he refused to identify those people as well as laying out exactly what happened on that day. He was able to do that because of the continuing investigation by the Justice Department. In addition to using the law on the books, the Justice Department needs to move a little swifter. The role of the Federal government has always been important in fully protecting federally guaranteed rights, such as the right to be free from racial violence. Chattanooga shows that the role of the private bar is important in securing protection for constitutional rights. However, the federally guaranteed right to freedom and equality which we have on paper in the Thirteenth, Fourteenth and Fifteenth Amendments and the statutes discussed today are next to meaningless if our own federal government, the Justice Department, does not rigorously enforce these protections by using the power to prosecute perpetrators of racially motivated violence.

Arthur Kinoy:

Thank you. Our last participant from the panel is Bill Kaplan, who is an associate of the Institute for Policy Studies in Washington and for a number of years has been a consultant to Representative Conyers, in respect to the preparation of the hearings on racial violence which we had reported to us this afternoon. Bill.

Bill Kaplan:

I am pleased to hear Mr. Rinzel's comments on the increased number of new cases in the criminal section of the Civil Rights Division. I wouldn't quarrel with those numbers, but I want to give you some other numbers so that you get an entire picture of what's going on in the civil rights division. It is quite true that from the period of January 20, 1981 to January 1982, fifty one cases were filed regarding criminal prosecutions. In 1977 and 1978, in the same comparable period only twenty-eight were filed. But let's look at a couple of other figures and the figures I quoted to you today are from the testimony that Mr. Reynolds delivered on April 5, 1982 before the Congress. On housing and credit from 1981 to 1982, there were no new cases filed. 1977 to 1978 there were twelve in education, there were two in the same period. In special litigation there were none, 18 in '82, '77 to '78 there were five. In the voting section there were three filed from '81-'82, from '77-'78 there were 10. I think that's important. Excuse me, I skipped federal enforcement, '81-'82 six cases were filed. In '77-'78 seven cases were filed. I think that's important because the problems of getting the attention of the Civil Rights Division on the question of racially motivated violence cannot be isolated from other problems

In the Civil Rights Division. In fact, the Civil Rights Division may be the first division of the government that may secede from the government.

There are many fine individuals in the Civil Rights Division. It is a division that can be characterized as in mutiny against the policies of the Reagan administration. It is a division that on a number of occasions has now made it crystal clear to the Reagan administration that they do not accept the basic racist policies of this administration. Example: When the president decided to redefine the constitution, when the president decided to unilaterally ignore court decisions, and the regulations of several administrations, and mind you not liberal administrations, the Nixon administration, hardly a liberal administration, the Ford administration, hardly a liberal administration. The Reagan administration decided to unilaterally repeal the regulations and the laws on the books concerning tax exemptions for schools that discriminate. The Reagan administration decided to unilaterally repeal the regulations and laws under the Nixon administration, under the Ford administration and under the Carter administration.

In response to that type of conduct over one hundred attorneys in the Civil Rights Division signed a petition, had a meeting with Mr. Reynolds, and make it crystal clear to him that they were in vigorous disagreement with that policy. In fact, the meeting was so extraordinary that the press was physically excluded from the meeting so that the comments of the staff attorneys could not be recorded. Example: Mr. Reynolds hired an assistant who wrote a memo that the associate in the Justice Department wrote used phrases such as he disagreed with the ultimate goal of the Justice Department which seems to be racial mixing. In response to an allegation in the Yonkers suit which alleges that Black children are disproportionately placed in classes for the emotionally disturbed, this high ranking official in the Civil Rights Division said, "Well, disproportionate to what to their family backgrounds, to their cultural background, to their economic background? Again, scores of attorneys in the Civil Rights Division signed petitions, had a secret interview with the press, leaked the memo to the press, so that we could all see who it is, what it is, that high officials in the Reagan administration are really saying about Black Americans, so please understand the people in the Civil Rights Division. The tragedy of this administration is that it has declared war against all of the fine people in the government, bureaucracy. It intends to dismantle those bureaucracies, and to remove those officials who really try to do their jobs. Let me make two additional points. The last generation has seen a pattern of government officials behaving lawlessly, lawlessly in the State Department, in the Pentagon, and in the

Department of Justice, official lawlessness in the present era, has its roots back in the massive resistance of the 1950's and the 1960's. Need I point out that Congressmen and elected officials and southern judges oppose the implementation of decisions of the highest court in the land, indeed signed petitions calling for massive resistance to those court decisions.

The national government in the 1950's failed to adhere to the decisions of the highest court in the land, failed to implement the laws of the national government. As a consequence of that lawlessness, that official lawlessness, trust in the government weakened. Obedience to laws weakened. It is my belief that this official lawlessness by the United States Government served as a model and a protector for vigilantism and the growth of anti-democratic forces in the 1960's. It is clear that that type of official lawlessness is also exemplified by the war in Vietnam. When the United States in violation of the Constitution and the U.N. Charter, waged an illegal and, I might add, an immoral war in South East Asia. Again, I repeat the above statement, I might add, my point is, that obedience to criminal law depends not only on enforcement of that law, it depends on the willingness of the citizens to trust the government that must enforce the laws. A lawless government cannot secure the trust of the American people. Need I point out that in the state of Florida, now as we talk, paramilitary camps are training Nicaraguan exiles for an invasion of Nicaragua. I can think of no clearer violation of the so-called neutrality statute. The most important thing is a government that obeys and adheres to its own laws; a government that will serve as a model for the citizens of this great nation. Let me make one additional point that has been made already this morning by Dr. Brenner. Law enforcement and government leadership by themselves, however, will not be adequate in my opinion in resolving the current crisis that we face. It is my belief that this crisis has its roots in an economy at the edge of collapse. There does appear in my mind to be a relationship between rising unemployment and recession, and increasing levels of racially motivated violence. Anger and frustration seem to be displaced and projected onto minorities. Minorities become almost a lightning rod for the anger, frustration and hatred of American citizens. In conclusion, let me point out that this is not a new problem. The Jim Crow Laws came into existence in the 1890's in a time of economic crisis and it is important for all of us to learn the lesson of history.

Arthur Kinoy:

The floor is now opening up for full scale discussion. Dr. Berry who thought that she had to leave at 3:00 and now doesn't have to leave until later, has one comment to make that she excluded from her remarks.

Dr. Berry:

I'll be brief, let me just say that we can't believe the administration when any of the officials say to us that they are interested in prosecuting racially motivated violence or racially targeted violence, and that they are interested in these issues like we are, if as Wade Henderson stated, they don't propose changes in the law and they keep saying the law is interested in an issue and wants to do something and says that the law doesn't cover it, immediately they go on television and make a speech about how they need the law to be changed. You've seen that happen on a lot of issues, whether it's tax cuts or anything else. The Attorney General can say he wants the law changed so that certain cases can't be appealed to the Supreme Court, he said that if he thought there were some changes that needed to be made in 241, 242, and 245 he could push on that.

Daniel Rinzel:

There have been changes, as you know, based in part on what the Civil Rights Commission recommended, proposed by the administration and the Carter administration, for changes in 241, 242, and 245 which are encompassed in the criminal code revision which is now tied up on the Hill.

Dr. Berry:

I'm talking about this administration. I'm not talking about Jimmy Carter. I said that they could be loud and vocal in support of these changes and give them the emphasis that they give other matters, whether it's tax cuts or changing the appellate jurisdictions in the Supreme Court, you would hear major speeches on national TV if this were a matter of highest priority and they thought these changes ought to be pushed. Rather than some kind of pro forma response, that was the point I made. The second point that I would make is that all across the government in areas that have nothing to do with Civil Rights, we are seeing the same kind of reactionary interpretation of the Constitution. Whether it's in issues related to the environment you look at any agency of government, whether it's in the Labor Department which has turned almost into a Commerce Department, or whether it's anywhere in the government. We focus on civil rights, but the same principle of interpreting statutes in such a way that one can't do anything, so that the law can't respond is happening everywhere. We are suffering from it on civil rights issues because the people who happen to be holding the policy making positions do not even see that the same problems that we complain about exist. They're not even a priority and so they don't make any difference in interpretation when it comes to civil rights. It's just standard procedure all across the government. What we are doing really is legally trying to return

the nation to what it was under the Articles of Confederation. I said that to an audience last week at the University and somebody got up afterwards and said, "Do you think the President knows what the Articles of Confederation are?" I said, I don't know, but in any case, the final thing I'll say is that I feel very sorry for professionals who work in the Civil Rights Division, who work in Justice. I feel sorry for lawyers who have to work anywhere in the government nowadays. I agree with Bill, that there are a number of dedicated professionals there and that we ought to be as supportive of them as we can, but you cannot watch the Justice Department operations over the years as I have and read all of their memos and letters from lawyers, successive generations, without realizing that when it comes to racially targeted violence they have been excessively conservative, administration in and out. Every single memo is explaining why they can't prosecute, why they can't use Arthur Kinoy's Badges of Slavery theory, why they shouldn't bring more cases, just to let the law develop and grow to confront the courts with some of these issues, it's always what we cannot do. I don't have any sympathy for any of the lawyers in any administration who are in that division who have not been aggressive about bringing these cases and while I think it's great that you've got fifty, I'd like to ask how many complaints you have had? How many have you pursued? I do not know what the staff problems are, but the law is just too slow on this issue.

Arthur Kinoy:

We've had a lot of exciting ideas put forward, let's have as much discussion as we can. Let's try to keep ideas, remarks, questions, brief.

QUESTION:

My statement is directed to Mr. Rinzel. There is currently a complaint that has been pending with your office since 1976. The authority for bringing the complaint to your office is under the Civil Rights Act of 1964, 1968, 1860, 1866, 1871. The branch office here in Essex County denies that it has any responsibility and I would like to have your consent to send them to you directly.

Rinzel:

You don't have to send them to me, you can give them to me.

Response:

Mr. Rinzel, you made a statement that I want to respond to. You listed the number of indictments but not a single word have you mentioned about how many convictions you have had.

Rinzel:

Well, our conviction rate is not nearly as high as most U.S. attorneys have in run of the mill

criminal cases, and that's because the cases are difficult. It's particularly difficult to convince juries to convict. It is particularly true in police brutality cases, police misconduct cases. It is not as true anymore in the racial violence cases, in fact, there is a dramatic difference between our experience, particularly in the South now from what it was fifteen years ago when it was almost unheard of for a jury in the South to convict in a racially motivated violence case. That is not the case anymore. We routinely get convictions in cases, even in Alabama, Mississippi, and other places involving racially motivated violence. I would say, my estimate would be that our conviction rate in racially motivated violence cases is far higher than it is in police cases, whether there's a racial aspect to the police case or not. As you may know, we can prosecute police brutality cases, even if both parties are of the same race. There doesn't have to be any racial aspect to the case. Those cases tend to be very difficult, and I think probably are getting more difficult because juries find it very difficult to convict police officers of anything.

QUESTION:

I would like to say that I stand before you as an elected representative of poor people in the area in prison who have been writing to me. I think I hear things that I know will be very upsetting to poor people. Death is very imminent on the street for them, and also for us because we look like them. The white people in this country are generally lawless, and I would say that the only reason that those attorneys signed a petition was because they thought they were going to lose their jobs and that their agency would be closed and defunct so they signed a petition. If they had resigned their jobs, that would say to me, that they're serious. They have been in those jobs, for countless ages giving excuses as Dr. Berry pointed out, and I thank her for pointing that out. We have been dying in the streets while they give their excuses and posturing and postulating and a whole lot of other things that they do, trying to look like they're doing work. You can't be doing work if you are only prosecuting fifty cases. I want to tell you that regulations come out of Washington made by an all white group, no one gets upset. They're all white males, running these different departments and they are all getting paid.

Arthur Kinoy:

One word, I understand very clearly the depth of feeling that everyone has on all kinds of issues here. But what we must try to do, because we have very little time left, is address ourselves as much as possible not only to questions of people here, but to remember the responsibility thrown on us to begin to think through what our strategies for strengthening and meeting the question of

federal role and federal responsibility will be. Let's try to address ourselves to some of those questions, also.

QUESTION:

I work with Anti-Klan Network. I feel that there are many things that the Federal Government isn't doing. So I do have a question. First, can someone on the panel tell me what is in the new revision of the new criminal code on 240 as it appears as Section 241:242? Second question. The second paragraph of 241 says it's against the law to go on the premises of another in disguise. Doesn't this mean that cross burning will be against federal law if done under those conditions?

ANSWER:

Cross burning is against the law.

QUESTION:

Then I do have a comment on that one point. Reported to our office are thousands of cross burning incidents where we believe that more than one person was involved. We would be very glad to share this information with the Justice Department.

Rinzel:

I'd be very happy to receive it. Of course, the cross burning has to be done with the intent to interfere with one of the rights like housing.

Arthur Kinoy:

Here we have, I should say, a real disagreement. And let's understand it, because I and a number of other people who have worked in the civil rights movement have a very serious disagreement with any hesitation to prosecute because of cross burnings. Because if there's one thing American history has proven, it's this: what's the reason for cross burning? It's with the intent to what? To intimidate black people and third world people from what? Exercising their constitutional rights. So we have a considerable disagreement on that.

Response:

We will be glad to present the Justice Department with plenty of evidence on cross burnings and more than one person being involved, we think, in many different cases. The third thing is: Have any Klansmen been indicted in the last year? If the thinking is that the federal government doesn't have to protect the rights to life of people, then we have a problem.

Rinzel:

Yes.

QUESTION:

Have any been convicted?

Rinzel:

Four.

QUESTION:

Was this in Nashville?

Rinzel:

Yes, in Chattanooga, Alabama, Interstate transportation. Oh yes, there have been some cases that were brought that are not included here because they were not Civil Rights cases. They were prosecuted under ATF, gun and explosive statutes involving a conspiracy in North Carolina to blow up some business and a conspiracy in Baltimore to blow up an NAACP headquarters.

QUESTION:

None of those are in your Department?

Rinzel:

Yes, there was one.

QUESTION:

Four Klansmen?

Rinzel:

Yes, for Civil Rights. There was interference with the right to interstate travel, a black man, white woman, husband and wife, traveling together from Tennessee to Alabama and set upon by four men and beaten.

QUESTION:

So out of the fifty-one cases, one case involved actual Klan activity where there were Klansmen involved?

Rinzel:

Out of the fifty one cases, one involved Klansmen, right. That's correct.

QUESTION:

The last question I have we'll have to come back to 241 and it's revision. I understand that in the charter, that if they are involved in investigating and intervening and negotiations in a situation, their findings cannot be used subsequently in criminal prosecutions. I raise this because for community organizers and activists, I think the roles of the community relations Service, which has been painted for some people as a bright spot in the Civil Right Activity in the Justice Department. I don't happen to think so because people have been followed around by them and have played a cointel type role, but I want to know if it's true because we want to alert people about this if people talk to CRS (Community Relations Service). If there's a Klan shooting in the community and CRS goes in to cool things down as they do, and people talk to them in the Black community, which a lot of people still do, or in the white community, is it true that what they tell

cannot be used, that there can be no criminal proceedings following that? If they're involved in the situation to reconcile? What is the exact status there?

Rinzel:

I think I can answer that. The Community Relations Service is not an investigative agency, and is careful to avoid that role because they are a conciliation agency. If they're going to work with both sides in a particular dispute they have to be able to have some credibility that they're not there trying to investigate either side. The fact is that the Community Relations Service does and will advise community people about where they can make complaints and where they can take their complaints and will, on occasion, alert us to the fact that there are community people who want to make complaints. They are not however, a conduit for information. There is nothing whatsoever, to prevent us from prosecuting events that may have occurred to give rise to that situation. They are not an investigative agency, they are a conciliation group. They are very careful to try to maintain that credibility. If it was felt that they were out spying on people and providing information to law enforcement authorities for purposes of criminal prosecution, they do not believe that they would make any progress.

Wade Henderson:

You asked earlier about the three criminal code bills or rather the criminal codes in the division. There are three bills currently pending in the Congress, two are in the House of Representatives, both under the jurisdiction of the Subcommittee of Congressman Conyers. One is currently pending in the Senate. Now each of the bills takes a different approach to Section 241 and 242 and those approaches in the Senate bill, the approaches with respect to actual offenses are enumerated. The House bill under the authorship of Congressman Conyers, at least from the ACLU standpoint, is considered the best of three bills. Now there seems to be some level of an implicit repudiation of the notion that the Justice Department is prepared to take the affirmed position about the legislation and how it can be used affirmatively. As I noted earlier, if in fact there are criticisms with current law, the way most agencies handle that is to bring forward their own preferred approach as to how current law can be brought up to standard through Congressional action. And this has not yet been done.

QUESTION:

I'd like to ask a question, focusing on the current administration on having directed Mr. French that class actions are not economically feasible, and in the matters of employee and sex discrimination in employment be discontinued.

Many people are aware that in the Justice Department, Mr. French is moving toward discontinuing busing of which I don't approve because I don't think it is the answer.

Arthur Kinoy:

Dr. Berry wants to answer your question.

Mary Berry:

I think I understand the drift of what you're saying. The Commission on Civil Rights has made a full blown criticism of the administration's position on a number of issues you've raised. Let me just say quickly in the interest of time that the administration, has another kind of pernicious bill which is on the hill, called the Wednesday Group Bill. The Civil Rights of 1982, and all the positions that Mr. Reynolds has been taking, and Mr. William French Smith and the others on these civil rights matters focus on such things as finding individual violators when you claim that there has been a civil rights violation in a sex or race case, and punishing that individual violator if they can determine that the individual violator had reason to believe that when he violated your rights he was violating your rights, and you must prove that. It ignores the whole doctrine of institutional discrimination which that you may not be able to say that X was the guy who did it to me, because the whole system in which X is involved did it to you. That's one problem and when you start talking about reason to believe and intent requirements, we all know how difficult that is to prove.

On the issue of school desegregation and busing, first of all polls show that while the administration keeps saying that most blacks don't support the idea of busing, that well over 65% of Black people still support the idea that there is a constitutional right to use any remedy that is ordered by a court, including busing in school desegregation cases and to argue otherwise flies in the face of the facts. Furthermore, the administration says instead of supporting busing as the answer which nobody has ever said is the answer, we are going to support quality education. At the same time that it does that, the Commission has reported in a study on the impact of budget cuts on civil rights, it has cut all the federal budget that relates to quality education. It's sort of a now you see it, now you don't pea and shell game. When you look to find the quality, you discover that quality is not there either. No one has yet to tell us how we are going to get this quality at the same time. I hope people are not deceived and it's not just the administration. There are many people in the Congress, especially on the Senate side, who hold such pernicious views in my opinion. We must be on guard for this sort of insidious undermining and sapping on the whole doctrine on which civil

rights progress has been based.

Shelly Wong:

I have a question for Mr. Kaplan who last night expressed to me that he had questions about whether there was federal conspiracy in the Greensboro murders. I wanted to relate the question to a concern that I had around the Grand Jury that is convening right now in North Carolina. The concern is that the Justice Department fully prosecute and present evidence to the Grand Jury of all those responsible for the murders on November 3, all Ku Klux Klan, Nazis, and government agents that were involved, evidence has emerged that implicates them at some level. The concern is that the first witness with the Justice Department introduced to the Grand Jury to orient the Grand Jury as to the Irresponsibility, is an FBI agent who was in North Carolina during the time of the investigation of the Communist Workers Party just before the murders. Those records of that investigation have never been made public, or available to our attorneys. My question to Mr. Kaplan and to the panelists, but particularly Mr. Kaplan, do you feel that there is a conflict of interest involved when the Justice Department, which is convening the Grand Jury, is defending in our Civil Rights suit some of the various parties like the Bureau of Alcohol, Tobacco and Firearms, and the FBI team.

Bill Kaplan:

I'm very pleased that the Civil Rights Division has in fact empanelled the Grand Jury and that the Grand Jury has been out now for several weeks and I welcome that. I hope and I am sure the Congressmen hope that the Grand Jury will be thorough and will take a look at all aspects of this case. It's very regrettable that it has taken several years before we got a Grand Jury, and as Miss Bowman pointed out at lunch through the vehicle of hearings in the Congress, we did bring Professor Van Alstyne from Duke University before the Congress, to make crystal clear that there were plenty of grounds for Federal jurisdiction in this case. We did forward that to the Justice Department. It is my belief that that did play a critical role in getting the Justice Department to empanel the Grand Jury. In addition, we had a meeting with Mr. Reynolds of the Civil Rights Division and made clear to him our concerns that this matter be looked into. As to the specific question of other agencies involved, I can only say that on a personal level I haven't seen any conclusive evidence which would convince me that the Bureau of Alcohol and Tobacco and Firearms was directly involved in the murder of these people. But having said that, doesn't mean that that shouldn't be looked into by the Grand Jury and I hope the Grand Jury will be thorough in its work. But I really think the question as to

whether there was any involvement of the Bureau of Alcohol, Tobacco and Firearms really ought not to be addressed to me for the simple reason that I don't work for the Justice Department. Mr. Rinzel does, and that may be kind of a dodge. I hope people here don't see it like that, and I think Mr. Rinzel should answer that question, not me.

Arthur Kinoy:

I don't think that with our time situation, we're going to be able to go further into this, but I would suggest that we find a way after the end of the workshop to continue this particular discussion back and forth.

Comment:

I'm not a law student, but I'm Black. The violence that has been discussed here today is racial violence, that we can see. The racial violence I'm talking about now is racial violence that we can't see. I live in a 99% Black complex in Pierce Manor Elizabeth and I'm being forced out of my home. I live in all white area. I'm a middle income individual, but racial violence is perpetrated on me. This is a very bad time when Reagan is cutting the budget, and we have the government giving one hundred and seventy million dollars to get me out of my home saying that I make too much money to get rent subsidy.

Arthur Kinoy:

Let me say this. As a resident of New Jersey and someone who has been very much involved in New Jersey affairs in recent years, I know that the crisis in the Pierce Manor situation is one of the most serious facing the people of this state at this moment, it is one of the most serious evidences, yes, of sophisticated racially motivated violence against three hundred families. I would like to suggest that because of our time situation, we obviously cannot discuss this altogether, but that we take a concrete step. The step is that the sisters and brothers representing the families arrange right now, as soon as we break, a meeting with the representatives of Congressman Conyers, who are here, to have a discussion as to what

emergency aid they can suggest from a national federal point of view, and with the representative of the Justice Department here, and with the representative of the U.S. Civil Rights Commission, who is here, and we set up meetings and discussions to consider this question and to help this situation in every way. Can we agree to this?

Now, sisters and brothers, we have a serious problem. Out of consideration to the other sisters and brothers who have to meet in this room, we have to conclude now. I just want to say one quick thing at the end of this session. I think everybody will admit that I have shown enormous discipline in not speaking at a million different points. I have one thing to say. I think we have shown that we have barely begun to discuss this critical question of the federal role, and one thing that must emerge from this conference is a continued coordination of our work so that we find the ways to continue to discuss and act upon these questions and certain things that have come up here that just blow my mind, they're so amazing.

I have to share this with you. This is the first time in thirty years that I have ever heard a representative of the Department of Justice say that the theories that I and a number of other people like Judge John Minor Wisdom have put forward are worth studying. Therefore, I'd like to propose that if the members of the Civil Rights Division of the Justice Department want to come to a seminar to be held at Rutgers Law School to study the 13th Amendment, we'll be pleased to do that.

Secondly, we have to put our heads together on a whole series of actions that we can see the Department of Justice can take at this time if they will do so, and we have to demand that they do so—to show what? What everybody has been talking about all day today. To show the forces of hatred throughout this country that the federal government is committed to an opposition to their plans. And if the Department of Justice refuses to take these symbolic national actions, then we have to figure out how to do it ourselves. And that's what we must do.

Racially Motivated Violence In America

Police Violence

MODERATOR

Charles Jones is presently an Associate Professor at Rutgers Law School. He received his J.D. Degree from Depaul University in Illinois, and his M.P.A. from Harvard University. Professor Jones worked as Assistant Staff attorney with the NAACP Legal Defense and Educational Fund. He published two articles, "Negro Voting in the South" and "SNCC Non-violence and Revolution."



PANELISTS



Martha Fleetwood attended Harvard Law School and received her J.D. degree in 1977. From 1980-1982, she was the Project Director for the NAACP. Ms. Fleetwood was a trial attorney for the Special Litigation Section of the Civil Rights Division, Department of Justice. She has handled cases involving the constitutional rights of incarcerated persons. Her list of publications includes an organizing guide on Police-Citizen Violence, which she did for the NAACP, and another work entitled "A Minority Perspective on Policing".

Dr. James Fyle is the Associate Professor of Justice at American University. He is also a Senior Fellow at the Police Foundation. Mr. Fyle was a member of the New York City Police Department for 16 years. He left the Department in 1979 as Lieutenant. He received his Ph.D. in Criminal Justice from the State University in Albany, New York. He has published and lectured extensively on Police-Citizen Violence.





Hubert Williams is the Director of the Police Department in Newark. He received his Bachelors Degree from John Jay College of Criminal Justice, and his J.D. degree from Rutgers Law School in Newark. He is a former member of the Board of Directors for the National Association of Urban Criminal Justice Planners. His list of publications include a book on "Police Chiefs Magazine Minority Representation within Law Enforcement," and the "National Criminal Justice Reference Service Police Use of Deadly Force." Director Williams received the Bronze Shield Merit Award and has been listed in Who's Who in Government, and Who's Who Among Black Americans.

Dr. Jonathan Rubenstein, see panelists under Causes and Nature



Steven Winter is presently Assistant Counselor with the NAACP Legal Defense and Education Fund. He is a graduate of Columbia Law School. He clerked for Judge Hayes of the Second Circuit Co

**CONFERENCE ON
RACIALLY MOTIVATED VIOLENCE
POLICE VIOLENCE WORKSHOP**

Charles Jones:

I want to set a framework for the discussion. When I met with the panelists, they agreed that the issues had to be rewritten completely. So, what we have done is to change, basically, the discussion of the issues together and have each panelist address them briefly for three to four minutes until we have discussed all issues. The issues we are concentrating on are: What is the role of police in contemporary society, and what is racially motivated violence?

We have a very distinguished panel to discuss these issues. The panel is composed of people who bring us a variety of backgrounds. They are both academics and police officers with theoretical and practical perspectives. For example, Hubert Williams, who is now the Police Director of the Police Department in the city of Newark, is a Rutgers Law School graduate, class of 1974, a member of the New Jersey Bar, and has degrees in Police Science and Criminal Justice. He has been in his present job for eight years. So he's bringing both a theoretical and practical perspective to the panel. Steven Winter is a graduate of Columbia Law School Class of 1977. He clerked for Judge Hayes on the Second Circuit and is presently Assistant Counsel for the NAACP Legal Defense and Education Fund and has been for the last three and a half years. While in that job he has been involved with both prisoners' rights litigation and in police violence suits.

Martha Fleetwood is a 1977 graduate of Harvard Law School. She clerked with Judge Wade McCree both when he was on the court as well as being Special Assistant to him when he served as Solicitor General for the United States. She now works with the NAACP and has been Project Director of the Police Citizens Violence Project. Dr. James Fyfe is a 1978 graduate of the SUNY Albany Criminal Justice Program from which he received his Ph.D. He was a New York City policeman for 16 years, became a Lieutenant, and then went into academia and is now an Associate Professor at American University School of Criminal Justice and Senior Fellow of the Police Foundation in Washington.

He has written extensively in the area of deadly force and has been a consultant to both Marty Fleetwood and Steven Winter.

Dr. Jonathan Rubenstein is a 1968 graduate of Harvard University receiving his Ph.D. in history. Jonathan went to Philadelphia and became a member of the police academy from which he graduated and then did a study of the Phila-

delphia Police Department. The study now known as "City Police" was written in 1973. Since then, Jonathan has been a Director of the Center for Research on Institutions and Social Policy in New York and a very close friend of mine. That is our panel. What I would like to do is take the issues up in turn as I describe them to you and ask each panelist to address the issue in the order that we agreed upon.

The first issues, the role of police in contemporary society will be addressed by Dr. Rubenstein, Mr. Williams, Dr. Fyfe, Marty Fleetwood and Steven Winter in that order.

Jonathan Rubenstein:

I have the luxury of taking the high road in discussing the theoretical aspects of these problems. The question is, what is the role of the police in maintaining order in contemporary society? Order is a neutral term and has no political context in theory and it has no moral context. It is exactly what it says. Order! If we view it from that point of view, then many of the explosive and real issues regarding the police or political institutions fall away and the question really becomes uninteresting. We live today where the police system is totally irrelevant to much of the violence and much of the disorder that we have to contend with. These panelists have to litigate trying to salvage the lives of unfortunate people who come under the brunt of policemen with their nightsticks. The system that we have inherited and embroiled and embroidered, and to a substantial degree made the object of contempt, was created in England.

Over a very long period of time it was opposed in every step of the way throughout the 18th century by very bright minded, great thinking people usually great people with great influence in society who viewed the creation of a centralized uniformed urban police force as a direct threat to traditional liberty. We now have such a system that has been in place for a very long time. It is used by those people who originally would have opposed it as in the past, as in the protection and preservation of order against forces of disorder, when in fact we see all about us the evidence of disorder and incapacity, of the police to deal with order and the maintenance of order in a meaningful human sense in this city and in New York City and many other cities. We have watched the police who have stood by and watched the cities being burned to the ground, and what they have done is maintain order. Every effort that they make under the current system of policing

Involves the profound invasion of peoples' rights of privacy, and it touches upon the nerves and emotional concerns of people who are truly disadvantaged and who know the police have, even with the best intentions, broken into people's houses to save them from being ripped off or murdered by their relatives. It is very simple to sit here and say that we need a new system of policing and there is no question that we do. In my mind it will take 50 or 75 years to create the system of policing that has to be based on the reality of a huge change in the distribution of information, and a huge amount of awareness that people have their differences with other people and that the reactions vary in the different communities within the city.

Hubert Williams:

One of the questions that was raised by Jonathan was the irrelevancy of the policing system with respect to its responsibility to maintaining order within the society. At least we assume that is their role and we assume that that's what they're supposed to do. But if all we look at is the police and what they do, and what they fail to do, it will be impossible for us to get a sense of the problems and the dilemma faced by the society, with respect to crime and with respect to decadence and disorder. I do not believe that the question of order is discernable when the whole social fabric has fallen.

Part of the police role in maintaining order in the society is insuring that people can function at a quality of life that is essential for their survival. Let me be more specific. Maybe there is a difference between the function of the police, to enforce the law, which is specific, and the function of the police to maintain order, which is general.

Let's say for example, that you have in a tough area of the city, a large concentration of people and they are roving about. People are in front of businesses and homes, the clientele can't go into the businesses and the peace within the domiciles is affected by the crowd that is moving about. So you have conflicting values at play. There is no law necessarily being violated. The police have a role to make people move on, to change their habits or what they're doing to insure the peace and to insure that business can be conducted, that people as well as merchants can go about their business in a regular fashion that may be distinguishable from the question of the police enforcement of the law.

If you were to ask the average citizen what they were to expect the police do, they would be general, they want to see the police eliminate the crime problem that exists in the city. They want to see the level of the quality of life improved in this city, so that violence and fear do not threaten their existence.

But what is it that you want the police to do? What is it that the police should do to make these things happen? Well the police ought to arrest those people that are creating the problem that make this decadence within this system. They ought to be arrested and taken out so that the rest of us can function at some level of normality. Well, police are arresting more people than they ever have before and police traditionally complain that it is really the judiciary that fails to discharge its responsibility. Five years ago, 250,000 Americans were incarcerated. Today it is 350,000. You find for example, in this country, that we incarcerate more of our citizens than any country among the western democracies. There is no country that incarcerates more people than we do. So clearly it is the police' responsibility, and a police power, to effectuate an arrest to alleviate the crime conditions. They are doing that. The judiciary is putting them in jail, and the conditions continue to be exasperating. Obviously, there is more to the problem.

Order keeping is clearly a responsibility that may or may not involve a specific enforcement of explicit laws. Police also have the responsibility to enforce all the laws within the parameters of their discretion which is extremely broad and often complained about. People expect police to be about everything that you can imagine. I don't think that the police have failed the system and I don't think that the system is irrelevant. I think that the volume has overwhelmed the system and that we are asking the wrong questions. The question should not be why crime is so bad or why the police aren't doing something about it. The question should be how come Americans are committing so much crime today?

James Fyfe:

I probably fall somewhere between Director Williams and Dr. Rubenstein. My feeling is that James T. Willison is correct when he says that the police function is maintaining order. And, I think the enforcement of the delivery of services is not the function of the police. There are tools by which the police fulfill their roles so that the cops are not out there to enforce the laws, or deliver services per se, they do those things, there are devices that the police use to maintain order. I know that Dr. Rubenstein gets into a lot of political definitions of whose order and whose law, and I think that if we say that order in a democracy should be defined as a quality of life, the police are out there doing everything they can to impact favorably on the quality of life for all citizens.

When I was in New York City, for example, and the city ran out of funds, Mayor Beame came down with a "Management by Objectives" system. He said that the primary objectives of all executive agencies of New York City was to pro-

fect the tax payers of the city and that included the police. And, the police protected the tax payers by making the city a desirable place to live by making sure that the city does not lose all of its population and become a nonentity. So, the fire department protects the tax payers by making sure that the buildings are not burned down and by putting fires out promptly, maintaining order and protecting the tax payers and preserving the quality of life for all citizens. These are interchangeable terms and that's what the police are all about.

Under maintaining order, we can list specific obligations of the police, the one that is most human, and the one by which all police operations and every action of every police officer should be measured, is the protection of life. Any police action should be congruent with the cop's obligation under that broad heading of maintaining order.

There are a couple of comments that I would direct to Director Williams and Dr. Rubenstein. One has to do with Hubert saying for example, that the police have been singled out and are not usually identified as part of the criminal justice system. I would take that a bit further and say that the criminal justice system has been singled out by what I call right thinking people because there is no such thing as a criminal justice problem, and there is no such thing as a police problem and these are society's problems. The police and the criminal justice system are just one institution and by the time people come into contact with that institution every other institution has failed them or not addressed their needs.

So we trace history and we find that the police are a recent invention, and that they were only invented because of what Dr. Rubenstein points out, greater organization in the 18th and 19th centuries. Prior to that time, the problems of law and order, and maintaining order and enforcing order were societal obligations, so we go back to the lue and cry.

I think that the police structure may be irrelevant in the sense that people have put unreasonable expectations on the police. They just cannot do what they are expected to do. Another thing that I think is irrelevant is the organization of the police. I do not think the police function is irrelevant at all, but if you look at the way police organizations are structured, based on a military model, everything is rigid and hierarchical. If you think about the military model, you find that the guy at the bottom has no discretion. He is a soldier and his is not to wonder why, but his is to do or die. The military model is highly centralized and when the commander says "hit the beach", everybody hits the beach. The only decision that they can make is whether to duck or to fire two shots or three shots, but if you think about the

police, Director Williams has very little discretion. The model on which the police are based is one that assumes great discretion at the top and very little discretion at the bottom and that is not the way police operate. Director Williams is certainly not a free agent and the people who work with him out in the police cars exercise a whole lot more discretion than he does. So I think that there is real relevance. We should start thinking about reshaping police agencies, and redefining their relationship with the rest of society.

Marty Fleetwood:

I have some comments to make about what everyone has said. First of all, as for the history of the police, I think largely ignored is the period that has to do with slavery. The role of the police and the interaction with the Black community didn't begin back in England, it began with the patty rollers, the patrollers, during slavery, the people who maintained order and upheld slaveocracy. In 1690, the state legislature in South Carolina set up the first official patrol system. They didn't have police departments. They didn't have an urban area. But they had a patrol system to keep the slaves in their place. That was in 1690.

In Mississippi, the first poll tax (you all know about poll taxes) was enacted to pay for a patrol system, to monitor the slaves. That shouldn't be ignored when we talk about the police role vis a vis, the Black community? Black people are certainly among the greatest victims of police violence, and racially motivated violence. So, Director Williams, in his comment about what people want from the police department and what is the typical citizen's response, I think is very accurate. I think what needs to happen and what he has been very helpful to me in doing in the project that I have directed, is going out and talking to community groups, talking to citizens and bringing their level of education and their level of sophistication about the police department role up to a level wherein they can articulate in a more sophisticated fashion what they want from the police department.

When we come to what Dr. Fyfe said about what is the role and the abdication on the part of the power structure, and turning to paid mercenaries to maintain order, the Black community voice is making a decision what the role of the police should be. It is up to us to start focusing on what we want from the police and making our voices heard. That has got to happen city by city and town by town. It is going to take grassroots organization, and it is going to take people sitting down in groups in homes and churches and wherever else, and talking about what we want from the police. Do we want maintenance of order, do we want enforcement of the law, what do we want? What does that come down to? How many cops do we want patrolling our streets?

Where do we want them to be assigned? Where do we want the precinct stations to be? Citizen participation is important in determining how the society should function because the society is not now functioning to our benefit.

Steven Winter:

Well, I think I have an unusual situation on this panel. I have the position of going last, and it is going to change the total discussion.

It seems to me that starting at the beginning with Dr. Rubenstein's point about order, a neutral word, suggests what I think is a key issue in the role of the police. In real life, order is a real term and when Jim Fyfe mentioned that Mayor Beame said a requisite role of the city police is to protect the tax payers, I think he was articulating a concept that was not related during the fiscal crisis. It seems to me that the role of the police in modern society is to maintain order and that suggests a very precise order which is the order of the powerful classes in this society. It strikes me as no accident that police organization is based on a military model, if you view their essential role, their unspoken role, as maintaining order. Something that I found rather striking and that well illustrates this perspective is a Public Broadcasting System (PBS) special, called "Police Station." This is an exercise where a husband and a wife team go around with New York Police at one of the precincts. At one point in this hour long film they interviewed the patrol manager who, by occupation and role in the socio-economic status one would expect to be an extremely conservative man; he said, "It is a shit can out there, and they expect us to keep the lid on." I think that that should be an important perspective when we look at the role of police in society.

The question of racially motivated violence, or any other violence on the part of the police involves two issues that are somewhat conflicting. That is the question of having a police force that is going to be restrained from acting improperly and at the same time having a police force that would be significantly aggressive, to deal with very aggressive people that are committing crimes against society.

A number of crime devices can be instituted, but I want to talk a little about control, in general; first I think most people think about a set of written regulations that will govern police in society, and then we think of some sort of mechanism that will provide for the enforcement of those regulations. Many people argue that the police are not capable of providing for their own discipline and that they can never be objective by disciplining themselves and what we need is some sort of outside civilian review. The notion of review is in fact a mechanism that will ensure that whatever rules or regulations we have written they will be properly enforced. We need to know, in the police

department, appropriate written regulations that will govern police conduct. Beyond the written regulation is the question of the enforcement mechanism. One of the problems that you face when you start to analyze the nature of those mechanisms is the fact that the incidents that involve police misbehavior are basically invisible incidents. That is they occur in areas that are remote locations and in ways that the only witnesses are the people themselves.

Generally, the police to some degree are a fraternity and they tend to be supportive of each other and because of that the notion of review is important. I think that you need to understand that unless you can regulate and control the conduct of the officers from the outside you will never ensure that those cops are going to be acting properly because the only ones that have control of the structure are on the inside.

I am not arguing totally against review, which I think is appropriate, but I am suggesting the relative impotency of that approach with respect to controlling what police do. Now, I have learned that a number of things are necessary. One, that in spite of what you may say you want in the written directives of what police should do, cops have more say than anybody else I have ever come in contact with as a group. They can discern your level of intent and commitment to the enforcement of those rules and regulations even if it means losing his job. Unions in police departments are highly organized.

One of the things that I have learned in looking at the question of the use of force, use of that gun, which is the most legal form of police violence, is that the control has to come from the leadership in the police department and society must hold that leadership accountable. Black communities need to know something about that structure and how it operates and have sufficient political advocacy within the community to ensure that the person on top is going to act properly, or not remain in the job. That is essential if you are going to deal with the issue of firearms use. The question of who enforces at the top is crucial. If you are going to get someone in control who is accountable to the community, he has to establish for himself mechanisms of control that will put him on notice if something happens, because very often, in a large bureaucratic organization, that is somewhat of a fraternity, he may be deemed an outsider or clearly not a participant in supporting the game plans. Therefore, there needs to be established a sufficient investigative mechanism that is going to have adequate integrity and that will conduct investigations properly and that will bring civilian witnesses and not rely totally on witnesses from the police department.

One of the things that you learn, as an investigator, is that it is not what you include, but what

you exclude as well. If you do not include those witnesses that may be there, if you don't exercise diligence to find them and bring them into the process even though they may be somewhat reluctant, you are never going to get the whole truth. So, part of the process of control is notice. It is having a sufficient investigative mechanism, it is having a person on top sufficiently committed to ensure that the job is done properly, and for the community to have mechanisms of accountability. To me, that means knowledge.

James Fyle:

People as a rule are very unknowledgeable about what is going on in the police department, and don't really want to know. I think that if we are going to deal with police violence in the minority communities then we have to become educated about the police department. If we fail to do that, we will never deal with the problems of police violence. Those of you who think that the problem can be controlled from the outside are mistaken. You must have a combination of forces with a major force being on the inside with accountability. My area of study has been with the use of deadly force.

When we talk about deadly force we have to talk about the shootings of other people, whether or not they kill the other person. The intent of the officer is the same whenever he points his gun at another human being and pulls the trigger. The International Association of Chiefs of Police has just completed a study which is in draft form. There are 17,000 police departments in the United States and when I finished my study, (I did my doctoral dissertation on the police force in New York City), the people that I worked with used their guns in a very restrained way. If you look at the IACP study, which surveys the 54 largest cities in the United States, you will find that the rates of fatal shootings vary almost 20-fold among those 54 largest cities.

Newark and New Orleans are two extremes. A police officer in New Orleans is ten times more likely to have shot and killed someone between 1975 and 1979 as a cop in Newark. One who lives in Newark can say that although Newark is ten times as violent as New Orleans, the cops are not responding to violence out there in the street ten times as frequently in New Orleans as they are in Newark. The rates among the cities vary tremendously. The cities in which deadly force rules, policies and enforcement procedures and public recording procedures have been instituted and have experienced drops this year. Last year, and for the five or six years before that, 350 or 400 officers fired their guns. Even though the crime rate is increasing and the activity rate of New York is increasing in terms of arrests and aggressiveness, the number of shootings have gone way down. The same thing has been experi-

enced in Kansas City, Missouri and in Atlanta. The reverse is true in other cities. For example, I have a lot of shooting data in Philadelphia. In 1972, when Frank Rizzo became the mayor of Philadelphia, the number of people shot by the police increased 25%. When Frank Rizzo left his office the number of people shot by the police declined about 75%. It's not enough to know what kind of and how many shootings there are, you have to know what the people are doing. I like to use numbers and although as Hubert said, we can't know what happened in an event, you can look at the patterns that come in the data. I did some work comparing New York City and Philadelphia in two different studies. The one I can talk about shows that the Philadelphia officer, in the early seventies, was about twice as likely to shoot, shoot and wound or kill someone, as a New York City officer. Philly isn't twice as violent as New York City. I could find that none of the crime rates or victimization rates varied by more than three percent.

If the police are in a non-elective situation, he's got to shoot. So, in Philadelphia and in New York, the rates at which officers reported shooting people who were armed with guns are almost identical. Philadelphia is slightly higher. They were almost identical. But if you deduct from the Philadelphia cases, the situations in which the bad guy's gun was a starter pistol, or a shiny object, you find that New York City cops were shooting more people who had guns than the Philadelphia police. Then if you get down to situations in which police reported shooting unarmed people, those are situations in which the cop doesn't have to make that life and death decision. You find that the Philadelphia police reported shooting people who were unarmed, but tried to assault them, five times as often as the New York City cops. They reported shooting people who were unarmed and running away, who were not trying to assault them, more than ten times as often, those are situations which are not life and death situations, in which a police chief and a mayor can say, "You ain't gonna do it. If you do, I'm going to fire you."

This morning folks, one of the panelists mentioned that the law doesn't really change that much. Where deadly force is concerned, it is someone inside the agency at the top of the agency who changes that around. But the experience in Philadelphia, I think is a very dramatic example of how much changes at the top means to the levels of police violence.

Marty Fleetwood:

I'd like to get back to the question and then just give three short clear answers. How effective are attempts to control police misconduct by internal rule making, disciplinary proceedings, etc? They are very effective. There is no doubt to anybody

who is interested in working in this area whether you're litigating, community organizing, writing as a law student, whatever your role and purpose for being here is, yes internal rulemaking, disciplinary proceedings, those changes have demonstrably turned around the problem of police violence in various cities. There is no city that is yet free from police abuse, from racially motivated violence to many other problems with the police department. But there has been a marked decrease in cities like Atlanta, Kansas City, Seattle, Newark, Philadelphia, where you have had combinations of Black administrators, top Black police officials. So you have to look at Affirmative Action. Then you have had a combination of community activity and community pressure on the police department and on the city structure to change the internal policies. You have also had litigation in some of those cities, whatever means brought it about.

In those cities where violent shootings, deaths and general misconduct towards Black people have occurred, there has been a change in written police directives governing how they interact with citizens in general, governing the use of deadly force, governing arrest procedures and the whole gamut of police activity. There has also been a change in disciplinary proceedings, and one of the most critical things is something that cannot be ignored. No amount of written policy change, no amount of federal court orders, no amount of community uproar is going to change anything within the police department, if you don't have a police administrator who understands the need for him to administer and discipline his officers for their misbehavior or nothing will change.

Steven Winter:

I'm going to be very short and sweet because I think this is one of the least controversial issues on the agenda. I want to point out, in terms of the effectiveness of focusing on internal procedures, that it's a good gauge of what I have said earlier. I think Martha's summary is very accurate and true, yet you just have to keep in mind that police are in addition to everything else, a bureaucratic organization and one of the very few governed organizations whose work product as well as the results of their work product is subject to scrutiny. As long as it remains a bureaucracy of this kind, without internal rulemaking and without accountable administrators, and without political pressure, we won't have the kinds of needed restraints on the use of deadly force or increase of deadly force, because there is going to be a great deal of pressure in this decade, for the police to be much more violent. The pressure is at hand all around us, and we're going to see a lot of the work started in the 60's to reduce police violence go right out the window.

As Martha mentioned, without conscientious administrators who understand that they are on top of a large bureaucracy in which they have to have internal control, you can't translate these demands into reduction of violence.

Charles Jones:

I think what the panelists should attempt to do now is to take questions from the audience and in answering the questions, respond with some of the thoughts that they have had on both community action and what is the nature of racially motivated violence in this context?

QUESTION:

I've been listening to what everybody is saying as far as the police department is concerned. I would like to know if a study has been done on why people become police officers.

ANSWER:

It varies with the quality of the job market. A lot of studies have shown that people become police officers because it's a very secure job, and more recently it's a very secure job with a pension. I know that when I became a cop, many of the people I came into the department with felt that they never had to do anything again. I've got the meal ticket. More recently than that in the early 70's when I was at the Police Academy in New York City, a city university team came in and surveyed about three thousand new officers on why they came in. What surprised me was that the results were never published. The results generally show that they were in it to help people, and that they were a much more qualified group in terms of other options, than the people with whom I had come into the department. They were generally a lot lower on the violence scales that psychologists use to measure people.

QUESTION:

So what you are saying is that most of them out of the survey of the police came in in terms of humanitarian services?

Dr. Fyfe:

I think so, and I think that's true based on my experience. I also think that there is a percentage of police officers, that is very small, that you can write off right on the spot, because they are wackos. The cops have all kinds of names for them, and the way you can best find them is to know which officers other police officers don't want to work with. If you're asking whether people are drawn to it because they love power and they want to wear guns on their hips, there is a percentage who do. It's very difficult to predict human behavior and it's very difficult to weed them out after they have done something. If I might add to that, a friend of mine, an expert that I've used in another context is a psychologist at the University

of Alabama Medical School and does the selection procedures and psychological testing for prospective candidates for the police department in Birmingham. He has assured me that he can't tell the difference between any of the police officers coming in. So the hope that people have put in the past in selection procedures, psychological testing, hasn't panned out in experience.

QUESTION:

Is there a relationship between crime rate and police shootings?

Marty Fleetwood:

There has been an increase in crime, certainly, everywhere. I will not tell you that I've gone and compared statistics, but I saw a chart that showed that crime increased in every one of the fifty-four major cities in the last five years.

Hubert Williams:

There is no relationship between the shooting rates and the crime rates. If you look, the cops in the United States shoot almost a thousand people a year and wound, and if you look, there are eleven million nine hundred thousand property felonies reported to the police every year. So, the number of people shot is much greater than the number of people executed, but in terms of the crime rate in all the cities that have been studied, the crime rate has continued to increase just like it has all around the country, but the shooting rate has gone to the bottom.

Panelist:

I'd like to respond to that coming from a slightly different perspective, vis-a-vis the greater number of Black police officers, and Black people in police hierarchies and the crime rate. My office helped defend the City of Detroit which was being sued by a group of the PBA, the white police union, to try and stop the Affirmative Action plan in the police department. One of the defenses which we were able to prove at trial, was that since Detroit had incorporated an Affirmative Action plan, and increased Black representation

on the force, their ability to solve crimes in Detroit had risen significantly, because they had entered into the Black community where the information was, where the witnesses were. As a result of having more Black officers, they were able to deal with crimes more effectively.

Response:

If I can respond to that for one second again, you really can't generalize about police departments, and I did work for Marty. I did work for Marty on the Philadelphia Police Department about shootings when she was with the Justice Department, and I was really horrified at some of the things I saw. They were foreign to my experience. I think things are going to get worse there because, if I was a young Black man and I heard Frank Rizzo say go out and bust their heads before they bust yours, we got to keep this as the safest city, and they're all animals, who would become a cop in Philadelphia? You know, that's the real question, who would? It's like a Jew joining the S.S.

Steve Lattimer:

My name is Steve Lattimer. I just want to get your statistics broken down as to shootings by race, either white cop to Black, Black cop to Black, that way, and do they reveal that Black people get shot more?

Panelist:

It's very difficult to generalize, and I'm not trying to cop out on you, to coin a phrase. The New York City Black officers, the rate at which Black officers shot people was much higher than the rate at which white officers shot people, but that's because half the Black cops were working in inner city areas, and in narcotics and in very dangerous jobs. For example, there are no Black detectives in Staten Island. Half of the cops or half of the detectives in the Bronx and in the South Bronx are Black, so for a detective in the Bronx, he's much more likely to get involved in a shooting than a detective in Staten Island.

Racially Motivated Violence In America

Community Action

MODERATOR

Victor Goode is the former Executive Director of the National Conference of Black Lawyers, and is currently practicing in the city of New York.

**PANELISTS**

Lynn Wells is currently the National Coordinator of the National Anti-Klan Network. She was a Civil Rights Activist. She is a former member of (SNCC). She served on the Board of the Southern Conference Educational Fund since 1975 and on the Executive Board of the Anti-Klan Network until Dec. 1979.

Dr. Boyd Bosma is a Human and Civil Rights Specialist with the National Education Association (NEA). He received his doctorate from Wayne State University. Dr. Bosma has been with the NEA since 1968. Dr. Bosma directed the Research Task Force on Racism in Education for the Michigan-Ohio Regional Educational Laboratory. He has been actively involved in school desegregation and the problem of the displacement of Black teachers. He is the author of the NEA School desegregation guidelines for the State and local education association and for the National Institute of Education, a work called "Planning for and Implementing Effective School Desegregation: The role of teacher associations." He is also a member of the National Anti-Klan Network, the Leadership Conference on Civil Rights, and the Council on Interracial Books for Children.





Stan Hamilton is currently the Executive Director of Ministry program at Shepherd of the Streets, Wilkes Barre, Pennsylvania. He was the chairperson on the Crime Prevention seminar, Queens Counsel of Concerned Clergy. Mr. Hamilton was also in the Police Community Relations Board and the Human Relations Commission. He participated in the filming of a documentary which dealt with community relations, focusing on racially motivated violence. He was a member of the Kerner Commission.

Jean Dember is the Chairperson of the Suffolk County Black Assembly. Mrs. Dember was responsible for a petition which demanded congressional hearings by Congressman John Conyers. Later Mrs. Dember became chairperson of the New York Assembly. She is involved in a white racism mental health clinic which works within the framework of the Suffolk County Mental Health Commission.



CONFERENCE ON RACIALLY MOTIVATED VIOLENCE COMMUNITY ACTION

Boyd Bosma:

We ought to understand a little bit about force field theory and specifically, as an observation, both for teachers whom I represent and for community folks with whom I work a great deal. The greatest lack is usually that of setting both long and short range goals so we know where we're going and specific objectives which are those steps which help us reach the goals. In choosing what you need to do, we have to have some criteria in what we choose to do. One of the criteria has to be that what we're trying to do ought to be worthwhile doing. It ought to show some measurable progress. What we do ought to relate to long-term plans, whether its revolution, which is not what I'm talking about here, whether it's achieving racial and social justice which is what I'm talking about. The goal or the objective you choose ought to be achievable and it ought to be specific enough that you can measure that achievement so you know that you've actually made a difference and that you're at a point where you can move to the next set of objectives. The activity that you select ought to be something that helps you build allies and support systems. If polarization is part of a strategy, you'll end up making some enemies and that may be alright, but that needs to be measured in the process so that at the end, your support systems, what I call allies, are going to be stronger than those forces I call your enemies.

The whole theory of change involves starting with a small circle of people who share a common set of objectives and engaging in activities which bring in other circles of people or, expand the circle until eventually you can reach the whole system. Identifying how those circles can operate is how you magnify your power and your influence and your ability to get things done.

I wanted to select two specific activities that are current that relate to organizing in the community and change making. As I go along, there's one other principle, that is, as you set a target for change the most effective change process that I've learned out of those groups that I deal with is the principle that you can make almost any kind of change you want if you do it through organizations. Individuals have power, they can do what they want, but they do it through the use of organizational techniques. The best process for making change is to convince the person you want to change that his or her self-interest lies in the direction you want them to move. You don't have to deal with it on the basis of greed, but if they see a relationship to

themselves and some benefit they get, they're more likely to do right than if you just ask them to do something because it's right. Operating with that principle, you can make a good deal of change and my own experience bears that out consistently.

Two specific examples I want to give of the process: One of them is a document that we've published in cooperation with the Connecticut Education Association and the Council of Interracial Books for Children this year. The title is: *Violence, the Ku Klux Klan and the Struggle for Equality*. To my knowledge, it's the first nationally used comprehensive kit of information and lesson plans and curriculum guides on the Ku Klux Klan ever. It has received some controversy, specifically from the Anti-Defamation League. I can talk publicly or privately about that. They said the "Klan" says that America is a racist society and that they object to the notion that the Klan is more than an aberration. I don't think their own literature and history agrees with that position but there are some disagreements they had with the content and they did relate to this. My friends from Wilkes-Barre have come up against that criticism already and I don't want to take the whole speech on that process but I think there needs to be some understanding that there are some political differences between the National Education Association and the American Federation of Teachers which had an interest in the process.

This has to do with the principles of change, however, that we're talking about. The curriculum was much more than just a piece of paper or the kind of thing that teachers may have prepared to use in the classroom. It's a political document. The specific decision was made by us, at least myself and Brad Chambers, the Director of Interracial Books for Children, that we wanted to use the curriculum as an organizing device to go beyond the issue of the Klan and to look at the problem of racism within our society. I don't think we owe anybody any apologies. The curriculum is specific, it does not say that America is a racist society. It's reasonable to let people make up their own minds, they are free to do that.

There are a series of lesson plans which I won't go into detail on. The specific activity that led to the development of this had to do in part with coalition with other allies who were involved with us, specifically the National Anti-Klan network of organizations that operate in cooperation with Lynn Wells and the others who have been active in that process.

The curriculum allowed us to have sufficient credibility with groups that we wanted to relate to but which had somewhat different political agendas than we could translate to our membership. In turn, we saw a developing problem around the country and we had a specific need for our teachers who ultimately would have to support this and because this has never been done there is a good deal of risk in it. In Connecticut, in September of 1980, the Klan held a rally in Scotland, in Northern Connecticut. Sixty miles away a little Black girl went to her teacher and wanted to know from the teacher, "How can I disguise myself so I won't be Black so when the Klan comes for me they won't know that I'm a Black. And another little boy went to the same teacher, a little Black boy, and said "How can I hide?" Now that kind of violence, emotional, educational violence, happened sixty miles away, far removed from the site of that cross burning and it gave those kids scars that they're going to carry for the rest of their lives. It gave white kids scars too, because it opened the possibility for hate, intolerance and misunderstanding. It's the white interest in this that I'm particularly interested in because ultimately we need to convince white America that we need to support effective strategies to deal with the process.

The other issue has to do with an event taking place now in Alabama. I won't cover the whole history because of the time. Essentially, we have the teacher fighting racism in a community that is 42% Black. The last 8 or 10 years, Maggie Bozeman has called me about once a week to describe local problems adequately and thoroughly and I feed back what she says over the telephone into a letter to the Justice Department or the Governor or the School Board or whatever. Six or eight years ago there had never been a public meeting of the School Board. After eight months of one letter a month going to the different school district officials, we finally forced them to comply with the Alabama Sunshine Law and allow public meetings with announcements in the papers that they meet on Monday at 7:30. Black folks thought they'd be smart and arrive at ten minutes to seven so they'd be there early. The School Board was coming out the door. You guessed it. They said, "How come? It said in the paper 7:30." They said: "Well, we didn't have much business, besides we hold the meetings on daylight savings time."

The next letter, after 8 months of letters, went directly to the Justice Department with copies of all the other correspondence and delays. The last three years, the School Board chairperson has saved a seat next to him for Maggie and he won't let anyone sit in it. There's never been a Black elected official in that county. In the 1980 election, we drove out the superintendent, last year we drove out the County Judge who runs the

county. This year Maggie and a 69 year old woman entered the state penitentiary on four and five year sentences, essentially for their activities in helping with voting registration of old folks in the '78 election. There's not time to cover this except that the power that these women generated through using the system against itself.

Lynn Wells:

I work with the National Anti-Klan Network which is headquartered in Atlanta, Georgia. I missed part of the morning but I have the impression that the first part of what I was going to talk about, which was the context for the resurgence of the Klan which I'm going to specifically speak on about Georgia today, has been fairly well covered in this conference already. I'm not going to discuss the government's official tolerance of the increase of racist violence in the country, I'm not going to speak about the Reagan administration's feeding of the climate in which the Klan grows by talking about welfare cheaters and so on, I think that many of the speakers this morning already touched on these things.

I mentioned them because no local community is really local. Everybody feels the effect of these national politics on the local community. And while I'm a firm believer in the fact that organizing in different communities can be entirely different depending on the particularities of those local communities, there are some things that do stay the same everywhere, unfortunately.

Since Christmas, there's been what we estimate between a 400 and 500 percent increase in Klan activity in the state of Georgia. The National Anti-Klan Network has worked closely in the past with people in Mississippi, Alabama, Tennessee, North Carolina, some people in Pennsylvania, in Pittsburgh mostly, and now in Wilkes-Barre. We have never concentrated our activities on Georgia before. The Klan in Georgia never disappeared. Klan activity at the end of the 1960's was reduced to relative impotency, the Klavens never went away or the guys who meet at the gas stations or whoever they are. I'm sure many of you are oriented in the field of community organizing or have done community work. You need leaflets and leaders, you need contacts, you need people to make speeches, you need people to work with the press. That kind of structure was in relative disarray at the end of the 1960's. Because of the strides of the Freedom Movement, a better public atmosphere, congressional hearings that uncovered financial wrong doing and scandals inside the Klan, they started fighting with each other. There are a million reasons, there was some law enforcement in cases where the Klan murdered people, by the Federal government under a statute they say they can't enforce now. But the Klan in Georgia had not regrouped. It is now regrouping.

I'm not one who believes that the Klan is the main problem in this country. But believe me, once the Klan starts working in your community, it is not easy to fight. It is not as easy as one would think. Because most white people don't support the Klan. As many racist ideas as people have, most white people do not overtly in their own minds at least support lynching. But you try to get people to start speaking out against the Klan once they've moved in, it is not easy.

I want to talk about some of the problems first and then some of the strategies that we're planning in the campaign which really takes the best of the organizing experience that the Anti-Klan Network has been able to absorb so far from Pittsburgh, from North Carolina, from all the communities with which we have been in touch. We've invited the best of all these experiences because we are going to do this in a big way in Georgia, hopefully utilizing a lot of different tactics.

I'd say that the number one problem beyond the context problems that I spoke of earlier is official government tolerance in the white community.

The Ku Klux Klan last September went to a School Board meeting in Griffin, Georgia, in Spaulding County to be exact, and asked for the use of the High School auditorium for a Klan rally. It was unanimously approved by the School Board. The head of the School Board in Griffin is the kind of a fellow just to give a brief description, who said that it was his understanding that the Ku Klux Klan was no longer violent, that it simply espoused Christian principles. When asked by the news media about the statutes that say only responsible community groups can use the school facilities, he said, "Yes, the Klan is a responsible community organization just like the Kiwanis Club." He runs the schools in Spaulding County.

Well, the NAACP decided that since they couldn't turn it around, they were going to go inside and monitor the meeting since it had to be public. They announced that to the media. The National Anti-Klan Network also announced a peaceful picket line outside just to let people know what we thought of the Klan, that this thing could not pass without anybody saying anything. Well, not only did the Griffin papers condemn the Anti-Klan activity, but the Atlanta and Southeast papers said that if any violence were to occur that Saturday night, the onus would be on the NAACP and the Anti-Klan Network.

The idea is being drilled into people that the Klan is simply a small fringe extremist group, that if it is ignored it will go away, that it does a number of childish, laughable pranks, cross burnings, wears weird costumes and so forth. It is this kind of official tolerance and promotion of ignor-

ance among the general population, I would say first and foremost from the new media, even though it also at the same time dramatizes Klan rallies, that is the worst enemy of the organizer in organizing against the Klan. The minute you start to say anything about the Klan, not only do you have outright reactionary forces working against you, but a lot of times you have the liberal news media and the liberal officialdom saying, "You're the ones who are causing the problems, not the Klan, if you just ignore them, they'll go away." That is important.

We are going to do a few things in Georgia. We're going to conduct a campaign, hopefully it'll last six to eight months. It may last 3 or 4 years. But what we intend to do in Georgia is unite the people and I think it's very important for our perspective to be reliant on grass-roots people. Grass roots people do not have an army, we do not have bombs like they use in Vietnam, we don't have a police force that usually takes up these matters, but it is the grass-roots people in the various communities that we have to reach and organize and unite in order to put pressure on and ultimately force, because I think that's about the only way it's going to happen. The state, Federal and local officials in these little towns must act against the Klan. We have to make it so bad on their businesses, so bad on the tourist climate going to Georgia, so bad that the only time the Atlanta constitution in the last five years, decided to expose the community to some of the vicious things the Klan's been doing lately.

We've got to make it that they're afraid of race war, so to speak, that the Black communities are up in arms about this Klan business now. We've got to make it so hot on them and keep up so much pressure that they have no choice for their businesses and not out of any lofty principles but out of their own self-interest that they'll have to act against the Klan, because they do have police forces and armies.

I think it's very important to build a broad coalition in Georgia and in any community and we intend to unite everyone from labor unions to religious organizations. We are working with the Georgia Association of Educators, there are various womens' organizations. I think that there should be no principles involved in forming such coalitions and projects other than that people oppose the Klan. You've got all different views. Some people think you should take up arms, some people believe in philosophical non-violence. The Anti-Klan Network, our common denominator is non-violent because that's all we can agree on that our activities should be. But if you develop a community-wide response, you're going to have all kinds of people. People have to agree on certain things, though. They have to have certain bases of unity. They have to agree on certain

goals like getting the government to crack down on the Klan. Our experience in the Anti-Klan Network is that if people don't try to win different Anti-Klan organizations over to everything under the sun, to have to agree on everything, then you can work out specific objectives along the way, then a very diverse group of people can unite.

Many of the Anti-Klan groups rely on a very impressive looking coalition on paper, which is very important, it is important to look good on paper and have prestigious organizations. One problem is that groups like the International Association of Machinists, whose president I have a lot of respect for, while they go lobby in Washington for civil rights laws, their international won't come to Georgia and talk to the folks in Marietta. We've got to ask in grass-roots work these organizations including the NEA to reach their own constituencies. If a small group wants to respond to the Klan, if they want to go out and do the grass roots work all themselves you will spend your whole time just reaching a small portion of people.

We are passing specific pieces of legislation, there's a bill that we have on a state level while federal law is on the books that could be used. There are deficiencies in most state laws. Klan Watchers published a model Anti-Klan statute pamphlet which you can get people in your state to compare with your state laws to see how they shape up.

The last thing I want to say is, every weakness of the Klan has to be exploited in this situation. Yes, they are racist but the Klan is also a swindler of poor white people, they are con artists, they are neo-Nazis and a lot of people even who are for the Klan don't like Nazis. Every one of the weaknesses in their positions we have to utilize and exploit. In Georgia, we just had a press conference showing the similarities between the new order Knights' head Ed Field, who is also editor of the Thunderbolt newspaper, deny he's a Nazi to the press. We've just documented four years of Nazi propaganda in his newspaper, the Thunderbolt. That's important to people. You should never overlook any of these weaknesses that the Klan has. Even if they beat their wives, people don't like wife beaters. We've got to cap all these kinds of things that people won't like. Basically our objective, as I've said is to bring enough public pressure to force the state government and Federal government officials to crack down on the Klan in Georgia and secondly to take the Klan and make them an isolated set among the white people in Georgia so that those two things will shut down their attacks on Black people.

Stan Hamilton:

Hi, glad to be here, we have ten minutes to get right to it. And we can't do it in ten minutes, we

couldn't do it in ten years, we didn't do it in 100 years. 1865 started this Klan business. Well, let me tell you what we're here for. We have the Klan right at our back door in Wilkes-Barre in north-eastern Pennsylvania. For the sake of geography, we'll talk about Stroudsburg in the North and we'll go on almost to State College in the south and all areas in between.

It's very nice to be here and hear all about the law, but what do you do when you are one thousand persons, Black amongst some 200,000 persons, white and you talk about the Klan. That doesn't mean anything. Everybody is the Klan, if you are Black. Get this clear right here this afternoon. And that's why Don Sperly and I travel as a twosome. He is in a highly white "don't like Stan Hamilton" neighborhood. I can't even go there. So when we decided to go to the church group and talk about anti-Klan activity, if I was to do all the talking I know I was going to get turned off, I've been turned off for years there, so I figured I'll fix you, we got a walking audio-visual aid, Don and myself. I'll tell you what the Black folks suffer with the Klan and he'll tell you why we're suffering. Note what I said, not what we're suffering with the Klan but why we're suffering it. Because we have to bridge that gap first. I am not going to be solicited by the Klan. Some of you out there will be. Make no mistake! So it is you who I've got to call on. What are you going to do to get this monster off of me? They are not going to solicit me but I am a natural, visible, up-front, by God enemy. Shall I go to my public official? They are the Klan! I'm not going to come here and further intellectualize nothingness for Black people in America. That's my ten minutes. Let's go to talking about what I can take back to a community where there are little Black kids who understand, who won't stand a snowball's chance in hell if I come here and legalise, bills and laws and rules. Give me something to work with. I've got the Klan rally right there now, immediately. Don't tell me to talk to my school teacher, she's the Klan person or a supporter or a sympathizer. Something is remiss, something is wrong. Don't ask me to come here today, two and a half hours long, and play games, word games. Please give me something to take back, to go back with. Don and I have come here representing a group of well meaning ministers who feel that "Well, we better not say anything, they like the publicity." Give us some help from Georgia.

I've got to stand up. We are not jiving, we are arming. Yes, I said it. Blacks, I don't care if we are 100, we are not going to wait for words. We are getting more guns. You understand? Make this perfectly clear. There will be no more games. Because we don't have time for rhetoric. We are but 100 or maybe a little more, we get up and get out if we have to, but in the meantime we're not going to sit back and wait for games and words

and we're not going to be prayed over after we've been shot down or hung up you understand? We don't know who to turn to.

Panelist:

Unfortunately, no one will respond until the guns start shooting. That's about where our good meaning efforts have gone thus far in the social concerns committee of the Anti-Klan Task Force. It hasn't gone anywhere. We have a few things we've talked about. NEA Curriculum, apparently we're going to promote it on Tuesday to the local Teacher's Association. Of all those that are going to promote it, I'm the only one I know for a fact has the book. And that doesn't make any sense at all. I called them up and had it sent to me. You can't go and promote something like this, which I think is a good curriculum by the way. I read it and it's excellent. But you can't promote it without doing the homework before hand. No one's interested, that's what it gets down to.

One other side line, while I'm here. We have had the Klan in the little community that I serve as United Methodist Pastor, Oxen, Pennsylvania. Five hundred people. The Klan was there, 9 or more people in white robes and hoods etc., the last Sunday in October of last year. The fear I saw by white people that were calling me up and asking if their kids should go out on the street, if their little kids should go collect for UNICEF that day. I'm going to lock my door and wait until it's over with. Even that fear was gone in a week. No one remembered and very few people wanted to do anything. We did go to our community officials, we did go to our supervisors in town and got their endorsement on this and at least that's a start. But it's so darn small. You in your community don't get caught with your proverbial pants down, as we were in Oxen and have the Klan on your back door or front door without doing any preparation. That's where the fear came in. The people were just scared because they didn't know how to react. They didn't even know what it was and they were afraid of nine persons. If they would have had some knowledge and some preparation, maybe they could have walked out on the street and done something at the time but as it was, we all sat in our doorway, myself included. I didn't even go out for 45 minutes after church.

Jean Dember:

Thank you very much for this opportunity. I consider this extremely important. I want you to know that community action does work. I just want to give you a little synopsis of the model that we use because I think it is important. When you go to somebody who is disinterested because they know everything has failed, if you are acting on a problem that they believe is seriously a problem, they will at least sign a petition. The petitions that I've drafted as a chairperson of the Black Independent Political Assembly in Suffolk

County. We had a half a dozen people who were members and they weren't too hot on collecting these signatures but we just kept on getting these signatures together. Alright, now I said what are we going to do with the signatures? So I found out about these meetings that John Conyers as a chairman of the subcommittee on crime was holding, I said I'll send it to him and I got the idea from other people on sending out petitions on various other things so I said, this might work for us, so that's what we started doing.

So we started generating these signatures. It ended up that we sent two thousand signatures to Mr. Conyers and I thought to follow up the signatures by a personal appearance, saying, "I'm not just a menopausal female with nothing to do, I have 2,000 signatures here that say there is a problem and we want you to come and hold a public hearing on this." Now they were not talking about police brutality in the Black Congressional Caucus meeting, they were talking about Federal judges. I said wait a minute, we're not worried about Federal judges. You're telling us to go out on the street and register people. I'm telling you I've been out in the streets to register people that don't want to register because of police brutality, because they are getting kicked in the balls. And that's what they tell me when I go out there. Now, I'm a housewife, I'm telling you when I went out there to find out what was the problem they said that we're being kicked, and they're not going to register to vote. I said if you're going to do something about being kicked, then you're going to get their attention. So, Mr. Conyers said to me, that the reason he didn't hold a hearing on police brutality was because he couldn't get the Republican members of the committee to hold a hearing. So I wrote to Mr. Hamilton Fish. I got a letter from Mr. Hamilton Fish saying, "When does Mr. Conyers ever ask me to hold hearings?" Well, that was like a slap in the face. I was very furious about that. I made copies of that letter and I sent it all around everywhere because I felt that that was a revelation.

Now we're always saying that it's white folks' fault. Sometimes, we do not do what is correct. I'm saying that it's one thing when we do not do what is correct but lives are lost on our not doing what's correct. I said to people, somebody's going to get killed out there in Suffolk County if you don't do something. Sure enough, a nineteen year old paid the cost. It was the first Black young man killed on a suburban train. I went to his funeral. I'm not going to forget that. Nineteen years old. So, it's critical. We did get this hearing. Mr. Conyers did not come. Mr. Conyers was not sick at that time that I heard. When we had those same two thousand signatures, you belong to a national organization. You take your national organization, take your local petitions to your national organizations, say look, before we go to

the party, pass me a resolution saying we support a public hearing. Alright, now what happens is they support public hearings in the quadrants of the United States, northeast, southeast, northwest, southwest. That was in the National Black Catholic Caucus, I got one of them. Got one out of the Black Independent Political Assembly. Now here I had national resolutions, I got the national president to write to Mr. Conyers. Now how was he going to resist all this pressure, so Mr. Fauntroy agreed to come in his place to Albany for the hearings. Now that generated three hundred pages of testimony.

Moderator: Victor Goode

I want to thank all of the panelists for the perspective and the information that they brought to us this afternoon. But actually, the purpose of any conference in addition to imparting that information is to build a dialogue between all of the participants so that both the panelists can benefit from your ideas as well as your benefiting from their's. So in our remaining time, which is about ten minutes, we'll take questions and dialogue between the audience and the panel.

QUESTION:

I want to ask a question about the strategies that you are using to project this NEA curriculum. To a teacher, a board member, a superintendent. Do you have some recommendations?

Bosma:

I'll give you an answer and Lynn Wells may want to add to this. She's been able to do more than I have lately on this. It's really the jurisdiction of another division of the NEA and we've been handicapped. The Klan curriculum, in my mind, as I said before is an organizing device aside from having value in itself. If you recognize that and use it on that basis you can bring attention to the issues of racism in the community, the educational system and so forth and provide a kind of opportunity or challenge or confrontation as you choose to get the system, the power structure, the teachers or whoever to at least engage in some kind of dialogue or to make some decisions that'll help them grow in how they deal with each other and themselves and the kids. It was our prediction that there would be a significant number of teachers who were fired because they chose independently to use our curriculum. I haven't heard of any yet but I suspect that they're out there and that we'll be providing legal defense money to protect them. We have a number of teachers' associations that have made presentations of the Klan through channels to both the curriculum committees or to school boards.

From our standpoint, because teachers are good people, but they also tend to be representative of the total community and have faults on that basis, it may be more comfortable for the

teachers if community organizations or other organizations of various types carry the ball. In my mind it's best to have a coalition in any case. You provide cover and support for each other in that process. The curriculum one of the major reasons for the conflict with the Anti-Defamation League and the American Federation of Teachers had to do with getting the curriculum with our name on it in New York City schools. It's being used there, and that's one of the big victories. It's been an expensive one but the fact is we've gotten that into the city. It's possible to do that sort of thing. Lynn, why don't you tell about NAKN and the organizing efforts you've seen this fall.

Lynn Wells:

I want to back up one second because the dynamics that are brought through the statement in your original plan is just the tip of the iceberg. I don't think we should be apologetic about that statement for one minute.

I just wanted to say you know people don't go with the implications of that statement which is that America is a racist society. So when you've got white teachers... what I'm suggesting here is would it be helpful to have a dynamic workshop with somebody who is trained and gets people to recognize what they're doing, what this prejudice is all about. Because I don't think they can keep to it if they don't deal with their own inner fight with that statement.

Bosma:

I'll agree with you and let me respond further on that if I can. I made a statement last year during the press conference when I spoke at the National Anti-Klan conference that I felt the Klan was the tip of the iceberg of both racism and fascism in America. I do not regard that statement as equal to saying America's a racist society. Now I happen to believe that it is and I don't apologize for that, but that isn't what I was saying. We've always had racism in this society just as we've had democratic values at least as a goal. That becomes a different kind of argument. I think the statement was taken out of context. But I think it's a defensible statement in its own right. People can certainly have the right to do that and it's unfair to attribute that to use that as an excuse to say that justifies, as the ADL said in their press release, the statement that America's racist, because the curriculum does not say that. Although you are certainly allowed to take that impression in my opinion. The answer is that you will look for things that are comfortable. Randy Williams of Klan Watch and I were discussing the curriculum this morning. It's very difficult to use it in Alabama and Georgia and these rural communities. There may be other curriculums that become available with variations that are useful there, we'll have to just deal with that as we go along. I think it's useful and I think it's fair.

Everything that we do will always be controversial and can always be better. This is the first, and I think we've had a remarkable success. I want to load praise particularly on the Council of Interracial Books for children which took the risk and almost went under financially.

Lynn Wells:

Let me just say that I'm not satisfied at all with the results on the curriculum campaign. I don't think that many teachers in the country yet are teaching it. Teachers can teach this curriculum whether the school boards approve it or not. They may get fired but in most cases, they won't. Teachers have a fair amount of discretion. So I think that to any community or church organization who want to see something done on the curriculum can teach it to their own members, you know you can self-instruct yourself about it and take it to the teachers that you know. Getting it into public schools is a long bureaucratic drawn out process. I think it's good to undertake, in fact I think it's essential. There are some people in the community who will not come to an Anti-Klan picket line or any other kind of visible thing but who will try to work to get the curriculum in the school system. So it's a good project to do, but it takes ages. You know, they knit-pick it over, they'll do a lot of different things but I think that it can be adopted at least as official resource material like it's been done in Montgomery County. The NEA affiliate in Montgomery County, Maryland, was active on it but you also have a county administration that is relatively fighting the Klan, relatively speaking compared to counties across

the country and doing more than most county governments. They held forums on the Klan, they instructed the police department to go get 'em and they're more active. But also, there's Anti-Klan Network there. They figured they've spoken personally in group meetings to something like two or three thousand people at different functions. So they've done a tremendous amount of research. It got adopted there. Not that teachers had to teach it, but that it was alright to teach it, the school board said it was okay. So I think this is going to be a long, drawn out process and therefore people ought to start now.

Bosma:

If I may add, the Connecticut teachers when they came out with their part of the package, developed their own supplement on the history of the Klan in Connecticut which nobody ever realized existed. They documented a beautiful book. There have been supplements developed and proposed in school districts and any number of places by associations and by the groups. As an organizing technique, one of the things that's generating involvement and support for getting people into the issue is getting them to develop that kind of supplement in local activities that really brings it home. It's terribly exciting.

Lynn Wells:

There's a program called "The Klan Youth Corp" which you can get from CBS news and it's a film or try to get it from the NEA or ADL in some places. It's a ten minute short on the Klan Youth Corps and their training camps. It wakes people up at least a little bit.



Racially Motivated Violence In America
New Legal Theories:
Private Judicial Remedies

MODERATOR

James Ferguson II, is a practicing criminal attorney in Charlotte, N.C., and a partner in the firm of Chambers Ferguson, Watt, Wallis, Adkins and Fuller, P.A. He studied law at Columbia University and was the chief counsel in the Wilmington 10 case. Mr. Ferguson has received such awards as the Outstanding Lawyer of the Year Award presented by the North Carolina Association of Black Lawyers, and the Lawyer of the Year Award from the National Conference of Black Lawyers. He also received the Frank Porter Graham Award from the North Carolina Civil Liberties Union in 1982. Recently Mr. Ferguson conducted a trial advocacy program on behalf of the American Bar Association, litigation section in London, England.

**PANELISTS**

Frank Deale is a staff attorney for the Center for Constitutional Rights. He graduated from the University of Pennsylvania Law School. He published a book review with the National Lawyers Guild on "Police Misconduct Litigation." He was one of the lawyers working on the case in Chattanooga in which five Black women were awarded \$535,000 in damages resulting from their being the victims of racially motivated violence.

Shelly Wong is the Administrative Coordinator for the Greensboro Justice Fund. She received her Bachelors in Sociology from the University of California. She lived in Hong Kong for three years where she taught sociology and English while she studied Chinese. She coauthored an Asian American studies publication "Going Back" which is an anthology about China.





Charles Jones is presently an Associate Professor at Rutgers Law School. He received his J.D. degree from DePaul University in Illinois, and his M.P.A. from Harvard University. Professor Jones worked as assistant staff attorney with the NAACP Legal Defense and Educational Fund. He published two articles, "Negro Voting in the South" and "SNCC Non-violence and Revolution."

H. Randall Williams is the editor for the Southern Poverty Law Center's Klanwatch Intelligence Reporter. He graduated from Stanford University. He is a former reporter for the *Birmingham News*, and editor for the *Birmingham Reporter*.

Steven Winter (See Police Violence Panelists)

RACIALLY MOTIVATED VIOLENCE NEW LEGAL THEORIES

James Ferguson:

We have assembled before you today a very distinguished panel who can share with you a wealth of experience and knowledge in the area of litigating violence with racial targets or racially motivated violence. They will suggest to you some new ways in which we hope we can bring about some results in the court.

Beginning to my far right is Shelly Wong, who is the Administrative Coordinator for the Greensboro Justice Fund. Shelly is a graduate of the University of California in Santa Cruz with a major in Sociology. She lived in Hong Kong for three years, teaching Sociology and English and studying Chinese. She has coauthored an Asian-American studies publication called "Going Back" which is a collection of reflections of the third, fourth and fifth generations of Chinese Americans returning to the village of their ancestors in Southern China. She will share with you some of the methods and techniques that have been used to litigate and organize around the Greensboro situation.

Our next panelist is Frank Deale. Frank is a lawyer. He graduated from Antioch College, Undergraduate School, and he has his law degree J.D. from the University of Pennsylvania. He is currently a staff attorney with the Center for Constitutional Rights, in New York, where he has been engaged heavily in litigation involving labor, and constitutional rights.

To my immediate left is Professor Charles Jones, who has a J.D. from the University of Illinois and an M.P.A. from Harvard. Charles was a staff attorney with the Legal Defense Fund from 1964 through 1968, where he litigated Civil Rights Cases throughout the South. He is currently a member of the Rutgers faculty, where he has served, since 1970, teaching Criminal Law and Procedure.

Next to Charles is H. Randall Williams, who is currently the Director of the Klan-Watch Project of the Southern Poverty Law Center in Alabama and he is both a writer and an investigator. He will be able to share with us some experiences that he, with the Southern Poverty Law Center, had in a couple of cases that would be of great interest.

Last but not least, we have Steven Winter, who is a graduate of Columbia Law School, class of 1977. Upon graduation, he clerked for Judge Hays of the Second Circuit Court of Appeals. For the past three and a half years, he served as Assistant Counselor with the Legal Defense Fund. He has been heavily involved in prison and police violence litigation.

Shelly Wong:

I want to begin with the facts of the case of November 3, 1979. The clippings that you saw, from the video-tape showed, were of a demonstration that had not even begun. It was a demonstration against the Klan. Folks were planning to meet, assemble and march to have a conference on the growth of the Klan. That conference never took place. Instead what happened was a caravan of Ku Klux Klan and Nazi cars drove onto the site of the demonstration. A man from the first car shot a signal into the air which was a signal for the Ku Klux Klan and Nazis to jump out of their cars and beat the demonstrators with sticks. Then there were shotgun blasts to scatter the crowd; and you saw certain men getting out of their cars opening up the trunks and pulling out semi-automatic weapons. The marksmen shot five people and murdered five people who were all shot in the head, and in the heart. Nine people were injured. A whole community was terrorized. Following the murders, only fifteen out of the thirty-five to forty Ku Klux Klan and Nazis were ever arrested. Only six went to trial and they were acquitted of all charges by November 17, 1980. They were acquitted in the state court. They were never charged with conspiracy to murder although, they were planning meetings of the Ku Klux Klan and Nazis prior to the murders. Since the conspiracy charges were dropped, it was outside of the scope of inquiry to investigate the planning meetings and find out who attended the planning meetings or what the plans were. The District Attorney in the state trial made public statements to the press saying that most of the people in Greensboro think that the communists got what they deserved. He was supposed to be prosecuting the Ku Klux Klan and Nazis.

The Greensboro Justice Fund was formed in the Spring of 1980 to begin work on the legal cases that came out of the Greensboro Massacre. November 3, 1980, a Civil Rights suit was filed on behalf of 16 plaintiffs, the widows and the widowers of the five people that were slain, the injured demonstrators and demonstrators wrongfully arrested and charged in conjunction with the events. (Two of the six arrested were also injured.) The plaintiffs are described in the complaint as militant, anti-racist, labor organizers as in one or more of the following categories: communists, labor organizers and/or advocates of equal rights for Black people.

There are 86 defendants in the civil rights suit. Bernard Butcovich, Agent provocateur of the Bureau of Alcohol, Firearms, and Tobacco; and Ed Dawson, the Greensboro paid police informant,

who organized and led the murder caravan, and who also rode in the head car of the caravan was never called to testify nor charged with a crime although identified by the victims to the District Attorney. According to a report by the Institute for Southern Studies, Independent Investigation of the Greensboro Massacre, Ed Dawson not only did not testify, but the Chief of Police told him when he didn't testify, "Good Boy! We expected that you wouldn't testify." So there was an intimate alliance alleged in the Institute for Southern Studies Report, between the Police Chief, the District Attorney and Ed Dawson, the Klansmen who was being paid by the Greensboro Police. Twenty Klan and Nazis who were known to be present and involved in the attack and/or involved in the planning of the attack are also defendants in the suit.

There were approximately 30-40 persons involved, not all of them known to the attorneys at this point. There was a police car, unmarked, that followed the murder caravan. The police took pictures, but did not call for assistance. The police knew that Ed Dawson had telephoned them that morning; knew that the Ku Klux Klan and Nazis were armed but did nothing to prevent the attack or to warn the demonstrators. City, state and federal agencies, the city of Greensboro, the Greensboro Police Department, State of North Carolina Department of Crime Control and Public Safety, State Bureau of Investigation, the U.S. Department of Justice, the Federal Bureau of Investigation, the Community Relations Service and the Bureau of Alcohol, Firearms and Tobacco, are also cited as defendants in the civil rights suit as well as twenty present or past officials or employees of the above government bodies, or agencies.

I wanted to talk a little bit about what the relationship of this civil rights suit is to the fight for justice. What we hope to get out of the civil rights suit, why we have a civil rights suit, and what we hope to accomplish by it. The Civil Rights Suit is a way of getting into and investigating. Our attorneys, the plaintiffs and the victims of the Greensboro Massacre have a lot of questions as to what was the role of the Bureau of Alcohol, Firearms and Tobacco. What was the role of the F.B.I.?

The F.B.I. at one time, made an investigation under the Freedom of Information Act that could lead to prosecution and damages. It has been kept from the victims of the Greensboro Massacre.

It is a question of how much education, how much organizing, how much public pressure can be done in conjunction with working with victims, attorneys, civil rights and civil liberties organizations and religious organizations. All this can continue to put the pressure for justice in the case. Our experience in working on this Greens-

boro case is that we believe that the only reason why this Grand Jury has been called now in the Greensboro case is because of the many petitions and letters of support and all of the work that has been done in demonstrations, organizing, forums and conferences like this one that have really forced the issue of Greensboro Justice.

Frank Deale:

There is some common information, which I think we should start out with, since this is a workshop which is to deal with various sorts of theoretical legal concepts.

The way to begin is to talk about some of the established principles and some of the historical background to civil rights legislation in the United States today. The questions that we have been talking about and what sort of strategies, both legal and political, can be used to combat those forms of racial violence are not really new to us or this country in general. I think that the first piece of congressional action designed to deal with the questions of the 13th amendment was, of course, the first major reconstruction amendment which was meant to eradicate racism in the United States. It was followed immediately by a number of other statutes as well as constitutional provisions. I'd like to briefly talk about some of those statutes.

Over the past 150 years of United States history the whole question of racial violence and equality for members of different minority groups in this country has been a very pressing problem. After the 13th Amendment, the reconstruction Congress passed a Civil Rights Act of 1866, which incorporates a number of the various provisions that are presently on the statute books dealing with racial violence. I did not find out until yesterday that the First Civil Rights Act of 1866 was actually vetoed by President Andrew Johnson, but was passed over Johnson's veto because it was felt that this was very important legislation and dealt with real problems that were in the country at that particular time. After the reenactment of the Civil Rights Act of 1866, we had the 14th Amendment, which is a very important part of the Constitution and has served as the source for a lot of litigation, particularly around racial issues in the United States.

The 14th Amendment was carried out by the states as well as by Federal Enforcement officials. There was the Ku Klux Klan in 1871 still putting the point across that the rights of blacks were something which was a Federal responsibility which had to be enforced through Federal provisions and which had to be respected in all parts of the country including the deep South. The Act of 1871 stated essentially the same thing.

Finally, at least in recent history, there was the Civil Rights Act of 1968, which again dealt with

the question of racial violence in the United States and various forms of judicial remedies, for ending that violence. I go through this possibly redundant exercise because I think it's very important to start out with the knowledge that the federal enforcement responsibility for civil rights legislation and constitutional provisions is something which has a long history in this country. It's important to keep that in mind as a starting point because the question of the federal role in assuring civil rights of Blacks and minorities is something we have to be clear about.

It is not a situation where the federal government can pass off its responsibilities to the states and to state constitutions. It is a federal role in terms of eradicating racial violence. The primary governmental agency which has the responsibility for bringing prosecutions and assuring that Civil Rights are implemented is the Department of Justice.

Now that I've talked about some of this historical material, I should say something about how the statutes presently exist. As the U.S. Code presently stands, some of the statutes which have been used frequently, in civil rights litigation, are codified in 42 U.S.C. Sections 1, 1981, 1982, 1983, essentially, 1985 and a number of other provisions which are designed to provide back up responsibilities for the Federal courts that are in fact implementing those constitutional provisions.

1981: is designed to assure that blacks and other minorities have the same rights to contract and security of persons and property as white citizens of the United States.

1982: is essentially designed to assure that minority citizens have the same rights to rent property and hold property and other non-discrimination kinds of provisions which deal with the transfer of property.

1983: was designed to outlaw forms of discrimination conducted by state officers.

1985: was designed to outlaw forms of discrimination conducted by private actors, and it was directed primarily at the Ku Klux Klan.

There were a number of criminal provisions which were designed to allow the Department of Justice to bring criminal prosecutions to supplement the civil remedies. To be very brief, there was a Title 18, U.S.C. Section 241, a statute which makes it unlawful for private citizens to engage in acts which are designed to intimidate members of the United States from engaging in their constitutional rights.

18 U.S.C. Section 242: is designed towards making it unlawful for people acting under color of State Law, meaning state officials, to engage in these same kinds of activities; and those two Sections (241 & 242) were supplemented in 1968 by the 90th Congress.

18 U.S.C. Section 245: which was designed primarily to plug up some of the gaps in U.S.C. 241 and 242.

There should be no doubt at this stage there are various forms of civil and criminal remedies which give private parties as well as governmental authorities the ability and the responsibility to eradicate various forms of racial violence in the United States.

I think I should start off by saying a little bit about the private remedies I've talked about, 42 U.S.C. Sections 1981, 1982 and other statutes. A number of cases have been brought in the United States by private parties seeking to receive injunctive relief as well as damage actions against various Klan and Nazi groups that are in the business of intimidating citizens who were exercising constitutional rights.

I want to talk about a case that my organization brought. We litigated the case in Chattanooga, Tennessee where five Black women were shot by members of the Ku Klux Klan in the center of a Black community. These women were coming from a social event and were simply in the process of walking home. The Klan's members had been drinking, and went out to get some "niggers". They went into the heart of the Black community and essentially shot these people down in the street.

We brought a civil action after some Klan members had been convicted and two acquitted in a state action. We brought the civil action for the purpose of hitting these people in their pockets and we received a \$500,000 damage award.

We also received injunctive relief preventing various forms of similar Klan violence in the future and are now in the process of trying to actually get this money. The feeling we have is that in the process of doing civil litigation you can get injunctive relief and those injunctions can be enforced to prevent recurring episodes of similar types of harms. With people like the Klan, you essentially have to hit them in their pocketbooks to let them know that intimidation which they carry out against Black and other minorities, is going to cost them money.

The Klan gets money from a lot of different sources. The money goes into a lot of different parts of the country into different forms of activity. I can only say that in Chattanooga the people who were ultimately held liable for the actions against these Black women were people who really had very few resources of their own. I suspect that around the country most of the people who are at the bottom line of the Klan hierarchies are people who are generally judgment proof. However, I think there still is a continuing need to bring civil actions of this sort even if the money is not immediately available. There is a need for getting the injunctive relief.

I think that generally we all know that historically private citizens do not have the right or power to bring a criminal prosecution in the United States. That responsibility primarily lies with state enforcement authorities when you are talking about protecting constitutional rights and federal statutory rights, the primary responsibility resides with the Department of Justice. A number of people at the Center, including myself, as well as people gathered at this conference have become convinced that the Justice Department is not exercising its responsibilities in a way we think they should be exercised. There has been documented evidence of a rise in racial violence and it is not something that is confined to the South. It is happening in various parts of the country.

In earlier workshops, a representative from the Department of Justice testified that there have been some prosecutions and very few convictions. We don't know how many complaints they have been hit with but the point of the matter is that all of the evidence points to the conclusion that there is a lot that can be done by way of further federal enforcement.

I want to throw out the one thing that I think we're going to have to talk about ultimately, and that is, the whole question of prosecutorial discretion. It essentially comes to the conclusion that prosecutorial officials have this unreviewable discretion to decide who to go after and who not to go after. I think that the doctrine has aspects of it which can be attacked. I know that in other areas of law, like labor law and environmental law, it's very possible to get judicial review over prosecutors' decisions not to prosecute when you can show that the failure to prosecute is an abuse of discretion or contrary to law.

Professor Charles Jones:

I essentially want to address two basic questions and to attempt to compare, under this discussion of new legal theories in dealing with racially motivated violence, the experience of lawyers working in the civil rights movement in the 60's with what I see as problems likely to be faced by lawyers representing victims of racially motivated violence in the 80's.

I think there are two questions that lawyers and community activist strategists have to face. What is new about the statutes that we have to deal with, that we utilize now in bringing private litigation? Secondly, what is the appropriate form of litigation to address these kinds of problems. Are state courts the most appropriate forum or are federal courts still the best for us?

I think as the Greensboro clip demonstrates, proving the relationship between organized violent groups like the Klan and Nazi party and the police is going to be very difficult. It seems to me that the strong remedies are probably going to be

those which rely mostly on private litigation efforts. That is where the victims themselves sue for damages, or where community people sue for injunctive remedies against repeated threats of violence and actual violence by organized hostile groups. Consequently, I think that there is something to be said about putting some attention on statutes like 42 U.S.C. Section 1985, Sub 3, which Frank Deale described to you just a moment ago. That statute essentially gives federal courts the jurisdiction to enjoin private conspiracies which have the effect of depriving persons of their rights protected under federal constitutional and statutory provisions.

The important thing that's involved in *GRIFFIN V. BRECKINRIDGE*, is that if it can be asserted in the complaint, and proven in the trial, that what we are dealing with in litigating against the Klan and other similar racist groups is a pattern of practice comparable to the kinds of activities which were exhibited by the Klan back in the Reconstruction era, then we begin to make out a very strong claim, under Section 1985 (3) for both damages and injunctive relief.

Now one thing I'd like to point out to those of you who have the package of materials, is that there is a copy of the Chattanooga decree. On page 4 of that material is an article from the *Chattanooga Times*. It gives the court a very real basis for both enjoining the Klan in Chattanooga, and also it gave the jury a very strong basis for imposing damages. The court found, based on extensive testimony, that the history and purposes of the Klan traditionally, are that it's a violent group and that when it acts, it's acting in a way that will bring about a very high likelihood of damage and injury to the people it confronts. That kind of allegation and that kind of proof lays the basis of what is really fundamental in this litigation. That establishes a nexus between Section 1985 (3) and the 13th Amendment; because part of the strategy, and I think anything new in our legal theory now, must be to show the connection between the organizational activity of the Klan now and what it was back in the 19th century. How the purposes of the Klan are the same, the use of violence to maintain a status of inferiority of Black and minority people.

Those purposes being demonstrated, a court is given a very strong basis for providing relief under that particular statute. So, it's something that I think we're going to have to look at very closely.

H. Randall Williams:

I'm going to mention a couple of cases. Three cases, specifically, because I think that there is something about them that we can look at in terms of trying to decide what other strategies we might follow. The first case was a case previously mentioned by a representative from the Justice Department. This case took place in North

Alabama about a year ago. It involved an interracial couple that was attacked by four white men. They were simply driving down the road and four men saw them and chased them and attacked them. The Justice Department attorney mentioned this as he pointed out, it was the one instance in which they had successfully prosecuted in federal court four Klan members. Unfortunately, for his statistics, they were not actually members of the Ku Klux Klan and so as far as I know, judging from what he said, the Justice Department still hasn't in recent time, prosecuted any Klansmen.

They were admittedly racist, and so, maybe as a practical matter, it didn't make any difference. But I think it's significant that there was never any state prosecution in this incident. There was a federal prosecution, there were convictions; and then there was a later private law suit brought by the couple in which damages and attorneys were awarded.

The second case happened in Decatur, Alabama. On May 26, 1979, there was a march by peaceful black demonstrators and they were attacked by about 50 or 60 Klansmen armed with sticks, ax handles and some firearms. In the riot which followed, there were some shots fired and several people were injured. State prosecution was limited. One black man was prosecuted but none of the Klansmen were prosecuted in state court. Since then a massive private law suit was brought by our organization on behalf of the Black citizens of Decatur. I mention this because even though the case has not yet been tried, I think it shows the effect that private law suits can have. They, (the law suits) and some other things that have been happening as well, have put Bill Wilkinson, the head of the Invisible Empire of the KKK, almost out of business. It cost him a tremendous amount of money in legal fees and other expenses. He had to sell the airplane that he used to go around the country to organize racist rallies. He's been unable to publish some issues of the newspaper he circulated all over the country. In other ways, it has had little impact on his activity.

The third case was in Texas against the Knights of the Ku Klux Klan. The Klansmen were harassing Vietnamese refugees. Again, over a period of time, there were a number of overtly hostile acts toward Vietnamese, on shrimp boats that were burned and a third was damaged. Several Vietnamese people had weapons pointed at them and crosses were burned. There was no local prosecution, there were no federal criminal charges brought, although there was some sort of an investigation. We never knew to what extent. In a private lawsuit brought against the Klan there, a federal judge granted an Injunction. There has been no further Klan harassment of the Vietnamese community.

One thing that private lawyers need to do is develop some kind of injunction against Klan activity. This is not a new idea. It's discussed all the time. But, so far, we haven't really come up with any concrete ideas on how to address it. There is really no difference between all the Klan groups that are out there. They operate the same way and they believe the same things. They're in quite frequent contact with each other, and we believe that some further thinking toward this nationwide injunction is much needed. We think that we need more specific suits.

The two cases I mentioned to you, the one in Decatur and the one in Texas, target two of the largest and most active Klan groups. They have had a significant impact on the activities of those Klan groups. Secondly, some lawsuits that target those are the lawsuits that prove where the financial support is coming from, and where the Nazis' financial support is coming from to see whether or not there are ways that you can attack the way they actually go about conducting their business. Third, to see whether or not there might be some lawsuits that will be able to actually force the government or prosecutors to take a more active part in prosecutions themselves. Fourth, and this is real risky, and in some ways I even hesitate to bring it up. But, we monitor all of the Klan and Nazi publications and there is literally a flood of extremely rabid material produced by these organizations. It is so racist and anti-semitic that you can hardly believe it unless you've seen it. In the United States we produce, in Lincoln Nebraska, for example, about 1/4 to 1/2 of all the Nazi literature that's distributed today in Germany. We don't have the laws in this country that allow you to stop this sort of stuff whereas some other countries do. I think it's extremely risky strategy. I think we ought to consider some sort of concept of class libel about how these organizations and these newspapers that are very careful not to libel individuals, libel the class of Black people and the class of Jews all the time. I don't know how, as a non-lawyer you would do that, but it's something I think we ought to think about. Fifth, I will suggest that we think about the strategy for states where local prosecutors, especially, are reluctant to get into vigorous prosecution of racists. I think we ought to look at the concept that some states have of allowing special prosecutors to be appointed to go after cases. I know they allow it a lot of times in death penalty cases. Lawyers who handle those on the defense side are confronted with special prosecutors hired by the family and I think that we could look into that for ourselves.

James Ferguson:

Thank you Randall. We'll go now to Steve.

Steven Winter:

I'd like to briefly conclude with a few observa-

tions and some pessimistic thoughts about litigation. Professor Jones, I think, made a good point that we're dealing with some new phase, new problems in terms of violence against minorities, in terms of its manifestations and that perhaps the statutes of the past are not as useful as they were in the past to deal with this issue. I'd like to pick up a few of those strands.

Focusing first on the more recent statutes that were passed in the 60's as a result of the Civil Rights era, the statutes are very carefully crafted and reflect pretty much the kinds of behaviors and activities that were happening in the 60's; the harassment of Blacks who were attempting to exercise their civil rights, and of civil rights demonstrators. Those statutes are not of great use today although they can be helpful from time to time. It doesn't really help us all that much in dealing with what seems to be a rising phenomenon in the last couple of years, of individualized random violence against minorities that is racially motivated.

I would suggest, that not to say that that cannot be litigated by either federal prosecutors, or by private plaintiffs, but that it represents unique problems of proof. Statutes require proof of racial motivation sometimes that's made easy by the perpetrators who engage in the stylized behavior such as burning of crosses or who belong to identified groups like the Klan, but that's not always the case. If we were to extrapolate from what's happening in the courts to other contexts, particularly in voting rights and Title Seven Cases, there seems to be sort of a hostility on the part of the courts to make findings of intent. I would suggest that although not impossible, it's more difficult to prove this sort of activity.

Finally, let me turn to a slightly different area, and that is the problem of public officials' violence against minorities. The statutes there do not require intent which has been called the work horse of civil rights litigation. The vast majority of civil rights litigation is brought under 1982 against State and State actors and doesn't require any proof of intent. But, when dealing with the problem of public officials, conduct against minorities, particularly problems of police violence, the central problem there seems to be is sort of a sub-culture within the police department and a failure of bureaucratic safeguards and controls. I think, in part, that it becomes increasingly more important that people who are concerned about these problems, communities that want to do something about these problems, cannot rely solely on the lawyers who have traditionally handled these problems in the past, sometimes with great success, but have to increasingly get involved in community action, political action, and exerting pressure directly on police departments and exerting pressure on prosecutors if we can't sue for prosecutorial

discretion. It is possible not to re-elect prosecutors who don't go after these kinds of things.

James Ferguson:

Thank you Steve. We have 15 minutes for questions.

QUESTION:

I am a director for the Emergency Security Institute. My name is Ken Davenport. I have six questions basically. What do you usually use to determine Klan membership or involvement? How many Klan members were prosecuted, and how many were convicted? I was just wondering what type of criteria you use to determine who is a Klan member as opposed to who is not. Also, in terms of responsibility, how do they determine whether it's a local Klan organization taking responsibility as opposed to whether or not to try to sue the national Klan organization? What about suits against the U.S. government if acts are by military personnel, or civilians who are Klan members? The question of suits prohibiting joining or organizing the Klan in the armed forces and based on the fact that armed forces personnel don't necessarily come under the Constitution, but they also come under the Uniform Code of Military Justice and under that they could probably be written in as some type of preventative measure based on the fact that it interferes with normal military work?

The question is whether or not it would be constitutional for the United States government to infiltrate Klan organizations that are based on the armed forces bases or property or personnel?

Ferguson:

Response from the panel, do you remember the questions?

Shelly Wong:

I wanted to respond using the Greensboro case. I wanted to talk a little more about the question of the government and its relationship with the Klan, particularly around the question of using National Security Laws to go after the Klan. What you have in the Greensboro case is Ku Klux Klan members and Nazi members who have identified themselves that way. There was a meeting of the various Ku Klux Klan factions and the Nazi party which formally formed the United Racist Front. That was their name. Bernard Butkovich, Bureau of Alcohol, Firearms, and Tobacco agent, attended those planning sessions that planned the murders. So the question in the civil suit that we're pursuing is, what is the relationship to the government, why do we have a federal agent in there and the relationship to the federal government in acting as an agent provocateur to encourage the Klan and Nazis? So the whole fight with the Justice Department in the civil rights suit is to see whether the Justice Department will really

seriously look at the question of monitoring. We're talking about a covert type of an operation working hand in hand with the Klan and Nazis.

Frank Deale:

I can address myself to one small part of your questions about the military and the Klan. I don't know just what the policy of the United States military is towards having Klan and Nazis. I do know, however, that on a particular college campus that has an ROTC program, an officers training program, there was a white student who was an avowed Klan member and an avowed segregationist and white supremacist who tried to get into the ROTC program and was denied admission by the army. He went into federal court claiming that his first amendment rights were violated because of the army's refusal to take him as an ROTC student and the army was upheld by the federal court. The Court of Appeals said essentially that the army has the right to keep out Klan and Nazi members as well as people who believe in white supremacy. That might address some parts of the military discussion.

QUESTION:

There's always a problem and I would like to know from the lawyers on the panel, if there's any corroboration on the rules of government operations that assist you in getting these cases into the federal courts. That is rule #1 which says that you must move expeditiously and rule #2 and soon?

Ferguson:

Do I understand the question to be whether or

not the rules help you in court?

Steven Winter:

I think the problem is not getting into court. I mean the statutes are there, the laws are there. I think now is a time that is hostile to the rights which have traditionally been effectively asserted in federal courts and one finds that the courts on the merits are being less considerate of the positions that we are bringing to them. It's not a question of what the rules are, and whether they help, lawyers all make use of the rules on both sides of any case. The basic sympathy of the courts is not where it once was.

Ferguson:

I took your question to mean that given the rules that you have, can lawyers expect to effectively litigate; is the question we're talking about in court, is that really what you are asking?

Response:

That's exactly, precisely my question. When you think of the oath that the lawyers and judges take, they are taking a rather precarious position when they do this in violation of those codes, their professional responsibility?

James Ferguson:

They are the ones who not only take the oath, but enforce the oath, and if they don't do that themselves, then the question becomes where do you go, how do you get a court to enforce a court to do something?

**CLOSING REMARKS
BY
PROFESSOR ARTHUR KINOY**



Sisters and brothers, there's one thing I've got to mention before I even get started. Brother Oliver just mentioned that I was to give a closing address, and that sent shivers up my spine because if there's one thing we have been taught during this conference by so many people, by Reverend Chavis at the very beginning, by Reverend Cobb, by all the people talking to us, it's that the strategies that we are attempting to work out here must be measured and shaped by practical reality, and not by some preconceived theoretical plan.

Well that speaks to the moment we're at right now. The preconceived theoretical plan was that I was to give a long closing address. The practical reality is that we are all very tired. Therefore, I am going to hold this down.

I think the words Reverend Chavis opened this gathering with last night have proven to be so true. Remember what he said to us? That the folks who decided to come together to hold this conference were very bold to have planned this type of gathering, and I think what has happened is the living proof of his words. I can't tell you how many hundreds of conferences I've attended over the years, and this has been, speaking very honestly, one of the most exciting gatherings I've been at,

that I can remember in many years. There's just no question about that. You came here from all over the country, from the organizations of people deeply committed to the struggle not just against the rise of racial violence, but committed to liberation, committed to Black liberation, committed to the changes that, as Dr. Chavis told us in his opening remarks, are the heart of everything we must confront in the struggle for the transformation of our society. We came here together and we talked with each other, and I cannot tell you how much I feel I have learned from the talking, the discussions—and not just the formal presentations of the panel people. Some of the most valuable things I came away with were the discussions out there in the hallways, the discussions on the walk to the luncheon, the discussions last night and early this morning.

What is happening? We are getting together again. We are beginning to pool with each other our experiences, our thinking. About what? Let us remember what Reverend Cobb said about the most difficult, critical problems that this country has been faced with in many, many years. Remember how he warned us that this discussion, this conference of ours, was going to be just a bare beginning. That we would just start to



discuss with each other what? The strategy for what? To halt the Klan? The strategy to stop racially *targeted* violence? (See, we've all learned something. Now we talk about racially *targeted* violence.) No, this is the struggle to save everything, every single one of us. The Black people in this country, the Puerto Rican people in this country, the Mexican people in this country, the women of this country, the working people of this country, have put before themselves as their goal a decent life, a life we can live without being blown up, a life we can live, in which all of our energies and activities can begin to create for ourselves, for our children, for the future, the kind of society where the exploitation of each of us by the powerful structure is eliminated.

We stand on the edge now of what? I want to say out loud and clear, and I don't care if there are people anywhere who are going to disagree with me on this, the word that just shook me and went through me when Reverend Chavis said it. We are on the edge in this country of what? Incipient fascism. The word that no American ever wants to face. The way that, for a hundred years, no American ever wanted to face another fact. I have one disagreement with my dear colleague and friend on the earlier panel who used the phrase, "The Compromise of 1877", I'm never caught dead using that phrase anymore. The *Betrayal of 1877*.

And what do we face now? We face the same crisis. Only, as people used to teach us in the old days, history does not repeat itself in the same way.

1877 was disaster. But the new 1877 that we face is not only going to be disaster, but death and catastrophe. Because the aim is to destroy not just the struggles of Black people, but to destroy every single elementary constitutional right of freedom which the power structure itself created many years ago.

They're afraid we're going to use them. They're afraid we're going to get together, all of us, and move forward, as Ben Chavis said, to the new world and new society, and they're so scared to death that they have unleashed all of their forces—to what? To move in the direction of what? Yes, Fascism. The struggle against racial violence is just a part of this struggle.

I'll say it very bluntly. Alright, it is perfectly clear for Black people and to the Black liberation movement why they must be in the center of this fight, but it's equally clear for white people why we must be in the center of this fight. Why, because we like Black people? Yes, we like a lot of Black people, Black people like a lot of us, but as the reason for action that's nonsense. Why? Because our lives are on the line. The entire future of the basic form of our society, the form that means we can meet here, is on the line. Let's be blunt about



it. In the society some of them have in mind for us, not so long from now, we won't be meeting in this room, we'll all be in a concentration camp together, and that will be a little too late to stand and fight, so the strategies we must work out now are critical to all of us. We cannot be arrogant about this. We cannot expect that we are going to solve these strategies in one day's meeting. We've just barely started. The question is how do we here, working together now, how do we move forward?

Now, this is not a big meeting that's going to plan out all the details of what's going to be done tomorrow morning, to fight the Klan. That would be arrogant, that would be to say we supersede all of the community organizations, everybody else that's working and struggling in this country. How do we begin to work together to plan out the kinds of strategies that will be effective on a local, a community, a regional, a national level?

Why was there a victory in Chattanooga? Because they were doing what the people of Chattanooga wanted them to do, and told them to do. Who made all the basic decisions in that Chattanooga case? The organizations, the city of Chattanooga. I tell you that speech that Vic gave us this luncheon, just like Ben Chavis' speech, and Reverend Cobb's speech, and the other speeches, have to be distributed massively all over this country. We have to get them to every organization of people who are involved in any way in this struggle.

We have to have the planning of similar conferences on a regional basis. It's a very big country. One of the strengths and weaknesses of our movement and our work is the size of this country. But we've got to have regional conferences of this nature from one end of the country to the other, and the Rutgers Law School, and the United Church of Christ, have got to take the responsibility, and all of us in different organizations, the INC Fund and everyone else who's here, the NAACP, have got to get together and help these organizations.

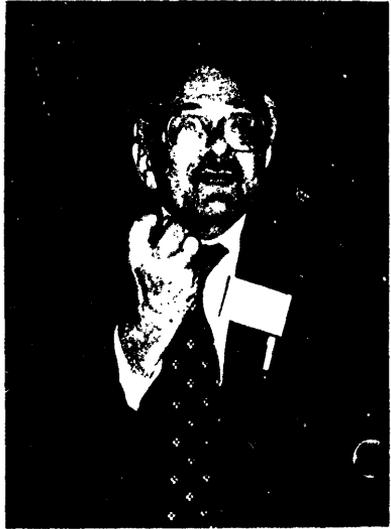
This grouping that got themselves together—the Commission, the Law School and whatever other national or regional organizations are represented here—have got to start to meet as a coordinating committee, to read through very carefully what was discussed at these workshops. There were practical proposals made. There were proposals made in our workshop on the role of the Federal government, of the most specific nature, to put that Justice Department on the spot. It just about blew my mind, sitting here listening to what the representative had to say, as I said to everybody at that workshop, when the representative of the Department of Justice said very directly, for the first time I'd heard them say it in thirty years, that the theories that I and a number of other people have been putting forward for years as to the power and strengths of the 13th Amendment to the Constitution and what it demands from the point of view of national action—you know what he said? He said, "I think it may be valid." We haven't heard that in years!

We've got to confront them now with demands for action. And if they won't act, then national organizations, community organizations of people, have got to act in the vacuum. If they won't take leadership, then who has to take leadership? The people, and the people's organizations. And this coordinating committee that can begin to develop can make suggestions to all of us on how we move and what we do, and that will be a beginning of moving. It's a great mailing list, everybody here now.

And then, as a real goal, I'll just throw this out, I would like to see us reconvene. Let's take a hard look at where we stand, and what we have won, and instead of one Chattanooga victory, let there be twenty victories that we're reporting to each other. We've done it before in this country, and we can do it again.

I will never forget, and I just have to say that I am moved at this moment to tell you. I remember the words that burned through me at the end of a meeting like this. It was in Sunflower County, Mississippi in 1964, and representatives from all over the state of Mississippi had been convened together by the leaders of an organization which the whole country then came to know because for a moment they shook the country, the Mississippi Freedom Democratic Party. And oh, then there were just loads of discussions, and you think we had differences of opinion here today? You should have been down there. All kinds of differences and discussions and everything else, and people were just exhausted after a day and a half of that conference—and I'll never forget what at the end, the convener of the conference, Fannie Lou Hamer, said to all of us, "We've talked enough, let's go out and do it."

On those words, I'll end here, let's go out and do it.



**THE FIRST NATIONAL CONFERENCE
ON RACIALLY MOTIVATED
VIOLENCE IN AMERICA**

By: Phyllis Reed
*Criminal Justice Coordinator
Suffolk Association United Church of Christ*



The first National Conference on Racially Motivated Violence in America was held April 16th and 17th 1982 on the Rutgers Law School campus in Newark, New Jersey. Sponsored by the Commission for Racial Justice, United Church of Christ and Rutgers Law School, it drew a racially integrated attendance from around the nation and from all walks of life, including the media, Congress, the legal profession, the police, the church and national networks concerned with this problem.

The conference, generated by an acute awareness of the increasing number of attacks directed at Black Americans in recent years, opened with the ABC "News Close-up: Wounds From Within" and keynote speaker, The Rev. Dr. Benjamin F. Chavis Jr., Deputy Director of the United Church of Christ Commission for Racial Justice. Dr. Chavis sounded a clear call for organized building of the Black community geared to winning and keeping its rights rather than waiting for an increasingly unresponsive administration to ensure them.

Dr. Chavis emphasized the constructiveness of Blacks and whites uniting and the positive effect that could have in eliminating Klan activities.

Throughout the U.S., the Klan is extremely destructive but its membership is small; all that is needed to squelch this tiny group is an outspoken, organized coalition. (There appeared to be an unspoken agreement throughout the conference that, out of personal experience, the technique of ignoring the Klan does not succeed in stopping it).

Dr. Chavis met concerns for Black safety head on. He emphasized that our "best self-defense" lies in working together for our rights. "Those who want to carry a gun for self-protection had better first consider the political implications of such a decision," he warned.

The Saturday morning session was opened by Dean Peter Simmons of Rutgers Law School who introduced Dr. Charles E. Cobb, Executive Director of the Commission for Racial Justice. Dr. Cobb spoke movingly of the effects of daily psychological, social and spiritual violence in addition to physical acts against Blacks, and set the tone for a panel presentation of a historical and current analysis of the Causes and Nature of Racially Motivated Violence.

Dr. Anthony Scott, historian at Rutgers, held the audience with his factual and analytical revelations of the origin of our present police force in the early slave patrols when efforts of southern slave owners to keep Blacks isolated and unable to organize a rebellion instituted a virtual state of martial law throughout the South. Segregation was their key to the success of slavery.

Jonathan Rubenstein, of the Center for Research on Institutions and Social Policy, detailed the effect of current anti-gambling laws on Blacks. Black communities have the largest saturation of police and this fact coupled with the practice of using police informants plus the widespread petty corruption of police spawned by these laws have resulted in Blacks constituting the highest percentage of gambling arrests.

Elsie Scott, of the Institute of Urban Studies, Howard University, counteracted the popular myth that most racial incidents against Blacks were "childish pranks" committed by young whites under twenty. Her studies show that most crimes against Blacks were committed by young

adult white males in their early twenties. She spoke of the reality of Black-on-Black crime but noted the category of response to society's repression in which Blacks turn on each other, a kind of inversion of racially motivated violence.

Dr. Harvey Brenner, of Johns Hopkins University, analyzed the current rise of crime against Blacks as rooted in the recession with the humiliation and defeat felt by jobless whites finding an outlet in aggression and the need for a scapegoat. He believes this is the reason for the current tendency to blame those on welfare, etc. for our current problems, budgetary and otherwise. (During some private discussions following the plenary session, the writer found others who shared her dissatisfaction with this conclusion; as one participant said, "How come Blacks, a high percentage of whom are continually unemployed, don't go after whites?")

Dr. Brenner extended the phrase "Racially-Motivated" to "Racially Targeted" violence—a wording that sharpened conference thinking and was adopted throughout the day. He feels responsibility for this violence lies with both destructive individuals and in the failure of "moral institutions" to set standards and to condemn such behavior. He stated that therefore, the law does not *prevent* the occurrence of racial incidents. It is up to whites to do those things which will diffuse the tremendous rage pouring out towards Blacks. Meanwhile, he charged that the law must demonstrate that it will take action against those who engage in focusing their anger on other groups.

The final speaker on the panel, Dr. Mary Berry of the U.S. Commission on Civil Rights, warned that, while economic downturns tend to exacerbate racially targeted crimes and harassment, we should not expect racially motivated crimes to disappear when the economy returns to a healthier state. She reminded us that these attacks have continued throughout our history regardless of the economic condition.

Many at the conference were able to recount, sometimes with the aid of newspaper clippings, stories of attacks, harassment and brutality against Blacks that defy recent civil rights efforts, creating a disbelief that this is 1982, and a wonder at the persistence of events duplicating the horror and injustice of those prior to 1965. Only after concerted, vocal protest does the U.S. Justice Department move on these violations and even then, the effort is often weak. Dr. Berry stated the persistent belief that there would be no prosecution of whites-who killed Blacks. She said that, until recently, states have been very reluctant to prosecute. She described U.S. Justice response as first a complaint of "lack of staff" and later a claim that "these cases are difficult to prosecute" and will probably only lead to acquittal and subsequent further crime.

There didn't appear to be much need to constantly repeat that racism still permeates our system. Life experiences spoke for themselves and the obvious was there for all to see. One of the more notable examples of that which hinders the protection of Blacks and prevents their full acceptance in our society is the insidious perception that results in terming violence against Blacks "a racial incident" whereas the same acts, if committed against whites, would be dealt with seriously and called a crime.

This view has historical roots in the notion of slaves as chattel, of Negroes as worthless, to be disposed of at whim and without concern.

Dr. Berry raised the crucial issue: What is government's main function—to protect life or to keep order?

All of the above background served as a preparation for the second half of Saturday's program. Following the luncheon, the conference was addressed by Victor McTyre, graduate of Rutgers Law School. The audience was moved by his account of the legal victory last February in Chattanooga when he won a civil case against the Klan. As a result—the judge awarded \$535,000 damages to five Black women who were shot at by Klansmen in Chattanooga in 1980. These same Klansmen still walk the streets as criminal charges have not yet been brought.

Due to illness, John Conyers sent his Congressional Assistant, Gail Bowman, to give a legal report on existing laws that should be used to protect Blacks.

Afternoon workshops were equally as vital as the morning session and there was difficulty containing them within the necessary time limits. In the first session, registrants chose between the following titles: "New Legal Theories: Private Judicial Remedies", moderated by the Attorney for the Wilmington Ten, James Ferguson, KKK; "Police Violence", moderated by Professor Charles Jones of Rutgers Law School, and "The Federal Role in Meeting the Threat of Racially Motivated Violence", moderated by Professor Arthur Kinoy, Rutgers Law School.

In the second session, participants chose between "Community Action Against Racial Violence", moderated by Victor Goode of the National Conference of Black Lawyers; and "The State Role in Meeting the Threat of Racially Motivated Violence", moderated by Oliver Quinn, former legislative aide to John Conyers.

This writer attended the Workshops on "Police Violence" and "Community Action." In the former, panelists made several observations which were just the beginning of what could be some very fruitful and illuminating discussions, first, with respect to the role of the police in maintaining order. Jonathan Rubenstein is of the definite opinion that our police system, which

began in the 1870's with the advent of industrialization and urbanization, is "irrelevant" to today's needs. He stated that, prior to the 1870's, society's institutions carried out the police function of keeping order.

Newark's Police Commissioner, Hubert Williams, disagreed and felt that the police *are* relevant to the functioning order. The basic question, he feels is why are so many people committing crimes?

James Fyfe of the Police Foundation, Washington, D.C. stated the number one obligation of the police should be to protect life. Fyfe believes that it is the *structure* of the police system that is irrelevant. Presently based on the military model with its implication of freedom of choice and decision making emanating from the top and therefore, complete obedience and no latitude at the lower levels, this model defies current reality. For example, the Newark Police Commissioner is accountable to a number of city groups and officials and not free to choose, while the cop on the beat, often alone, is free to exercise a number of choices.

Fyfe feels that it is society's institutions which have failed—not the police—or the person involved would not come in contact with the "Criminal Justice System" (a phrase that was questioned by someone's statement to the effect that we really do not have a system).

Martha Fleetwood, lawyer for the NAACP, underscored historian Tony Scott's morning report by explaining that police violence originated with the slave patrols started by South Carolina in 1690. Not long after, the poll tax was instituted to pay for the Slave Patrols. Patrols harassed and killed slaves without compunction or accountability.

With respect to the effectiveness of internal controls in curbing police violence, Commissioner Williams felt that they are effective and he does not believe that control should be exercised by an external mechanism. He feels control should come mainly from within with some monitoring from an outside structure.

James Fyfe noted the direct effect that attitudes of top city leadership have on rates of police violence. When Frank Rizzo became mayor of Philadelphia in 1973, police shootings increased by 25%. After his term ended, police shootings decreased by 75%.

In the second workshop attended by this writer, "Community Action Against Racial Violence", we were addressed by the following panelists: Lyn Wells of the National Anti-Klan Network; Boyd Bosma, National Education Association; Stan Hamilton and the Rev. Sperling of Shepherd of the Streets Mission, Wilkes-Barre, Pennsylvania, and Jean Dember, member of the National Board of the Catholic Black Lay Caucus.

They demonstrated several strategies and approaches to community involvement. Representing the educational approach and using our schools, Boyd Bosma presented the first instructional aid of its kind, just published in 1981 and entitled, "Violence, the Ku Klux Klan and the struggle for Equality." People are encouraged to purchase a copy for each person on their community action committee so that with adequate study and preparation, they can make an intelligent presentation to individual teachers, school officials and the school board. Referring to boards and getting official approval for inclusion in the curriculum, Lyn Wells described it as a long process and so prefers approaching individual teachers. She said teachers could possibly lose their jobs but she hasn't heard of any yet. (The teaching aid can be purchased for \$4.95 from: The Council on Interracial Books for Children.

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The writer suggested that the teaching of any curriculum on racism needs to be preceded by some evaluation of white teachers with respect to their own inherent racism under a person trained to lead in these discovery techniques (some of which may elicit a painful experience).

The National Anti-Klanwatch, operating with one staff member, Lyn Wells and a number of volunteers, is seeking records of racially targeted incidents nationwide and appreciates receiving notification of such. She also spoke of a need for a computer to keep track of all information. Presently, she is promoting the instruction book and also is circulating petitions on behalf of the five Black women in Chattanooga in order to secure a criminal trial of their Klan attackers.

Amid all the spadework, education, and hope for legal remedy, Stan Hamilton and Rev. Sperling gave a startling presentation that left many at a loss for words. For Stan, the need is immediate action and solutions are a must as the Klan is not only meeting near Wilkes-Barre, but it has issued threats to such an extent that some Black children have asked their parents how to hide their Blackness, if not actually how to hide. Adults and children were afraid to go on the streets during a recent Klan visit to town.

In their work with the community of Wilkes-Barre, Stan Hamilton and Rev. Sperling are themselves the technique and the strategy. Stan who is Black and Rev. Sperling, a white United Methodist minister, attend community action board meetings together. Those who would be inclined to dismiss the testimony or feelings of one, tend to listen to the other and vice versa. They make a powerful witness as a united integrated team.

Jean Dember uses the strategy of attending as many meetings of different church and political groups/caucuses as she can, speaking about

critical issues and carrying petitions for signing on these occasions. After mailing 2,000 signatures she and other volunteers had gathered requesting a Congressional hearing on Police brutality, she personally followed up by visiting John Conyers herself. Meanwhile, her efforts caught the attention of the Black/Puerto Rican Caucus in New York State which resulted in a hearing on this issue in Albany.

Some audience participants were anxious for the how-to steps for Community organization. (It seemed to this writer, that there is less need for explicit instructions and more need to be inspired to use one's own gifts, in short, oneself in a creative way right where one is and reaching out to the nearest sympathetic person to make plans and carry them out. Brainstorming, personal contacts, constant education and communication are the beginning, involvement will come from there.)

Following the second session, all participants were privileged to hear Professor Arthur Kinoy, Constitutional lawyer, Rutgers Law School, issue the challenge. He begged us not to let this conference be "a one shot deal" and called for the Commission for Racial Justice and Rutgers Law School to set up regional conferences, followed by another national conference. There was no mistaking the effect of this man's dynamism on the audience as he proclaimed "Go and Do!"

The idea of holding this first National Conference originated with Travis L. Francis, Director of Research, Information and Education for the Commission for Racial Justice, United Church of

Christ and himself a graduate of Rutgers Law School. The joint planning done by him, Ruth Banner, and Fred Brooks of the Commission, and by Professor Charles Jones and Janice Mitchell of Rutgers and their hard-working staff people created a truly powerful, information-packed beginning. The literature was extensive and excellent as well.

If I am representative of other whites at the conference, then I would say most white participants left the conference with a greater understanding and awareness, not the least of which was the new knowledge of the origins of our police force. That provided a context (lacking before) for understanding even more deeply the tensions between police and the Black community. If more people were instructed in the historical roots of current situations, we might yield more productive solutions. Sometimes just understanding dissolves the tension.

It is time to condemn all forms of hatred, subtle and direct, whether physical, psychological or spiritual and for whites to demonstrate the love of the Gospel and their abhorrence of destructive actions focused on any group.

Phyllis L. Reed
Criminal Justice
Coordinator

Suffolk Association
United Church of Christ
April 18, 1982

RACIALLY MOTIVATED VIOLENCE CONFERENCE

Statement by Jean Wilkins Dember:



In Suffolk as the Chairperson of the Suffolk County Black Assembly (Now Party), since we had such a pressing problem with police violence, which had been written up in the National Law Review, and other reports; such as the Suffolk Bar Association—I proposed to the membership a petition demanding Congressional Hearings by Congressman John Conyers in his role as Chairman of the Subcommittee on Crime. The idea was accepted, and as the petition filled, it was forwarded to Mr. Conyers, with copies to Mr. Robbie L. Robinson, Director of the National Black Lay Catholic Caucus. I retained a copy. After a year of this, I had the opportunity to speak to Mr. Conyers directly, about the hearings at the Criminal Justice Braintrust meeting, one of which was in Washington, and one which was in Philly, in concert with the Blacks in Criminal Justice. In Philly, Mr. Conyers said he would come to Suffolk for a hearing, further, that he would invite the suburban caucus to attend, and demand their presence. The third time I had the opportunity to speak to Mr. Conyers it was again in Washington, D.C. during the Criminal Justice Workshop of the Black Caucus I was advised to speak to an aide to make arrangements. I found out that a hearing had been held in Los Angeles. I protested that New York had been petitioning for just such a hearing. I was assured that New York's turn would come.

Subsequently, I became chairperson of the New York Assembly, and widened the scope of the petition to include the state. Mr. Conyers indicated that the Republicans would not support a hearing in New York State. I obtained letters from Mr. Hamilton Fisch, a member of the subcommittee. Mr. Fisch said he thought that the hearing was a good idea, and wondered when did Mr. Conyers ever ask him to hold such a hearing. Naturally, we felt betrayed. Several more youths had been shot down by police, in Nassau and in Suffolk. More killings had taken place in New York City as well. As a result, I was able to get resolutions of support from the Black United Front, and Rev. Herbert Daughtry also held some hearings. Later, both the National Conventions of the Black Lay Catholic Caucus and the Black Independent Political Party had supporting resolutions which demanded hearings be held in the four quadrants of the United States. The N.Y.S. hearing was held in Albany, May 19, 1981. The report was 300 pages. It is being summarized in Assemblyman Al Vann's office, through Assemblyman Arthur Eve's Staff. Mr. Vann, and Congressman Walter Fauntroy were hearers, as well as other members of the caucus there. I testified that Mr. Conyers had promised to attend.

The behavior of police in Suffolk County is notorious. Most recently a youth of 19 years old was arrested and held for 9 1/2 hours, while the young woman with him was held for 10 1/2 hours. Injustices like this mount and we are terrorized.

The Genocide Treaty is in committee of the U.S. Senate. It states that if members of a group are killed, or caused extreme mental anguish that is genocide. Also if the children of a race are removed that is genocide, in New York City the social services staff is 93% white, and the children are 98% Black and Hispanic, obviously they are removed from our control.

Surely, we can see that this applies to the Native American population as well. The F.B.I. has broken into several homes in New York City, violating the rights of the citizens and also recently stormed the Black Acupuncture Center of North America. Dr. Kamu Middleton was treated outrageously causing him extreme grief and threatening patient confidentiality.

Ms. Ruth Fletcher has worked closely with me in coordination of the petition drive, in the state, and obtained the support of Congressman Rangel.

It is imperative that we force the Genocide Treaty out of committee. The fact that the constitutional rights have not protected us thus far, and in fact are still under question and debate while we die in the street, and while our men are subject

to homosexual rape while guards who "have a right to belong to the KKK turn their backs and ignore brutality and violence makes it clear that it is only through the Genocide Treaty and the United Nations that we will receive justice and protection. The attitudes of Jean Kirkpatrick clearly shows that the U.S. government does not have the skills to work with the predominating nations of color because of the white supremacy racism which reigns.

It is imperative that we communicate our support of passage of the Genocide Treaty. I have indicated my support to Mr. Patrick Moynihan. Further, in order to help white people work on this critical problem, we have constructed a white racism mental health committee, which works within the framework of the Suffolk County Mental Health Commission. We train mental health clinicians to deal with their own attitudes

so that they can deal with both white and black patients and help to diffuse the volatile racial situation.

Time precluded my making a summation statement, although I was the only Black woman on the panel, the young white woman was allowed her closing statement. I feel it is important that people seek out the anti-poverty programs and get involved with them in seeking political empowerment so that these objectives can be achieved.

The New York State Alliance is one such organization. It is the state wide lobby for the rights of poor people, disproportionately of color in this nation. There are white people working with us who see that we must work together broadly to solve these problems. White supremacy racist violence can be stifled by healthy intergroup action.

RACIAL VIOLENCE IN THE UNITED STATES

by Dr. Elsie L. Scott
Institute for Urban Affairs and Research
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Data were collected from police departments, district attorneys, newspapers, organizations, and human relations commissions in various cities, counties and states throughout the country. The following variables were used to analyze the cases: (1) year of occurrence; (2) region of occurrence; (3) age of victims and offenders; (4) sex of victim; (5) number of victims and offenders; (6) weapons used; (7) motive for the attack; and (8) age of perpetrators. Only cases involving attacks by white civilians have been included.

This study is limited by several factors. First, it only addresses one aspect of the crime problem in the United States. Second, a number of incidents are not reported to the police, human relations commissions or other organizations or agencies. Third, all racially motivated incidents are not readily identifiable. Fourth, data are still being collected that may increase the numbers reported in this paper.

Findings and Discussion

Forty-two racially motivated homicides and 92 assaults/attempted assaults were documented (Tables 1 and 2). There was an increase in the number of incidents reported from 1979 to 1980, but there was a decrease in the number of attacks reported in 1981. The decrease in the number of homicides can be accounted for almost totally by the arrests of Joseph Paul Franklin and Joseph Christopher. Franklin has been convicted, indicted or implicated in seven of the 1980 murders, Christopher has been indicted or is the chief suspect in another twelve murders. Additionally, they are the chief suspects in a total of six 1980 assault cases.

Table 1
Homicides by Year and Region

Region	1979	1980	1981	N	%
South	1	6	6	9	21.4
North Central	2	6	1	9	21.4
West	0	4	1	5	11.9
Northwest	0	16	3	19	45.2
Total	3	32	7	42	99.9

Table 2
Assaults by Year and Region

Region	1979	1980	1981	N	%
South	8	14	4	26	28.3
North Central	3	6	9	18	19.6
West	0	2	6	8	8.7
Northeast	13	17	10	40	43.5
Total	24	39	29	92	100.0

The South has had a long history of oppressive acts committed against Black people; therefore, it was expected that the South would have the largest number of incidents. Nevertheless, the Northeast region reported close to half of the cases in each category. The South had the second largest number, and the West had the smallest number of incidents reported in this study. Some of the differences between the regions may be accounted for by differences in the reporting systems. The Northeast has more human relations commissions and police departments that are systematically collecting data on such incidents. City and human relations commissions which are quite common in the Northeast are practically non-existent in the South.

The homicides and assaults covered in this study were spread across 23 states—ten in the South, five each in the Northeast and the North Central, and three in the West. New York had the largest number of incidents—35—followed by Massachusetts with 15 and California with nine.

Males were much more likely to be victims of homicide than females. Males made up over 90 percent of the homicide victims. This finding is consistent with FBI statistics which show that males have a much greater murder victimization than females. Yet, the findings of this study show a higher percentage of male victimization than the FBI statistics and other studies. In 1980, only about 77 percent of the homicide victims were male (FBI, 1980). Similarly, Pokorny (1975) found that males made up 76 percent of the victims. The large percentage found in this study may be due to the fact that all the victims were Black, and that Black males tend to have the highest victimization of any race/sex group. The difference may also be explained by the nature of the crimes studied. White males have traditionally been more likely to physically attack a Black male than a Black female.

Males also dominated the assault statistics but differences were not as great. One-fourth of the assault victims were female.

Young people were the major targets of the attacks. Close to 50 percent of the homicide victims were younger than 20 years old; less than 10 percent were over 40. This finding is not consistent with the findings of previous studies and surveys. Only 13 percent of the 1980 murder victims in the United States were 19 years or less (FBI, 1981). In Wolfgang's (1958) Philadelphia study, the homicide victims were most concentrated between the ages of 25 and 34. Similarly, Voss and Hepburn (1968) found that the victims in their study were concentrated between the ages of 25 and 29.

Some, who have alleged that there is a conspiracy to kill Black children, may interpret this finding as support for their thesis. However, this study is not comprehensive enough to draw such a conclusion.

Over half of the homicides and over one-fourth of the assaults were carried out with guns. Knives and other cutting instruments were the second most popular attack weapons.

Because so many of the assaults involved the use of guns, it can be argued that many of the assaults were really attempted murder. "The difference between fatal and nonfatal (but serious) attacks with a firearm is in most cases a matter of chance—where the bullet happened to hit" (Cook and Nagin, 1979).

The majority of the cases involved multiple offenders—56.0 percent (Table 3). When the cases were categorized into homicides and assaults, it was found that close to three-fourths of the homicide cases involved single offenders, while close to three-fourths of the assault cases involved multiple offenders. In 1979 less than one half, 48.9 percent, of the incidents were perpetrated by more than one offender; in 1980 and 1981 multiple offenders were present in over 60 percent of the cases.

The fact that over half of the cases involved multiple offenders indicates that there is an element of mob activity involved. However, it is difficult to determine if organizations are involved in specific incidents if the organization does not claim responsibility or if known members are not interested.

Klansmen were involved in two of the homicides and 21 of the assaults reported in this study. In these 23 cases, either a Klansman was arrested for the attack or the persons carrying out the attack identified themselves as members of the Ku Klux Klan or they wore Klan type hoods and robes. Thus the Klan involvement may be greater than what is reported here.

Most of the 1979 incidents with Klan involvement took place in the South. The 1980 and 1981

incidents that the KKK was associated with occurred in states located in every region of the country—California, Georgia, Indiana, Michigan, Pennsylvania, Tennessee and Washington. The various factions of the Klan have been engaged in recruitment drives throughout the country. The fact that a number of incidents of hate activity have taken place outside the South seems to provide evidence of the effectiveness of the recruitment. Nevertheless, there are several factors that may serve as checks against the future effectiveness of the Klan: (1) internal power struggles, (2) opposition activity by Anti-Klan groups, and (3) tough actions by local executives and legislative bodies (Klan watch, 1981).

Table 3
Number of Victims and Offenders

	Homicides		Assaults		Total	
	N	%	N	%	N	%
Single victim/ single offender	21	50.0	14	15.2	34	26.1
single victim/ multiple offenders	9	21.4	23	25.0	32	23.9
Multiple victims/ single offender	10	23.8	5	5.4	15	11.1
Multiple victims/ multiple offenders	0	0	43	46.7	43	32.1
Unknown	2	4.8	7	7.6	9	6.7
Total	42	100.0	92	99.9	134	99.9

In most of the cases, no specific motive, besides the fact that the victim was Black, could be determined (Table 4). Only a small number involved interracial relationships or Black families moving into a predominantly white neighborhood, and even fewer cases involved political conflict.

These recent incidents differ from the acts of racial violence that were perpetrated during the Civil Rights Era in that during that era attacks were mainly aimed at persons who were attempting to or who they feared may attempt to exercise their political or civil rights or at males accused of having contact with white women. Victims in this study seem to have been selected at random because of their race and vulnerability. All of the political attacks were recorded in the South where there has been more activity in support of civil rights and justice causes.

This study shows that despite the Supreme Court ruling that legalized interracial marriages and the removal of restrictive covenant ordinances from the books, Black men are not free to

openly live with or be seen in the company of white women, and Blacks are not free to reside in the neighborhood of their choosing. The number of persons killed/attacked for moving into a predominantly white neighborhood or for associating with a white woman is small, but it is significant because lives have been lost and physical and emotional damage have been inflicted.

Most of the hearing panels on hate activity have found that juveniles are the major perpetrators of this type of activity. Juveniles are probably the major perpetrators of vandalism and cross burnings, but this study shows that the more serious acts are being committed by adults.

Table
Apparent Reasons for Attack

Reason	Homicides		Assaults		Total	
	N	%	N	%	N	%
No apparent reason besides victims' race	27	58%	6	3.0	85	63.4
Interracial relationships	6		6	6.5	12	9.0
Living in white neighborhood	0		12	13.0	12	9.0
Political reasons	0		6	6.5	6	4.5
Other	1		5	5.4	6	4.5
Unknown	8		5	5.4	13	9.7
Total	42		92	99.8	134	100.1

Charges have been filed or arrests have been made in 24 of the 42 homicide cases, and Franklin or Christopher is the prime suspect in 11 other cases. Of the 24 cases where arrests were made, only five involved juveniles. Adults were also the major perpetrators in most of the assault cases in which a perpetrator has been identified.

Many jurisdictions have not taken the allegations of increasing hate activity very seriously because some officials feel that it is the result of "childish pranks." This study's findings show that the opposite is true. The most serious offenses are being perpetrated by adults who are fully aware of what they are engaged in.

The courts have treated some of the defendants as if they were juveniles. They have been allowed to plead guilty to a lesser offense, they have been found not guilty, and one of the major offenders was found incompetent to stand trial. The defendant received a life sentence in only two cases (one other defendant received 15 years-life).

What is Being Done

A number of activities have been undertaken to try to prevent and reduce the number of violent acts that are motivated by racial hatred. Some Blacks are fighting back when they are assaulted or threatened by white individuals or groups. For example, Annie Small, a Black Cincinnati woman, shot and killed her white neighbor after he came to her house calling her a "nigger" and threatening to kill her. She had previously filed five complaints with the authorities. In St. Louis, two Black men killed a white man during a fight with three white men who had shouted racial epithets at the Black men.

Some communities have come together in a "united front" to not only reduce incidents, but to offer support and assistance to racial violence victims. In Montgomery County, Maryland, the Network of Neighbors was organized in 1977 to offer support to victims, the police and the Human Relations Commission. In Los Angeles, neighbors of a Black family whose house was vandalized, leaving most of their furniture and clothing destroyed, gave a party to raise money for the family and to show support. In Oklahoma, Mississippi, Blacks were forced to organize patrols to protect Black families.

City councils and other city, county and state agencies have become involved in the anti-hate activity effort. In Los Angeles, a fund has been established to pay for information leading to the arrest and conviction of persons committing hate activity. The District Attorney of Nassau County, New York, created a special unit to investigate racially motivated incidents. The Connecticut state legislature censured one of its members for answering a questionnaire on legislative issues with a racial epithet.

Several civil suits have been filed by victims with the support of anti-Klan groups. Danny Adams sued his four attackers after he suffered a head gash requiring 24 stitches in a 1980 attack that took place in Alabama. The most publicized civil suit was the Chattanooga, Tennessee case in which five Black women were shot. The women won \$535,000 in damages.

Anti-Klan legislation has been passed by several states. Most of the legislation has been aimed at either outlawing paramilitary training or banning the wearing of masks.

Conclusion

In this investigation, we have shown that racial violence is a continuing problem that is not just isolated in the southern region. Some jurisdictions are taking the incidents very seriously, but others are trying to ignore the problem in hopes that it will go away.

This paper has only reported on the most serious offenses—murders and assaults. There

are many more incidents of vandalism, arson/fire-bombings, cross burnings, and threats/harassment that have not been included. Additionally, data on murders and assaults are not complete. The additional data on other incidents and other forms of violence will be reported on in future papers.

6. *Other Writings;

Violence Against Blacks In the United States
1979 - 1981
Occasional paper #20
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**STATEMENT OF PROF. ARTHUR KINOY BEFORE THE SUBCOMMITTEE
ON CRIME OF THE HOUSE COMMITTEE ON THE JUDICIARY
SUBMITTED DECEMBER 9, 1980**

My name is Arthur Kinoy. I am a professor of Constitutional Law at Rutgers University School of Law, Vice-President of the Center for Constitutional Rights, and a member of the legal task force of the National Anti-Klan Network. I have practiced for many years as an attorney in the field of constitutional and civil rights law. I have been asked to testify before this Subcommittee on Crime of the House Committee on the Judiciary concerning the serious questions of law enforcement arising out of the nationwide upsurge of violence and threats of "race war" against Black, third world, and minority peoples.

The frightening rise in violence against Black and minority peoples and the rapid escalation of activities of organizations openly committed to the incitement and perpetration of this violence has become a country-wide phenomena. Only two weeks ago, on December 1, 1980, the *New York Times* reported on its front page that there is a "growing perception" among Black people that the "series of violent incidents against Blacks is a result of a national conspiracy to terrorize and kill them". As the *Times* reported, "In such cities as Atlanta, Buffalo, Cincinnati, Indianapolis, Portland, Oregon, and Salt Lake City, violent and highly publicized attacks on Blacks and increasing activity by the Ku Klux Klan and other white extremist groups have created or heightened the perception of conspiracy."

The media reports almost daily on cross burnings, bombings, racist assaults, mutilations, and murders inflicted upon Black people. Time permits the mention of only a few of these incidents illustrating the intensity of those developments throughout the country.

1. In Decatur, Alabama in May, 1979, the Southern Christian Leadership Conference (SCLC) was holding a demonstration in support of Tommy Lee Hines, a mentally retarded Black youth convicted of rape, when suddenly robed Klansmen opened fire on the defenseless demonstrators severely wounding and almost killing Mrs. Lowery, wife of the President of SCLC.
2. In April of 1980, a group of Klansmen burned a cross at a prominent location in the Black community of Chattanooga, Tennessee, and then drove through the community armed with shotguns with which they shot five elderly Black women.
3. On November, 1979 in Greensboro, N.C., a motor vehicle caravan of admitted Klansmen and Nazis arrived at an anti-Klan demonstration on that day, and persons in

that caravan proceeded to coldly, methodically, in plainview of television cameras, and in broad daylight remove weapons from the trunks of their vehicles and open fire on the assembling demonstrators. Five anti-Klan demonstrators were brutally slain in the barrage of Klan-Nazi bullets and many more were injured.

4. Only two days ago an official survey of 12 U.S. Army bases reported that "recent anti-Black and anti-Jewish activity on United States military bases in Germany has deeply divided American troops along racial lines and is threatening combat readiness." According to the December 7, 1980 *Bergen Record*, the author of the study, Sgt. First Class James Tarver of Philadelphia, said "the incidents showed a sharp rise of extremist and racist activities at the bases in the past 18 months."
5. In September four Blacks were killed in Buffalo by sniper fire within 36 hours by an assailant who witnesses said was white. The next week, two Black taxi drivers were murdered and their hearts were cut out. Later, animal hearts were left in a locker room used mostly by Black workers at the Bethlehem Steel Co. and in a bathroom used mostly by Blacks at a downtown public library.

These are but a few of the many episodes of violence and terror against Blacks and minority people which have been publicized from one end of the country to the other during the past months. The *New York Times* article of two weeks ago set forth as examples frightening recent incidents of such violence in Cincinnati, Atlanta, Chattanooga, Salt Lake City, Buffalo, Florida, Detroit and Youngstown, Ohio.

As this Committee knows, these are just a handful of the developments erupting all over the country. And certainly the most alarming revelation is that this studied wave of violence is now being consciously planned in Klan-run paramilitary training camps all over the country. On October 6, 1980, *Newsweek*, in an article entitled "The KKK Goes Military", reported that on the mountainside north of Birmingham, Alabama, each month Klansmen "wearing camouflage and military fatigues, prowl the remote ravines with M-16 rifles practicing search-and-destroy mission". *Newsweek* said these secret soldiers of the KKK study guerilla war tactics and "talk openly of fighting Blacks in the coming 'race war'". The report stated that a Klan member said there were

similar units training in Mississippi, Georgia, Tennessee, and two unnamed northern states. The *New York Times* on September 28, 1980, in an article by Wendell Rawls, Jr., entitled "Klan Group in Alabama Training for 'Race War'", also reported on the development of Klan para-military training. See also, a report entitled "Ku Klux Klan Paramilitary Activities" prepared by the Anti-Defamation League of B'Nai Brith on October 23-26, 1980.

This exploding pattern of violence directed against Black and other minority peoples unless checked and repudiated, threatens the nation with the disaster warned against so forcefully over a decade ago in the Kerner Commission Report of 1968. We are on the edge of a national crisis of untold dimension if this spreading pattern of violence is not halted firmly and decisively. The problem posed is as serious and grave as the country has faced in many years. It is a national, country-wide development and requires national, country-wide remedies of a swift and compelling nature.

Such remedies are available for immediate use. They were first fashioned by the Republican Congress in the years immediately following the Civil War to meet the threat of wholesale violence and terror designed to undermine and destroy the solemn commitments of the nation to freedom and equality for the emancipated Black people. What must be recognized is that the federal statutes shaped first in the Reconstruction period for this very purpose, and then strengthened in the 1960's, offer the opportunity for the immediate development of a powerful two-pronged strategy to avert the disaster which otherwise faces the nation.

The first prong of such a strategy lies in the immediate full scale and sweeping enforcement of the federal criminal civil rights statutes. These criminal statutes, 18 USC Sections 241, 242, and 245, were first enacted by the post-Civil War Congress, and then strengthened and amplified in the 1960's to meet precisely the dangers presently being generated by the Klan and similar groupings throughout the country. Known historically as the "KKK Statutes", these laws provide an immediate criminal remedy against conspiracies to use violence and threats of violence against citizens exercising their elementary constitutional rights. Federal grand juries should be swiftly used wherever these acts of violence have occurred to hear evidence upon which indictments for violation of the KKK Statutes can be returned. This was precisely the approach which was taken in the early 1960's after the brutal murders of the three civil rights workers, Michael Schwerner, Andrew Goodman, and James Chaney, in Philadelphia, Mississippi in 1964. There were loud and insistent demands from the civil rights

movements all over the country, and the institution of private citizen actions seeking court protection for elementary constitutional rights in the absence of effective federal intervention. See complaint in *Council of Federated Organizations et al., v. L. C. Rainey and Cecil Price, Individually and as Sheriff and Deputy Sheriff of Neshoba County, Mississippi et al.*, attached hereto as Appendix B.

Finally, the Department of Justice invoked the federal criminal anti-Klan statutes, 18 USC Sections 241 and 242 and obtained indictments and convictions of the Klan murderers. These were ultimately sustained by the Supreme Court of the United States as absolutely proper exercises of the legislative and judicial power to enforce the 13th, 14th, and 15th Amendments to the United States Constitution. *United States v. Price (Rainey)*, 383 U.S. 787 (1966).

There is a pressing urgent need for the immediate sweeping enforcement of these federal criminal anti-Klan statutes. As in the Reconstruction Days, and in the period of the 1960's, local and state criminal procedures are proving to be utterly useless in punishing or deterring the wave of violence against Black and minority peoples. The recent acquittal of the Klansmen and Nazis charged with the killings in Greensboro, N.C., as well as the acquittals in Chattanooga and the collapse of the state criminal proceedings in Miami, Florida, are but a few examples of the total failure of local and state attempts at the protection of the elementary civil rights of citizens. This is precisely the situation the federal criminal anti-Klan statutes were designed to meet. The Department of Justice has in fact turned to the utilization of these statutes in certain limited situations in the past year but what is now required is full-scale, immediate, and sweeping enforcement of the federal statutes wherever and whenever such violence occurs.

An emergency national task force of the Department of Justice needs to be established immediately. There must be appropriation of emergency funds permitting the enlistment of the talents of the most skillful and experienced women and men throughout the country to form emergency teams to enforce the statutes. They should be sent immediately into any community where acts of intimidation and violence against Black and minority peoples occur. A national atmosphere of emergency federal response to such violence or threatened violence must be created. This could serve as a critically needed deterrent to the encouragement and stimulation of such violence. Such emergency federal enforcement teams should be dispatched immediately into Greensboro, Wrightsville, Chattanooga, Atlanta, Buffalo, and wherever the signs of such violence and intimidation break out.

Such a national plan for immediate federal response to acts of violence and intimidation against Black and minority peoples is essential to meet the national crisis which flows from the almost universal widespread lack of knowledge of even the existence of these federal criminal statutes. Virtually no one knows about these laws making it a federal crime to plan and conspire to use violence and threats of violence to undermine the elementary equal constitutional rights of citizens, Black and white. Even lawyers, judges, and legislators are hardly aware of their existence. This is no accident. Since 1877 when the infamous Hayes-Tilden "compromise" resulted in the abandonment of federal enforcement of the wartime promises of equality and freedom for the supposedly emancipated Black people, there has been a conscious "burial" of the criminal and civil federal Anti-Klan statutes. This "burial" resulted in a climate which allowed the Klan to lynch, murder, castrate, burn, bomb, and terrorize Black people back into virtual slavery. For a brief period in the 1960's, these statutes were momentarily "unburied". Once again, the moment has come when there is a crying need for a massive national campaign which utilizes every conceivable avenue of approach to educate the nation. Everyone in the country must be made aware that it is a serious federal crime to participate in acts of violence or intimidation against Black and minority people, and that such crimes will be vigorously prosecuted. Such a "resurrection" of the federal criminal Anti-Klan statutes could serve as a massive and effective deterrent to the spreading of these acts of violence and harassment.

The second prong of the strategy also developed in the early 1960's would be the immediate seeking of national federal injunctions by the federal government itself against the developing conspiracies to violate the civil provisions of the federal Anti-Klan and civil rights statutes 42 USC Sections 1971, 1981, 1982, 1983, 1985, 1986, 1988, and 1989. These statutes, first passed after the Civil War and then amplified and strengthened in the 1960's, prohibit any action or conspiracy to use violence or intimidation to interfere in any way with the exercise of constitutionally protected rights of citizens. They provide for the issuance of federal injunctions against any activities designed to interfere with the exercise of these constitutional rights. Such an injunction was obtained by the Justice Department in 1965 in an action entitled, "*The United States Against the Original Knights of the Ku Klux Klan*". *United States v. Original Knights of the Ku Klux Klan*, 250 F. Supp. 330 (E.D. La. 1965, 3 judge court). In a historic opinion written by Circuit Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit, the federal court held that the United States government had the

power and the duty to seek federal injunctive relief to restrain and stop Ku Klux Klan activities designed to harass and intimidate the Black people who were demanding enforcement of their most elementary constitutional rights of equality, as well as white people in the South and throughout the country who were supporting their demands. The opinion of Judge Wisdom, one of the most respected members of the federal judiciary, goes directly to the heart of the grave problem which was then erupting in the early 1960's and which has now re-emerged in such serious dimensions. Judge Wisdom described the action instituted by the Department of Justice in those terms, "This is an action by the Nation against a Klan. The United States of America asks for an injunction to protect Negro citizens in Washington Parish, Louisiana, seeking to assert their civil rights. The defendants are the Original Knights of the Ku Klux Klan, an unincorporated association; the "Anti-Communist Christian Association, a Louisiana Corporation; and certain individual Klansmen . . ." And then in sweeping terms, Judge Wisdom sets forth the heart of the Court's conclusions as to why the injunction requested by the Department of Justice had to be issued

"In deciding to grant the injunction prayed for, we rest our conclusions on the finding of fact that, within the meaning of the Civil Rights Acts of 1957 and 1964, the defendants have adopted a pattern and practice of intimidating, threatening, and coercing Negro citizens in Washington Parish for the purpose of interfering with the civil rights of the Negro citizens. *The compulsion within the Klan to engage in this unlawful conduct is inherent in the nature of the Klan. This is its ineradicable evil.*

*We find that to attain its ends, the Klan exploits the forces of hate, prejudice, and ignorance. We find that the Klan relies on systematic economic coercion, varieties of intimidation, and physical violence in attempting to frustrate the national policy expressed in civil rights legislation. We find that the Klansmen, whether cloaked and hooded as members of the Original Knights of the Ku Klux Klan, or skulking in anonymity as members of a sham organization, 'The Anti-Communist Christian Association', or brazenly resorting to violence and the open streets of Bogalusa, are a 'fearful conspiracy against society' . . . [holding] men silent by the terror of [their acts] and [their] power for evil'" (Wisdom opinion *supra* at p. 334) (emphasis added)*

Based upon these fundamental conclusions, the federal three-judge court composed of Judges Wisdom, Christenberry, and Ainsworth, issued a sweeping injunction against "assaulting, threat-

ening, harassing, interfering with or intimidating, or attempting to assault, threaten, harass, interfere with or intimidate . . . Negro citizens from exercising their equal rights under the laws and Constitution of the United States."

Under the powerful principles set down by Judge Wisdom and the other judges of the Fifth Circuit in 1965, injunctive actions should be immediately brought by the Department of Justice nationally, regionally, and locally. No such actions have been instituted by the Department of Justice as of the present time. It is essential to emphasize the lesson of the 1960's as to the central importance of such injunctive actions as a principal deterrent to Klan and other violent activities and threats against Black and minority peoples. Such injunctions dealing with prospective conduct have the potential of performing an invaluable service in the first instance in educating and teaching entire communities about the federal mandate against the perpetration of such violence and harassment. Judge Wisdom's original injunction contained a mandate that a copy of the injunction be posted "conspicuously" at all meeting places of the enjoined organizations. The order was to be posted at all times and during all meetings".

Such orders are available to be publicly distributed in the hundreds of thousands of copies all over a town, a city, a state. They can become the basis for public meetings in schools, colleges, and every community organization. They will say loudly and clearly what needs to be heard from one end of this land to the other—that the wave of rising violence and intimidation against Black and minority peoples is in total violation of the Constitution and laws of the United States and will be rejected and repudiated by every American committed to the deepest principles and promises of this country.

Moreover, the issuance of these injunctive orders permits an immediate and swift federal legal response to any eruption whatsoever of such violence or harassment. Using the federal contempt power and instituting immediate proceedings enforced by federal marshalls and the federal subpoena power offers a tremendously important opportunity to assert a federal presence into every situation developing anywhere in the country in which such violence or harassment occurs. Once again this would accomplish the desperately needed deterrent impact of a forceful, widespread public recognition of the fact that there will be federal intervention to protect the equal rights of all Americans.

The apparent hesitation of the Department of Justice to follow the clear mandate of the Anti-Klan and civil rights statutes and institute widespread civil injunctive actions, which would have sweeping deterrent and educational impact, must be immediately overcome. In the 1960's, the

Department was similarly reluctant to invoke the federal authority available in the Anti-Klan and civil rights statutes. Only after the greatest pressure from civil rights organizations in the South national civil rights and civil liberties organizations throughout the country, and from national religious, labor, and civic organizations, did the Department resort to the power mandated to it in federal law to institute either criminal actions or civil injunctive proceedings against Klan and other organizations and individuals engaged in violence against Black and minority peoples.

Once again we are at a crucial turning point. Faced with federal government inaction (and state or local inaction or even sometimes complicity in such actions and harassment, in certain localities where this violence has erupted most openly), private citizens and their organizations, using private attorneys, have brought actions in federal courts seeking injunctive protection and relief. A few examples are the federal actions recently instituted in Chattanooga, Tenn.; Decatur, Ala.; Greensboro, N.C.; and Wrightsville, Ga. (For the use of the Committee, I have attached Appendix D, describing these actions.) The Center for Constitutional Rights and the Southern Poverty Law Center have been deeply involved as private counsel in bringing these actions which seek to invoke the federal power created in the anti-Klan and civil rights statutes. In the early 1960's, actions brought by the Council of Federated Organizations of Mississippi, the Student Non-Violent Coordinating Committee, the Southern Christian Leadership Conference, the Congress for Racial Equality, and the National Association for the Advancement of Colored People, began the process of resurrecting the powerful civil rights remedies. In the same way these new actions presently being pressed in Chattanooga, Decatur, Greensboro, and Wrightsville, and in other localities must be the occasion for demanding that the national government meet its responsibilities under the Constitution and statutes of the Congress to invoke immediately the federal power present in this two-pronged strategy based upon the existing anti-Klan and civil rights statutes.

The Rowe Task Force Report dramatizes the seriousness of the reluctance of the executive branch of government to move swiftly and decisively to utilize the existing criminal and civil remedies against the rising tide of violence and harassment against Black and minority people. That reluctance is especially dangerous when it is juxtaposed to the frightening information contained in the Rowe Task Force Report revealed in articles appearing in the *New York Times* on February 18, of this year. These articles reveal grave government complicity and misconduct in connection with episodes of Klan violence and

misconduct in the past. These articles reported that four attorneys assigned by the Attorney General to investigate charges involving one Gary Thomas Rowe Jr., a paid informant working for the FBI, filed a report with the Department of Justice. The 302 page report reveals that the FBI knew about, condoned, and covered up its own informers' role inside the Ku Klux Klan in the early 60's and participated and incited violent attacks upon Black people and civil rights activists. Despite the extraordinary fact that the Department has refused to release this report for public consideration, the *New York Times* reported the following conclusions from the Rowe Task Force Report..:

"J. Edgar Hoover blocked prosecution of four Ku Klux Klansmen identified by agents of the Federal Bureau of Investigation as the bombers who killed four black children at the 16th Street Baptist Church here in 1963. . ."

"Mr. Hoover's office had also been informed that Mr. Hall [(an FBI Klan informant)] had once volunteered [to] kill the Rev. Fred L. Shuttlesworth, [Birmingham's] leading Black civil rights leader, as part of a Klan assassination plot exposed by Mr. Rowe. . ."

"The report also criticized the bureau for failing to protect the Freedom Riders after its Director, J. Edgar Hoover, was informed in advance about the ambush and . . . that Mr. Rowe armed with a leadweighted baseball bat, would lead one of the Klan attack squads." "Agents of the Federal Bureau of Investigation knew about and apparently covered up involvement in violent attacks on Blacks, civil rights activists and journalists by its chief paid informer inside the Ku Klux Klan in the early 1960's . . ."

"The report is more conclusive as to Mr. Rowe's involvement in nonfatal Klan attacks. In general, the investigative force supports Mr. Rowe's contention that bureau agents initially warned him not to become involved in violence but later ignored or accepted his participation . . . as essential to maintaining his cover. Field agents apparently covered up Mr. Rowe's violence, by failing to report it to their superiors and by disregarding indications of illegal conduct."

"Field agents told the task force that violence against Blacks was essential, if regrettable, to maintaining an informer's cover as a militant segregationist. . ."

The Rowe Task Force Report apparently reveals many facts which raise grave questions concerning possible federal governmental misconduct and complicity with respect to the Klan-instigated violence in the 1960's, including: (1) deliberate blocking of prosecution of the perpetrators of serious racial violence, (2) deliberate use of informants with knowledge that such informants had a history of violence and continued to engage in violence, (3) failure to protect against and/or warn about violence against civil rights demonstrators which the FBI knew would occur, and (4)

cover up of the violent and criminal acts of FBI informants.

In the face of the revelation of the existence and contents of the Rowe Task Force Report, the recent announcement on December 4th by the Department of Justice that under guidelines just issued, government informers may participate in "some crimes" while assisting in federal investigations, assumes potentially frightening proportions. The guidelines purport to bar informers from actually engaging in "acts of violence". However, in light of the Rowe Task Force Report, it is important to determine whether the new "guidelines" sanction participation by informers, like Rowe, in the crimes of planning and instigating acts of violence in violation of the anti-Klan and civil rights statutes. And in light of these startling revelations, what are the conclusions to be drawn concerning the recent indication that an agent of the Federal Bureau of Alcohol, Tobacco, and Firearms, as well as a Greensboro police informant, participated in the planning and carrying through of the recent shootings and murders of the anti-Klan demonstrators in Greensboro at the November 3, 1979 rally?

These indications of governmental misconduct and complicity in the instigation and perpetration of violence and harassment against Black and minority peoples are especially serious within the framework of governmental failure and reluctance to fully enforce the federal remedies in the anti-Klan and civil rights statutes. The inference begins to emerge that the federal government is committed to "looking the other way", if not actually "quietly" approving this course of conduct, when the violence against Black and minority peoples occurs. It is essential that this dangerous illusion be erased at once. There is the urgent necessity for an immediate full-scale investigation into and public exposure of any governmental misconduct in respect to such violence, including failure to prosecute under federal statutes any such participation in or toleration of conduct condemned under the anti-Klan and civil rights statutes.

This Committee should institute such an investigation at once and demand the immediate production of the Rowe Task Force Report. The Committee should inquire into whether there is any intention to prosecute those in the government responsible for allowing participation of government agents and informers in the instigation and perpetration of crimes of violence against Black and minority peoples. Only such a full-scale public disclosure, prosecution of past crimes that are revealed, and prohibition of any such future misconduct, will restore any confidence that the federal government is in fact committed to the enforcement of the federal laws guaranteeing the equality and freedom promised by the Constitution.

The problem being examined here today highlights the critical importance of the role of this Committee. There is an urgent need at this moment in the nation's history to unearth the remedies first fashioned by the Reconstruction Congress to meet the threat of planned conspiracies to undermine the constitutional guarantees of equality and freedom to all people in this country. There is a pressing need to educate the Nation and all its peoples that these remedies do exist and will be enforced. Most fundamental of all is the need to alert the Nation to the danger of a new 1877, the danger of another attempt to bury the elementary promises of freedom and equality set forth in the 13th, 14th, and 15th Amendments.

I would urge that this be but the first of an extended series of hearings. The Committee should hold hearings in areas of the country where the conspiracies to violate the anti-Klan and civil rights statutes have been most overt. Further hearings should be held in Washington, D.C. to explore fully the serious questions which will be raised at the regional hearings.

Just as the historic hearings of the Congress after the Civil War into the rise and impact of the organized efforts to use massive violence against the newly emancipated Black people led to the enactment of the Anti-Klan and civil rights statutes, so these hearings over a hundred years later must lead to a deep and full consideration of methods of massive and effective enforcement of the remedies for the protection of the constitutional guarantees of freedom and equality contained in these statutes.

CRIMINAL STATUTES

18 U.S.C.

Section 241. Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

As amended Apr. 11, 1968, Pub.L. 90-284, Title I, Sections 103 (a), 82 Stat. 75.

Section 242. Deprivation of rights under color of law

Whoever, under color of any law, statute,

ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

As amended Apr. 11, 1968, Pub.L. 90-284, Title I, Sections 103 (b), 82 Stat. 75.

Section 245. Federally protected activities

- (a) (1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.
- (2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.
- (b) 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—
- (1) Any person because he is or has been, or in order to intimidate such person or any class of persons from—
- (A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office qualifying or acting as a poll watcher, or any legally authorized election official, in any primary special or general election;
- (B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;
- (C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance;

(2) any person because of his race, color, religion, or national origin and because he is or has been—

(A) enrolling or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for, enjoying employment or any perkquisite thereof, by any private employer or any agency of any state or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of state in connection with possible service, as a grand or petit juror.

(E) traveling in or using any facility of interstate commerce, or any vehicle, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments;

or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which sells or offers for sale have moved in commerce; or

(4) 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—

(A) participating, without discrimination on account of race, color, religion or natural origin, religion or national origin, in any of the benefits or activities described in subparagraphs (1) (E) or subparagraphs (2) (A) through (2) (F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1) (A) through (1) (E) or subparagraphs (2) (A) through (2) (F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate— 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. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2) (F) or (4) (A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

Added Publ.L. 90-284, Title I, Section 101 (a), Apr. 11, 1968, 82 Stat. 73.

CIVIL STATUTES

42 U.S.C.

Section 1971. Voting Rights—Race, color, or previous condition not to affect right to vote; uniform standards for voting qualification; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(a) (1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to sections 1974 to 1974c of this title: Provided, however, that the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law,

including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection—

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

Intimidation, threats, or coercion

(b) No person, whether acting under color of law or shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote for, or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

Preventive relief; injunction, rebuttable literacy presumption; liability of United States for costs; State as party defendant

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States a civil action or other proper proceeding for preventive relief including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school or in a private school accredited by, any State or territory, the District of Columbia or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or

privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed office, the proceeding may be instituted against the State.

Jurisdiction; exhaustion of other remedies

- (d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

- (e) In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefore, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared

qualified to vote to vote an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees who shall subscribe to the oath of office required by Revised Statutes, section 1757; to serve for such period as the court shall determine to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State Law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of state law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be deter-

mined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53 (c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: Provided, however, that such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other persons as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this action: and the

words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern of practice of discrimination was found to exist.

Contempt; assignment of counsel; witnesses

- (f) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof shall immediately, upon his request assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

Three-judge district court; hearing, determination, expedition of action, review by Supreme Court; single-judge district court; hearing, determination, expedition of action

- (g) In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern of practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing

and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

R.S. Section 2004; Pub.L. 85-315, Pt. IV, Section 131, Sept. 9, 1957, 71 Stat. 637; Pub.L. 86-449, Title VI, Section 601, May 8, 1960, 74 Stat. 90; Pub.L. 88-352, Title I, Section 101, July 2, 1964, 78 Stat 241 Pub.L. 89-110, Section 15, Aug. 6, 1965, 79 Stat. 445

Section 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

R.S. Section 1977

Section 1982. Property Rights of Citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. Section 1978

Section 1983. Civil action for deprivation of rights.

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or

causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

R.S. Section 1979

Section 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties, thereof; or to induce by the like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges

and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. Section 1980.

Section 1986. Same; action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

R.S. Section 1981.

Section 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters

conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

R.S. Section 722.

Section 1989. United States magistrates; appointment of persons to execute warrants

The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of United States magistrates so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such magistrates are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said magistrates are empowered within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the magistrates may issue in the lawful performance of their duties and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

R.S. Sections 1983, 1984; Mar. 3, 1911, c. 231, 291, 36 Stat. 1167; Oct. 17, 1968, Pub.L. 90-578 Title IV, Section 402, 82 Stat. 1118

CONSTITUTIONAL AMENDMENTS

AMENDMENT XIII-SLAVERY ABOLISHED

Section 1. 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 2. Congress shall have the power to enforce this article by appropriate legislation.

AMENDMENT XIV-CITIZENSHIP: PRIVILEGES AND IMMUNITIES; DUE PROCESS EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein

shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House remove such disability.

Section 4. The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid or insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV— UNIVERSAL MALE SUFFRAGE

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

**THE CONSTITUTIONAL AND STATUTORY BASES FOR
FEDERAL ACTION TO MEET THE RISING TIDE OF
RACIALLY MOTIVATED VIOLENCE AGAINST BLACK
AND MINORITY PEOPLES**

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General Statement of Proposition Advanced

Incidents of racially motivated violence have escalated to the level of an impending national crisis. The exploding pattern of violence directed against Black and other minority peoples threatens the nation once again with the disaster warned against over a decade ago in the Kerner Commission Report of 1968. Historically in this country, racially motivated violence has been one of the principal means employed to frustrate efforts by Black and other minority people to overcome the status of inferiority imposed upon them. Such acts of violence, whether random in nature or engaged in by organizations established for such purposes such as the Ku Klux Klan, are wholly condemned by the Wartime Amendments to the Constitution of the United States—the 13th, 14th and 15th Amendments, and the federal statutes enacted over the years pursuant to their authority.

A rationalization has recently been advanced by the Department of Justice to justify the absence of any effective federal action against this rising tide of racially motivated violence. The department asserts that no federal constitutional or statutory authority exists for national intervention against obvious acts of racially motivated violence unless such acts are shown to have occurred at the actual *moment* of the victim's being engaged in a *specific* federally protected activity such as voting or attending a desegregated school. This attempted justification for the obvious failure of the federal government to move decisively against the rising national wave of racially motivated violence flies in the face of the clear command of the Constitution and the statutes enacted pursuant to its mandate prohibiting any activity which has the effect of con-

tinuing or reinforcing the status of inferiority which the nation abolished in the universal charter of liberty enacted in the 13th Amendment to the Constitution. Accordingly, the full force of federal power must be asserted to reach racially motivated violence wherever and in whatever form it occurs, since such violence has been historically, and continues to be, a central weapon in the efforts to maintain or reinstitute the inferior political, economic and social status in American society of Black and other minority peoples.

National Upsurge of Racially Motivated Violence

Incidents of racially motivated violence have escalated, within the last few years, to a crisis of epidemic proportions. Today, as in the past, whenever Blacks have sought to acquire new rights or to exercise existing rights, either after the Civil War, during the 1960s or in the 1970s, racially motivated violence is being used to thwart efforts to eradicate the vestiges and remains of inferior status embedded in American society.

These rapidly increasing incidents of racially motivated violence may be characterized as taking three distinct forms. The first form is incidents involving random attacks by individuals acting, apparently, independently. These random racially motivated attacks are typified by the following incidents:

1. During the period December 29, 1980, through January 5, 1981, in Buffalo, New York, one Black male was fatally stabbed by a white male. Four other Black males were attacked by a knife-wielding white male assailant. (Source: *New York Times*, January 3, 1981, and January 6, 1981).
2. During the period December 22 through 24, 1980, in New York City, three Black males and

an Hispanic male were fatally stabbed by a white assailant. Three other Black males were also attacked by a knife-wielding white male assailant. (Source: *New York Times*, December 24, 25, 26, 1980).

3. A Black teenager in Mobile, Alabama, was beaten, strangled and hung from a tree. Three white males have been arrested and charged with murder. (Source: *New York Times*, March 28, 1981).
4. Perhaps the most highly publicized of these incidents was the assassination attempt on the life of civil rights leader Vernon Jordan, Executive Director of the National Urban League.

The second form of racially motivated violence includes assaults perpetrated directly by organizations such as the Ku Klux Klan and the American Nazi Party. The following incidents are illustrative of the emerging patterns:

1. On July 8, 1978, three Klansmen were arrested on charges stemming from a plot to bomb the home of Congressman Parren Mitchell and a synagogue in Baltimore, Maryland (Source: *Washington Star*, July, 1978).
2. In May, 1979, while the Southern Christian Leadership Conference was holding a demonstration in Decatur, Alabama, in support of a Black mentally retarded youth convicted of rape, more than 100 heavily armed, club swinging, robed Ku Klux Klansmen clashed with civil rights demonstrators and riot police (Source: *New York Times*, May 27, 1979, May 29, 1979 and May 30, 1979).
3. In April 1980, a group of Klansmen burned a cross at a prominent location in the Chattanooga, Tennessee Black community, drove through the community armed with shotguns and shot five elderly Black women. (Source: *Washington Post*, July 23, 1980).

The third form of racially motivated violence involves both the disproportionately high rate of killings of Black and Hispanic youths by police officers and wanton police assaults on innocent Black adults. Perhaps the most egregious example of the latter was the fatal beating of Arthur McDuffie by Miami police officers for allegedly making a right turn on a red light, without stopping, while on a motorcycle.

This last category of racially motivated violence, while distinguishable from the first two in many important respects, must be considered for two important reasons. First, as reported by Dr. Kenneth B. Clark, in a seven-year follow-up report to a study conducted in 1974 by the Metropolitan Applied Research Center (MARC), there has been an increase in the use of deadly and excessive force by police officers with an attendant rise in community awareness. Although the McDuffie killing was the latest in a series of

incidents of police brutality against citizens charged with minor offenses in Miami, that incident received an extraordinary amount of attention because of the enraged reaction of the Miami Black community who had seen Blacks brutalized by police on other occasions.

In an address delivered on November 10, 1979, then Assistant Attorney General Drew S. Days, III, mentioned the Kerner Commission's remarks "that police brutality and abuse were not viewed in a vacuum. Instead, lawless behavior on the part of police was identified as an overwhelmingly important factor in exacerbating racial tensions in urban centers . . . 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 . . ."

Second, as Dr. Clark testified before the Criminal Justice Subcommittee of the House Judiciary Committee on March 4, 1981, young people growing up in urban centers like Harlem view law enforcement officers as as much a factor in crime as criminals. Their lawlessness teaches a total disrespect for the law and perpetuates an environment where criminality does not receive serious social disapproval.

These incidents exploding throughout the nation manifest few common characteristics other than that Black people or other minority group members are victims and that the violence is racially motivated. They take a variety of forms: Random shootings and sniper attacks, assaults, attacks on civil rights leaders, fire-bombings, armed confrontations at political demonstrations and intimidations and threats of violence. The incidents are not confined to any one geographical area of the nation. The crisis generated is national in every respect.

The reasons for the sudden acceleration of these acts of racially motivated violence are varied, complex, and sometimes not fully visible. *The New York Times* reported on December 1, 1980 that many members of the Black community believe the "series of violent incidents against Blacks is a result of a national conspiracy to terrorize and kill them." As the *Times* reported: "In such cities as Atlanta, Buffalo, Cincinnati, Indianapolis, Portland, and Salt Lake City, violent and highly publicized attacks on Blacks and increasing activity by the Ku Klux Klan and other white extremist groups have created or heightened the perception of conspiracy."

¹ U.S. Commission on Civil Rights, *Police-Community Relations in the City of Wichita and Sedgewick County*, U.S. Commission on Civil Rights, July, 1980, p. 1, as quoted in Kenneth B. Clark, "Race and Police Killings: A Summary of Findings," March 4, 1981 (unpublished mimeo).

Other insights include the recognition that because of the country's preoccupation with the current economic slowdown, groups such as the Ku Klux Klan and individuals predisposed to racial violence may be led to think that these acts will go unnoticed and the laws prohibiting such violence will be unenforced. Thus, the emerging pattern of federal inaction may be strengthening the white backlash of racial violence.

Further analyzing the relationship of violence to the current economic decline, Dr. M. Harvey Brenner of the Johns Hopkins University, in a report entitled *Violence Against Minorities, and Criminal Aggression in General, as Related to National Economic Distress and High Unemployment Rights*, stated: "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." Dr. Brenner further stated, "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. Others, however, become prone to great hatred and violence directed toward others—especially those minorities which are traditional scapegoats and subjects of pejorative stereotyping."

Whether or not Dr. Brenner's thesis adds a deepened dimension to the growing concern within the Black community that the acceleration of racially motivated violence is a conscious part of a national conspiracy to undermine the civil rights gains of the sixties and to strengthen the patterns of inferiority so deeply embedded in American society, it is frighteningly obvious that the proliferation of such incidents within the context of the unfolding economic crisis, has created a national atmosphere of fear and hatred from which increased racially motivated violence will emerge unless drastic steps of national intervention are immediately undertaken by the federal government.

Necessity for Immediate Massive Federal Action

It is now clear that the amount of racially motivated violence against Blacks and other minority peoples has reached the point where there is a driving urgent need for massive federal presence in the areas where recurring racially motivated violence is taking place. The current situation in the United States has *distressing parallels to the level of random and organized violence* which victimized Black citizens who attempted to exercise their rights during the Reconstruction period after the Civil War, and the

random and organized violence perpetrated against civil rights activists who were attacked in the South during the early 1960s.

In both the Reconstruction years, roughly 1865-1877, and during the 1960s and 1970s, the role played by the federal government in counteracting the rise of racial violence was crucial in containing the levels of violence attained.¹ It takes no great imagination to draw the lesson of history that the absence of effective federal governmental action to halt the escalation of racial violence contributes significantly to its growth. It is for this crucially important reason that it is necessary to face and reject any legal rationalization which would cover up or excuse the failure of the federal government to provide for immediate and massive action to deter the rise of racially motivated violence.

Unfortunately, the willingness of the U.S. Department of Justice to act decisively against racially motivated violence has been wholly inadequate. The reason for reticence on the part of the federal government was addressed by Mr. Drew Days, former head of the Justice Department's Civil Rights Division, testifying on December 9, 1980, before the Subcommittee on Crime of the House Judiciary Committee. Mr. Days indicated on that occasion that he did not believe federal law reached racially motivated attacks by whites on Blacks where the Blacks were not engaged in specifically protected federal activities.

This proposition, advanced by a representative of the Justice Department, that there is no constitutional or statutory authority for federal action against acts of racially motivated violence unless such acts are committed at the moment the victims are engaged in specific federally protected activities such as voting, files in the face of the letter, the spirit, and the legislative history of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution and the statutes enacted by the Congress pursuant to their authority.

Constitutional and Statutory Bases for Federal Action

The Thirteenth Amendment, the foundation stone upon which all of the subsequent national commitments to freedom and equality for all peoples rests, enacted in the words of the entire Court in the historic *Civil Rights Cases of 1883*, 109 U.S. 3, 20, 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'." A principal "badge and incident" of slavery was the thesis of the infer-

¹ See generally Kenneth M. Stampp, *The Era of Reconstruction, 1865-1877* (N.Y.: Random, 1967); John Hope Franklin, *Reconstruction after the Civil War*, Chicago: University of Chicago Press, 1961.

ority of Black people so frankly advanced in the pre-Civil War decision of *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1856) as the justification for the institution of slavery itself. This recognition of the sweeping commands of the Thirteenth Amendment was reaffirmed in 1968 by the Supreme Court in *Jones v. Alfred H. Mayer Company*, 392 U.S. 409. The Thirteenth Amendment not only rejected slavery, but the doctrine of white superiority which had been generated to rationalize the subordination of an entire group of people. See "The Constitutional Right of Negro Freedom," 21 *Rutgers L. Rev.* 387 (1967). The American slaves were identified by only one criterion—the color of their skin. This color was the badge and stamp of the inferior social status. Prior to the passage of the Thirteenth Amendment, legal and moral standards which whites felt bound to observe in their relations with each other could be disregarded in the treatment of Blacks. The Wartime Amendments imposed an affirmative duty on the national government to abolish and eradicate all forms of action operating to preserve the badges and indicia of slavery and racial inferiority.

At the very heart of the experience of those who wrote the Thirteenth Amendment and those who enacted the statutes immediately designed to enforce its thrust, was the recognition that racially motivated violence against Black people was a central instrument in the bitter attempts to frustrate the constitutional command to eliminate the status of inferiority of Black people from every aspect of American life.³ Any honest appraisal of American history leads to the conclusion that racially motivated violence was the principal means employed to preserve the status of inferiority prohibited by the Thirteenth Amendment, and accordingly falls directly within the sweep of its affirmative mandate upon the national government for direct and meaningful action.⁴

The end of the Civil War witnessed throughout the South the instant rise of a wave of terror which engulfed the supposedly emancipated Black people from the Ohio River to the Gulf of Mexico, from the Atlantic to the Mississippi Valley.

"How many Black men and women," writes a noted author, "were beaten, flogged, mutilated and murdered in the first years of emancipation will never be known. Nor could any accurate body count or statistical breakdown reveal the barbaric

savagery and depravity that so frequently characterized the assaults made on freed men." Leon Litwack, *Been in the Storm So Long, The Aftermath of Slavery* (New York, 1979), 277-78. One of the most terrible aspects of this violence was the torture and murder of Black children. When new schools were set up both the schools and the pupils in them became easy targets for arsonists and assassins. Children were lashed and driven from the plantations. In countless cases they were the targets of random violence when white bullies cut their throats and dumped the bodies in the rivers or swamps.

This reign of terror, both organized and random in nature, was part of the instant reaction of the defeated white slave owners' power structure, encouraged by the vacillations of the new President, Andrew Johnson, replacing the assassinated Lincoln, to totally frustrate the mandates of the 13th Amendment and reinstate the essence of the slave society, resting on the "inferior status" of Black people.⁵ Racially motivated violence, instigated by newly formed organizations such as the Ku Klux Klan, and occurring both as systematic organized acts of terror as well as widespread random acts of violence, was clearly a principal means of attempting to intimidate the newly emancipated people from taking any step whatsoever towards the promised constitutional goals of freedom and equality.

The response of the Radical Republican Congress was immediate. At hearings of the Joint Congressional Committee on Reconstruction, convened in December, 1865, hundreds of witnesses testified to the reign of terror emerging throughout the South. Out of these hearings emerged both the Fourteenth and Fifteenth Amendments, and a battery of federal civil and criminal statutes designed to provide massive federal protection to Black people against the wholesale attempts underway to wholly frustrate the purposes and mandates of emancipation and the universal charter of freedom enacted in the 13th Amendment. At the very heart and center of these hearings was the recognition of the driving need to provide physical protection for the Black people of the south, to counteract the terror, to require the southern states either to give effective guarantees for the maintenance of law or to accept direct federal intervention as a result of their failure to provide for the physical security of Black people.⁶

The statutes enacted as a result of these hearings, 18 U.S.C. 241, 242, 42 U.S.C. 1981 through 1989, and subsequently extended and strengthened during the upsurge of civil rights activities in

³ The Reconstruction Amendments debates, the legislative history and contemporary debates in Cong. on the 13th, 14th and 15th Amendments (Richmond, Virginia, Virginia Commission on Constitutional Government, 1967); 39th Cong., Joint Committee on Reconstruction, *Report*, (Washington, D.C. 1866; reissued N.Y., 1870), Part III.

⁴ John Anthony Scott, *The Origin and Development of the KKK as a Badge of Slavery* (unpublished mimeo, available upon request from Center for Constitutional Rights, 853 Broadway, 14th Floor, New York, N.Y. 10003.

⁵ John Anthony Scott, *The Origin and Development of the KKK as a Badge of Slavery*, *supra*.

⁶ 39th Cong., Joint Committee on Reconstruction, *supra*, I.n.3.

the 1960s, 18 U.S.C. 245, and 42 U.S.C. 1971, provide the fullest repudiation of the rationalizations of the representatives of the Justice Department seeking to excuse federal inaction against the rising tide of racially motivated violence.

A. Bases for Federal Criminal Actions

18 U.S.C. Section 241, the present statement of the original anti-Ku Klux Klan criminal statute passed by the Reconstruction Congress, was designed to make it a federal crime for two or more persons to conspire to "injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured . . . by the Constitution or laws of the United States".

There can be no question of the legitimacy of federal action under 241 when there are allegations of the deprivation of the rights guaranteed by the Thirteenth Amendment. In *United States v. Price*, 383 U.S. 787 (1966), Justice Abe Fortas concluded for a unanimous Supreme Court that the language of Section 241:

embraces *all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States. (Emphasis in original text.)

We cannot doubt that the purpose and effect of Section 241 was to reach assaults upon rights under the entire Constitution, including the Thirteenth, Fourteenth, and Fifteenth Amendments, and not merely under part of it. (383 U.S. at 800, 805).

Nothing could be clearer than the recognition that Section 241 authorizes full scale federal intervention when acts of racially motivated violence occur representing, as they have throughout the entire history of this country, an "assault" upon the constitutional right of Black people and other minority people to be freed from any status of inferiority, as created by the 13th Amendment.

The thrust of Section 241 was further strengthened by 18 U.S.C. 242. This Section makes it a federal crime for anyone acting under "color of law" to deprive anyone of rights protected by the Constitution or laws of the United States. In seeking prosecution under this statute the Justice Department need not prove that the actual crimes were committed by officers of the state. It is more than sufficient if the accused is a willful participant in joint activity with the state agents or state officials. As the Court held in *United States v. Price*, *supra*, the "under color of law requirement does not necessitate that the accused be an officer of the state. It is enough if he is a willful participant in joint activity with the state or its agents."

In the late 1960s, the 90th Congress enacted further legislation, 18 U.S.C. 245, which con-

clusively determined the proposition that federal action is authorized not only where one is victimized while engaging in a federally protected activity, but also when the victim is not engaged in such activity but is victimized for the purpose of discouraging a person or class of persons from taking part in a protected activity. This statute was passed by the 90th Congress and was designed to deal with the rise of organized and randomly motivated violence having the impact of deterring civil rights activists from exercising their constitutional rights during the 1960s.⁷ This statute was written to accomplish several major purposes: first, to eliminate any doubts about congressional power to punish overtly private actions which interfere with Fourteenth Amendment rights; second, to remedy a deficiency in Section 241 by allowing the federal government to prosecute individuals who were not acting jointly with others, but acted alone, to deprive citizens of their constitutional rights.

This statute specifically addresses the problem involved in the rationalization the Justice Department advanced to avoid exercising federal power over random violence against Blacks, in that it contains no jurisdictional prerequisite for its invocation that victims of racial violence be actually engaged in conduct that is specifically delineated as protected in the statute. The legislative history of Section 245 mandates the conclusion that this statute was intended to cover victims who are not directly engaged in civil rights activities if they are victimized for the purpose of discouraging them or any class of persons from taking part in the protected activities. Senate Report No. 721, published in *2 U.S. Code Congressional and Administrative News*, p. 1837 (1968) lays out the problem faced by Congress:

Such acts of violence have occurred in retaliation against Negroes who have exercised or sought to exercise their civil rights. In some cases, violence has been used against Negroes who have not engaged in civil rights activities in order generally to intimidate and deter all Negroes in the exercise of their rights.

The Senate Report's conclusion as to the reach of the statute's protection is unequivocal:

The statute would punish interference or attempts to interfere, by force or threat of force, with any person because of his race, color, religion, or national origin and because such person is or has been engaging or seeking to engage, while acting lawfully, in any of the enumerated activities. . . . Also punishable would be violence directed against persons not involved in civil rights activity where such

⁷ Senate Report No. 721, published in *2 U.S. Code Congressional and Administrative News*, 90th Congress 2nd Session 1968, p. 1837 (1968) at pp. 1840, 1841.

persons are selected as victims in order to intimidate others. (Emphasis added.)

The House Report indicates that the decision to include within the reach of the statute people not engaged in civil rights activity was prompted by a report of the U.S. Commission on Civil Rights, entitled *Law Enforcement, A Report on Equal Protection in the South*, published in 1965. The head of the U.S. Commission on Civil Rights testified as to the conclusions reached in the Commission Report at hearings that were held on the bill. In his testimony, William L. Taylor, Director of the Commission, vividly described the conclusions of the Commission and its recommendations:

The Commission's investigations in Mississippi in 1964 and 1965 revealed that much of the violence that occurred was directed at persons selected at random, and that such violence intimidated the Negro community as effectively as if it were directed at persons actually engaged in civil rights activities. This kind of attack to terrorize the Negro community would be dealt with expressly by 501(b) [18 U.S.C. 245(b)(1)]. This section will strengthen existing laws by covering random acts of violence against persons who have not attempted to exercise any of the rights enumerated in Section 501(a), when such violence is intended to discourage other persons from exercising these rights.

The legislative intent of the framers of the legislation thus clearly indicates that Section 245 can be used to prosecute perpetrators of violent activity which is racially motivated and designed to intimidate Black and minority peoples from exercising certain federally protected rights, although the victims of the violence may not themselves have been engaged in any of the activities specifically mentioned in the statute at the time of the assaults.

B. Bases for Federal Civil Actions.

It is more than amply clear that there exists full scale authority for massive federal action through the invocation of the criminal justice process to counter the development of racially motivated acts of violence against Black and other minority peoples. There is also authority for massive federal civil action in the form of Injunctive actions against the upsurge of racially motivated violence, particularly where such acts are encouraged and stimulated by organizations such as the Ku Klux Klan and sometimes covertly encouraged by state officials. A striking example was the invocation of 42 U.S.C. 1971, as well as 42 U.S.C. 1983 and 1985, to obtain a sweeping federal injunction in 1965 in an action entitled *The United States Against the Original Knights of the Ku Klux Klan*, 250 F. Supp. 330 (E.D. La. 1965, 3 Judge court). In a historic opinion written by Circuit

Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit, the federal court held that the United States government had the power and the duty to seek federal injunctive relief to restrain and stop Ku Klux Klan activities designed to harass and intimidate the Black people who were demanding enforcement of their most elementary constitutional rights of equality, as well as white people in the South and throughout the country who were supporting their demands. The opinion of Judge Wisdom, one of the most respected members of the federal judiciary, goes directly to the heart of the grave problem which was then erupting in the early 1960s and which has now re-emerged in such serious dimensions. Judge Wisdom described the action instituted by the Department of Justice in these terms: "This is an action by the Nation against a Klan. The United States of America asks for an injunction to protect Negro citizens in Washington Parish, Louisiana, seeking to assert their civil rights. The defendants are the Original Knights of the Ku Klux Klan, an unincorporated association; the Anti-Communist Christian Association, a Louisiana Corporation; and certain Individual Klansmen . . ." And then in sweeping terms, Judge Wisdom sets forth the heart of the Court's conclusion as to why the injunction requested by the Department of Justice had to be issued:

In deciding to grant the injunction prayed for, we rest our conclusions on the finding of fact that, within the meaning of the Civil Rights Acts of 1957 and 1964, the defendants have adopted a pattern and practice of intimidating, threatening, and coercing Negro citizens in Washington Parish for the purpose of interfering with the civil rights of the Negro citizens. *The compulsion within the Klan to engage in this unlawful conduct is inherent in the nature of the Klan. This is its ineradicable evil. We find that to attain its ends, the Klan exploits the forces of hate, prejudice, and ignorance. We find that the Klan relies on systematic economic coercion, varieties of intimidation, and physical violence in attempting to frustrate the national policy expressed in civil rights legislation. We find that the Klansmen, whether cloaked and hooded as members of the Original Knights of the Ku Klux Klan, or skulkingly in anonymity as members of a sham organization, 'The Anti-Communist Christian Association,' or brazenly resorting to violence on the open streets of Bogalusa, are a "fearful conspiracy against society" * * * [holding] men silent by the terror of [their acts] and [their] power for evil.*" (Wisdom opinion *supra*, at 334). (Emphasis added.)

Based upon these fundamental conclusions, the federal three-judge court composed of Judges

Wisdom, Christenberry, and Ainsworth, issued a sweeping injunction against "assaulting, threatening, harassing, interfering with or intimidating, or attempting to assault, threaten, harass, interfere with or intimidate . . . Negro citizens from exercising their equal rights under the laws and Constitution of the United States."

Conclusion

This discussion of the array of federal legislation enacted primarily in the aftermath of the Civil War and reinforced during the 1960s indicates that federal power fully exists to justify action on the part of the federal executive and judicial branches to protect the rights of minority citizens faced with the rising wave of violence that is directed at them by organized forces of hatred and those who act individually and randomly.

The random violence against Black and minority people which permeated the atmosphere of this country after the Reconstruction period and again in the early days of the Civil Rights movement in the 1960s has returned with a vengeance. This time, Blacks and minority peoples can read in the pages of newspapers across the land, in plain language that can be understood by adults and children, that violent bands of hate-filled racist individuals are arming themselves, and engaging in training for a "race war."

The Republican Reconstruction Congress and the 90th Congress were closely attuned to this wave of racially motivated violence and the purposes for which this violence was perpetrated. The legislative history of Sections 245, 241 and 242 indicates that Congress, both in the nineteenth and in the twentieth centuries, was well aware of the intimidating effect of violence against people for no other reason than the fact

that they are not white. They knew that random, racist violence of this sort sends out a clear message: Blacks and minority peoples are not citizens of these United States, they have no rights, and they should not exist.

This is the very message that was decisively rejected by the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution. Those Amendments declared in simple terminology that Blacks and minority peoples are to be protected by the enormous powers of the federal government in the exercise of every right that extends to white citizens of the United States. These Amendments provided Congress with the authority to legislate to assure that the Amendments accomplished their objective. Sections 245, 241 and 242 are direct products of congressional exercise of that power. The Department of Justice has the authority to bring criminal prosecutions for the concrete enforcement of those rights, and sweeping injunctive actions under Sections 1971, 1981 through 1989 of Title 42.

Any suggestion that violence, even murder, directed against Black or minority peoples solely because they are Black or minority peoples presents no basis for federal intervention, totally ignores the most sweeping commands of the War-time Amendments. This misreading of the purpose and sweep of the civil rights statutes not only results in an abandonment of the tools designed by the Congress for the protection of the life and liberty of Black and minority citizens. It lays the basis for the burial once again in our history as a nation of the fundamental promises of freedom and equality contained in the universal charter of freedom set forth in the Thirteenth Amendment and strengthened and protected in the Fourteenth and Fifteenth Amendments.



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"The People Have Spoken" By: Dr. Charles E. Cobb

The abuse of the rights of citizens under the color of law is the first stage of tyranny. The most heinous form of this official misconduct is racially motivated police brutality. When society becomes prey to its so-called protectors we are witnessing the seeds of insurrection. The poor and Black communities have historically been the primary victims of this brutal form of racially motivated violence.

In New York City where police brutality has reached epidemic proportions, we have even seen Black ministers pummeled by groups of police. Requests for relief from the city administration and specifically Mayor Edward Koch have fallen on deaf ears. In light of this characteristic insensitive response on the part of the Mayor and Chief of Police, Black community leaders took their grievances to Washington. Having investigated the national increase in racially motivated violence, Congressman John Conyers, Chairman of the House Subcommittee on Criminal Justice, welcomed the community representatives and immediately scheduled congressional hearings to be held in New York.

(MORE)

This action was immediately followed by accusations of a "witch hunt" and "unfair" by the Mayor and police officials. On the day of the scheduled hearings to be held in Harlem, the nation's largest Black community and the scene of repeated incidents of police brutality, an unexpected 1,000 people appeared to hear testimony. This enormous turnout should have clearly demonstrated the severity of the problem. It was at this point, for some unknown reason that the Congressmen unilaterally decided to cancel the so-called official hearings. This was no less than an insult to the community who had placed their hopes for relief in the congressional hearings.

The Mayor of New York has consistently demonstrated disdain and unconcern regarding the needs of the city's minority community. Thus, the crowd's negative reaction to his presence should have been expected even by the most casual observer. During the singing of the Black National Anthem the Mayor remained seated while all others stood, just one more indication of the arrogance that has been the mark of the Koch-administration.

At the urging of Black leaders unofficial hearings were held and contrary to media accounts, did proceed in an orderly fashion. Over 50 witnesses testified to the brutality they suffered from New York police. Those Congressmen, State Assemblymen, religious and community leaders who remained to hear the more than 7 hours of testimony should be highly commended, for they recognized that the needs of the people surpassed political backscratching and backroom deals. The events surrounding the hearings should demonstrate the need for political accountability of our elected officials. Some have said that the hearings were designed to fail and that they were sabotaged.

We may never know who deserves the blame. We can be sure however, that it does not lie with the community. The hearings were a success and most importantly, the people have spoken.

This is Charles E. Cobb of the United Church of Christ for Civil Rights Journal. Thank you.

Reverend CHAVIS. Thank you.

I submit this testimony on behalf of the United Church of Christ Commission for Racial Justice. Dr. Charles E. Cobb, executive director, the United Church of Christ Commission for Racial Justice has been challenging the problem of racially motivated violence for the last several years. The unmitigated occurrence of racially motivated violence in the city of New York is one of the most crucial problems facing the city.

While the incidence of racially motivated violence is certainly an historic national problem, the city of New York continues to distinguish itself as the place where vicious police brutality against African Americans and other racially oppressed peoples routinely occurs with the defense and sanction of municipal officials.

The location of this hearing is in the heart of Harlem, N.Y. This African community in particular has become literally an armed encampment where racist police officers, acting under the color of the law, have subjugated the indigenous residents to a state of fear, intimidation, and violence that can no longer be tolerated. Thus, the importance of this hearing is not only to lay before the committee testimony and evidence about police brutality in the black community, but also to serve notice that the situation has reached a crisis stage and that unless there is corrective and concrete action taken by the Federal, State, and local governments to stop this violence then the community at large, in order to survive, will be left no other alternative than to exercise its inalienable right to develop self-defense mechanisms that will insure that the termination of the grievous assaults on the community.

We speak in the interest of the victims of racially motivated police violence in Harlem, Brooklyn, Bronx, Queens—all across New York City. We must not only remove the man in the mayor's house, we must remove the man in the White House. But not only that, we must organize block by block and street by street and mobilize our people.

Mr. Chairman, you heard today from many organizations representing our community. Our task is to unite these organizations into a broad based coalition. This issue of police brutality has brought us together like no issue before. In fact, I wish to report to the committee that there are many past victims of racially motivated police brutality in New York City who would like to be here today to testify in person but they are simply afraid to come to the hearing because of fear of retaliation by the police. In such an atmosphere of pervasive and permissive police abuse, citizens' civil and human rights are severely violated.

We understand the real danger that the many victims who are now testifying before this committee will face as a result of their testimony. We encourage this committee to take every possible action to prevent them from experiencing undue hardship or retaliation as a consequence of their appearance at this hearing. For example, there were many black police officers that we are aware of that in fact themselves have been victims of police brutality, who want to come and testify, but have been threatened by fellow white officers and have been threatened by the city, that prevented them from coming forward.

We believe that the church as a whole must speak to the State when the abuse of citizens rights continues to be perpetrated to satisfy the madness of racial prejudice and bigotry. We wish to point out that we believe that the marked increase in the occurrence of racially motivated violence by the police and others across the United States is directly related to the racially assaultive policies of the Reagan administration. The extent to which the Government of the United States supports racially motivated violence in Latin America, the Caribbean, southern Africa and other parts of the world is the extent to which this Government will allow racially motivated violence to be committed on its own citizens.

For the purposes of this hearing, I would like to enter into the record a copy of a book that we have just published entitled, "Racially Motivated Violence in America." Attorney Steven Winter stated:

Generally, the police to some degree are a fraternity and they tend to be supportive of each other and because of that, the notion of review is important. I think that you need to understand that unless you can regulate and control the conduct of the officers from the outside you will never insure that those cops are going to be acting properly, because the only ones that have control of the structure are on the inside.

Therefore, the issue of the control of the police, not just the monitoring of their activities, but the control of the police by the community at large, by the people that the police purport to serve and protect, is extremely important.

However, Mr. Chairman, what we have heard here today already substantiates that in New York City, within the criminal justice system, it is in point of fact the actions of racist police officers supported by public officials that causes the criminal assaults on our community.

Mayor Koch is responsible for the explosive situation in New York City around this issue. Specifically, Mr. Koch's unqualified defense of the police department in the *Lee Johnson* case and the city's reluctance to discipline the officers who continue to commit these crimes only adds more and more names of victims to the present expanding list. We therefore call upon this committee to do all in its power to rectify legislatively and to expose the contradictions here in New York City concerning racially motivated police violence.

Mr. Chairman, some of the victims that we have heard about could not be here today because they are dead. The latest incident that we have had reported to us happened just 4 days ago. On Thursday, September 15, 1983, our office received a call from Attorney Michael Warren and Attorney Clayton Jones in reference to yet another brutal attack. Attorneys Warren and Jones were calling from the Bellevue Hospital here in Manhattan to report that Michael Stewart, 25 years old, was beaten by New York City Transit Police into a state of coma for allegedly writing graffiti on the subway wall. At this very moment Michael Stewart is listed in critical condition at Bellevue Hospital.

Our staff just checked with the hospital a few moments ago and they are expecting Michael Stewart to die as a result of being brutally beaten by New York Transit Police. When will it stop? When will it stop? How long must we endure these atrocities?

Not only must the answer come from city hall, not only must the answer come from the Congress of the United States, but the answer must come from those of us who live in Harlem, who live in Brooklyn, who live in the Queens, who live in the Bronx. The bottom line is what we intend to do around this issue of self-determination for our people. We must stop these brutal attacks on our community.

We don't have all the answers, Mr. Chairman but we pledge to you to work with the Ad Hoc Committee Against Racially Motivated Violence, that we intend to use this hearing as a means to further an end. After this hearing and after the records are submitted, one strategy that we have come up with, that we intend to make public today, we know the officers' names, we know their badge numbers, we know their addresses, the officers who commit violence on our community. We are putting up wanted posters in our community. We want them out of this community. If we catch them in the community they will be dealt with accordingly.

I would like to yield the remainder of my time to Attorney Clayton Jones, who will give the specifics of the latest incident of racially motivated police brutality in New York City, in the case of Michael Stewart.

[Prepared statement of Rev. Ben Chavis follows:]

TESTIMONY

ON

RACIALLY MOTIVATED POLICE VIOLENCE
IN THE
CITY OF NEW YORK

BEFORE THE

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIMINAL JUSTICE

BY

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HARLEM STATE OFFICE BUILDING

JULY 18, 1983

THEN THE COMMUNITY AT LARGE IN ORDER TO SURVIVE WILL BE LEFT NO OTHER ALTERNATIVE THAN TO EXERCISE ITS INALIENABLE RIGHT TO DEVELOP SELF DEFENSE MECHANISMS THAT WILL ENSURE THE TERMINATION OF THESE GRIEVOUS ASSAULTS ON THE COMMUNITY.

WE SPEAK IN THE INTEREST OF THE VICTIMS OF RACIALLY MOTIVATED POLICE VIOLENCE. IN HARLEM, BROOKLYN, BRONX, QUEENS---ALL ACROSS NEW YORK CITY, THE VICTIMIZATION OF BLACK, HISPANIC AND OTHER RACIAL-ETHNIC COMMUNITIES BY THE POLICE IS WIDESPREAD. IN FACT, I WISH TO REPORT TO THE COMMITTEE THAT THERE ARE MANY PAST VICTIMS OF RACIALLY MOTIVATED POLICE BRUTALITY IN NEW YORK CITY WHO WOULD LIKE TO BE HERE TODAY TO TESTIFY IN PERSON BUT THEY ARE SIMPLY AFRAID TO COME TO THE HEARING BECAUSE OF FEAR OF RETALIATION BY THE POLICE. IN SUCH AN ATMOSPHERE OF PERVASIVE AND PERMISSIVE POLICE ABUSE, CITIZENS' CIVIL AND HUMAN RIGHTS ARE SEVERELY VIOLATED. WE UNDERSTAND THE REAL DANGER THAT THE REVEREND LEE JOHNSON AND OTHER VICTIMS WHO WILL TESTIFY BEFORE THIS COMMITTEE WILL FACE AS A RESULT OF THEIR TESTIMONY. WE ENCOURAGE THIS COMMITTEE TO TAKE EVERY POSSIBLE ACTION TO PREVENT THEM FROM EXPERIENCING UNDUE HARDSHIP AS A CONSEQUENCE OF THEIR APPEARANCE AT THIS HEARING.

WE BELIEVE THAT THE CHURCH AS A WHOLE MUST SPEAK TO THE STATE WHEN THE ABUSE OF CITIZENS RIGHTS CONTINUES TO THE PERPETRATED

TO SATISFY THE MADNESS OF RACIAL PREJUDICE AND BIGOTRY. WE WISH TO POINT OUT THAT WE BELIEVE THAT THE MARKED INCREASE IN THE OCCURRANCE OF RACIALLY MOTIVATED VIOLENCE BY THE POLICE AND OTHERS ACROSS THE UNITED STATES IS DIRECTLY RELATED TO THE RACIALLY ASSAULTIVE POLICIES OF THE REAGAN ADMINISTRATION. THE EXTENT TO WHICH THE GOVERNMENT OF THE UNITED STATES SUPPORTS RACIALLY MOTIVATED VIOLENCE IN LATIN AMERICA, THE CARIBBEAN, SOUTHERN AFRICA AND OTHER PARTS OF THE WORLD IS THE EXTENT TO WHICH THIS GOVERNMENT WILL ALLOW RACIALLY MOTIVATED VIOLENCE TO BE COMMITTED ON ITS OWN CITIZENS.

FOR THE PURPOSES OF THIS HEARING, I WOULD LIKE TO ENTER INTO THE RECORD A COPY OF A BOOK THAT WE HAVE JUST PUBLISHED ENTITLED RACIALLY MOTIVATED VIOLENCE IN AMERICA. I CALL SPECIAL ATTENTION TO PAGES 53 THRU 61 WHICH IS A SECTION ON RACIALLY MOTIVATED POLICE VIOLENCE.

MAYOR KOCH IS RESPONSIBLE FOR THE POTENTIALLY EXPLOSIVE SITUATION IN NEW YORK CITY AROUND THIS ISSUE. SPECIFICALLY MR. KOCH'S UNQUALIFIED DEFENSE OF THE POLICE DEPARTMENT IN THE LEE JOHNSON CASE AND THE CITY'S RELUCTANCE TO DISCIPLINE OR CRITICIZE THE POLICE INVOLVED IN THE WILLIE TURKS MURDER IN BROOKLYN ONLY ADDS INJURY TO INSULT.

WE THEREFORE CALL UPON THIS COMMITTEE TO DO ALL IN ITS POWER TO RECTIFY AND TO EXPOSE THE CONTRADICTIONS HERE IN NEW YORK CITY CONCERNING RACIALLY MOTIVATED POLICE VIOLENCE. WE FURTHER CALL UPON ALL CHURCH AND COMMUNITY ORGANIZATIONS TO JOIN TOGETHER IN THE STRUGGLE TO ORGANIZE AND MOBILIZE OUR COMMUNITY FOR SELF-DETERMINATION, JUSTICE AND FREEDOM. THANK YOU.

Mr. CONYERS. Welcome, Attorney Jones. We are fast running out of time. We may have to put some of the witnesses over, but I know that everybody will be sensitive to the time constraints from this point on.

Welcome to our hearing again.

TESTIMONY OF CLAYTON JONES

Mr. JONES. Thank you, Congressman Rangel. I should like to thank the Rev. Ben Chavis for his extension of courtesy to this speaker and to the family of Michael Stewart in ceding a portion of his time to a consideration of the most recent police atrocity in the city of New York. I shall also take this opportunity to apologize to this committee on behalf of rational New Yorkers for the infantile conduct of certain of its public officials in boycotting this hearing and to commend you for your efforts in assuring a fair and constructive climate in which the hearing shall take place.

I am aware of the constraints of time in this matter and shall attempt to be as succinct, precise, and specific as I possibly can. In that connection, I offer for your consideration the following statement of facts:

At or about 1:15 a.m., last Thursday, a 25-year-old black male artist, weighing approximately 135 pounds, entered the subway station at 14th Street and First Avenue in the Borough of Manhattan. Before he could board the LL train to return to his home in the Clinton Hill section of Brooklyn where he lived with his mother, a retired school teacher and presently nursing home administrator, and his father, a retired employee of the New York City Transit Authority, he was arrested by Transit Patrolman John Kostick. It is alleged that he was defacing the subway platform walls with graffiti and that a substantial quantity of cocaine was found on his person. At around 11 p.m., Wednesday, he borrowed \$2 from an artist friend to finance his trip from the Lower East Side to Clinton Hill.

Between the hours of 1:15 a.m. and 3 a.m., Thursday, something happened. A promising young black artist, the child of a black middle class family, living in a middle class neighborhood in the Borough of Brooklyn was admitted to Bellevue Hospital as an unknown white male with his wrists in handcuffs, his feet in shackles and his legs in chains. His heart had stopped beating, he was in coma, one of his lungs had collapsed, his eyes were blackened, his neck was probably broken, internally he was bleeding profusely, his lower skull was probably fractured, his body was covered with scars and bruises, and his brain was massively damaged. In the emergency room at Bellevue, he was resuscitated and taken to the intensive care unit and later transferred to the 16th floor where he now lies in a comatose state, neither dead nor alive.

The family physician, Dr. Robert Wolf, a senior physician at Mount Sinai Hospital, has informed the family that its son and sibling will soon be dead and that, in the highly unlikely event of his survival, he will spend the balance of his days on this planet as little more than a vegetable.

At the time of arrest, Officer Kostick was aided by six additional officers and, we are informed, other so-called backup personnel. It

is alleged that the heretofore retiring and almost docile 135-pound young artist who had a history of avoiding confrontation, resisted the arrest so violently that six officers and their backup were required and that, according to a spokesman for the transit authority, it was necessary to beat him to death to effectuate the arrest. One would think that the handcuffs, shackles and legirons should have provided sufficient restraints to the young man's resistance. On the other hand, if he were shackled, bound, and cuffed subsequent to the coma, brain damage, collapsed lung, scars, bruises, blackened eyes, and cardiac arrest, serious questions arise concerning the allocation of resources within the transit authority.

It has been said in certain places that police brutality in New York City is not systemic. If the mayor is asserting that there is no written policy that prescribes brutality against black New Yorkers by its law enforcement agencies, there exists, at least, the possibility that he is correct. If, however, in this Orwellian age in which words have been stripped of their meanings and common usage is no longer a guide to rational discourse, one nevertheless relies as a last resort, on common usage as a reasonable tool in understanding the meanings of words, the mayor is incorrect.

If I may, for the next few minutes, I should like to point out to this distinguished committee a specific example of the manner in which the power structure both private and public, of this city actively cooperates in the maintenance and perpetuation of police brutality. The tragedy of young Michael Stewart is a case in point.

The battered body of an obviously black young man whose hair was styled in a modified version of the currently popular dreadlocks was admitted to the emergency ward of Bellevue Hospital, a municipal hospital controlled by the mayor's office, accompanied by an array of arresting officers, believed to be dead on arrival, and immediately classified as a white male by the admissions office.

Later in the day, when an eminent pathologist on the staff of Mount Sinai Hospital was called in at the request of the parents, my associate and I were informed that Dr. Wolf would be permitted to see the patient upon compliance with Bellevue's procedure. We were told, in the presence of several witnesses that the procedure involved the paging of Dr. Bill Cole upon the arrival of Dr. Wolf. Dr. Cole would then escort Dr. Wolf to the patient and medical records of the patient would be shown to Dr. Wolf. He could make transcriptions, confer with the attending physicians, but he could make no copies.

When Dr. Wolf arrived, however, he was told to wait in the hall while certain telephone calls were made. He was then informed that he could not see the patient because he had not brought his framed and laminated license to practice medicine with him. After a 40-minute attempt at rationality and commonsense and calls to certain unnamed hospital authorities, and offers of other proof of credentials, Dr. Wolf was told that he must produce the license, whereupon he returned to his Madison Avenue office, collected his license, and was then, 2 hours after being deliberately misled by the administrative officer, permitted to see his patient.

Throughout the day the parents had received no word concerning the condition of their son except an assurance that he had no brain

damage, but was in critical condition. Sitting with the family were many friends offering assurance throughout the day that, even though in critical condition, Michael would pull through. It was only after Dr. Wolf examined her son that Mrs. Stewart confronted the stark choices of death or human vegetation facing her second son.

Meanwhile, the New York Post and the Daily News sent reporters to interview the parents and to learn the condition of the prisoner. A brilliant young reporter of African descent was assigned by the Daily News. Upon the realization that he had been assigned to a classic study in police brutality, he called for a photographer. The photographer never arrived and, within the hour, the story was re-assigned to the city hall desk where it died.

Likewise, the reporter for the New York Post prepared a major story commensurate with the enormity of the crime perpetrated on the body of Michael Stewart. The entire manuscript was scrapped by his editors and replaced with the official line of the transit authority. The New York Times, of course, as the establishment newspaper, had no interest in the story except to bury it in a story on today's hearings.

Ironically, however, it is these hearings which will force the citizens of this city to come to grips with the calumny of a mayor who would trivialize numerous and monstrous instances of police brutality with the disingenuous assertion that such cases are nonsystemic. I say to you that police brutality in the city of New York is systemic. It is condoned and covered up on a systematic basis by the agencies of city government and the racist press. It is ignored and, at best, poorly covered by a pusillanimous and cowardly black press that, except in the case of WLIB and WWRL is unworthy of the name press.

If I may, in order to complete my case for the proposition that the system itself promotes and condones police brutality in the city of New York, I would invite your attention to the case of Robert Torsney who murdered 14-year-old Randy Evans in cold blood, was tried before a judge by a jury of his peers and acquitted on the grounds that at the precise moment of pulling the trigger he was undergoing a rare form of epilepsy that passed immediately after releasing the trigger.

Again, I say to you, the system, from the time of the arrest and murder of the alleged criminal to the trial and acquittal of the murdering policeman, the system, I suggest, has targeted the young black male New Yorker as an animal who may be exterminated with the same impunity as one would employ in the extermination of a family of rodents. To assert, in the face of so long a history of unjustified police murders of young black males in New York City, that the practice is not systemic, is to utter in the last analysis, an obscenity.

In closing, may I suggest to this distinguished committee that the subject to which you address your attention today will not go away. The cities of this Nation are giant powder kegs. They are inhabited by hundreds of thousands of Michael Stewarts who have observed the blue suited murderers of their friends set free in the finest traditions of American law—due process in every instance has been meticulously observed. They have seen their friends—the lucky

ones—escape death only to fill the prisons of this Nation. They have understood that to be black in America is to be a defenseless prisoner in a concentration camp surrounded by mad dog killers who take their orders from a ruling class consisting of a bizarre assortment of racists and bigots who are prepared to see the planet vanish in a puff of smoke before acknowledging the humanity of one whose skin is not white.

I would ask this committee as it pursues its purposes to ponder the following question and its implications for what might have been, but for the question of race, a great nation:

What is the appropriate response of an intelligent and sensitive human being, born in a concentration camp, surrounded by killer guards, compromised by Negro trustees, unable to rely upon an appeal to reason and commonsense in the negotiation of his release, and powerless in the mere assertion of his own humanity?

I would suggest that, in your quest for an answer, you read the histories of Chile, Ireland, Lebanon, Nicaragua, Cuba, the Philippines, the Soviet Union, France, China, the United States of America and of every nation on the face of this Earth where the will to be free is systematically stifled under the jackboot of official tyranny and corruption of the kind that permeates the city of New York.

I thank you for your indulgence.

Mr. CONYERS. I thank you, Attorney Jones. That response indicates fully how this subcommittee feels about the insights that you have delivered into this record. We are grateful again for your participation in this struggle and we are stonger knowing that you are going to be organizing and leading the much more important activity that must follow this hearing, because without that this will become another incident in the pages of history.

Thank you very much.

Reverend CHAVIS. Mr. Chairman, I beg the indulgence of the Chair. We have one more witness, a young lady who walked in before 7 o'clock this morning, filled out a complaint form. She promises to be brief. Her name is Lorna Early, who was a victim of police brutality.

TESTIMONY OF LORNA EARLY

Mrs. EARLY. Congressman, and councilmen, and staff and everyone, I greet you. I am a Moslem in the American Moslem Mission, my name is Lorna Early and this is my husband, and I am a victim also, and I had an incident that happened to me September 21, 1981, where I was sleeping one morning, and I was awakened by a great deal of banging. It seemed like the door was going to come down. I went to the door and asked who it was. It was three police officers and I asked what they wanted. They said they wanted my husband for a child support warrant. That is what they said, and they told me to open the door.

I told them I wasn't dressed, and the fact that the hinges were coming off the door, the paint was coming off the door, I said that I didn't feel comfortable opening the door. So they said they were coming in anyway. So I moved away from the door because I heard them as if they were together bouncing the door in. I moved away from the door and ran to the phone. As the door broke down, my

door was broken in, they came tumbling through and they grabbed me and started searching all through my apartment, all my drawers.

I don't know what had to be in my drawers. They were in my drawers, you know, going through everything. So while they were busy searching, I ran to the phone and called and asked for help. The three police officers—I was on the phone talking—I said, "Please, police officers broke into my apartment, and I know this is wrong." Before I could finish what I was saying, one officer from the 44th precinct in the Bronx—all of them are from the 44th precinct in the Bronx—grabbed the phone—the phone went up the wall—and said, "Who are you calling?" And I said, "The police." So they replied, "I am the police."

So that was when they commenced to punching me in the face, blackened my eye, kicked me as I fell to the floor, and what made me semiconscious when they punched me in the rib cage, around my stomach and my rib cage, and I fell to the ground and the wind was taken out of me. So I was what you call semiconscious, knowing something had happened.

At the time I fell to the ground, my negligee I had on, I was not dressed—my daughter was in the house, the youngest daughter, 5 years old at the time—my negligee went up, the door was broken into, people had seen my negligee go up and they were looking at me. I covered my body, I am a Moslem. This is my husband here. He is insulted, humiliated, embarrassed and I am, too.

So they see my body and they start making snarling remarks against my body, what they would like to do. So I am trying to remain conscious. They see me coming to, and he starts to beat me up. He says, "Well, listen, get dressed."

I said, "I can't get dressed in front of you." So he beats me more. He punches me in the back, kicks me in the back, punched me in the face. Then he tells me I am under arrest. So I am dragged out, I wasn't dressed, in my negligee through the streets, handcuffed, went to jail. Handcuffed, left my door open. They took my child, put her with somebody, I don't know who.

What I am trying to say—this is embarrassing to me, my doors were left open. They waited 3 hours, I would like to stay in the house, to see if my husband would come up to the house, which I told them in the beginning. I didn't say that my husband wasn't living with me at the time and that I resided at this apartment. They were actually looking for him and his child and they waited in the apartment about a good 2 to 3 hours after this whole incident while I was handcuffed waiting to see if he come through the door so they could put a bullet through his head.

Eventually they didn't see him come so they left. They trumped up four charges against me, which a jury trial acquitted—I was acquitted of all charges—I told the truth and they believed me. Through the trial, which aggravated me a lot—was one officer, actual officer that did all the brutality—he said the reason why her negligee went up is because I pulled it over my head. Now, I am a Moslem. I don't stand for that, I dress. I don't even have to explain my—all I know, it hurt a lot when they said I pulled my own negligee over my head.

So we were acquitted of minor charges, and my family—but I was acquitted. So it was an embarrassment for me and my family and my husband here is humiliated.

Mr. CONYERS. We share your feelings. We can understand how deeply this offended you, not only as a human being but as a Moslem, and we will incorporate your testimony into the record.

Would your husband like to add anything before we conclude this part of our testimony?

TESTIMONY OF JEROME EARLY

Mr. EARLY. I would like to see justice done. I would like all of us to get together to see that they don't disrespect our families.

I know I am going to die. If I came up there I was going to die. My whole family would have known I die. I am still here carrying on a fight to make sure this doesn't happen to other black families. You know, they didn't have a warrant. I want you to understand they did not have any warrants on me at all. They directly busted down the door and beat my wife up. We have to get together. That is hard to do. That is all I have to say.

Mr. CONYERS. We appreciate that very much. Thank you so much.

I would like now to call Mr. Lawrence O'Donnell, Jr., the author of a book entitled "Deadly Force: The True Story of How a Badge Can Become a License to Kill." He has researched the deadly force question nationally, and we are very pleased that he would have come from Boston, Mass., to participate in this hearing today. We apologize for your very long wait, but you can appreciate that all of the witnesses' testimony was crucial to the subject matter that brings us here.

So I am very pleased on behalf of myself and my colleague, Congressman Rangel, to welcome you before the subcommittee at this time.

TESTIMONY OF LAWRENCE O'DONNELL, JR., AUTHOR OF "DEADLY FORCE: THE TRUE STORY OF HOW A BADGE CAN BECOME A LICENSE TO KILL"

Mr. O'DONNELL. Thank you very much, Chairman Conyers, Congressman Rangel.

I am in no way put out by having waited all day to testify. I admire and indeed am jealous of your physical stamina and patience and the judicious manner in which you have chaired the hearing today, and I thank you for inviting me to be here.

Mr. CONYERS. Thank you.

Mr. O'DONNELL. I intend to depart from my prepared testimony in the interest of brevity, because I think it is important that the other New Yorkers here be heard by you and Congressman Rangel. I intend to limit my comments only to police use of deadly force. It is the subject matter of my book and it is something that I have been researching now for over 6 years.

I would simply like to point out that abuse of deadly force can be the ultimate police brutality. There are approximately 600 people killed in the United States by police bullets every year. This is not a problem that is unique to New York. Indeed, there are cities in

other parts of the country with much higher shooting rates in their police departments than in the New York City Police Department.

I am here today because this is not only New York's Congressional Hearing on Police Brutality and Abuse of Deadly Force, this is America's hearing, and this is also why Rev. Jesse Jackson came here today and why other people from other parts of the country are here today.

I am not optimistic that we are going to be able to prevent police use and abuse of deadly force. I think the 600 people killed per year represents a stubborn statistic and there is very little that we can do in preventive measures to reduce that. I think we must be very much concerned with the aftermath of police killings and this is where the Congress and Federal Government can have a role.

I think that even with sensible deadly force rules in cities like New York, Boston, and Los Angeles, there will still be accidental, negligent, reckless, malicious, and indeed sometimes insane killings by the police. I refer, for example, to insane the killing by former patrolman Robert Torsney in New York City.

I think we have to open up avenues for citizens to proceed against the police. I favor citizen review boards and also recognize their impracticality as something that cannot be implemented throughout the country.

Congress, though, can take a specific action in civil rights law: change it so that citizens pursuing lawsuits against the police have a serious remedy at their disposal.

A few years ago, the Congress added a provision that allows attorneys to collect attorneys' fees when successful in a civil rights lawsuit under title 42, section 1983, of the United States Code. The Congress did that because it considers attorneys in those matters to be acting as "private attorneys general." They are carrying out the highest role an attorney can carry out in the private bar in the United States, and that is representing people whose civil rights have been violated. That is why attorneys' fees have been added into the Federal civil rights litigation system.

The problem with that is that it now represents a hollow remedy in jurisdictions throughout this country, because cities under title 42, section 1983, cannot be sued and added as parties in litigation that involves police brutality or abuse of deadly force. I suggest that the Congress investigate the chances of amending title 42, section 1983, to include a provision that allows plaintiffs to plead cities as defendants in those civil rights lawsuits.

That is presently impossible in most cities around the country and, therefore, even if a plaintiff is successful in winning one of these suits, it is impossible to collect money from the city. We have two egregious judgments outstanding in this country, one in the city of Boston in the amount of \$750,000 which the city of Boston refuses to pay to a black widow who lost her husband in a burst of police gunfire in 1975. The city of Boston has defended the police in that action, has exhausted every appeal, and now faces a \$750,000 judgment which it is ignoring.

The city of Houston has a judgment of \$2 million against two Houston patrolmen who killed a white teenage boy and were found to have planted a gun at the scene. The policemen were criminally prosecuted. The Webster family was successful in the civil rights

lawsuit but was unable to collect any money because of this hole in section 1983.

I would also suggest that civil rights prosecutions should be pursued honestly and energetically by U.S. attorneys. Every police use of deadly force that results in a fatality in America—all 600 of those—should be automatically investigated by the Justice Department, that is by the local U.S. attorney in the jurisdiction involved.

There are approximately 600 such killings every year. There are approximately 90 U.S. attorneys. The burden shared on average throughout the country is not significant. Each U.S. attorney on average would have no more than two or three controversial such killings to investigate in the course of the year. It would not be an undue call on their resources to do that.

There are many other suggestions that have been made to this committee today, many of them I support, but many of them are not going to be politically palatable in many jurisdictions around the country. The two that I have suggested, I think, are politically palatable, adding cities to section 1983 actions is something that police unions in fact support universally in this country because it removes the liability from policemen themselves.

I am in extremely conservative company when I suggest to you that the U.S. attorneys in this country should investigate every one of these killings. It is not an idea that originates with me. It originated with President Richard Nixon's Attorney General, John Mitchell, who proposed it after the killing of black students at Jackson State University approximately 10 years ago.

It was, like many promises of the Nixon Justice Department, one that was never carried out, but it was the stated intention of Attorney General John Mitchell that his Justice Department would investigate every fatal police use of deadly force. The Justice Department has never done that. It should finally get around to doing it.

Thank you very much.

Mr. CONYERS. Thank you very much. You have made some recommendations that Congressman Rangel and I will follow up on. We do have also a new model provision for the civil rights law in my own model criminal code that I would like you to examine and then I think we could move forward for special subcommittee hearings on the constitutional remedy exclusively, and I would be looking forward to your participation.

Mr. O'DONNELL. I am very much aware of the initiatives that you have taken, Congressman Conyers, and I think people in this room should know that Representative Conyers is not new to this problem. I first met him in 1979 at a conference that was sponsored by the U.S. Justice Department on the matter of police abuse of deadly force. He has been attentive to this problem throughout the country, not just in New York, but in Michigan and across this land, for several years. He is not new to it. He is an authority on it and should be recognized as such.

Mr. CONYERS. We will be working together on this point. It is good to see you.

Mr. RANGEL. Let me thank you for making this trip and appearing as a witness. It is my understanding that you have some very close friends of the Speaker, and I am certain with our combined effort, we can bring about some change. Thank you.

Mr. O'DONNELL. Thank you very much.

Mr. CONYERS. Ladies and gentlemen, we are going to have to excuse my colleague, Charles Rangel, who must appear at a university engagement for which he is very late. He has been here all day. He has worked with me from the beginning on these hearings and pledges to continue. Will you give your member from Harlem, Charlie Rangel, a very large hand for his unstinting activity and the work of his staff with my staff that was very helpful. [Applause.]

The chairman of the New York Police Department Guardians, Mr. Jacques Maurice, the organization of black police officers of New York, who is also the Assistant Chief of Security for Roosevelt Island, would like to come forward for a brief statement with Mr. John Cousar, Past President of the N.Y.P.D. Guardians. He is also Special Assistant for Criminal Justice to New York Assemblyman Roger Green.

Now, ladies and gentlemen, these are the black police officers who have done so much, who are now the heroes of Black America. They have done an incredible job of trying to keep the peace, fight the fight inside the law enforcement system who know so much, who work so hard and who have given so unstintingly of themselves and frequently jeopardized themselves in ways that many of us will never know.

I might also add, as Congressman Rangel reminds me, that they have been very helpful in organizing today's hearings. So, Jacques Maurice and John Cousar, colleagues, and associates, welcome to the witness table for whatever observations you may wish to make. Thank you very much for all that you have done.

TESTIMONY OF JACQUES MAURICE, CHAIRMAN, GRAND COUNCIL OF GUARDIANS, ACCOMPANIED BY JOHN COUSAR, PAST PRESIDENT OF THE N.Y.P.D. GUARDIANS AND SPECIAL ASSISTANT FOR CRIMINAL JUSTICE TO ASSEMBLYMAN ROGER GREEN; WILLIAM JOHNSON, JR.; RICHARD WOODBURY; AND VERNON GASSAWAY

TESTIMONY OF JACQUES MAURICE

Mr. MAURICE. Congressman Conyers, thank you very much. Needless to say, we are all grateful that you are here. My name is Jacques Maurice. I am the President of the Grand Council of Guardians. [Applause.]

The Grand Council is an umbrella organization that represents the four guardian associations here in New York City: No. 1, the Correction Guardians who have the toughest job in the whole city; No. 2, the NYPD Guardians, the largest black police organization in the country; No. 3, the Transit Guardians and, No. 4, the Housing Guardians.

This is an organization that represents all black police officers here in the city of New York. And we are here, and I am here along with John Cousar, who is the former President of the NYPD Guardians who has done a tremendous amount of research.

We won't be able to tell you everything that we have and everything that we would like to say, but we need you to understand

that black police officers suffer the same indignities and injustices that black citizens suffer. [Applause.]

We need you to understand and be aware that when we take off those uniforms, we are just another black citizen.

I need you to know that we are not just talking through the air. We want you to know Detective Francis Phillips is a black police officer. In August 1982, he was beaten by white police officers. A transit police officer, Tom Walker, he was shot at nine times. He apprehended a felon. He was standing over the felon and the white police officers pulled up in their cars, and they opened up on him. Fortunately, they just didn't shoot too good, and Tom didn't get hurt.

Detective Boswell was shot on duty. Irving Wright, brother of the famed Assemblyman, Sam Wright, was shot and killed.

Police officer John White was shot in the back. We have a housing police officer, Howard Buckler, who was beaten. Detective William Jones was shot in the abdomen. Everyone knows about Detective Capers. Detective Capers was killed on duty, shot in the back of the head by a white police officer.

Edward Singleton, Lamuel Booker was shot in the back of the head. Lamuel Booker was shot by a drunken police officer. We have a detective who did some research on that, and on the night in question, white police officers were putting candy bars in the mouth of the white officer who shot Booker.

Nothing was done. Officer Malone was shot in the arm. Irving Gilmore was beaten. To this day, he has a speech impediment and brain damage. We could go on and on. This list is not complete. We could tell you things forever.

We are talking as fellows who are on the inside. We have been aware of these things and we have been waiting for something like this hearing to take place.

I was appointed a police officer in 1960, and I am glad you are here with us. I would like to introduce you to John Cousar. I will let John speak for himself. He is right here.

TESTIMONY OF JOHN COUSAR

Mr. COUSAR. Congressman Conyers and other distinguished members of the committee, I will be very brief.

Let me just start off by saying that we came here today with at least five active police members of the New York City Police Department. We worked until the last minute to try to get immunity for them to testify. We did not get that immunity but we still could not keep them out of the building.

Therefore, we must ask this distinguished committee to help us to get that immunity.

Mr. CONYERS. I want to guarantee you that Congressman Rangel and I will do everything we can starting tomorrow to secure you total immunity for any testimony that you want to present to this subcommittee or any evidence with reference to racially motivated police violence.

Mr. COUSAR. Thank you very much.

Additionally, it is critical for us to bring probably what will be the only testimony completely void of rhetoric and completely from

inside the New York City Police Department to this committee as quickly as possible.

Therefore, we would request that you bring us before the committee when you come to take testimony from the mayor and the police commissioner. It will be critical for you to compare our statistics to those of the police commissioner and the mayor.

Mr. CONYERS. We accept your offer and your continued cooperation. It goes without saying that many of your members are in plain clothes here today providing us with the protection and security that has made this hearing a model in decorum and cooperation for everybody to see from morning through night.

We have had one of the most orderly and peaceful and difficult hearings that I have ever presided over, and I want to thank all of the members of the Guardians who have provided their time. Some of you came down to Washington with Rev. Calvin Butts, when we first determined with Congressmen Rodino, Rangel, and Owens that we had to come to New York and it had to be as soon as possible.

Thank you all and we will be working together as we have for the last several months.

I would like now to call Mr. Bill Chong from the Asian-American community who has been working with the Asian-Americans for Equality for 2 years.

It is not just blacks fighting violence. We have Mr. Bill Chong and representatives of Chinatown in a nonpolitical organization which works to increase voter participation in the Chinese-American community. The group has become involved in police misconduct matters as a result of incidents brought to them from the Chinese-American community.

You have waited a long time, my friends and gentlemen. Please come forward to know that your testimony is valuable and important to this subcommittee. We appreciate your patience.

You may proceed in your own way.

TESTIMONY OF BILL CHONG, ASIAN-AMERICANS FOR EQUALITY

Mr. CHONG. Thank you, Congressman Conyers.

My name is Bill Chong and I represent the New York City Chapter of the Asian-Americans for Equality, a national Asian-American organization active in civil rights issues.

During the last few years, recent incidents of police brutality against Chinatown residents have concerned many of us. In response to this growing problem, my group has organized community meetings, petition drives, letter writing campaigns, demonstrations, and other activities. We therefore welcome these hearings as an important step to finally helping to bring this problem under public scrutiny.

I want to speak briefly about two major pieces of police brutality. I do want to point out that these are not isolated cases. In fact, many incidents of police harassment go either unreported, or if they are reported, are not pursued because of the reluctance of many victims to put up with the bureaucratic difficulties involved.

The first incident involved Peter Yu, a 27-year-old architectural engineer who was grabbed, arrested, and beaten by police officers of the fifth precinct of Chinatown during a traffic incident on April 26, 1975.

The incident began innocently enough that afternoon at the corner of Elizabeth and Bayard Streets when two motorists, a Chinese man who was parking his car and a white man whose car was parked, got into an argument. As the argument became more heated and a crowd began to gather, the white motorist backed out his car onto the sidewalk, hitting several bystanders. The white motorist eventually sought refuge in the fifth precinct, which was half a block away. Outside the station, police officers began pushing the crowd back.

When a 15-year-old youth was pushed to the ground, Peter Yu was standing in the crowd and protested loudly. A policeman then grabbed Mr. Yu by the throat, pushed him against the railing, and dragged him to the police station, where he was beaten by three other police officers. He was then cuffed, stripped, and further beaten.

At 11 p.m., he was brought down to night court and charged with resisting arrest and assault on an officer. As a result of that attack, Mr. Yu suffered several injuries, including punctured eardrums.

In response to this unprovoked attack, my group initiated a broad coalition of community organizations. Within several weeks, we organized a rally of more than 7,000 people outside of city hall on May 12. A week later, on May 19, an even larger protest with nearly 20,000 people—and by the way, that demonstration was the largest demonstration of Asian-Americans in this country in history—was held so that the charges against Mr. Yu be dropped and that disciplinary action be taken against those officers involved.

Throughout the entire incident, the police department clearly demonstrated their total insensitivity to our concerns. At that point, Capt. Edmond McCabe, commanding officer of the 25th precinct, attributed our protests to "resentment in the community because of gambling arrests," and completely ignored our grievances.

After months of publicity and community pressure, charges against Mr. Yu were eventually dropped, and in a token gesture to us, Captain McCabe was transferred. In the words of one police department spokesperson, "The Chinese community has lost confidence in Captain McCabe."

To this day, not one single officer has been disciplined or punished for the assault against Mr. Yu.

On the evening of June 30 that same year, in an act of retaliation against the community, police officers surrounded, drew their weapons and searched four young men while they were sitting in their car outside our offices at East Broadway and Chatham Square. As a crowd of several hundred people gathered at the site and began to march to the precinct to protest the unnecessary use of weapons, a contingent of 12 officers marched out of the station-house and proceeded to attack the demonstrators. Ten people were injured in the melee and no one was ever punished for that attack.

More than 2 years later, after pressure from my group and others, the police department awarded financial compensation to pay for the medical bills of those injured.

The second incident of police brutality occurred on September 17, 1977 when a Mrs. Wai Chin Chang, a 47-year-old nurse's aid, was beaten by police officer Thomas Petty while she was being issued a traffic violation for double parking. Mrs. Chang, who complained to Officer Petty for taking too long to write the ticket, was grabbed in a choke hold, knocked to the ground and handcuffed. Mrs. Chang is only 5 feet tall and just weighs 100 pounds and defended herself against a 6-foot-tall officer by biting his hand.

During the scuffle, Mr. Chang went to the aid of his wife. When he left his car to pull the officer away, Policeman Petty drew his pistol. Mrs. Chang suffered several head injuries during the attack, and was rushed to downtown Beekman Hospital for treatment.

Later that day, she was booked at the Manhattan South Precinct for assaulting an officer and resisting arrest and disorderly conduct. After spending the night in jail, she was released and readmitted to a New Jersey hospital for a 2½-week stay.

When word of the incident reached other Chinatown residents, the community was once again mobilized. Several protest rallies involving thousands of people in Chinatown were held in ensuing months.

Despite several attempts by the Manhattan district attorney's office to bring a case against Mrs. Chang before a grand jury, felony charges against her were eventually dropped because of lack of evidence in the spring of 1978.

More than a year later, as part of a settlement in the lawsuit against the police department, Mrs. Chang and her husband were awarded \$30,000 as financial compensation. But again, no police officer was ever disciplined for the attack.

Since the incident involving Mrs. Chang, other cases of police harassment occurred in the community, and in most of these instances, an all too familiar pattern was followed. First, these victims of police harassment are charged with assault and other violations. They are automatically labeled criminals.

From the outset, they are put in the position of proving their innocence before any serious moves are made to investigate the charges of unnecessary violence. It often takes many months before these charges are dropped, and by that time, most victims are too exhausted to pursue their cases any further.

Second, the civilian complaint review board has proven to be totally unresponsive to complaints of brutality unless community and political pressure is brought to bear against it.

Ironically, some of our strongest political support in the incident involving Mrs. Chang in 1977 came from a Congressman from the West Village by the name of Edward I. Koch, who at the time was running for mayor of New York City.

For this reason, major changes need to be made in the civilian complaint review board to make a truly independent civilian board be responsive and sensitive to community complaints of harassment and brutality. This will not solve the problem completely but at least it is a step in the right direction.

But even before this initial step can be taken, city hall and the police department must first face up to their responsibilities on this issue and acknowledge the problem.

Thank you.

Mr. CONYERS. Thank you, Mr. Chong.
[Prepared statement of Bill Chong follows:]

TESTIMONY BY THE ASIAN AMERICANS FOR EQUALITY (AAFE) AT THE
THE CONGRESSIONAL SUBCOMMITTEE HEARING ON POLICE BRUTALITY
IN NEW YORK CITY

September 19, 1983

Presented by Bill Chong

My name is Bill Chong and I represent the New York City Chapter of the Asian Americans For Equality, a national Asian American organization active in civil rights issues. During the last few years, increased incidents of police harassment and brutality against Chinatown residents have concerned many of us in the community. To draw attention to this growing problem, my group has organized community meetings, petition drives, letter-writing campaigns, demonstrations and other activities. We therefore, welcome these hearings as an important step in helping to finally bring this problem under public scrutiny.

Because of time constraints, I just want to speak briefly about two major cases of police brutality. I do want to point out that these are not isolated cases. In fact, most incidents of police harassment go either unreported or if they are reported are not pursued because of reluctance on the part of many victims to put up with the bureaucratic difficulties involved.

The first incident involved Peter Yew, a 27 year-old architectural engineer, who was grabbed, arrested and beaten by police officers of the Fifth Precinct in Chinatown during a traffic dispute on April 26, 1975. The incident began innocently enough that afternoon at the corner of Elizabeth and Bayard Streets when two motorists, a Chinese man who was parking his car and a white man whose car was parked, got into an argument.

As the argument became more heated and a crowd began to gather, the white motorist backed out his car on to the sidewalk, almost hitting several bystanders. The white motorist eventually sought refuge in the Fifth Precinct Station which was half a block away.

Outside the station, police officers began pushing the crowd back. When a 15 year-old youth was pushed to the ground, Peter Yew who was standing in the crowd, protested loudly. A policeman then grabbed Mr. Yew by the throat, pushed him against the railing and dragged him into the police station where he was beaten by three other officers. He was then handcuffed, stripped and further beaten. At 11 pm, he was brought down to night court and charged with resisting arrest and assault of an officer. As a result of the attack, Mr. Yew suffered several injuries, including punctured ear drums.

In response to this unprovoked attack, my group initiated a broad coalition of community organizations. Within several weeks, we organized a rally of more than 7000 people outside of City Hall on May 12. A week later, on May 19, an even larger protest of nearly 20,000 people was held to demand that charges against Mr. Yew be dropped and disciplinary actions be taken against the officers involved.

Throughout the entire incident, the Police Department clearly demonstrated its insensitivity to our community. At one point, Captain Edward McCabe, the commanding officer of the Fifth Precinct, attributed

our protests to "resentment in the community because of gambling arrests" and completely ignored our grievances.

After months of publicity and community pressure, charges against Mr. Yew were eventually dropped and in a token gesture to us, Captain McCabe was transferred. In words of a Police Department spokesperson, "the Chinese community had lost confidence in Captain McCabe."

To this day not one single officer has been disciplined or punished for the assault against Mr. Yew.

On the evening of June 30 that same year, in a clear act of retaliation against the community, police officers surrounded, drew their weapons on and searched four young men while they were sitting in their car outside our offices at East Broadway and Chatham Square. As a crowd of several hundred people gathered at the site and began to march to the police precinct to protest the unnecessary use of weapons, a contingent of twenty club-wielding officers marched out of the station house and attacked the unarmed demonstrators. Ten people were injured in the melee. No officers were ever identified and punished for the attack.

More than two years later, after pressure from my group and others in the community, the Police Department awarded financial compensations to pay for the medicals bills of those injured.

The second incident of police brutality occurred on September 17, 1977 when a Mrs. Wei Ching Chang, a 47 year-old nurse's aid, was beaten by police officer Thomas Pennie while she was being issued a traffic ticket for double-parking at the corner of Canal and Mott Streets. Mrs. Chang who complained to officer Pennie for taking too long to write the ticket was grabbed in a choke-hold, knocked to the ground and handcuffed. Mrs. Chang who is only five feet tall and weighed a little more than a hundred pounds, defended herself against the six foot tall officer by biting his hand.

During the scuffle, Mr. Chang went to aid his wife. When he left his car to pull the officer away, Policeman Pennie drew his pistol.

Mrs. Chang suffered several head injuries during the attack and was rushed to Downtown Beekman Hospital for treatment. Later that day, she was booked at the Manhattan South Precinct Station for assaulting an officer, resisting arrest and disorderly conduct. After spending the night in jail, she was released and readmitted to a New Jersey Hospital for a 2½ week stay.

When word of the incident reached other Chinatown residents, the community was once again mobilized. Several protest rallies involving thousands of people in Chinatown were held in the ensuing months.

Despite several attempts by the Manhattan District Attorney's office to bring the case against Mrs. Chang before a grand jury, felony charges against her were eventually dropped because of lack of evidence in the spring of 1978.

More than a year later, as part of a settlement of a lawsuit against the Police Department, Mrs. Chang and her husband were awarded \$30,000 as financial compensation. But again, no police officer was disciplined for the attack.

Since the incident involving Mrs. Chang, other cases of police harassment have occurred in the community. In most of these incidents, an all too familiar pattern is followed.

First, these victims of police harassment are charged with assault and other violations, and are automatically labeled criminals. From the outset, they are put in the position of proving their innocence before any serious moves are made to investigate their charges of unnecessary violence. It often takes many months before these charges are dropped and by that time, most victims are too exhausted to pursue their cases any further.

Secondly, the Civil Complaint Review Board has proven in many instances to be totally unresponsive to complaints of brutality, unless community and political pressure is brought to bear against it. Ironically, some of our strongest political support in the incident involving Mrs. Chang came from Congressman Edward Koch who at the time was running for Mayor of this city.

For this reason, major changes need to be made in the Civilian Complaint Review Board to make it a truly independent, civilian board which will be responsive and sensitive to community complaints of harassment and brutality. This will not solve the problem completely, but it is at least a step in the right direction.

But even before this initial step can be taken, City Hall and the Police Department must face up to their responsibilities on this issue and acknowledge this problem.

Thank you.

EDWARD I. KOCH
18TH DISTRICT, NEW YORK

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE
FOREIGN OPERATIONS
TRANSPORTATION

Congress of the United States
House of Representatives
Washington, D.C. 20515

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28 FEDERAL PLAZA
NEW YORK, NEW YORK 10007
PHONE 212-264-1066

WASHINGTON OFFICE:
1126 LONGWORTH OFFICE BUILDING
PHONE 202-225-2436

October 6, 1977

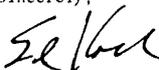
Carolyn H. Jung
Chang Defense Committee
C/O 1 East Broadway - 2nd Floor
New York, New York 10038

Dear Ms. Jung:

Thank you for your letter of October 3rd and your telegram, received in my New York office on September 26th.

I have written to the Commissioner of the Police Department, asking his office to look into the entire matter you have raised in both your telegram and your letter. When I have received a response, I will be in touch with you again.

Sincerely,



Edward I. Koch

EIK:ndr

Misc 243 (Rev 8-77)

COM #461/77



CIVILIAN COMPLAINT REVIEW BOARD
 POLICE DEPARTMENT, CITY OF NEW YORK
 200 PARK AVENUE SOUTH at 17th STREET
 NEW YORK, N Y 10003 • TELEPHONE 477 7530

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Executive Director
 EDWARD C CUFFONE
Deputy Director

October 5, 1977

OCT 25 1977

Hon. Edward I. Koch
 Member of Congress
 26 Federal Plaza
 New York, N. Y.

Re: C.C.R.B. #2561/77
 Asian Americans for
 Equality Committee

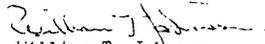
Dear Congressman Koch:

Your letter addressed to Police Commissioner, Michael J. Codd has been referred to the Civilian Complaint Review Board for investigation.

Please be advised that an investigation has been initiated and will be conducted by the investigative staff of this office.

Upon the conclusion of this investigation, we shall notify you of the final determination of the Board.

Sincerely,


 William T. Johnson
 Executive Director
 Civilian Complaint
 Review Board

WTJ:jhb

EDWARD I. KOCH
18TH DISTRICT, NEW YORK

COMMITTEE ON APPROPRIATIONS

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Washington, D.C. 20515

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NEW YORK, NEW YORK 10007
PHONE: 212-266-1068

WASHINGTON OFFICE:
1128 LONGWORTH OFFICE BUILDING
PHONE: 202-525-2436

October 25, 1977

Carolyn H. Jung
Chang Defense Committee
c/o 1 East Broadway - 2nd Floor
New York, New York 10038

Dear Ms. Jung:

With the thought that it will be of interest, I am sending on to you a copy of a letter which I received in response to my letter of inquiry addressed to Commissioner Michael Codd.

I trust that the information is helpful.

Sincerely,



Edward I. Koch

EIK:ndr
encl

Misc (42, Rev 8-77)

COMM.#461/77



CIVILIAN COMPLAINT REVIEW BOARD

POLICE DEPARTMENT, CITY OF NEW YORK
 200 PARK AVENUE SOUTH at 17th STREET
 NEW YORK, N Y 10003 TELEPHONE 477-7530

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WILLIAM T. JOHNSON
Executive Director
 EDWARD C. CH'FONE
Deputy Director

October 5, 1977

OCT 25 1977

Hon. Edward I. Koch
 Member of Congress
 26 Federal Plaza
 New York, N. Y.

Re: C.C.R.B.#2561/77
 Asian Americans for
 Equality Committee

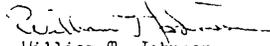
Dear Congressman Koch:

Your letter addressed to Police Commissioner, Michael J. Codd has been referred to the Civilian Complaint Review Board for investigation.

Please be advised that an investigation has been initiated and will be conducted by the investigative staff of this office.

Upon the conclusion of this investigation, we shall notify you of the final determination of the Board.

Sincerely,


 William T. Johnson
 Executive Director
 Civilian Complaint
 Review Board

WTJ:jhb

EDWARD I. KOCH
18TH DISTRICT, NEW YORK

COMMITTEE ON APPROPRIATIONS

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WASHINGTON OFFICE:
1128 LONGWORTH OFFICE BUILDING
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December 13, 1977

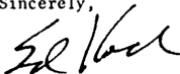
Carolyn H. Jung
Chang Defense Committee
c/o 1 East Broadway - 2nd Floor
New York, New York 10038

Dear Ms. Jung:

Enclosed is a copy of a letter which I have received from the Civilian Complaint Review Board in response to my follow up letter of inquiry. I trust that the information is helpful. I am certain that the Board will contact your organization directly as soon as the investigation is completed.

All the best.

Sincerely,



Edward I. Koch

EIK:ndr
encl

Enc. 211 (Rev. 9/75)


CIVILIAN COMPLAINT REVIEW BOARD

POLICE DEPARTMENT, CITY OF NEW YORK

200 PARK AVENUE SOUTH
NEW YORK, N. Y. 10003at 17th STREET
TELEPHONE 741 9700

MEMBERS OF THE BOARD

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REC'D

November 22, 1977

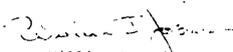
Honorable Edward I. Koch
 Member of Congress
 26 Federal Plaza
 New York, N.Y. 10007

Dear Congressman Koch:

Receipt of your letter of November 18, 1977 with its enclosures from the Chang Defense Committee, is hereby acknowledged.

Please be assured that upon the conclusion of this investigation, we shall notify you of the final determination of the Board.

Sincerely,


 William T. Johnson
 Executive Director
 Civilian Complaint
 Review Board

WTJ/cr



Pei Wah Chang leaves Criminal Court, escorted by her husband, Wei Ching and daughter Lei Yan, after her arraignment Sunday.

Chinatown rally on cop 'brutality'

The husband of a woman who claims she is the latest victim of police brutality in Chinatown told a rally last night, "What has happened to us could happen to all of you tomorrow."

Wei Ching Chang told 300 people his version of the Saturday altercation over a parking ticket that left his wife hospitalized.

The session at PS 124, 40 Division St. was called by ASIAN, a Chinatown group that quickly formed the Chang Defense Committee in response to the incident.

Chang, 33, of Jersey City, said on Canal St. near Elizabeth St. so his wife, Pei Wah, a nurse, could go into a store. When a cop told him to move, he said his wife would out in a minute.

WROTE TICKET

At that point, Officer Thomas Pennie wrote a double parking ticket and stuck it under the windshield of the car. Chang said he tried to retrieve it without leaving the car and the ticket fluttered to the ground.

His wife, who had emerged from the store, tried to get it as Pennie started to write another ticket.

Mrs. Chang, 47, protested to the cop about the summonses, and he told her to make her complaint at the Elizabeth Stationhouse, where he's assigned.

She declined, her husband said, but the cop grabbed her and said he'd take her there. The woman was caught in a choking neck-hold, and bit the officer's hand, her husband said. The cop then hit her, knocked her down, knelt on her back, and handcuffed her, Chang said.

Chang said he then got out of the car to pull the cop

away, and the officer drew his gun. Both Chang, a dockworker and his wife were arrested.

A Police Dept. spokesman said that the woman had

slapped Pennie's face with the ticket, then bit him. He threw her to the ground in self defense, according to the department.

Pennie received six stitches in his finger. Chang was taken to the Elizabeth Street stationhouse, then to Beckman-Downtown Hospital, and then held overnight in a police lockup pending arraignment.

HOSPITALIZED

The next night, after she was freed without bail, she was admitted to Greenville Hospital in Jersey City.

Her lawyer said she is undergoing tests by a neurologist, a bone specialist and a dentist. Her husband said "she is very bad. She can't talk. She can't talk. She's all swollen. They have tubes in her."

Mrs. Chang, who was charged with assault on an officer, and her husband, accused of obstructing governmental administration, face an Oct. 6 hearing. They have filed brutality charges against Pennie with the Civilian Complaint Review Board.



Post Photo by Richard Lee
WEI CHING CHANG
"It could happen to you."

NON YORK POST

9/22/77

DAILY NEWS 9/22/77

Claim Police Brutality In Chinatown Scuffle

By CLAIRE SPIEGEL

A Chinese-American woman said she was knocked unconscious by a police officer, who claimed he was bitten on the hand, in a dispute over a parking ticket. Chinatown residents charged yesterday it was the latest display of police brutality against Asian-Americans.

Peihwo Chang, a 47-year-old nurse and mother of four, claims the police officer, Thomas Pennie of the Elizabeth St station, started the scuffle on Saturday afternoon when he threw her to the ground after she had criticized his manners.

Her husband Wai Hing Chang, 53, who publicized the incident in a press conference in Chinatown yesterday, explained that his wife had criticized the officer for taking a half hour to write out the ticket. Mrs. Chang, who is in the hospital as a result of the scuffle, was too sick to attend the press conference, Chang said.

Required Six Stitches

Officer Pennie, who arrested Mrs. Chang and charged her with felonious assault, required six stitches for a bite wound on his hand. Sgt. Philip Ahrens of the Elizabeth St station said.

The dispute occurred in front of a Chinese market at 200 Canal St. where the Changs, who had driven in from their home in Jersey City to shop, had double parked their car.

The Police Department's Citizens Complaint Review Board is investigating the charge of police brutality which has been filed by the Changs.

COUPLE CHARGE BRUTALITY BY OFFICER OVER A TICKET

The Civilian Complaint Review Board has received a charge of brutality from a Chinese couple against a police officer, resulting from a parking incident last Saturday on Canal Street, near Mott.

Mr. and Mrs. Wei Ching Chang of 2089 Kennedy Boulevard, Jersey City, brought the complaint against Officer Thomas L. Tennie of the Elizabeth Street station, who arrested Mrs. Chang and charged her with obstructing a police function.

According to Asian Americans for Equality, which is representing the Chinese couple, Mrs. Chang was thrown to the ground by Officer Tennie while she remonstrated with him about a summons he had issued to her husband for being double-parked.

The organization said Mrs. Chang suffered head injuries, had to be treated at Beekman Downtown Hospital and was then booked at the Manhattan South Precinct station. She was arraigned Sunday in Criminal Court and released without bail for a hearing Oct. 5.

A spokesman for the Police Department said that Mrs. Chang had struck Officer Tennie in the face with the summons, that she and her husband bit him on the hand, and that the officer threw her to the ground in self-defense. He was later treated at St. Vincent's Hospital and had to have stitches in one of his fingers.

NY Times 9/22/77

N.Y. DAILY NEWS 9/26/77



Chinatown residents hold up signs in English and Chinese during protest against alleged police brutality in front of the Elizabeth St. station.

200 Picket Cops Over Chinatown Case

By MARTIN KING

Nearly 200 Chinatown residents demonstrated in front of the Elizabeth St. police station yesterday charging the cops with brutality for allegedly beating a Chinese-American woman unconscious in a dispute last week over a parking ticket.

Carrying signs, banners and loud speakers, the chanting demonstrators began gathering at Broadway and Elizabeth Sts at 11:30 a.m. They marched through Chinatown with a police escort

before staging their rally in front of the stationhouse more than an hour later.

Peihwo Chang, a 57-year-old nurse and mother of four, claims that Police Officer Thomas Pennie threw her to the ground Sept. 17 after she had criticized his manners.

Pennie, who arrested Mrs. Chang and charged her with felonious assault, claimed he was bitten on the hand during the scuffle and that the wound took six stitches to close.

The dispute occurred in front of a Chinese market at 200 Canal St. where Mrs. Chang and her husband, Wai Hong

Chang, 53, had double-parked their car after driving in from their home in Jersey City to shop.

Chang said the flareup started after his wife had criticized Pennie for taking a half hour to write out the parking ticket.

Members of the Chinatown community met Wednesday night and organized the Changs Defense Committee. The committee drew up a list of demands, which included dropping of charges against the Changs and Pennie's dismissal from the police force.

Parking Ticket Arrest Stirs Chinatown Charge Police Assault on Nurse

On September 17, Mr. and Mrs. Wei Ching Chang of Jersey City—he is a dock worker and she, a nurse—did as hundreds of other Chinese in the area do, they came to New York's Chinatown to shop for groceries.

As do hundreds of other couples throughout the city any day of the week, they double-parked in front of a store, in this case on Canal Street, so that Mrs. Chang could dash inside for something that she had forgotten.

Enter a police officer to tell Mr. Chang to move along. When the latter tried to explain that he was waiting for his wife to emerge from the store, the officer asked to see his driver's license. Still explaining the circumstances, Mr. Chang handed over his license as his wife returned to the car.

The officer proceeded to write a ticket for double parking, at the same time engaging in a lengthy conversation with a nearby woman. When he finally completed filling out the ticket, instead of handing it to Mr. or Mrs. Chang, who were now in the car, he slipped it on the windshield and returned the license.

Starting the car's engine, Mr. Chang attempted to retrieve the ticket from the windshield, when it was blown to the ground by a wind. The officer ordered him to turn off the engine, and when Mr. Chang did not respond quickly enough, pulled out his gun. The officer then demanded that Mr. Chang hand over his license and registration card or face arrest. When Mr. Chang complied, the officer began to write a second ticket, this time for refusal to comply with a lawful order! Mrs. Chang then got out of the car to pick up the fallen ticket, asking the officer why he must make out another, having taken so long to write the first.

The officer responded that if she had a complaint, she should go to the Fifth precinct (on nearby Elizabeth Street). When she said that she did not have the time to do so, he said that he would take her himself, whereupon he pushed her against the trunk of the car, twisting her arm. When she protested and bit his hand, he pulled her by the hair and threw her to the ground, putting a knee against her back and continuing to twist her arm. When Mr. Chang tried to pull the officer away, the latter put his gun to Mr. Chang's chest. Mrs. Chang became unconscious, and other officers now at the scene put her into a patrol car and took her to the Fifth precinct, where she was placed in a cell.

Some considerable time later, Mrs. Chang, badly bruised and her face swollen, was taken to Beekman Downtown Hospital, which reportedly minimized her injuries. Still later, she was transferred to the Midtown South Precinct and placed in a cell there without her husband's being notified. When her attorney and a reporter learned of the transfer, word was spread, and Mr. Chang and a representative of Asian Americans for Equality demanded that she be given proper medical attention. Taken to Bellevue Hospital, Mrs. Chang was refused admission, and she was then

returned to the Midtown South Precinct for an overnight stay, charged with felonious assault and disorderly conduct.

The following day, some 80 persons from the Chinatown community were in the courtroom where Mrs. Chang was to be arraigned. Seeing this show of support for the injured woman, someone remarked, "The police sure picked on the wrong community to push around."

Mrs. Chang was released without bail, and since that time she has been in Greenville Hospital in Jersey City, suffering from internal and other injuries. A neurologist and a bone specialist were called in to examine her, and she remains swollen.

The foregoing incident, as told by eyewitnesses, including Mr. Chang, has precipitated an angry reaction from an increasingly militant Chinatown community, which has not yet forgotten a similar episode, known as "the Peter Yew case," which two years ago prompted up to 20,000 persons to march—twice—upon the Fifth Precinct and City Hall to demand redress for an unprovoked physical attack upon and subsequent arrest of a young passerby for merely protesting the rough handling of a young boy by a police officer. The dates of those two massive, unprecedented demonstrations—May 12 and 19—have been raised like a banner by the newly-formed Chang's Defense Committee which is seeking to have all charges against the Changs dropped.

A press conference concerning the Chang arrest was called by the Committee last Wednesday morning outside the headquarters of the Chinatown Consolidated Benevolent Association, 62 Mott St. The conference was conducted on the sidewalk when it was learned that space inside would not be made available.

Present were members of the Committee, Mr. Chang, and the Changs' lawyer, Harold Mayerson. After giving his version of the incident, countering the officer's assertion that it was he who was assaulted, Mr. Chang made the following demands:

1. Immediately drop all charges against Mr. and Mrs. Chang.
2. Compensation to the Changs for all losses suffered by them.
3. Dismiss the arresting officer and Captain Hoehl of the Fifth Precinct.
4. An investigation by the Mayor into the facts of the case and a public apology to the Changs.
5. Immediate investigation of the Fifth Precinct's past and present crimes against the Chinese community.

Mr. Mayerson declared that he had asked Capt. Hoehl to reduce the charge to a simple misdemeanor, but that the Captain had refused.

It is the Defense Committee's contention that not only should all of the charges be dropped, the arresting officer should be charged with felonious assault.

"It is important," said a spokesman, "that the community support

(Continued on page 2)

*New York
Nichihei*

Thursday, Sept. 29, 1977

Chang—

(Continued from page 1)

the Changs, because if such a thing could happen to them, it could happen to anyone."

Community Aroused

At a community meeting held last Wednesday evening at P.S. 124 in Confucius Plaza instead of at CCBA headquarters, where a notice informed those who had gathered there that no such meeting was scheduled, the Chang's Defense Committee called for persons in the auditorium to tell their own stories of mistreatment by the police. Those who did so included a 60-year-old factory worker, and restaurant, laundry and garment workers ranging in age from 75 to the teens.

Mr. Chang, also present, urged the roomful of people not to let the incident go unchallenged, reminding them that "it could happen to any one of you."

March on Precinct

This past Sunday at noon, a steadily growing number of supporters of the Changs' cause assembled in front of Fifth Precinct headquarters on Elizabeth Street to denounce the police handling of the case and, ultimately, to press their demands in a post-demonstration session with Capt. Hoehl.

The original 200-odd demonstra-

tors added to their numbers during a march through Chinatown in an early-autumn drizzle, raising their placards and shouting for a permanent end to police harassment. Their urgings to onlookers to join the march resulted in at least a doubling of the original group, and upon their return to the precinct, the marchers filled the street.

The Chang's Defense Committee is seeking funds to help pay legal expenses, and will accept donations at its headquarters, 1 E. Broadway.

The 47-year-old Mrs. Chang, mother of four, is scheduled to appear at a hearing in Criminal Court on Oct. 6, at which time it is expected that an aroused community will be well represented.

Chang Defense Committee

c/o 1 EAST BROADWAY - 2nd Fl. NEW YORK, NEW YORK 10038
(212) 233-0988

支援張案委員會

東百老匯街一號二樓

電話：233-0988

October 19, 1977

Dear Friends:

The Chang Defense Committee was formed on September 18, 1977, one day after Police Officer Thomas Pennic of the Fifth Precinct brutally assaulted Mrs. Lei Hsio Chang. Mrs. Chang, a 47 year old nurse, was subsequently charged with assaulting a P.O. However, after her release she was admitted to a New Jersey hospital for 2 1/2 weeks, as doctors there examined and treated her internal injuries. After her preliminary hearing on October 6, Mrs. Chang was re-admitted for further testing. The Defense Committee has been working to bring the facts of the case to the public, in order to dispel the false rumors created by the police version of the story.

Mr. and Mrs. Chang, the Support Committee and the community have agreed on the following 5 demands which have been adopted:

1. Immediately drop all charges against Mr. and Mrs. Chang.
2. Compensate for all losses suffered by the Changs.
3. Dismiss the responsible officer and Captain Hoehl from the police force.
4. The Mayor must immediately investigate the facts of the case, make a public apology to the Changs and the Chinese community and guarantee that such atrocities against the community must not recur.
5. Immediately investigate the 5th Precinct's past and present crimes against the Chinese community.

In the time we could like to bring you up-to-date on this case, and have prepared a package containing leaflets with information on the case, earlier press releases, a sample of media coverage of the case, and statements from members of our community, supporting Mr. and Mrs. Chang. On October 6 at her Preliminary Hearing, 2 other charges (resisting arrest and disorderly conduct) against Mrs. Chang were dropped, recognizing her innocence, as well as pressure from the community.

The case goes before the Grand Jury on Monday, October 24, and the trial will begin on Monday, November 7. Because of the time factor, it is imperative that all interested people begin immediately to involve themselves in helping the case move forward.

Chang Defense Committee

October 19, 1977
Page 2

Specifically, there are several things we are urging our friends to do at this time:

1. Letters of support fro Mr. and Mrs. Chang should be written and sent to Mayor Beame (City Hall, New York, New York 10007), the District Attorney (Robert Morgenthau, D.A. 155 Leonard Street, New York, New York 10013), and to the Chang Defense Committee.
2. Inquiries should be made at the D.A.'s office regarding this case.
3. To urge that the remaining charge still pending against Mrs. Chang be dropped, and to call for an immediate investigation into the case.

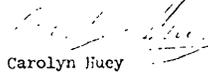
We also urge that our friends in local community organizations and in the schools also help us in these ways:

1. Pass out our leaflets to inform more people of the case.
2. Participate in and help out with the petition drive.
3. Contribute financially to the Chang Defense Committee.

Someone from the Chang Defense Committee will be in touch with you shortly to discuss further how we can work together to show our support for Mr. and Mrs. Chang on this case.

If you have any questions or would like further information, please contact the Chang Defense Committee, c/o 1 East Broadway, 2/F, New York, New York 10002.

Sincerely,



Carolyn Huey

Chang Defense Committee

Chang Case Chronology (9/77 to 3/78)

- 9/17 New Jersey nurse's aide Pei Hwo Chang went shopping in Chinatown. She was harassed by the police while parking outside of Golden Gate Grocery. She was then beaten to unconsciousness and taken to the precinct. She was charged with assault, resisting arrest and other serious crimes. AAFB was informed about the incident and it immediately mobilized the community to attend the court hearing to demonstrate support for Mrs. Chang.
- 9/18 Over a hundred community people packed the court room. Mrs. Chang was released without bail. The Chang Defense Committee was formed that night.
- 9/20 Mr. Chang went to CBA to ask for support. CBA and AAFB ambassador expressed willingness to support the Changs on two conditions:
1. fire the present lawyer Harold Meyerson
2. do not sue the police
- 9/21 Mr. Chang and the Defense Committee held a joint press conference in front of CBA and announced the 5 demands:
1. Immediately drop all charges against the Changs.
2. Compensate the Changs for all losses and injuries inflicted by the Changs by the police.
3. Dismiss the officer responsible for the assault and Captain Hoehl from the police force.
4. The Mayor must immediately investigate the facts of this case, make a public apology to the Changs and the Chinese community; and guarantee that such atrocities will not happen again in Chinatown.
5. Immediately investigate the 5th Precinct's past and present crimes against the Chinese community.
- At night, a community mass meeting was held. The 5 demands became the program of action of the Defense Committee.
- 9/22 Precinct Captain Hoehl participated in the Steering Committee meeting of CBA to give a report on the Chang Case. He defended the police and made a statement to the community:
1. the community should have confidence in the precinct
2. the Police Headquarter's Civilian Complaint Review Board will investigate the issue
3. during the period of investigation by the police department CBA should not take any action.
- 9/25 When 300 people demonstrated in front of 5th Precinct, Captain Hoehl was forced to respond to the community. He uttered, "This case has already been sent to the Civilian Complaint Review Board."
- 9/30 Hamilton Madison House issued statement to support the Chang Case.
- 10/2 Asian Children Underground issued statement to support the Chang Case.
- 10/5 Second press conference. Facts of the incident and photographs taken at the scene of incident were presented.
- 10/6 There was a scheduled pre-hearing of the case at 9:30a.m. The Judge tried to delay the case by postponing the hearing.
- Community people in the court room were dissatisfied with the delaying tactic of the Judge. The hearing was resumed at 4pm. Mr. Chang's charges were dropped. Mrs. Chang's charges of resisting arrest and obstructing governmental administration were dropped, but she was still charged with assault of the police officer. Police testimony was self-contradictory. There was a possibility that the officer will be indicted. The case would be investigated.

A Partial list of endorsements include:

Dr. Chen Ning Yang, Nobel Prize Winner in Physics/ Prof. Hao Wang, Prof. of Logic at Rockefeller University/ Richard L. Chen, Industrial Specialist for IBM, Program Director of Chinese American Culture & Welfare Foundation/ Sam Chu, Psychologist for Bureau of Child Guidance at the Board of Education/ Kenneth Chu, Attorney at Law at Asian American Legal Defense & Education Fund/ Dr. Michio Kaku, Prof. of Physics at City College of New York/ Asian American Legal Defense & Education Fund/ Asian Americans for Equality/ National Association of Chinese Americans/ Chinese American Culture & Welfare Foundation/ Asian Children Underground/ Revolutionary Youth League League

- 10/26 Originally scheduled Grand Jury hearing was cancelled.
- 11/7 Second court hearing of the case. The D.A. said due to inadequate investigation, the case was not presented to the Grand Jury.
- 11/25 15 people of the Chang Defense Committee went to see the D.A. with petition from 800 community people. The delegation asked the D.A. to deal with the case as soon as possible. The D.A. had already interviewed all the witnesses and inspected the doctor's report. However, the D.A. said more investigation still had to be done. There was no satisfactory answer to the demands raised by the delegation.
- 12/13 Court hearing for the third time. D.A. stated again the investigation had not been completed. The lawyer protested and demanded the judge to immediately dismiss the charges against Mrs. Chang. The Judge refused. The next court date was scheduled for 1/30/78.
- 1/30 Judge announced the decision of the Grand Jury. About 30 people from the community showed up in court in support of Mrs. Chang. The D.A. showed up in the court very late. The Grand Jury could not find enough evidence to indict Mrs. Chang on the charge of felonious assault of the police officer. The Grand Jury refused the charge to a misdemeanor. The case will then be handled in the lower court. The D.A. proposed to Mrs. Chang that if she pleads guilty, the case can be settled by giving Mrs. Chang a violation of "disorderly conduct". Mrs. Chang refused.

In the afternoon, one of the higher officials of the D.A. office called up the lawyer and discussed the possibility of settling the case with an A.C.D. (Adjournment in Contemplation of Dismissal). In general, when an A.C.D. is offered, it shows that the D.A. lacks sufficient evidence to prove the defendant guilty and is not willing to take the trouble to collect more evidence for the trial. Mrs. Chang told the lawyer that she would not accept A.C.D. if it is offered. Although by accepting A.C.D., she is not admitting to any guilt and can pursue immediately with the civil suit against the city and the police officer, it is still unfair to Mrs. Chang, who must wait out the adjournment period before the charge against her is dropped, and during that period the D.A. can seek a motion to put the case back in the court.

- 2/6 Court day. D.A. did not show up in court court because of the heavy snow.
- 2/14 The National Association of Chinese-Americans formally joins the Defense Committee.
- 2/21 Court day. D.A. adjourned the case to March 13.
- 2/26 Delegation to see the D.A. was formed. The delegation will ask the D.A. to dismiss the charges. Delegates include Dr. C.H. Yang, Nobel Prize Winner; Hao Wang, Professor of Logic; Sam Chu, Psychiatrist Counselor of the Board of Education and member of Association of Chinese Teacher; Richard Chen, Industrial Specialist and Representative of Chinese American Cultural and Welfare Foundation; and representatives from Asian American Education and Legal Defense Fund, Asian American for Equality etc.
- 3/13 Court hearing. D.A. had not finished preparations for the trial. Postponement of the Chang Case to April 10.

For further information, please write
Chang Defense Committee
c/o Asian Americans for Equality
1 East Broadway, New York, N.Y. 10038

Chang Defense Committee

c/o 1 EAST BROADWAY - 2nd Fl. NEW YORK, NEW YORK 10038
(212) 233-0988

支援張案委員會

東百老匯街一號二樓

電話：233-0988

The Chang Defense Committee was formed on September 18, 1977, one day after police officer Thomas Pennie of the Chinatown 5th Precinct brutally assaulted Mrs. Pei Hwo Chang. Incredulously, Mrs. Chang, a 47 year old nurses' aid, was subsequently charged with assaulting the police officer.

After her release from the precinct, she was admitted to a New Jersey hospital for three weeks, where she was examined and treated for internal injuries. After her preliminary hearing in criminal court on October 6, 1977, Mrs. Chang was readmitted to the hospital for further treatment.

In order to dispel the rumors and allegations of the police's version of this incident, the Defense Committee has been working to bring the true facts of this case to the public. We want justice for Mrs. Chang. Mr. and Mrs. Chang, the Defense Committee and the community have agreed upon the following five demands:

- 1) Immediately drop the charge against Mrs. Chang.
- 2) Compensate the Changs for all losses suffered.
- 3) Dismiss the officer responsible for the assault and Captain Hoehl from the police force.
- 4) The Mayor must immediately investigate the facts of this case; make a public apology to the Changs and the Chinese community; and guarantee that such atrocities will not happen again in Chinatown.
- 5) Immediately investigate the 5th Precinct's past and present crimes against the Chinese community.

Presently, after recognizing Mrs. Chang's innocence as well as the pressure asserted by the community, the district attorney has dropped two of the three charges against Mrs. Chang. But the struggle is hardly over. We need everyone's support and there are many tasks which you can help with. You can support the Changs by:

-
- 1) Contributing time, energy, and/or donations to the Chang Defense Committee.
 - 2) Joining and encouraging others to join the Chang Defense Committee.
 - 3) Defraying the prohibitive cost of legal fees by sending checks payable to the Chinese-American Culture and Welfare Foundation (CACWF) in Memo to Chang Defense Committee. Their address is: 15 Buckingham Way, Freehold, New Jersey 07728. (All donations are tax deductible.)
 - 4) If you are interested in helping the Defense Committee in any way possible, please detach this portion and mail it back to us:
Name _____
Address _____
Telephone _____
-

A partial list of endorsements include:

Dr. Chen Ning Yang
1964 Nobel Prize Winner in Physics
Professor of Physics at SUNY at Stony Brook

Dr. Hao Wang
Professor of Logic at Rockefeller University

Richard L. Chen
Industrial Specialist for IBM, Program Director of Chinese American Culture & Welfare Foundation

Chinatown Enters The Age of Protest

By EDMUND NEWTON

"If you're Chinese, you should yell on the streets," the elderly man with spectacles as thick as bottle glass said in Cantonese.

Some 10,000 Chinatown residents, young and old, protesting at City Hall yesterday against alleged police brutality, seemed to be making a direct assault on the myth that their community was somehow "inverted." Bolsterous and at times belligerent, they yelled until they were hoarse and scuffled briefly with police. Then, 2000 of them formed a human barricade on lower Broadway, disrupting afternoon traffic for four hours.

Four demonstrators and 11 cops were slightly injured in the scuffle. Two demonstrators were charged with disorderly conduct.

"It's a new era," said one youthful demonstrator, scanning the crowd at City Hall. Many expressed similar sentiments, noting a new spirit of militancy in Chinatown.

The protest, the second in eight days, was touched off by alleged police brutality in the arrest on April 26 of Peter Yew, 27, an architectural engineer.

Yew, a bystander at a traffic accident dispute, was arrested for allegedly attacking a police officer. Witnesses claimed that he was beaten both outside the Elizabeth Street stationhouse and inside it. Freed without bail, he is scheduled to go on trial June 3 for assault and resisting arrest.

Challenge to Tradition

By late yesterday afternoon, however, the demonstration against police practices in the community had developed into an unusual challenge to the traditional leadership of Chinatown, as some 2000 protesters returned to Mott Street to hurl chants at the headquarters of the Chinese Consolidated Benevolent Assn (CCBA) and to pelt the building with eggs.

Demonstrators claimed that the CCBA leadership—heads of business and family groups, the "establishment" of Chinatown—had "sold out the people" in negotiations with Deputy Mayor Cavanaugh and Police Commissioner Codd.

The day had begun with a peaceful march through Chinatown, complete with a "moment of silence" in front of the Elizabeth Street stationhouse.

Feelings against the police, and specifically against Capt. Edward McCabe, commanding officer of the precinct, were fueled by a statement McCabe had made during a similar demonstration last week. He told a reporter then that "there may be some resentment (in the community) because of gambling arrests..."

His remarks "made it seem as if the whole community is involved in criminal activity," said Robert Lee, chairman of the Republican Club of Chinatown. "Chinatown citizens are usually law-abiding citizens."

McCabe, reached by phone at the stationhouse, said that he had been speaking in "a conjectural sense... I said there might be resentment because of increased enforcement... that is, traffic summonses and gambling arrests. I can't help what they think. It was not meant that way."

But demonstrators—many of whom were chanting, "McCabe must go!"—countered that there had been an all-encompassing "get-tough" policy in the community under McCabe. "That means illegal searches and roughing up people," said Peter Chan, a youth worker.

At City Hall, a delegation led by CCBA president M. B. Lee met with Cavanaugh and Codd, emphasizing the demand for removal of McCabe from the precinct. Codd was said to have committed himself to a "review" of McCabe's leadership and to a further report to community representatives within a week.

Many demonstrators, particularly those from Asian-Americans for Equal Employment (AAFE), which had co-sponsored yesterday's protest, reacted angrily when CCBA's Lee, the "unofficial" Mayor of Chinatown, made a brief statement urging them to go home.

AAFE representatives, who had worked out a list of nine sweeping demands, were not allowed to participate in the negotiations in City Hall. AAFE had led the smaller demonstration last week.

At noon some 2000 demonstrators surged onto Broadway and refused to move—despite furious negotiating by police officials—until four hours later, when Lower East Side Councilwoman Miriam Friedlander reported to them on the City Hall negotiations.

New York Post
May 20, 1975

The Case That Stirred Chinatown Is Dropped

7/15 NY Times

By DEIRDRE CARMODY

Charges were dismissed yesterday against Peter Yew, whose arrest during a small demonstration in April became a rallying point for thousands of residents of Chinatown and the focus of two major demonstrations at City Hall.

Mr. Yew, a 27-year-old architectural engineer, had been part of a crowd that gathered in front of the Fifth Precinct station on Elizabeth Street in Chinatown on April 26 after a minor traffic accident involving a white motorist and a Chinese motorist. As the police were trying to disperse the crowd, Mr. Yew, who was not involved in the traffic accident, was allegedly seized by the police, dragged into the police station and stripped and beaten.

He was originally charged with felonious assault, but this was later reduced to a misdemeanor. A grand jury was impaneled to look into the case and yesterday dismissed the charges against Mr. Yew. The grand jury is still looking into the accusations by Mr. Yew of police brutality.

Commander Shifted

The Yew arrest triggered an outpouring of sentiment in Chinatown and unleashed an evident sense of frustration. Residents drew up lists of protests, which included charges of police brutality and harassment. Groups called for dismissal of charges against Mr. Yew and for the removal of Capt. Edward M. McCabe, commanding officer of the Fifth Precinct.

Captain McCabe was transferred to another command shortly thereafter. The reason given by the police was that the Chinese community had "lost confidence" in him.

Mr. Yew's lawyer, Robert Keshner, said yesterday that Mr. Yew would file an action against the city for injuries—

—that he suffered allegedly as a result of the beating.

Another incident occurred in Chinatown Monday evening when the police responded to an anonymous telephone call reporting that four armed youths were sitting in a car on the corner of East Broadway and Chatham Square. The police searched the youths, but they were unarmed. However, demonstrators immediately gathered at the site, barricading East Broadway with bicycles and garbage cans.

Later, about 100 demonstrators gathered in front of the Fifth Precinct station as the youths and their lawyers conferred with the police inside. The demonstrators yelled obscenities and a few minutes later 20 police officers marched out of the station with their clubs in their hands and broke up the demonstration. At least 10 young demonstrators were clubbed to the ground.

A spokesman for Asian Americans for Equal Employment, a young militant group of Chinatown residents, denounced police action in breaking up the demonstration and said it was "related" to the actions of the police in the Yew incident.

"We feel that what happened last night is connected with Peter Yew's case and a continuation of police brutality," Donald Chong, a spokesman for the group, said. "The dropping of charges against Peter Yew is not a complete victory."

However, Man Bun Lee, president of the Chinese Consolidated Benevolent Association, said yesterday that relations between the community and the police had improved. As an example of this, he said that Capt. John Ferriola, the new commanding officer of the Fifth Precinct, had telephoned him late Monday evening to inform him of the demonstration. Commenting on the dismissal of the charges against Mr. Yew, Mr. Lee said that he had "received justice, fair and square."



Peter Yew, left, and his lawyer, Robert Keshner, after a misdemeanor charge against Mr. Yew was dismissed yesterday by a grand jury.

City Lee

6 Chinatown Rally Protests Police 'Brutality'

By EDMUND NEWTON

The arrest and alleged police beating of a young architectural engineer in Chinatown has become the focus of an outpouring of community resentment against what is seen as discrimination, police brutality and "fourth-class citizenship" for the Chinese.

Some 350 Chinatown residents met last night at the Chinese Community Center, 62 Mott St., to express support for Peter Yew, 27, who was arrested a week and a half ago following an altercation between two motorists.

The participants in the community meeting, at which the Chinatown leadership joined Chinese garment workers and the area's elderly in protesting attitudes of police officers from the Elizabeth Street stationhouse, voted almost unanimously to demonstrate at City Hall next Monday.

Drawing the Line

"I don't mind being called a Chinaman, and I don't mind being looked down upon," said one of the few participants who spoke in English, addressing himself to the general plight of Chinese in New York. "But we must draw a line that is when you put your foot on our foot, we'll fight back with all our might."

Yew, a Brooklyn resident, was arrested on April 26 after two motorists, one Chinese and the other white, argued after a minor accident a half block away from the Elizabeth Street stationhouse, between Bayard and Canal Sts.

When the white motorist, who had allegedly swung his car into a crowd of pedestrians, sought refuge in the stationhouse, many onlookers assumed he was a police officer.

It was a matter of "people reacting to rumor more than to fact," precinct Capt. Richard Nolan said yesterday afternoon. The story of the white driver's police affiliation was "just not so," Nolan added.

Witnesses say that police,

trying to clear a path into the stationhouse for the motorist, jostled a youth. When Yew, standing near the scene, protested loudly, an officer allegedly grabbed him by the throat and three others beat him with night sticks.

The witnesses, who did not want to be identified pending a court hearing on the matter, say that Yew was then dragged into the stationhouse.

The police contend that Yew "engaged an officer in an altercation and jumped on his [the officer's] back," Nolan said.

"Some people felt that more than necessary force was used in the arrest," Nolan added. The captain would not comment on the charges, saying that the matter had been referred to the Police Dept.'s Civilian Complaint Review Board.

M B Lee, president of the Chinese Consolidated Benevolent Assn and as such the unofficial "Mayor" of Chinatown, claimed that Yew had been subsequently beaten in the stationhouse. He reportedly suffered several bruises, a sprained elbow and an ear injury.

Yew, who attended last night's meeting, would not comment on the incident or his alleged injuries on the advice of his lawyer.

He is scheduled to stand trial Tuesday in Criminal Court on charges of assault and resisting arrest.

The arrest of Yew was the most recent in a "series of incidents," Lee said. "People have suffered so long it's up to the boiling point."

Among earlier incidents Lee and other community residents mentioned were the slaying of a bystander by a Fifth Precinct officer during a fight in a Worth Street restaurant last December and the arrest of dozens of demonstrators protesting employment practices at a Chinatown construction site last fall.

Lee blamed the police problems on "rookie cops," recently transferred to the area, who "don't know the situation here."

Capt. Nolan, who was not present at the meeting, said that "if there was any im-

NEW YORK POST

5/7/75



proper conduct by our officers - and I emphasize the 'if' - it was a mistake in judgment on their part and not the policy of this command."

Many in the audience said last night's meeting was ex-

traordinary because it involved segments of the community which for years have been at odds - young and old, rich and poor. Some residents see a new wave of militancy in the area.



Police scuffle with residents from the Chinese community during demonstration outside City Hall yesterday afternoon.

News photo by Mel Finkelshtein

15 Injured as 10,000 Chinese Protest at City Hall

By FRANK FASO and PAUL MESKIL

At least 15 persons were injured yesterday in clashes between cops and demonstrators as more than 10,000 Chinatown residents surrounded City Hall to protest al-

leged discrimination and police brutality.

The injured included 11 policemen and four demonstrators. Six of the cops and all four demonstrators went to Beekman Downtown Hospital, but none was seriously hurt.

Veteran observers of the City Hall scene said it was the biggest protest rally ever staged

there by a single ethnic group. It was extremely well-organized and quite orderly, despite occasional flareups of violence. There was even a cleanup squad that removed soda cans, sandwich wrappers and other litter left by the rally participants.

Most of the protesters walked to City Hall from Chinatown,

about a half mile away, but some came from other Chinese communities as far away as Boston and Washington, D.C.

Ranging in age from toddlers to senior citizens, they converged on City Hall Park in such numbers that cars couldn't get on or off the Brooklyn Bridge and Broadway traffic was snarled

from Chambers St. to the Battery.

City officials and the Police Department had been notified that the rally would be held, but they did not anticipate such a huge turnout. A similar rally last Monday, drew an estimated 2,500 Chinatown residents. The authorities figured yesterday's crowd would not be much larger. Consequently, there were only 100 cops around the hall when several thousand Chinese and

Chinese-Americans showed up around 9:30 a.m.

A hasty call for reinforcements brought at least 400 additional bluecoats to the scene in police buses and patrol cars. The extra manpower came from several Manhattan and Brooklyn precincts and the Police Academy.

Many of the demonstrators carried signs in Chinese and

(Continued on page 26, col. 2)

15 Injured as Chinese Protest at City Hall

(Continued from page 3)

English, demanding an immediate end to alleged police harassment. Rally leaders chanted slogans and issued orders over loudspeakers set up all along the line of march.

As the demonstration gathered momentum, several youths started moving cars that were parked along Chambers St. near Broadway. They pushed two cars into the middle of Chambers to block traffic. Police rushed in and fists and nightsticks flew.

Arrest of Engineer

The rally was called to protest, among other things, the April 26 arrest of Peter Yew, 27, an architectural engineer, on charges of resisting arrest and assaulting a policeman.

Leaders of the Chinese community say Yew was dragged into the Elizabeth St. police station and beaten by three cops

following an altercation between two motorists in Chinatown.

Chinatown groups also have been protesting the shooting of two Chinese men, one of whom died, by a policeman last Dec. 3 in the Jade Chalet Restaurant, 199 Worth St. The officer claimed he fired because he and his partner were under attack by several members of the Ghost Shadows youth gang. A Manhattan grand jury investigated the incident and declined to indict the cops.

The rally leaders demanded an immediate meeting with Mayor Beame, then settled for Deputy Mayor James Cavanagh. Police Commissioner Michael Codd was summoned from Police Headquarters to sit in on the City Hall conference, which lasted about 30 minutes. Representatives of the Chinatown Chamber of Commerce, the Chinese Consolidated Benevolent Association

and the New York Chinese Market Association took part.

When the meeting broke up, community spokesman M.B. Lee told newsmen it was "very fruitless."

"Over the past year or two, we've been having many, many problems in Chinatown concerning police and the community," he said. That's what this demonstration is all about. We will wait and see what will happen. Something must be done. If we get no satisfaction, there'll be another demonstration."

Promises a Report

Codd promised to look into the matter and report to the Chinatown leaders by the end of the week. He had no comment on their demand that Capt. Edward McCabe, commander of the Elizabeth St. (Chinatown) station, be replaced.

The rally had been scheduled to break up around noon but it

continued until 4 p.m. Several hundred young people, not satisfied with the outcome of the City Hall meeting, staged a traffic-stopping sitdown on Broadway between Chambers and Worth Sts., directly in front of the hall. Finally, rally leaders and police herded all the demonstrators back to Chinatown.



Confrontation at City Hall.

Bleeding from scalp wound, a demonstrator is taken into custody after scuffle with police at City Hall yesterday. Fifteen persons were injured, none seriously, during protest by 10,000 Chinese-Americans who charged discrimination and police brutality.

News photo by Max Eisenstein

—Story p. 3; other pics centerfold.

Daily News May 20, 1975



Police on motorscooters precede marchers as they leave Chinatown for march to City Hall.

Daily News, May 21, 1975



Part of the crowd of 10,000 jam street as demonstrators trudge the half mile to City Hall.

News photo by Jim Garrett

10,000 March At City Hall Protest

In case the ideographs aren't understood, a woman shouts her protest as some 10,000 Chinese-Americans marched to City Hall yesterday in a demonstration against what they alleged to be police brutality. Below, they display signs in English as well as Chinese. The protest grew out of an incident in which an engineer, Peter Yew, was beaten up in Chinatown on April 26. The rally was an orderly one despite sporadic scuffles with police. Eleven policemen and four demonstrators were injured.

Story on page 26

News photo by Frank Russo



ASIAN AMERICANS FOR EQUAL EMPLOYMENT
 1 East Broadway, New York City 10038
 telephone no.: 233-0988

Dear Friends:

Enclosed is a media package with information on the Peter Yew case and the community's response to another incident of police brutality and harassment.

On April 26, 1975 Peter Yew was brutally beaten by police from the Fifth Precinct following an incident between a White and Chinese motorist. He was then charged with resisting arrest and assault of an officer.

On May 6, 1975 the Chinese Consolidated Benevolent Association called an open community meeting, where various sectors of the community showed up overwhelmingly in support of this issue of discrimination and police brutality. It was decided at this meeting to have a demonstration the following Monday from Chinatown to City Hall to make known the community's anger. However, CCBA later decided it had not enough time for preparatory work such as getting a permit and organizing a demonstration and changed the date to ~~April~~ ^{May} 19, 1975.

On May 12, 1975 taking the initiative and following the community mandate established on the May 6th community meeting, Asian Americans For Equal Employment organized a demonstration, where 3,000 community residents, workers, students marched down to City Hall and presented 9 demands to the Mayor's Office.

On May 13, 1975 there was a court hearing at Criminal Court with the support of 500 community people on a picket line in the street, in the corridor outside the courtroom and in the courtroom itself. Charges against Peter Yew were dropped from the original two of: resisting arrest and assault of an officer to a lesser charge of: misdemeanor. The community was outraged at this, when in fact the charges against Peter Yew should have been dropped all together! A hearing on the charge of misdemeanor has been set for the date of June 3, 1975, again at Criminal Court.

On May 16, 1975 there was a community meeting in the Chinese Community Center sponsored by the Basement Workshop in which information of the case was to be heard and exchanged among people in the community on the issue. Reaffirmed was the push to have the Mayor's Office response to the 9 demands presented on May 12, 1975.

On May 19, 1975 there will be a demonstration to City Hall with an expected attendance of 10,000 to 20,000 people from all over the East Coast Region. Further information at the outcome of this event will be forwarded to you as soon as possible. Both CCBA and AFEE continue support of the 12th and 19th rallies, and any action toward this cause in unity. We need your support. Spread word of this issue in your communities,

in your organizations. Join us if you can. Monetary support should be mailed in to continue the printing, publicity and organizing costs that must be met somehow. Letters of support from all over this country would also unify our spirits in struggle of this issue and the ones to come.

If you need more information, just call the following telephone numbers: 233-0988, 966-1019, 964-6832 or 962-8620.

Keep in touch and in unity,

ASIAN AMERICANS FOR EQUAL EMPLOYMENT
May 18, 1975

P.S. Also letters of concern and/or support of this incident and case should be sent in to the Mayor's Office(Beame) of New York City, the Police Commissioner (Codd) 's Office for action, and letters to WNBC-TV for their biased coverage of the May 12th Rally at City Hall.

亞洲人平等就業會 Asian Americans for Equal Employment

1 East Broadway, New York City 10038

PRESS RELEASE

Contact: Linda/565-2140 (May 19, 1975 only)
Patsy/964-6832

May 19, 1975

At 9:00 A.M., a contingent of 15,000-20,000 Chinatown community workers and residents will rally on ~~the~~ Street and march on to City Hall to press the Mayor's office to respond to the demands presented last week in light of the Peter Yew incident (see attachments). Supporters of this cause which represents a call to the end of all oppression against minorities (whether it be economic, social or political) have been mobilized to attend the rally from as far away as Chinatown communities in Boston and Washington, D.C. areas. For the third time within a period of one week, garment and restaurant workers will take another day off from work to join students and professionals in this demonstration which will climax an entire week of community anger and protest against the brutal beating of Peter Yew by police on April 26th.

The nine demands which were presented to the Mayor's office on May 12th when 3,000 community supporters demonstrated for 11 hours outside City Hall are:

- (1) Immediately dismiss all 'charges' against Peter Yew.
- (2) Immediately suspend the officers who beat up Peter Yew and file charges against them.
- (3) Immediately compensate Peter Yew for damages.
- (4) Order the Fifth Precinct captain to give an immediate public apology (especially concerning the recent statement he made on NBC TV) ^{and resign from his post}.
The Government should guarantee there will be no more police brutality.
- (5) Recognize the right of any Chinese who suffered from police brutality to immediately open his/her case to the community so that justice can be done.
- (6) Provide security to the Chinese community. No more harrassment of the community and the Chinese people.
- (7) End police brutality to all minorities and working people. (Stop using the excuse of searching for 'illegal aliens' to harrass the Chinese community).
- (8) End all discrimination and oppression against minorities and working people.
- (9) End all discrimination in employment, education, health, housing, and all other social services to the minorities and working people. (no budget cuts at Gouverneur Hospital, allocation of funds to build a new JH 65, implementation of Chinese bilingual and bicultural programs and hiring of more Chinese teachers.)

The Chinese community is demanding an immediate response to the above demands.

BACKGROUND OF THE DEMONSTRATIONS

On April 26, 1975 Peter Yew, a Brooklyn resident was grabbed by the throat by police and dragged into the Fifth Precinct Station and beaten. Peter Yew was subsequently charged with resisting arrest and assault of police officer. If convicted, Yew could face up to 7 years in prison.

WHAT HAPPENED ?

Earlier on the same afternoon at 3 p.m. on the corner of Elizabeth & Bayard Sts., 2 motorists (a Chinese who was parking his car and a white whose car was parked) got into an argument. The white motorist kicked and broke the rear lights of the Chinese's car. The latter got out of his car to jot down the licence plate # of the white's, who retaliated by ramming twice the rear bumper of the Chinese's car; the Chinese retaliated and did the same. Meanwhile a crowd had gathered. The white motorist backed out his car and veered towards the sidewalk and into the crowd nearly hitting two onlookers. The white motorist then sought refuge in the 5th precinct station half a block away from the scene of the argument.

Outside the Precinct station, police pushed people around jostling a 15 yr. old youth to the ground. Peter Yew standing in the crowd protested loudly. A policeman grabbed Peter by the throat, pushed him against the railing, dragged him into the police station and was beaten by three other policemen. He was then handcuffed and further beaten. At 11 p.m. Peter was brought down to Night Court and charged with resisting arrest and assault of an officer.

Concerned people are urged to attend and support Peter Yew at the hearing scheduled for Tuesday, May 13, 1975 at Criminal Court, 100 Centre Street at 9:00 a.m..

COMMUNITY MEETING MAY 6TH 1975, CCBA AT 8P.M.

Three hundred fifty community residents rallied in support of Peter Yew and agreed unanimously to demonstrate on May 12th 1975 Monday at City Hall against the harassment by police of the Fifth Precinct. Represented at this meeting were such community organizations as the Garment Industry Union - whose members would close down Chinatown garment factories and mobilise factory workers to the demonstration, the Chinatown Republican Club, the Democratic Party, Asians For Equal Employment. The latter stressed unity of all minorities, whether Chinese, Blacks, or Puerto Ricans, in fighting oppression of not only police harassment, but in all phases of health, education and employment. The Community Meeting showed the unity of the different sectors - young, old, rich, poor - of the community behind this issue. Community leaders such as the CCBA president M.B. Lee and Councilwoman Miriam Freeland were also present at this meeting.

IS THIS AN ISOLATED INCIDENT ?

On December 3rd 1974, two police officers (according to the police version) followed a group of youths into the Jade Chalet Restaurant in Chinatown. In the restaurant, the officers claimed they were attacked by the youths, whereupon one of the officers fired two shots that killed one customer while seriously wounding another. 

It took the District Attorney's office three months to investigate this case which was finally brought before a grand jury . After three days of hearing the Grand Jury dismissed the case because of 'conflicting testimonies'.

It is inconceivable and unacceptable that a case which took one person's life and seriously injured another would be so casually dismissed. There are many unanswered questions : What were the officers doing in the restaurant ? Did they provoke the fight? Were they under the influence of alcohol? Did the youths at any time attack the officers ? Were the officers' lives sufficiently in danger to warrant the use of guns ? Why were the two customers shot?

According to the testimonies of Mr. Johnny Lee, owner of the restaurant, and Mr. Jimmy Leong, who was wounded by the police, the officers did not follow the youths into the restaurant; their entries were 30-40 minutes apart. The officers appeared to be drunk when they entered the restaurant. They challenged the youths to a fight and made racist remarks against the Chinese. When an unidentified customer started to fight with one of the officers (Louis Cupo), the other officer (Maineman) opened fire. Both Mr. Lee and Mr. Leong maintain that none of the youths ever joined the fight. Four of the youths were subsequently charged with assault.

The Chinese community is outraged by the Grand Jury's decision to dismiss the case; people are feeling an utter sense of despair for the criminal system. To reaffirm our respect for the law, we strongly urge a review of the 'Jade Chalet' case and, if necessary, to reconvene a grand jury to look into this case.

Other incidents include: A thirteen year old Chinese boy was beaten up by a policeman in the backroom of the family laundry last October 1974; A Brooklyn Black youngster was shot to death in his own home; and a Puerto Rican handicapped man was shot to death in a wheelchair with 8 bullets. Minorities face racial discrimination and must fight for democratic rights as working class members and taxpayers of this city.

What Can YOU Do?

demonstrate: mon. 5/12/75. Meet 50 Bayard Street. 9 a.m.
 also: mon. 5/19/75. meet at 62 West Street. 9 a.m.
 hearing: Peter Yew needs your support. come. to 100 Center st.
 courtroom #1 Part AP3. 5/13/75 at 9 a.m.

Continued advocacy for this case and others must be supported by you and friends. Come to the demonstrations and rallies, come to the hearing, contribute what you can and tell other people about this case. Thank you.

On Monday morning, May 12, over 1,000 Chinatown residents and supporters marched to City Hall to express community outrage at the police beating on April 26 of Peter Yew, a Chinese architectural engineer.

Addressing the rally were speakers representing garment workers, Asian-Americans for Equal Employment (AAFE), the organizers of the rally, Black Economic Survival and Councilwoman Miriam Friedlander.

The delegates of the demonstration presented Mr. Joseph Erazo of the Mayor's office a list of 9 demands:

WE DEMAND THAT THE NEW YORK CITY POLICE DEPT.:

- (1) Immediately dismiss all 'charges' against Peter Yew.
- (2) Immediately suspend the officers who beat up Peter Yew and file charges against them.
- (3) Immediately compensate Peter Yew for damages.
- (4) Order the Fifth Precinct captain to give an immediate public apology (especially concerning the recent statement he made on NBC TV)
The Government should guarantee there will be no more police brutality.
- (5) Recognize the right of any Chinese who suffered from police brutality to immediately open his/her case to the community so that justice can be done.
- (6) Provide security to the Chinese community. No more harrassment of the community and the Chinese people.

WE FURTHER DEMAND THAT THE GOVERNMENT:

- (7) End police brutality to all minorities and working people. (Stop using the excuse of searching for 'illegal aliens' to harrass the Chinese community).
- (8) End all discrimination and oppression against minorities and working people.
- (9) End all discrimination in employment, education, health, housing, and all other social services to the minorities and working people. (no budget cuts at Gouverneur Hospital, allocation of funds to build a new JH 69, implementation of Chinese bilingual and bicultural programs and hiring of more Chinese teachers.)

Mr. Erazo proposed for a response within 48 hours (which was rejected by the demonstrators) or a phone call by 5 pm. However, by noon, there was still no response from the Mayor's office. Their evasion from presenting immediate concrete action intensified the anger of the demonstrators and strengthened their determination to be heard. Over 300 people continued to demonstrate past the 5:00 pm deadline proposed by Mr. Erazo, chanting, "Fight to the End", "Fight to Win" in both Chinese and English. As a result, at 7:15 pm, Manhattan South Assistant Police Inspector addressed the aritated crowd expressing surprise that there could be such "suspicion" between the police department and the Chinese community. This attitude further depicts the police force's lack of sensitivity in understanding the sentiments of the Chinatown community.

The demonstration was an indication of the growing awareness, militancy and determination of the community to organize and fight against police brutality, racial discrimination and all oppressive acts against Asian Americans and other minorities.

WNBC'S (TV CHANNEL 4) COVERAGE OF THE CHINATOWN DEMONSTRATION

There was wide coverage by the media of the May 12 demonstration by Chinatown residents and supporters against police brutality and racial discrimination. In WNBC's coverage of the demonstration on May 12th during the 5 o'clock evening news, on-duty, but unidentified, policemen when interviewed, falsely stated that the demonstration was organized by 'leftist youth groups', and contradictorily linked 'leftist youth groups' with the gambling business. Captain McCabe, police captain of the 5th Precinct Station of Chinatown, publicly supported such wilful distortion and mis-interpretation of the purposes of the demonstration by stating, when interviewed: "We've been hitting parking summonses, we've been working against the gambling houses; and there may be some resentment because they don't understand why the enforcement is there".

The Chinese community (over 3,000 strong) demonstrated on May 12th to protest police brutality and all forms of racial discrimination. We fully support the police cracking down on the gambling houses. Captain McCabe's public statement has a much more serious impact than the particular policeman's crime against Peter Yew, because it is a racist statement insulting to every Chinese person in America.

Asian Americans for Equal Employment (AAFE) has since incorporated into the original nine demands the demand that Captain McCabe make a public apology and resign from his post. Letters of protest have been presented to the Mayor requesting that City Hall implement the Chinese community's demand that Captain McCabe publicly apologize and resign. Furthermore, the Chinese community has demanded that WNBC take immediate remedial action and give a representative from the Chinese community equal rebuttal time to correct Captain McCabe's public slander against every Chinese person in America.

500 SUPPORTERS TURN OUT FOR PETER YEW HEARING

In still another demonstration of the community's support for the cause of Peter Yew, close to 500 Chinatown workers and residents took another day off from work to rally at 100 Centre Street where Peter Yew's hearing was held on Tuesday, May 13, 1975. The courtroom was jammed from wall to wall with approximately 250 supporters of Peter Yew, while outside the building another crowd of 150-200 persons rallied and waited for a chance to enter the building and witness the proceedings. The courtroom guards tried to use many tactics that day to force as many of the spectators as possible to leave the courtroom but community people persisted in vocalizing their support for Peter Yew's case against police brutality and other forms of racist oppression by obstinately maintaining their physical presence in the room. The high energy and tension which filtered throughout the courtroom that day was clearly evident and surprising to the courtroom officials who had not expected such a large turnout for the hearing.

At the hearing, the testimony of the police officer who brought charges against Mr. Yew for second degree assault and resisting arrest was heard. The officer denied all charges that he had physically abused Mr. Yew on April 26th when a crowd had gathered on a street in Chinatown as police investigated a car accident between a Chinese and a white driver that day. Almost 200 Chinatown residents witnessed the police officer brutally attack Mr. Yew on the street and carry him into the police station. According to the officer's testimony, it was Mr. Yew who had instigated the altercation between the two of them. The defense for Mr. Yew in questioning the officer was able to expose the following points:

- that two other officers, one weighing 170 lbs. and the other weighing 160 lbs. assisted him in "directing" Mr. Yew to the police station after the hearing. (Mr. Yew is small-built in comparison).
- that inside the police station, Mr. Yew was told of his legal rights only after he was physically "handled" and requested to disrobe himself.

The evident disregard of Mr. Yew's habeas corpus rights as elucidated by these facts came as no surprise to the crowd of supporters who were addressed quite condescendingly by the judge throughout the entire hearing.

Because of a substantial lack of evidence, the charges of second degree assault and resist to arrest of Peter Yew, were reduced to a misdemeanor which carries a maximum sentence of one year imprisonment if he is convicted. Community representatives feel that this action was taken as a measure to placate the anger of the Chinatown community and to mitigate the militancy of the community which has become strongly unified as a result of this incident.

After the hearing, the crowd of community supporters which included both old and young people, workers and students alike, converged at the site of Columbus Park in Chinatown to hear speakers report on the results of the hearing and also to plan for further action when Peter Yew's arraignment hearing takes place on June 3rd.

Mr. Morganthau
 Manhattan District Attorney
 155 Leonard St.
 New York, N.Y.

Dear Sir:

We are writing to you about a traffic accident which resulted in the tragic beating of a New York University graduate student Mr. Tzong-Huey Lin and his friend Mr. T.C. Chen by two former housing policemen. The incident occurred at Seventh Avenue and West 10th Street on November 2, 1980. As a result of the beating, Mr. Lin had to be hospitalized in the intensive care unit at St. Vincent Hospital. He was pronounced dead on November 14, 1980. His friend, Mr. Chen was injured, too.

When the police arrived at the scene, they did not charge the two former policemen who initiated and did the actual assault, but instead, without proper and sufficient investigation, they arrested Mr. Lin and Mr. Chen. Obviously, the arresting officers took the "words" of their former peers as sufficient "evidence". Neither of the two former housing policemen was arrested or charged, instead Mr. Lin and Mr. Chen were charged. This was upside down justice.

After Mr. Chen was arrested, the police at the 6th Precinct violated his constitutional rights. He was not allowed to make a phone call. He was not permitted to contact his lawyer. He was denied proper medical treatment for his injury. When he went to the hospital to visit his dying friend, Mr. Lin, he was turned away by the guards. He then returned to the 6th Precinct to ask for permission to do so, but the officers there forced him to write a statement of the incident. After he did that, he was still not allowed to see his friend. This was blackmail of the worst kind.

The Chinese Community and other concerned people are outraged and agitated over the beating and the illegal actions of the police department and the arresting officers. We are following the development very closely to ensure that proper justice be done. A defense committee composed of distinguished individuals and community organizations has been formed to both monitor the development and organize the community to take appropriate actions to fight for justice for the victims.

We want you to handle this case properly to see that no wrongdoings are whitewashed. We demand justice for Mr. Lin and Mr. Chen. We demand

- 1) All charges against Mr. Lin and Mr. Chen be dropped immediately,
- 2) The arresting officers who violated the victims' rights be disciplined and charged for their bias, improper treatment and handling of the case,
- 3) The two former housing policemen involved in the beating be charged and brought to the Grand Jury for indictment.
- 4) The Captain of the 6th Precinct be accounted and be responsible for the mistreatment of Mr. Lin and Mr. Chen. He should be disciplined.
- 5) We hold the Police Department responsible and that an open apology to the public be made by the Department.
- 6) Compensation for Mr. Lin's family and Mr. Chen.

請參加紐約全僑支持林陳委員會

示威大遊行



示威日期：

十一月二十五日(星期二)

地 點：

中央街一百零五號法庭門外

100 CENTER ST (CORNER OF LEONARD)

時間：上午十時

僑胞們：

林宗慧慘案已到了最迫急的關頭，法庭在本月二十五日作最後決定。但林案因在缺乏證人、法庭蓄意偏袒兇徒之下，對此案極為不利，法庭將取消對兇手的控罪，消遣法外。也就是說林宗慧先生便也冤沉海底，死不瞑目。

支持林陳血案委員會呼籲各位僑胞屆時踴躍參加示威遊行。

捐錢給林宗慧家屬及聯絡「支持林陳血案委員會」地址：「亞洲人平等會」東百老匯一號二樓

電話：233-0988

「基督信徒人權委員會」

94-27 43 Ave. Elmhurst, N.Y., N.Y. 11373

電話：476-8631

Mr. CONYERS. Are there any further statements?

Mr. HSU. I am an attorney in the Chinatown community. Mr. Lau and Mr. Tam, on behalf of our organization, CHINA, will testify. Thank you.

Mr. CONYERS. Tell me your name, sir.

TESTIMONY OF WEI TAM OF CHINESE HELP IN NATIONAL AFFAIRS, (CHINA), ACCOMPANIED BY HWA MIN HSU, KWAN FEE LING, AND PAUL LAU

Mr. HSU. My name is H-w-a M-i-n H-s-u.

Mr. TAM. Mr. Chairman, ladies and gentlemen, dear people of New York, I am a citizen, social worker in the Chinese community in the last 10 years.

Today I represent an organization named CHINA, an acronym for Chinese Help in National Affairs. It is a nonpolitical organization interested in increasing voter registration among Chinese Americans, nationwide. I am here to testify that, unfortunately, there exists brutality, improper conduct and an abuse of power practiced by the police in the city of New York against the people in the Chinese community. In today's testimony I will give but two examples.

On July 19, 1983, a Queens College student named Francis Chu was riding in a car in Queens along with his girlfriend. He was stopped by police from the 108th precinct for a minor traffic violation. The behavior of the police was irrational, however. Mr. Chu and his girlfriend were handcuffed and beaten by two police officers who charged him with reckless endangerment and resisting arrest.

Mr. Chu did not resist arrest. He is 5' tall and weight 120 pounds. Nevertheless, he was immediately handcuffed and beaten by police. Two hours after the beating, he was taken to Elmhurst Hospital, where one of the officers told an official that Mr. Chu's wounds, which resulted in 20 stitches, were from a car accident. Yet there was no blood stain in Mr. Chu's car, nor was there any damage to the car's windshield. The wounds in fact were caused by the policemen's beatings.

After leaving the hospital, both Mr. Chu and his girlfriend were locked up in the 108th precinct and later transferred to the 112th precinct, where he was again beaten and kicked. His girlfriend was detained until 2:30 a.m. the next day. Mr. Chu was transferred to the 109th precinct and taken to court, where the case is still pending.

If I may, Mr. Chairman, I wish to now hand up to you a written statement by Mr. Chu.

[The information follows:]

To: The Mayor of City of New York,
The Commissioner of Police,

Re: For Peoples' Rights I apply for your help and Justice.

On 7/19/83 I, Francis Chu, with my friend Miss Lin was driving a car (car plate No. 6746-ASD) on Queen's Midtown Expressway near 44th St. and 43rd St. at Queens, New York, around 7:40 pm. ^{When/} I discovered a police car behind my car and siren, then I slowed down the speed from 30 M.P.H. going to stop, because of the road was full of water and slippery, my car hit to the wall under the bridge of the Long Island Expressway, my car had a little damage, the wall had no damage, and no body was hurt. At the same time the following police car stopped next to my car and hit the support of a road sign, but both cars had no contact.

The the two police officers rushed down to my car without saying anything took me down out of my car and locked me immediately by hand cuff-links on my back, and then pushed me upon the trunk of my car, and used their steel hand cuffs as weapon to hit my head in many places, until my head bled profusely. Then these two police officers pushed me to ground, used their legs to kick me my body everywhere about one or two minutes. At that time the another three police cars came, then some of another police officers came to kick me my body again. Then these police officers took me to their car and also locked my friend Miss Lin up to another police car to the 106th Precinct. At that time I was still continuously bleeding from my head and whole body in in pain due to the police officers assault and torture cruelly, that is about 8:10 pm.

^{me/}
Then the police officers charged/both the criminal case and the traffic offenders, The criminal contains two charges: (1) Reckless Endangerment, and (2) Resisting arrest. It is fully nonsense, from the beginning I didnot resist arrest, because the police took me from my car they had locked me at the same time by the hand cuffs behind my back, how can I resist to arrest. As to the charge of "Reckless Endangerment ", it also cannot be applied to my case, because, my car was not running over speed, at that time of raining, water coming to the brake drum of my car or other reason happeded, I felt my car lost its brake at that moment temporarily, also I was slow down the speed, yet the car still hit the wall. The wall has no damage, my car had a damage, but nobody was hurt. On about 10:00 pm the police officers of 106th Precinct took me to the Elmhurst Hospital, the Doctor stitched and wrapped my wounded head about

to to 20 stitches at 4 to 5 different places of my bleeding head, but the Doctor didnot perform any X-ray examinations and checking to brain smoking and other bodily pain. The police officers told the Elchurst Hospital why I was bleeding because of car accident. It is Lie, actually my head bleeding and whole body pain and wounded did by police officers cruel assault and torture.

After left the Elchurst Hospital it was around 11:10 pm then the police took me back to 108th Precinct . From 8:00 pm up to 11:30 pm the police was not allowed me to make a phone call to my parents, until 11:45 pm(about I called my parents, my parents came to 108th Precinct and saw my head being wounded, and talked to me about one minute, at that time my parents not yet learned the whole story of this case, the police were hurrying to take me and also my friend Miss Lin to another Precinct for kept in jail. My parents asked the police officers what is the charge to Miss Lin, the police replied that Miss Lin was in the same car of this matter, so she will have the same charge. My father said that Miss Lin was only as the passenger of the car, she had no control of the car anyway, but the police didnot care about this complaint. My father asked the police officers, how did my head became wounded, the police officers spoke lie again to my father that my head was injured by car accident, at that time my father didnot know of the police officers made cruel assault and torture to me.

About 1:00 am 7/20/83 the police officers of 108th Precinct took me and Miss Lin to 112th Precinct for jail processing. In the jail custody, the police of 108th Precinct made another cruel assault to me hitting my abdomen and other part of my body.

My friend Miss Lin was released at 2:30 am of 7/20/83 at Precinct 112th, as to me the police took me from Precinct 112th to 109th Precinct and then took me to the Court on 10:30 to 12:30 noon time. My parent made bail for me from the Court.

All of these above mentioned are true, nothing but the truth, that I can swear.

I realize that most of New York City Police Officers are helpful, kindful and respectful persons/officers, but in my case, these wicked and brutal police officers who did cruelly assault and torture to me I will accuse them, some of them I learned their names, and some I know their faces but didnot know their names, I wish the police Commissioner or authority to help me to find out these names. Why they told lie to the Hospital, and my parents, because they want to deny their cruel assault and severely hurt and injured to an innocent people.

I appeal herewith to the Mayor of City of New York, and Commissioner of Police to give me justice.

Yours Truly, *Francis Chu*

P.S. The names of Police Officers did
Cruel assault to me are: David Sergio, & Egan, and some others.
FRANCIS CHU.

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I	VISIT SEQUENCE NO 739961		NEW VISIT		PROCEEDURE CODE		PROCEEDURE CODE		PROCEEDURE CODE	
	POSSIBLE DIS		CHAR		TREATMENT		RE EXAMINATION		OTHER	
LAB TESTS IF INDICATED										
L	<input type="checkbox"/> CBC		<input type="checkbox"/> HGB		<input type="checkbox"/> HCT		<input type="checkbox"/> WBC		<input type="checkbox"/> POLYS	
	<input type="checkbox"/> BANDS		<input type="checkbox"/> LYMPHS		<input checked="" type="checkbox"/> X RAY					
A	<input type="checkbox"/> Na		<input type="checkbox"/> K		<input type="checkbox"/> CL		<input type="checkbox"/> Co		<input type="checkbox"/> BUN	
	<input type="checkbox"/> GLU		<input type="checkbox"/> U/A		<input type="checkbox"/> SPG		<input type="checkbox"/> GLUCOSE		<input type="checkbox"/> KETONES	
B	<input type="checkbox"/> WBC		<input type="checkbox"/> RBC		<input type="checkbox"/> BACT		<input type="checkbox"/> AMYLASE		<input type="checkbox"/> CREATININE	
	<input type="checkbox"/> PT		<input type="checkbox"/> PH		<input type="checkbox"/> pO ₂		<input type="checkbox"/> pCO ₂		<input type="checkbox"/> O ₂ SAT	
J	<input type="checkbox"/> ABG		<input type="checkbox"/> TOXICOLOGY		<input type="checkbox"/> OTHER (SPECIFY)		EKG			
	CONSULT REQUESTED		TIME CALLED		TIME ANSWERED		DOCTOR			
A	VALUABLES AND CLOTHING		<input type="checkbox"/> SAFE		<input type="checkbox"/> SELF		<input type="checkbox"/> FAMILY		<input type="checkbox"/> WARD	
	<input type="checkbox"/> MORGUE		<input type="checkbox"/> POLICE		<input type="checkbox"/> OTHER					
I	DOCTOR'S INSTRUCTIONS TO PATIENT									
	IT IS ESSENTIAL THAT YOU RECEIVE ADDITIONAL TREATMENT WITHIN _____ DAYS FOR									
N	<input type="checkbox"/> SUTURE CHECK					<input type="checkbox"/> SUTURE REMOVAL				
	<input type="checkbox"/> CAST CHECK					<input type="checkbox"/> RE EXAMINATION				
S	OTHER TREATMENT (SPECIFY)									
	I HAVE READ AND UNDERSTAND THE [] CONSENT OBTAINED									
T	ABOVE INSTRUCTIONS									
	SIGNATURE OF PATIENT									

HISTORY & PHYSICAL EXAM TREATMENT DISPOSITION

PATIENT NAME (LAST FIRST MI)		CHART NO		DATE & TIME	
FRANCIS		1151837		07/19/83 09:31P	
D.	ORDER	TIME	NURSE	TIME	ALLERGY
				TEMP	
				BP	
				P	
				R	
COMPLAINT:		NURSE'S SIGNATURE			
<p><i>Swollen bridge of nose, brownish discharge</i></p>		<p><i>[Signature]</i></p>			
HISTORY & PHYSICAL EXAM:					
<p><i>Head begun with sticks -</i></p> <p><i>Swollen bridge of nose</i></p> <p><i>Swollen</i></p> <p><i>nasal mucosa</i></p> <p><i>swollen</i></p> <p><i>swollen</i></p> <p><i>swollen</i></p>					
ASSESSMENT:					
TREATMENT:					
PRIMARY DIAGNOSIS:					
SECONDARY DIAGNOSIS					
CONDITION ON DISCHARGE					
ADMITTED TO					
TRANSFERRED TO					
REFERRED TO PVT. M.D.					
TREATED & RELEASED					
NOTIFICATION					
LEFT A.M.A.					
WALKED OUT					
O.A.					

... autorizo al personal de mi información de mi

... MEDICO

... tratamiento medico conjuntamente al tratamiento de diagnostico y de tratamientos medicos a ser medico y personal de

... en cuanto a los en este hospital. Este estado y certificado, que

... de rutina.

... TRATAMIENTO

... rechazo permit

... 204

... miento es contrario a

... me han sido expli que mi rechazo a tal br seramente mi vida

... and Hospital's Corpo fermeras, empleados y del respeto y cumpli los

... 22 x 9

... UNTARIA

... por el presente cuido y seguridad te

... habiendo rramen, e al consejo de

... and Hospital Corpora fermeras, empleados y

[Handwritten signature]

SUMMONS
THE PEOPLE OF THE STATE OF NEW YORK—VS—

43 369180, 6

Last Name CHIL FRANKS

Street Address 30-02 47th AVE

City (as shown on license) LI NY 11101

License or Identification Number

Sex Male Female Date of Birth 06/27/46 Age ASD

Class of Driver's License

The Operator of Registered Motor Vehicle (Registration Class)

6 7 4 6 A S D

Other Plates to Type

Class of Motor Vehicle

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

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Other Plates to Type

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Other Plates to Type

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Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

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Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

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Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

10-30-AM-83
 10-31-AM-83
 11-01-AM-83
 11-02-AM-83
 11-03-AM-83
 11-04-AM-83
 11-05-AM-83
 11-06-AM-83
 11-07-AM-83
 11-08-AM-83
 11-09-AM-83
 11-10-AM-83
 11-11-AM-83
 11-12-AM-83
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 11-21-AM-83
 11-22-AM-83
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 11-24-AM-83
 11-25-AM-83
 11-26-AM-83
 11-27-AM-83
 11-28-AM-83
 11-29-AM-83
 11-30-AM-83

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

170 170.15 170.20 170.21 170.22 170.23 170.24 170.25 170.26 170.27 170.28 170.29 170.30 170.31 170.32 170.33 170.34 170.35 170.36 170.37 170.38 170.39 170.40 170.41 170.42 170.43 170.44 170.45 170.46 170.47 170.48 170.49 170.50 170.51 170.52 170.53 170.54 170.55 170.56 170.57 170.58 170.59 170.60 170.61 170.62 170.63 170.64 170.65 170.66 170.67 170.68 170.69 170.70 170.71 170.72 170.73 170.74 170.75 170.76 170.77 170.78 170.79 170.80 170.81 170.82 170.83 170.84 170.85 170.86 170.87 170.88 170.89 170.90 170.91 170.92 170.93 170.94 170.95 170.96 170.97 170.98 170.99 170.100

FOLLOW INSTRUCTIONS ON REVERSE SIDE

IF YOU FAIL TO ANSWER THIS SUMMONS BY THE DATE OF APPEARANCE, YOUR LICENSE WILL BE SUSPENDED.

Countering M P N M P N Zone 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Description of Traffic Violation FAILURE TO STOP AT RED LIGHT

The person described above is charged in violation of the N.Y.S. DEPARTMENT OF MOTOR VEHICLES TRAFFIC VIOLATIONS BUREAU OFFICE

1. County where the summons was issued

2. Date of summons 15 AUGUST 83

3. Time of summons 8:30 AM

4. Name of driver FRANKS

5. License number 87100412910

6. N.Y.S. DEPT. OF MOTOR VEHICLES TRAFFIC VIOLATIONS BUREAU

SUMMONS
THE PEOPLE OF THE STATE OF NEW YORK—VS—

43 369180, 6

Last Name CHIL FRANKS

Street Address 30-02 47th AVE

City (as shown on license) LI NY 11101

License or Identification Number

Sex Male Female Date of Birth 06/27/46 Age ASD

Class of Driver's License

The Operator of Registered Motor Vehicle (Registration Class)

6 7 4 6 A S D

Other Plates to Type

Class of Motor Vehicle

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

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Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

Other Plates to Type

M Q A S T W P R O B L E S C H I J K L M N O P Q R S T U V W X Y Z

SUMMONS
THE PEOPLE OF THE STATE OF NEW YORK—VS—

43 369179 7

Last Name CHU First Name FRANKS Initial CHU
 Street Address 30-02 47th Ave
 City (as shown on license) ITD NY 11101 Zip Code 11101

— LICENSE OR IDENTIFICATION NUMBER —

Sex	Type	Date Expires	Sex	Date of Birth	Operator	Operator	Operator
<u>M</u>	<u>NY</u>	<u>04/15/83</u>	<u>M</u>	<u>04/15/83</u>	<u>NY</u>	<u>NY</u>	<u>NY</u>

The Operator of Registered Out-of-State Vehicles

3	2	4	5	A	S	O			
---	---	---	---	---	---	---	--	--	--

Other Operator's License Type

Other							
<u>None</u>							

Color of Eyes BRN

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

Section	Vehicle	Class	Class	Class	Class	Class	Class
<u>AS1</u>	<u>TRUCK</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>

Other Vehicle Classifications

Other							
<u>None</u>							

FOLLOW INSTRUCTIONS ON REVERSE SIDE.

IF YOU FAIL TO ANSWER THIS SUMMONS BY THE DATE OF APPEARANCE, YOUR LICENSE WILL BE SUSPENDED.

Department of Traffic Subdivision of New York State

Motor Vehicle	Sign	Signal	Mark	License	Operating	Unauthorized
<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>

Description of Traffic Subdivision of New York State

DISORDERLY DRIVING

The person described herein is summoned to appear at the
 N.Y.S. DEPARTMENT OF TRAFFIC VEHICLES
 TRAFFIC VIOLATION DIVISION, 100 WEST STREET, 10TH FLOOR, NEW YORK, N.Y. 10038
 Located at the County Seat of the County of New York

Date of Appearance 25. AUGUST 83

8:30 AM	10:00 AM	1:00 PM	2:30 PM
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Name FRANKS CHU
 Signature [Signature]
 Date 8/25/83

Ref: 11-10-83 1030418

THE PEOPLE OF THE STATE OF NEW YORK—VS—

43 369181 5

Last Name CHU First Name FRANKS Initial CHU
 Street Address 30-02 47th Ave
 City (as shown on license) ITD NY 11101 Zip Code 11101

— LICENSE OR IDENTIFICATION NUMBER —

Sex	Type	Date Expires	Sex	Date of Birth	Operator	Operator	Operator
<u>M</u>	<u>NY</u>	<u>04/15/83</u>	<u>M</u>	<u>04/15/83</u>	<u>NY</u>	<u>NY</u>	<u>NY</u>

The Operator of Registered Out-of-State Vehicles

6	2	4	6	4			
---	---	---	---	---	--	--	--

Other Operator's License Type

Other							
<u>None</u>							

Color of Eyes BRN

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

Section	Vehicle	Class	Class	Class	Class	Class	Class
<u>AS1</u>	<u>TRUCK</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>

Other Vehicle Classifications

Other							
<u>None</u>							

FOLLOW INSTRUCTIONS ON REVERSE SIDE.

IF YOU FAIL TO ANSWER THIS SUMMONS BY THE DATE OF APPEARANCE, YOUR LICENSE WILL BE SUSPENDED.

Department of Traffic Subdivision of New York State

Motor Vehicle	Sign	Signal	Mark	License	Operating	Unauthorized
<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>

Description of Traffic Subdivision of New York State

EXCESSIVE SPEED VIOLATION

The person described herein is summoned to appear at the
 N.Y.S. DEPARTMENT OF TRAFFIC VEHICLES
 TRAFFIC VIOLATION DIVISION, 100 WEST STREET, 10TH FLOOR, NEW YORK, N.Y. 10038
 Located at the County Seat of the County of New York

Date of Appearance 25. AUGUST 83

8:30 AM	10:00 AM	1:00 PM	2:30 PM
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Name FRANKS CHU
 Signature [Signature]
 Date 8/25/83

Ref: 11-10-83 1030418

SUMMONS
THE PEOPLE OF THE STATE OF NEW YORK—VS—

43 369183 3

Last Name: CHU First Name: FRANCIS

Street Address: 30-02 47 AVE

City (as shown on license): LIU NY State: NY Code: 11107

License or Identification Number: 211

Sex: M Type: 14 Date Expires: 12/15/83 Date of Birth: 12/15/53 Operator's Class: CL

The Operator of Registered Owner of Vehicle: Operator Other

Vehicle Identification Number: 74BASQ

Year: 81 Make: SAAB Model: 900 Color: SL Other: 81

THE PERSON OF ABOVE IS CHARGED AS FOLLOWS:

1. VIOLATION OF VEHICLE AND TRAFFIC LAWS

2. VIOLATION OF VEHICLE AND TRAFFIC LAWS

3. VIOLATION OF VEHICLE AND TRAFFIC LAWS

R311-10-83

FOLLOW INSTRUCTIONS ON REVERSE SIDE

IF YOU FAIL TO ANSWER THIS SUMMONS BY THE DATE OF APPEARANCE, YOUR LICENSE WILL BE SUSPENDED.

Category: VIOLATION OF TRAFFIC LAWS

Description of Traffic Violation: VIOLATION OF TRAFFIC LAWS

Location of Traffic Violation: VIOLATION OF TRAFFIC LAWS

THE DEPARTMENT OF MOTOR VEHICLES, TRAFFIC VIOLATIONS BUREAU, HAS DETERMINED THAT YOU ARE RESPONSIBLE FOR THE VIOLATION(S) CHARGED IN THIS SUMMONS.

NY DEPT. OF MOTOR VEHICLES, TRAFFIC VIOLATIONS BUREAU, 290 EAST 90th STREET, BROOKLYN, NY 11230

Telephone: (718) 224-3600

Date of Appearance: 12/15/83 Time: 8:30 AM

Name: CHU FRANCIS Signature: [Signature]

Address: 30-02 47 AVE LIU NY 11107

SUMMONS
THE PEOPLE OF THE STATE OF NEW YORK—VS—

43 369177 2

Last Name: CHU First Name: FRANCIS

Street Address: 30-02 47 AVE

City (as shown on license): LIU NY State: NY Code: 11107

License or Identification Number: 211

Sex: M Type: 14 Date Expires: 12/15/83 Date of Birth: 12/15/53 Operator's Class: CL

The Operator of Registered Owner of Vehicle: Operator Other

Vehicle Identification Number: 74BASQ

Year: 81 Make: SAAB Model: 900 Color: SL Other: 81

THE PERSON OF ABOVE IS CHARGED AS FOLLOWS:

1. VIOLATION OF VEHICLE AND TRAFFIC LAWS

2. VIOLATION OF VEHICLE AND TRAFFIC LAWS

3. VIOLATION OF VEHICLE AND TRAFFIC LAWS

R311-10-83

FOLLOW INSTRUCTIONS ON REVERSE SIDE

IF YOU FAIL TO ANSWER THIS SUMMONS BY THE DATE OF APPEARANCE, YOUR LICENSE WILL BE SUSPENDED.

Category: VIOLATION OF TRAFFIC LAWS

Description of Traffic Violation: VIOLATION OF TRAFFIC LAWS

Location of Traffic Violation: VIOLATION OF TRAFFIC LAWS

THE DEPARTMENT OF MOTOR VEHICLES, TRAFFIC VIOLATIONS BUREAU, HAS DETERMINED THAT YOU ARE RESPONSIBLE FOR THE VIOLATION(S) CHARGED IN THIS SUMMONS.

NY DEPT. OF MOTOR VEHICLES, TRAFFIC VIOLATIONS BUREAU, 290 EAST 90th STREET, BROOKLYN, NY 11230

Telephone: (718) 224-3600

Date of Appearance: 12/15/83 Time: 8:30 AM

Name: CHU FRANCIS Signature: [Signature]

Address: 30-02 47 AVE LIU NY 11107

SUBPOENA
THE PEOPLE OF THE STATE OF NEW YORK—VS—

43 368224 3

Last Name: CHU First Name: FRANCIS

Street Address: 30-22 47th Ave

City (or other locality): FLUSHING NY 11357

State or Identification No.: NY

Sex: M Race: C Height: 5-7 Weight: 150 Eyes: B Hair: B Complexion: F

Age: 27 Date of Birth: 1945 Driver's License No.: 12A150

Vehicle No.: 1975 Make: BUICK Model: Wildcat Year: 1975 Color: Black

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS:

FOLLOW INSTRUCTIONS ON REVERSE SIDE

IF YOU FAIL TO ANSWER THIS SUBPOENA BY THE DATE OF APPEARANCE, YOUR LICENSE WILL BE SUSPENDED.

Counting Driving Other

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of Pts. <

DEPARTMENT OF MOTOR VEHICLES —
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

- Read Notice printed in red below.
- See Fine Schedule below to determine amount of your fine.
- Complete the Plea Form below and check "Guilty" box.
- Mail your check or money order in the appropriate amount, payable to Department of Motor Vehicles, within 7 days, together with this Summons and your Record of Convictions (Part 2 of your Driver's License) to the Mailing Address below.

OR

- Bring this Summons and both parts of your Driver's License to any of the hearing office locations listed on the face of this Summons, on or before date of appearance.

FINE SCHEDULE FOR GUILTY PLEAS

(THIS SCHEDULE DOES NOT APPLY IF YOU PLEAD BEFORE AN ADMINISTRATIVE LAW JUDGE.)

SPEEDING	Inspection or Equipment Violation — \$20
1 - 14 MPH over limit — \$35	All Other Offenses \$35
15 - 24 MPH over limit — \$50	
25 MPH or more over limit, personal appearance required.	

TO PLEAD GUILTY WITH EXPLANATION

- Read Notice printed in red below.
- Bring this Summons and both parts of your Driver's License to any of the hearing office locations listed on the face of this Summons, on or before the date of appearance.

TO PLEAD NOT GUILTY

- Complete the Plea Form below and check "Not Guilty" box.
- Send this Summons to the Mailing Address below within 7 days or enter your "Not Guilty" plea in person within 7 days at any of the hearing office locations listed on the face of this Summons.
- If you enter your "Not Guilty" plea within 7 days after issuance of this Summons, your hearing will be on the date of appearance and at the time indicated on the face of this Summons at the hearing office location in the county in which the Summons was issued. You may be represented by counsel. Bring to the hearing any witnesses or evidence and both parts of your Driver's License.

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MAILING ADDRESS

TRAFFIC VIOLATIONS BUREAU, PLEA UNIT
N.Y.S. DEPARTMENT OF MOTOR VEHICLES
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12226

Rules and regulations of the Traffic Violations Bureau may be inspected at any of the offices listed on the face of this summons.

PLEA FORM		DO NOT DETACH
I, the undersigned, plead	<input type="checkbox"/> GUILTY	<input checked="" type="checkbox"/> NOT GUILTY
NAME (Print)		
ADDRESS		
CITY		STATE ZIP NO.
SIGNATURE <i>Jeanie S. De...</i>		DATE

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

- Read Notice printed in red below.
- See Fine Schedule below to determine amount of fine.
- Complete the Plea Form and check "Guilty" box.
- Mail your check or money order for appropriate amount to Department of Motor Vehicles, Traffic Violations Bureau, 1000 Record of Convictions Building, Driver's License Administration Building, 1000 North Capitol Street, Lansing, Michigan 48906. **DO NOT SEND CASH.**
- Bring your Driver's License to any of the hearing office locations listed on the face of this Summary on or before date of appearance.

FINE SCHEDULE FOR GUILTY PLEAS

SPEEDING	Other Equipment Violations
1-14 MPH over limit	1st Offense \$25
15-24 MPH over limit	2nd Offense \$50
25 MPH or more over limit	3rd Offense \$75

TO PLEAD GUILTY WITH EXPIRATION

- Read Notice printed in red below.
- Bring this Summary and both parts of your Driver's License to any of the hearing office locations listed on the face of this Summary on or before date of appearance.

TO PLEAD NOT GUILTY

- Complete the Plea Form and check "Not Guilty" box.
- Send this Summary to the hearing office by mail or enter your "Not Guilty" plea in person at any of the hearing office locations listed on the face of this Summary.
- Submit your Driver's License to the hearing office in the county in which the hearing office is located.

A plea of guilty to a traffic violation is equivalent to a conviction. If you are convicted, not only will you be liable to a penalty in addition to your license to drive a motor vehicle, but your certificate of registration will be subject to suspension and revocation as provided by law.

MAILING ADDRESS

I, the undersigned, hereby plead **GUilty** **Not Guilty**

NAME (print) _____

ADDRESS _____

CITY _____ STATE _____

SIGNATURE _____ DATE _____

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

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SPEEDING	Other Equipment Violations
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15-24 MPH over limit	2nd Offense \$50
25 MPH or more over limit	3rd Offense \$75

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TO PLEAD NOT GUILTY

- Complete the Plea Form and check "Not Guilty" box.
- Send this Summary to the hearing office by mail or enter your "Not Guilty" plea in person at any of the hearing office locations listed on the face of this Summary.
- If you are pleading "Not Guilty" within 7 days after issuance of this Summary, you must appear in person at the hearing office location in the county in which the hearing office is located. You may be arraigned by counsel. Bring your Driver's License to the hearing office.

A plea of guilty to a traffic violation is equivalent to a conviction. If you are convicted, not only will you be liable to a penalty in addition to your license to drive a motor vehicle, but your certificate of registration will be subject to suspension and revocation as provided by law.

MAILING ADDRESS

I, the undersigned, hereby plead **GUilty** **Not Guilty**

NAME (print) _____

ADDRESS _____

CITY _____ STATE _____

SIGNATURE _____ DATE _____

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

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- See Fine Schedule below to determine amount of your fine.
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FINE SCHEDULE FOR GUILTY PLEAS	
14 MPH over limit—\$35	Inspection or Equipment Violation—\$20
15-24 MPH over limit—\$50	All Other Offenses \$35
25 MPH or more over limit—personal appearance required	

TO PLEAD GUILTY WITH EXPLANATION

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TRAFFIC VIOLATIONS BUREAU PLEA UNIT
MAILING ADDRESS
DEPARTMENT OF MOTOR VEHICLES
STATE PLAZA
ALBANY, NEW YORK 12224

Rules and regulations of the Traffic Violations Bureau may be inspected at any of the offices listed on the face of this summons.

I, the undersigned, plead		PLEA FORM	DO NOT DETACH
NAME (Print)		<input type="checkbox"/> GUILTY	<input type="checkbox"/> NOT GUILTY
ADDRESS			
CITY			
STATE			
SIGNATURE			
DATE			

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

- Read Notice printed in red below.
- See Fine Schedule below to determine amount of your fine.
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14 MPH over limit—\$35	Inspection or Equipment Violation—\$20
15-24 MPH over limit—\$50	All Other Offenses \$35
25 MPH or more over limit—personal appearance required	

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TRAFFIC VIOLATIONS BUREAU PLEA UNIT
MAILING ADDRESS
DEPARTMENT OF MOTOR VEHICLES
STATE PLAZA
ALBANY, NEW YORK 12224

Rules and regulations of the Traffic Violations Bureau may be inspected at any of the offices listed on the face of this summons.

I, the undersigned, plead		PLEA FORM	DO NOT DETACH
NAME (Print)		<input type="checkbox"/> GUILTY	<input type="checkbox"/> NOT GUILTY
ADDRESS			
CITY			
STATE			
SIGNATURE			
DATE			

TRAFFIC VIOLATIONS BUREAU

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FINE SCHEDULE - BY QUANTITY	
1-14 MPH over limit - \$30	Inspection or Equipment Violation - \$20
15-24 MPH over limit - \$60	1st Offense - \$100
25 MPH or more over limit - \$100	2nd Offense - \$150

TO PLEAD GUILTY WITH EXPLANATION

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TO PLEAD NOT GUILTY

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MAILING ADDRESS
TRAFFIC VIOLATIONS BUREAU PLEA UNIT
U.S. DEPARTMENT OF MOTOR VEHICLES
120 EAST 57th STREET
NEW YORK, N.Y. 10022

Rules and regulations of the Traffic Violations Bureau may be inspected at any of the offices listed on the face of this summons.

I, the undersigned, plead		<input checked="" type="checkbox"/> PLEA FORM <input type="checkbox"/> GUILTY <input checked="" type="checkbox"/> DO NOT DETACH <input type="checkbox"/> NOT GUILTY
NAME (Print)	KRAKACIS, CATHY	
ADDRESS	38-02 47th Ave	
CITY	STATE	ZIP CODE
SIGNATURE Cathy Krakacis	DATE	6/12/68

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

- Read Notice printed in red below
- See Fine Schedule below to determine amount of your fine
- Complete the Plea Form below and check "Guilty" box
- Mail your check or money order in the appropriate amount payable to Department of Motor Vehicles, together with this summons and your Record of Convictions to the Mailing Address below
- Bring this Summons and both parts of your Driver's License to any of the hearing office locations listed on the face of this Summons on or before date of appearance

FINE SCHEDULE - BY QUANTITY	
1-14 MPH over limit - \$30	Inspection or Equipment Violation - \$20
15-24 MPH over limit - \$60	1st Offense - \$100
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TO PLEAD GUILTY WITH EXPLANATION

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- Bring this Summons and both parts of your Driver's License to any of the hearing office locations listed on the face of this Summons, on or before date of appearance

TO PLEAD NOT GUILTY

- Complete the Plea Form below and check "Not Guilty" box
- Send this Summons to the Mailing Address below within 7 days or enter your "Not Guilty" plea in person within 7 days at any of the hearing office locations listed on the face of this Summons
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U.S. DEPARTMENT OF MOTOR VEHICLES
120 EAST 57th STREET
NEW YORK, N.Y. 10022

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I, the undersigned, plead		<input checked="" type="checkbox"/> PLEA FORM <input type="checkbox"/> GUILTY <input checked="" type="checkbox"/> DO NOT DETACH <input type="checkbox"/> NOT GUILTY
NAME (Print)	KRAKACIS, CATHY	
ADDRESS	38-02 47th Ave	
CITY	STATE	ZIP CODE
SIGNATURE Cathy Krakacis	DATE	6/12/68

018

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

- Read Notice printed in red below.
- See Fine Schedule below to determine amount of your fine.
- Complete the Plea Form below and mail back "Guilty" box.
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FINE SCHEDULE FOR GUILTY PLEAS

SPEEDING	14 MPH over limit - \$35	15-24 MPH over limit - \$50	25 MPH or more over limit - \$75
	All Other Offenses \$35		

TO PLEAD GUILTY WITH EXPLANATION

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MAILING ADDRESS

TRAFFIC VIOLATIONS BUREAU PLEA UNIT
N.Y.S. DEPARTMENT OF MOTOR VEHICLES
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

Rules and regulations of the Traffic Violations Bureau may be inspected at any of the offices listed on the face of this summons.

I, the undersigned, plead GUILTY NOT GUILTY

NAME #100: MAKINCE CHY

ADDRESS: 33-01 Woodlawn

CITY: CT STATE: NY ZIP NO: 11701

SIGNATURE: Jacques P. [Signature] DATE: 1/17/01

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

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FINE SCHEDULE FOR GUILTY PLEAS

SPEEDING	14 MPH over limit - \$35	15-24 MPH over limit - \$50	25 MPH or more over limit - \$75
	All Other Offenses \$35		

TO PLEAD GUILTY WITH EXPLANATION

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N.Y.S. DEPARTMENT OF MOTOR VEHICLES
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

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I, the undersigned, plead GUILTY NOT GUILTY

NAME #100: MAKINCE CHY

ADDRESS: 33-01 Woodlawn

CITY: CT STATE: NY ZIP NO: 11701

SIGNATURE: Jacques P. [Signature] DATE: 1/17/01

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OR

- Bring this Summons and both parts of your Driver's License to any of the hearing office locations listed on the face of this Summons, on or before date of appearance.

FINE SCHEDULE FOR GUILTY PLEAS	
(This amount includes court costs and other assessment fees.)	
SPEEDING	Inspection or Equipment Violation—\$20
1-14 MPH over limit—\$35	
15-24 MPH over limit—\$50	Other Offenses \$35
25 MPH or more over limit or other appearance required.	

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Rules and regulations of the Traffic Violations Bureau may be inspected at any of the offices listed on this Summons.

PLEA FORM

I, the undersigned, plead GUILTY NOT GUILTY

NAME (print) _____

ADDRESS _____

CITY _____ STATE _____

SIGNATURE _____ DATE _____

DEPARTMENT OF MOTOR VEHICLES
TRAFFIC VIOLATIONS BUREAU

TO PLEAD GUILTY

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DO NOT SEND CASH

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MAILING ADDRESS

TRAFFIC VIOLATIONS BUREAU, PLEA UNIT
DEPARTMENT OF MOTOR VEHICLES
PO BOX 12008
TAMPA, FL 33612-0008

Rules and regulations of the Traffic Violations Bureau may be inspected at any of the offices listed on this Summons.

PLEA FORM

I, the undersigned, plead GUILTY NOT GUILTY

NAME (print) _____

ADDRESS _____

CITY _____ STATE _____

SIGNATURE _____ DATE _____

Mr. TAM. But Mr. Chu's case is not an isolated one within the Chinese community. Last February, the newspapers reported that Jean Sung was maliciously beaten by police after he refused to move his double-parked van in Chinatown. I will make available to you, Mr. Chairman, a copy of one newspaper report of the incident.

[The newspaper report follows:]

DAILY NEWS

NEW YORK'S PICTURE NEWSPAPER

Tuesday, July 26, 1983

Largest general circulation paper in America



Joseph P.C. Mei (left), president of Chinese Consolidated Benevolent Association, with Francis Chu, who says he was beaten by police officers.

Chinatown leader hits 'cop brutality'

By JOHN RANDAZZO
and THOMAS HANRAHAN

A prominent Chinatown organization charged yesterday that city police are brutalizing Chinese Americans because of their minority status.

"Over the last two years, there have been more than a dozen cases of police brutality—they're discriminating against us because we're a minority," said Joseph P.C. Mei, president of the 94 year old Chinese Consolidated Benevolent Association, which represents 58 organizations in the city.

At a press conference, Mei also said his group will conduct a voter registration drive "to prove to Mayor Koch that we don't have just a few thousand votes—as he has said in the past."

TOLD OF THE PLANNED drive. Koch said "I have the highest regard for the Asian community. If there are instances of police brutality, they should call them to my attention. An investigation will be made, due process will be followed, and if an officer is found guilty, he will be punished."

"I want everyone to register to vote," the mayor added.

With Mei at the conference was 23-year-old Queens College freshman Francis Chu of Long Island City, Queens, who said he was beaten by several officers after he was involved in a minor traffic accident on the Long Island Expressway on July 19.

Chu said he and his girlfriend were

on the Expressway, near 44th St., when he heard a siren behind him. He said he slowed down to 30 mph and struck an embankment before the police car pulled alongside him.

"The cops rushed out and beat me with their handcuffs," said Chu, who alleged that when additional police arrived, they also beat him.

CHU, CHARGED WITH assaulting an officer and resisting arrest, said 20 stitches were required to close five head wounds. He also said he was denied a phone call to his father.

Mei referred to an incident Feb. 16, when a Chinatown deliveryman, Jean Sung, 27, allegedly was beaten after he refused to move his double parked van on Division St.

Sung was charged with assault, misconduct and resisting arrest. Capt. Robert Beatty, commander of the Elizabeth St. stationhouse in Chinatown, said that "two cops were injured in that case, one who was about to issue a summons to Sung. Passers by sided with Sung and assaulted the cops."

Beatty said he referred the case to the Police Department's Civilian Complaint Review Board, "which sent an official to speak to the Chinese community about it."

Officials still are waiting for Sung to appear before the board to give his side of the story, according to Police Capt. Arthur Ury. Ury said he thought the number of alleged brutality cases Mei mentioned was "high."

Mr. Chairman, the Chinese community in New York City harbors a genuine fear of the police, who are supposed to protect them. Unfortunately, the history of discrimination against individuals of Chinese descent is as old as the Republic itself. The perception of police abuse within our community must be seen against the history of discriminatory laws and official sanctions under which Chinese-Americans have been burdened for generations.

We demand drastic measures be taken, legislation be made, to stop police brutality in our great city.

Any activity to eliminate the abuses shown by the police toward Chinese-Americans today—such as this hearing, which is certainly a healthy start—is much needed by the minority Chinese within our city.

Thank you for your kindness.

Mr. CONYERS. You are more than welcome. It is important that we know that there are other minorities that are suffering from the same kind of racially motivated violence that brings us all here. We welcome you in that struggle. We need to form coalitions, because until you are safe from that same violence, it is impossible for blacks to feel safe, and as long as you are subject to it, we know that black people will also be subject to it.

Thank you. We join you in an alliance.

Mr. TAM. We should not forget that New York City in itself is a United Nations. If we don't have a future here, the United Nations will not have a future.

STATEMENT OF PAUL LAU

Mr. LAU. Due to the lateness of the hour—we have sat through the whole hearings—we notice not only police brutality happens in black communities, it does exist, unfortunately also to our Chinese, and our only objective is to fully participate in this kind of hearing. We would like to see justice and something done, and hopefully this will prevent any future incidents occurring. I know it is not going to eliminate everything but we hope something can be done to protect especially minority citizens in this city.

Mr. CONYERS. Thank you for coming forward, gentlemen.

[Prepared statement of Wei Tam and Paul Lau follows:]







For the Record

全美華人投票總會

All Correspondence Reply To
CHINA

P.O. Box 490 New York, N.Y. 10013

TEL. (212) 925-0889

Mr Chairman:

I represent an organization named CHINA (an acronym for Chinese Help in National Affairs). It is a non-political organization interested in increasing voter registration among Chinese-Americans, nation-wide. I am here to testify that, unfortunately, there exists brutality, improper conduct and an abuse of power practiced by the police in the City of New York against the people in the Chinese community. In today's testimony I will give but two examples.

On July 19, 1983, a Queens College student named Francis Chu was riding in a car in Queens along with his girl friend. He was stopped by police from the 108th precinct for a minor traffic violation. The behavior of the police was irrational, however. Mr. Chu and his girl friend were handcuffed and beaten by two police officers who charged him with reckless endangerment and resisting arrest.

Mr. Chu did not resist arrest. He is 5'4" tall and weighs 120 pounds. Nevertheless, he was immediately handcuffed and beaten by police. Two hours after the beating, he was taken to Elmhurst Hospital, where one of the officers told an official that Mr. Chu's wounds, which resulted in 20 stitches, were from a car accident. Yet there was no blood stain in Mr. Chu's car;



NOT FOR PROFIT CORPORATION

-2-

全美華人投票總會

All Correspondence Reply To

CHINA

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nor was there any damage to the car's windshield. The wounds in fact were caused by the policemen's beatings.

After leaving the hospital, both Mr. Chu and his girl friend were locked in the 108th precinct and later transferred to the 112th precinct, where he was again beaten and kicked. His girl friend was detained until 2:30 A.M. the next day; Mr. Chu was transferred to the 109th precinct and taken to court, where the case is still pending. If I may, Mr. Chairman, I wish to now hand up to you a written statement by Mr. Chu.

But Mr. Chu's case is not an isolated one within the Chinese community. Last February, the newspapers reported that Jean Sung was maliciously beaten by police after he refused to move his double-parked van in Chinatown. I will make available to you, Mr. Chairman, a copy of one newspaper report of the incident.

Mr. Chairman, the Chinese community in New York City harbor a genuine fear of the police, who are supposed to protect them. Unfortunately, the history of discrimination against individuals of Chinese descent is as old as the Republic itself; the perception of police abuse within our community must be seen against the history of discriminatory laws and official sanctions under which Chinese-Americans have been burdened for generations.

Any activity to eliminate the abuses shown by the police towards Chinese-Americans today - such as this hearing, which is certainly a healthy start - is much needed by the minority Chinese within our city.

Thank you.

Mr. Hsu. Thank you, Mr. Chairman.

Mr. CHONG. Asians are docile, peaceful persons. We can be victims of police brutality. Our only recourse has been to fight and demonstrate and to raise our voices along with our black brothers and sisters. I support your comments wholly.

Mr. CONYERS. Thank you, Bill Chong. It sounds like a new day here in New York City.

I would like to call Prof. Douglas Colbert, a professor at Hofstra Law School, former adjunct law professor at John Jay Criminal Justice, who has been practicing criminal law for 11 years, and he has been working with a number of his colleagues, both professors and lawyers, on this very interesting subject. He has been called on very short notice. I talked with him yesterday and he has cooperated magnificently. He has been here quite a long time after a long day.

Professor Colbert, it may be late in the day, but we are very anxious to hear from you. Welcome to our witness table.

TESTIMONY OF DOUGLAS COLBERT, PROFESSOR, HOFSTRA LAW SCHOOL

Mr. COLBERT. Thank you very much, Congressman Conyers. It is my privilege to be here. I will try to make my remarks as brief as possible.

I have been asked by the Congressman to comment upon the statements that have been issued by both Mayor Koch and by Police Commissioner McGuire, on July 18, 1983.

After having carefully read the statement, I must take strong opposition to the major points and ideas expressed in the remarks of both public officials.

In summarizing the positions taken by the Mayor and his police commissioner, I find three major ideas, each of which are refuted by both the facts and by people's own life experiences. The first is the false notion that New York City's record on police killings is lower than that of other major cities and, therefore, not as serious a problem in New York City as it is elsewhere.

The second is the equally untrue suggestion that where police killings or brutality exists, the offender is punished or disciplined with severity by the authorities.

Last, is the fallacy that an objective, factfinding body exists to provide every citizen with public access to air their grievances.

I would suggest that each of these opinions goes directly against what the reality has been and continues to be for many people in this city who have regular encounters and experiences with the police establishment.

Let me speak first to what I consider some disturbing trends in the statistics relevant to police violence against the civilian population during the present administration of Mayor Koch.

The mayor and police commissioner each claim that New York City's record is superior to that of every other city in its restraint in the use of firearms, with Commissioner McGuire stating that New York has the lowest incidence of police shootings of any major American city. This is absolutely untrue.

A study of the International Association of Chiefs of Police cited by the police commissioner, places New York City 25th of 54 cities and the author of that study was recently quoted as saying that the figures used by the police commissioner, "must have been made up."

More disturbing is the fact that unlike every other major city, but one, which shows a downward trend in police killings—including the cities of Los Angeles, Chicago, Detroit, Philadelphia, Houston, Baltimore, and Washington, D.C.—more civilians are being killed by the New York City police in recent years than were killed in the early seventies. It is a sad and tragic fact that police killings are up almost 25 percent during the Koch administration.

Second, the figures demonstrate that the independent police officers responsible for killings or brutality against the civilian population are rarely punished or disciplined for their behavior. The close relationship between the prosecutors' office and local police result in the rarity of a police officer ever being charged or indicted for any offenses against the public.

In the extremely unusual case when this occurs, the police officer is generally absolved of any wrongdoing. Recently, more police officers are waiving their right to a jury trial by the public and instead, insisting upon being tried by a single judge, who has frequently been agreed upon beforehand by both sides—the prosecution and the defense.

Finally, it would be the longest of odds for any police officer to be even sentenced to a term of imprisonment, even if convicted, if any other alternative could be reached by the court.

In the usual case of gunfiring no action is frequently taken either by a local prosecutor or by the police department. In 1976 and 1977, less than 5 percent of all gunfirings resulted in any disciplinary action being instituted against a police officer; yet in comparing this incredibly low figure with the statistics during the Koch years in office, we find an even more disturbing trend in the Koch years. In situations involving a gunfiring, a lower figure of 3.9 percent exists, in which departmental charges were brought against the police officer. In the last year alone, the number of such charges brought was one-third that of the total brought in 1976, which was prior to the Koch administration. Of this number, only 52 police officers were even disciplined by command and the overwhelming majority were simply warned and admonished not to do it again.

In effect, the clear message and perception to every police officer is to understand that the firing of his gun against a civilian will result in little, if any, adverse consequences to himself by the establishment authorities.

The final point to be addressed is understanding the nature of the civilian complaint review board. It is not in the mayor's words, a fair, objective independent fact-finding process, nor does it even provide the appearance of one, since it is merely an arm of the police department and staffed not by civilians, but by employees of the police department.

Its role can best be understood by the fact that 98 percent of the more than 43,000 complaints filed by citizens during the Koch administration, have resulted in no disciplinary response against any

police officer. Where a disciplinary action is brought, the result is usually a verbal reprimand by a commanding officer. The reality of nonfairness is understood by most who have subjected themselves to this process as a total farce. Members of the police department cannot investigate other members of the same department with any degree of objectivity or fairness, or with any due process to the victim of an act of police brutality.

For the mayor to believe there is less police brutality today than 5, 10, or 15 years ago is an impression which reflects a limited reality of how prevalent is the practice, particularly in poorer, non-white communities. Anyone representing the accused in the arraignment courts of the city will see the evidence of the number of people who have been physically beaten and abused by officers during the course of an arrest.

In conclusion, I would suggest three remedial measures in this area of police misconduct:

One, the composition of the civilian complaint review board must be reformed to allow community members to have a power to decide complaints of police brutality within their own neighborhoods. Only in this way will police be held accountable for their actions and a democratic, fair investigatory process be assured.

Two, a special prosecutor must be appointed to review and initiate criminal proceedings in any case where sufficient evidence exists to charge any police officer with misconduct or physical brutality against any citizen.

Three, police appointments must reflect their overall racial composition within this city if the balance against nonwhite persons is to be dramatically reduced.

In addition, a full review of all police officers who have demonstrated any history of violence against the community would be instituted, and any officer found unfit for duty would be removed once and for all from the police force.

Thank you very much, Mr. Chairman, for this opportunity.

Mr. CONYERS. Professor Colbert, you have done such a very good job in analyzing the rather shocking discrepancies between the statements and the facts elicited in the prepared testimony of Mayor Koch and Police Chief McGuire. I am going to ask that their testimony be entered into the record without objection at this point, and I would like you to continue to study any statistical divergences that may occur in their testimony as you continue to examine it.

I think it is very important that we try to understand—if it is possible—how the head of the police force and mayor of the city could come to such conclusions that are so patently divergent from all the other testimony that has been gathered, and to have submitted it to a congressional committee.

[The information follows:]

TESTIMONY OF EDWARD I. KOCH, MAYOR
OF THE CITY OF NEW YORK, BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE OF
THE HOUSE COMMITTEE ON THE JUDICIARY

NEW YORK CITY
JULY 18, 1983

I WANT TO SPEAK TO YOU CANDIDLY ABOUT THE RELATIONS OF THE POLICE AND THE MINORITY COMMUNITIES OF THIS CITY. I WANT TO TELL YOU FLATLY THAT EVEN ONE INCIDENT OF POLICE BRUTALITY IS UTTERLY INTOLERABLE. I ALSO WANT TO SHARE WITH YOU MY PRIDE IN WHAT NEW YORK CITY HAS DONE AND IS DOING INSTITUTIONALLY TO KEEP OUR STANDARDS OF POLICE BEHAVIOR HIGH--AND TELL YOU FURTHER THAT WE ARE DOING BETTER THAN IS THE REST OF THE NATION. I WANT TO ASSURE OUR MINORITY CITIZENS THAT I FULLY UNDERSTAND THE REASONS FOR THEIR SPECIAL CONCERN WITH POLICE POWER. FINALLY, I HOPE THIS HEARING TODAY WILL BE USED NOT TO INFLAME, BUT TO HEAL. I BELIEVE THAT THE RECORD WILL DEMONSTRATE THAT WE ARE DOING WELL, BUT ALSO THAT WE CAN ALWAYS DO BETTER. FOR OUR FUTURE AS A CITY WE MUST BUILD UPON THE GOOD, AND I FOR ONE INTEND TO DO PRECISELY THAT.

IN MY COMMENTS TODAY I INTEND TO PROVIDE AN OVERVIEW OF THIS ADMINISTRATION'S POLICY. THE POLICE OFFICIALS WHO FOLLOW ME WILL ADDRESS THE STATISTICS AND THE FACTUAL RECORD AT GREATER LENGTH.

LET ME BEGIN BY SAYING MINORITY COMMUNITIES HAVE HAD A CENTRAL PLACE IN MY CONSTITUENCY AS A MEMBER OF THE CITY COUNCIL, A CONGRESSMAN AND MAYOR. CITIZENS IN THESE COMMUNITIES ARE AMONG THE MOST COURAGEOUS, RESILIENT AND CIVIC-MINDED IN NEW YORK. DISPROPORTIONATELY PLAGUED BY CRIME AND POVERTY, THESE ARE CITIZENS WHO, OFTEN IN THE FACE OF DEPRESSING AND DESTABILIZING CONDITIONS, RESOLUTELY AFFIRM RELIGIOUS FAITH, DEVOTION OF FAMILY, AND NEIGHBORHOOD PRIDE.

IN TURN, THE NEW YORK CITY POLICE DEPARTMENT IS WIDELY ADMIRER AS ONE OF THE FINEST LAW ENFORCEMENT INSTITUTIONS IN THE WORLD. BOB MCGUIRE, WHO IS A SYMBOL OF MY COMMITMENT TO EXCELLENCE, HAS ESTABLISHED A NATIONAL REPUTATION FOR INTEGRITY, INTELLIGENCE AND DECENCY THAT IS A SOURCE OF PRIDE FOR ME AND I TRUST FOR ALL NEW YORKERS. THE DEPARTMENT'S CURRENT PROFESSIONAL LEADERSHIP IS WITHOUT PEER IN AMERICA, AND MANY OF ITS FORMER MEMBERS HAVE BECOME OUTSTANDING COMMISSIONERS AND CHIEFS IN CITIES AND TOWNS ALL ACROSS THE NATION. THE OVERWHELMING MAJORITY OF THE RANK AND FILE MEN AND WOMEN OF OUR POLICE FORCE ARE CONSISTENTLY BRAVE AND HUMANE, OFTEN IN THE FACE OF THE MOST AWFUL AND DISTRESSING CONDITIONS OF LIFE.

THE RELATIONSHIP BETWEEN OUR POLICE AND OUR MINORITY COMMUNITIES IS IN GENERAL SOUND. THIS IS NOT TO SAY THAT THERE IS NO FRICTION, NO RESENTMENT OR NO ABUSES THAT--COMING FROM EITHER DIRECTION--NECESSARILY AFFECT THE RELATIONSHIP. SUCH A POSITION WOULD BE NAIVE, GIVEN THE COMPLEXITY AND DIMENSION OF THE PROBLEMS WITH WHICH BOTH MUST CONTEND. BUT I REPEAT: THIS IS A PRODUCTIVE AND MUTUALLY DEPENDENT RELATIONSHIP WHICH IS VITAL TO THE CITY'S HARMONY, SAFETY AND GROWTH.

THE REASONS FOR THIS BASICALLY SOUND RELATIONSHIP ARE NOT HARD TO DISCOVER. TO START, ALL CITIZENS OF WHATEVER RACE OR RELIGION WELCOME THE POLICE IN TIMES OF TROUBLE, AND ALL LAW-ABIDING CITIZENS WANT FREEDOM FROM THE CURSE OF CRIME. IN ADDITION, THE DEPARTMENT HAS FOCUSED SPECIFICALLY

ON IMPROVING ITS RELATIONSHIP WITH MINORITIES AND SEEKS TO CONFRONT BOTH REAL DIFFICULTIES, AND THE PERCEPTION OF DIFFICULTIES. EFFORTS HAVE BEEN UNDERTAKEN TO MAKE PRECINCT HOUSES PLACES OF DIALOGUE AND COOPERATION IN OUR COMMUNITIES. THE DEPARTMENT HAS THE LARGEST, MOST COMPREHENSIVE AND BEST FUNDED COMMUNITY OUTREACH PROGRAM IN THE COUNTRY. THE DEPARTMENT HAS INCREASED ITS REPRESENTATION OF BLACKS AND HISPANICS. THE DEPARTMENT'S RESTRAINT IN THE USE OF FIREARMS IS SUPERIOR TO THAT OF EVERY MAJOR AMERICAN CITY. CASES OF EXCESSIVE FORCE INVOLVING NIGHTSTICKS, FISTS OR OTHER WEAPONS, THOUGH SMALL IN NUMBER, ARE PUNISHED WITH SEVERITY.

THE DEPARTMENT'S CIVILIAN COMPLAINT REVIEW BOARD, ALTHOUGH UNABLE, SINCE IT WAS CREATED IN THE 1960'S, TO SATISFY EVERYBODY'S CONCEPTION OF WHAT ITS STRUCTURE AND FUNCTIONS SHOULD BE, NONTHELESS PROVIDES DIRECT PUBLIC ACCESS TO AN INVESTIGATIVE PROCESS SUPERVISED BY CIVILIANS. FEW CITIES PROVIDE EVEN THIS TYPE OF RECOURSE. THIS ADMINISTRATION HAS DEVISED MANY OTHER AUXILIARY PRECAUTIONS. THUS, THE POLICE ACADEMY NOW DEVOTES ALMOST HALF OF ITS CURRICULUM TO COURSES IN HUMAN RELATIONS AND LEGAL RIGHTS, WHICH INCLUDE SPECIAL ATTENTION TO RACIAL AND ETHNIC SENSITIVITY. UNDER BOB MCGUIRE, THE POLICE DEPARTMENT NOW HAS PSYCHOLOGICAL SCREENING PROCEDURES FOR RECRUITS, AND VIOLENCE-PRONE IDENTIFICATION MECHANISMS FOR THOSE ALREADY ON THE FORCE. BOTH ARE CRITICAL INSTRUMENTS FOR ENHANCING PUBLIC CONFIDENCE. AND THE BIAS INCIDENT INVESTIGATION UNIT, CREATED IN 1980 AS THE FIRST PERMANENT POLICE

COMMAND OF ITS TYPE IN THE NATION, DEMONSTRATES THE ENERGETIC CONCERN OF THIS ADMINISTRATION, THAT EVERY CRIMINAL ACT BASED UPON RACIAL PREJUDICE OR RELIGIOUS BIGOTRY BE VIGOROUSLY INVESTIGATED AND PROSECUTED.

THE POLICE HAVE ALSO SUBSTANTIALLY REDUCED VIOLENT CRIME IN THE MINORITY NEIGHBORHOODS OF THE CITY. WE ARE REBUILDING THE POLICE FORCE, AFTER THE HARD TIMES OF FISCAL AUSTERITY AND THE SERIOUS EROSION OF POLICE PRESENCE IN THE STREETS, THE PARKS AND PUBLIC PLACES OF OUR NEIGHBORHOODS. WE HAVE SIGNIFICANT NUMBERS OF COPS BACK ON THE BEAT IN THIS CITY, AND DRAMATIC INCREASES IN QUALITY-OF-LIFE ENFORCEMENT IN EVERYTHING FROM STREET PUSHERS OF MARIJUANA TO RED LIGHT RUNNERS. DIRECT CONTACT OF YOUNGER AND MORE ENERGETIC POLICE OFFICERS WITH THE PUBLIC IS EXPANDING ENORMOUSLY.

TURNING NOW TO THE SPECIFIC QUESTIONS OF POLICE MISCONDUCT, LET ME SAY AT THE OUTSET THAT I HAVE BEEN DISTRESSED TO SEE AN INCREASE IN COMPLAINTS ABOUT LACK OF COURTESY AND OFFENSIVE LANGUAGE FROM OUR POLICE OFFICERS. SOME OF THESE COMPLAINTS RELATE TO RACIALLY OFFENSIVE REMARKS. THERE MAY BE EXPLANATIONS FOR THIS, BUT NO EXPLANATION IS SATISFACTORY. I PERSONALLY KNOW THAT WORDS DO STING AND WORDS OF PREJUDICE STING WORST OF ALL. ANY RACIAL REMARK BY AN OFFICER OF THE LAW IS INTOLERABLE. I KNOW BOB MCGUIRE SHARES THIS VIEW, AND ACCORDINGLY THE MOST VIGOROUS ADMINISTRATIVE, SUPERVISORY AND DISCIPLINARY MEASURES MUST BE IMPLEMENTED TO SEE TO IT THAT THIS PROBLEM IS ROOTED OUT.

LET ME TURN NOW TO THE SUBJECT OF THE USE OF EXCESSIVE FORCE BY THE POLICE. BOB MCGUIRE WILL DEAL WITH THE STATISTICS. FOR MY PART, I WANT TO MAKE CLEAR THAT -- WHATEVER THE STATISTICS -- EVEN ONE INCIDENT IS TOO MANY.

LET IT PLAINLY BE SAID THAT INEVITABLY SOME POLICEMEN WILL ABUSE THEIR POWERS. SUCH DEEDS ARE THE DEEDS OF INDIVIDUAL MEN OR WOMEN, WHICH MUST BE ROOTED OUT, CONDEMNED, AND PUNISHED BY THE DEPARTMENT. I HAVE REPEATEDLY EXPRESSED THE VIEW THAT SUCH DEVIATIONS FROM DECENT, PROFESSIONAL, AND LAW-ABIDING BEHAVIOR WILL NOT BE TOLERATED. AS MAYOR OF THE CITY IT IS MY RESPONSIBILITY TO ENSURE THAT ABUSIVE, BRUTAL OR CORRUPT ACTS OF POLICE OFFICERS BE INVESTIGATED, EXPOSED AND SEVERELY PUNISHED. AS LONG AS I AM MAYOR, THE LAW WILL BE RIGOROUSLY OBSERVED AND ENFORCED IN NEW YORK CITY WITH RESPECT TO OFFICERS AND CITIZENS ALIKE. I KNOW THAT THE CITY OFFICIALS WHO ARE WITH ME HERE TODAY CARE DEEPLY ABOUT THIS.

CRITICAL TO PUBLIC CONFIDENCE THAT JUSTICE WILL BE DONE IN CASES OF QUESTIONABLE SHOOTINGS OR OTHER USE OF EXCESSIVE FORCE BY POLICE, IS THE ESTABLISHMENT OF PROCEDURES THAT ENSURE INDEPENDENT AND OBJECTIVE FACT-FINDING. OF EQUAL IMPORTANCE IS THE APPEARANCE OF FAIRNESS AND OBJECTIVITY IN SUCH INVESTIGATIONS. AS MADISON TAUGHT US, OUR WHOLE THEORY OF GOVERNMENT IS BUILT UPON THE RECOGNITION THAT MEN ARE NOT ANGELS. AND BECAUSE THEY ARE NOT, WE MUST DEVISE AND DAILY NURTURE PROCEDURAL PROTECTIONS. THE HISTORY OF LIBERTY IS THE HISTORY OF PROCEDURAL SAFEGUARDS, AND THE INTEGRITY OF PROCEDURE IS AT THE VITAL CENTER OF THE LAWFUL EXERCISE OF

THE POLICE POWER IN ANY ENLIGHTENED STATE.

IN NEW YORK CITY, THE INTERNAL PROCEDURES OF THE POLICE DEPARTMENT, THE OFFICES OF THE DISTRICT ATTORNEYS AND THE SPECIAL PROSECUTOR, THE UNITED STATES ATTORNEYS AND THE CRIMINAL UNIT OF THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE, CONSTITUTE A THREE-TIERED, MUTUALLY INDEPENDENT, AND BROADLY RESPECTED JUDICIAL PROCESS. IN ADDITION, INDIVIDUAL CITIZENS HAVE FULL ACCESS TO THE COURTS THROUGH CIVIL LAW SUITS.

OVER THE YEARS INDICTMENTS HAVE BEEN RETURNED FOR THE EXCESSIVE USE OF FORCE BY SOME POLICE OFFICERS. IN CERTAIN OF THESE CASES, OFFICERS WERE CONVICTED, AND IN OTHER CASES OFFICERS WERE EXONERATED. IN SOME CASES WHERE THERE WERE EXONERATIONS IN THE COURTS, THE POLICE DEPARTMENT, UNDER A LESS STRINGENT BURDEN OF PROOF, HAS FIRED OFFICERS FOR ACTS OF MISCONDUCT.

ALTHOUGH I HAVE GENERALLY DEFERRED REFERENCE TO SPECIFIC FACTS TO THE TESTIMONY OF THE POLICE COMMISSIONER, I BELIEVE THAT THE DEPARTMENT'S RECORD HERE IS SUFFICIENTLY IMPORTANT TO WARRANT SOME SPECIFICS. IN FOUR CASES IN MY ADMINISTRATION, POLICE OFFICERS HAVE BEEN INDICTED FOR HOMICIDE BUT THEN EXONERATED BY THE COURT BUT, NEVERTHELESS, THE DEPARTMENT PURSUED DISCIPLINARY PROCEEDINGS AND DISMISSED THE OFFICER IN QUESTION.

WHAT IS CRITICAL IN A CONTROVERSIAL CASE IS FOR THOSE WHO HAVE A COMPLAINT TO TAKE PART IN THE PROCESS AND NOT TO

AVOID IT. MERELY TO ACCUSE IS NOT RESPONSIBLE. TO REFUSE TO PARTICIPATE IS TO CONSCIOUSLY INJURE THE FRAGILE EQUILIBRIUM SO VITAL TO MUNICIPAL HARMONY. WHAT IS CALLED FOR IS NOT GENERALIZED RHETORIC DESIGNED TO CONVINC A COMMUNITY THAT IT HAS BEEN BETRAYED BY ITS INSTITUTIONS OF JUSTICE. BUT A SYSTEMATIC ANALYSIS THOUGHTFULLY CARRIED OUT OF THE FACTS OF EVERY CONTROVERSY, AND -- MOST FUNDAMENTALLY -- OF THE INSTITUTIONS IN PLACE TO DEAL WITH THE PROBLEM.

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WHEN DEALING WITH A PROBLEM AS COMPLEX AND CRITICAL AS THAT BEFORE US, WE MUST PROCEED BEYOND THE REALITY, WHICH I BELIEVE IS BEING HONESTLY AND COMPREHENSIVELY ADDRESSED, AND CONFRONT THE PERCEPTION. I KNOW THAT THERE ARE UNDERSTANDABLE AND HONESTLY HELD FEARS IN THE MINORITY COMMUNITY ABOUT POLICE POLICY AND THE EXERCISE OF POLICE POWER. SOME OF THIS IS ROOTED IN EXPERIENCES IN OTHER PLACES WHERE THE POLICE ARE NOT SERVANTS OF THE PEOPLE BUT OF OPPRESSIVE OR DISCRIMINATORY GOVERNMENTS. AND SOME OF THIS IS AN ECHO OF THE UGLY HISTORY OF RACISM IN OUR OWN COUNTRY. NEITHER OUR COUNTRY, NOR OUR CITY, HAS YET OVERCOME THIS HISTORY. BUT WE ARE GOING TO KEEP ON MOVING TO DO SO.

SU TO THOSE WHO SHARE THIS PERCEPTION, I SAY, LET'S FIND WAYS TO DEAL WITH THIS TOGETHER, FIRST, BY ACQUAINTING EVERYONE WITH THE FACTS, AND THEN THROUGH THE LABORIOUS PROCESS OF BUILDING CONFIDENCE AND CIVIC PRIDE THROUGH MUTUAL RESPECT AND UNDERSTANDING. THE POLICEMAN ON THE BEAT AND THE CITIZEN ON THE STREET CANNOT BE SAFE WITHOUT EACH

OTHER. THE ONE CANNOT SECURE JUSTICE WITHOUT THE OTHER. TO
SOW DIVISION AND TO SUBVERT THIS CRUCIAL ALLIANCE IS WRONG,
IT IS DANGEROUS, IT CAN LEVY A TERRIBLE COST UPON THE
COMMUNITY.

I BELIEVE, AND I BELIEVE MOST NEW YORKERS BELIEVE, THAT
THERE IS LESS POLICE BRUTALITY HERE NOW THAN THERE WAS 5
YEARS AGO, OR 10 YEARS AGO, OR 50 OR A HUNDRED YEARS AGO. I
WELCOME THIS IMPROVEMENT AS I WELCOME OUR SUBSTANTIAL RECENT
IMPROVEMENT IN FIGHTING ROBBERY AND OTHER VIOLENT CRIMES.
BUT WE MUST CONSTANTLY RAISE OUR STANDARDS, CONSTANTLY RAISE
OUR EXPECTATIONS.

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NOW TO CONCLUDE. I AM 58 YEARS OLD AND GOD HAS BLESSED
ME WITH OPPORTUNITIES THAT FEW WILL RECEIVE DURING THEIR
LIFETIME, THE MOST IMPORTANT ONE OF WHICH IS BEING THE MAYOR
OF THIS EXTRAORDINARY CITY.

I HAVE ONLY ONE GOAL, AND THAT IS TO STRIVE TO BE THE
BEST MAYOR THIS CITY HAS EVER HAD. HOW CLOSE I COME TO THAT
GOAL IS A JUDGMENT FOR FUTURE HISTORIANS. BUT IN SEEKING
THAT GOAL, I HAVE ALWAYS BELIEVED THAT PUBLIC SERVICE IS THE
NOBLEST OF PROFESSIONS IF IT IS DONE HONESTLY AND IF IT IS
DONE WELL. MY HONESTY IS NOT UNDER ATTACK, AND EVEN MY
BITTEREST OPPONENTS CONCEDE ME THAT. SO LET ME TALK ABOUT
DOING THE JOB WELL.

THERE IS NO OTHER JOB THAT BRINGS YOU SO CLOSE TO PEOPLE
EACH AND EVERY DAY. IN THE COURSE OF A YEAR, I TOUCH HANDS
WITH EVERY SEGMENT OF OUR POPULATION -- WHITES AND BLACKS,
HISPANICS AND ASIANS. I HAVE AS MY CREDO THAT ETHIC OF MY

FATHERS WHICH IS: "JUSTICE, JUSTICE SHALT THOU RENDER." JUSTICE FOR ME, IN THE WORDS OF A UNITED STATES SUPREME COURT JUSTICE, MUST BE COLOR-BLIND. AND THAT IS HOW I MANAGE MY PERSONAL AND PROFESSIONAL LIFE.

I BELIEVE THAT ALL CITIZENS HAVE A RIGHT TO BE SAFE IN THEIR HOMES AND ON THE STREETS. AND I ALSO BELIEVE THAT THEY HAVE EVERY RIGHT TO LOOK AT A POLICE OFFICER AND EXPECT NOT ONLY PROTECTION BUT RESTRAINT, PROFESSIONALISM AND COURTESY. I HAVE SAID TO THE POLICE OFFICERS GRADUATING FROM THE ACADEMY, "I WILL STAND UP AND SUPPORT YOU WHEN YOU ARE RIGHT AND I WILL DENOUNCE YOU WHEN YOU ARE WRONG." I HAVE ALSO SAID TO THOSE GRADUATING, "THERE ARE SOME ROTTEN APPLES AMONGST YOU NOW WHO WILL DISGRACE US WITH CORRUPTION OR BRUTALITY." AND I HAVE SAID TO THEM, "WHEN WE DISCOVER THAT BAD APPLE AND HE OR SHE AFTER DUE PROCESS IS FOUND GUILTY, WE WILL DISCIPLINE YOU, SUSPEND YOU, AND FIRE YOU." IF THAT MESSAGE FOR WHATEVER REASON HAS NOT BEEN SUFFICIENTLY KNOWN TO CITIZENS, THEN LET ME ASSURE YOU THAT I WILL EMPHASIZE IT ON EVERY OCCASION.

THIS IS A REMARKABLE CITY. THERE IS NONE LIKE IT IN THE WORLD. AND ITS UNIQUENESS STEMS FROM THE DIVERSITY OF ITS PEOPLE -- THE RACES, THE RELIGIONS, THE ETHNIC BACKGROUNDS AND THE NATIONALITIES, ALL OF WHICH MAKE UP THE MOSAIC OF THIS CITY AND ALL OF WHICH MUST BE RESPECTED. THERE ARE UNDOUBTEDLY SOME WHO BELIEVE THAT I HAVE NOT SUFFICIENTLY ARTICULATED THIS PHILOSOPHY. IF I HAVE OFFENDED THEM I AM TRULY SORRY. I HAVE TRIED TO HAVE THAT MESSAGE RING LOUD AND CLEAR THROUGHOUT THIS CITY AND WILL CONTINUE TO DO SO.

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TESTIMONY OF
ROBERT J. McGUIRE,
POLICE COMMISSIONER
OF THE CITY OF NEW YORK,
BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE HOUSE COMMITTEE ON THE JUDICIARY

New York City
July 18, 1983

When I became New York City's Police Commissioner in 1978, I accepted charge of one of the world's great law enforcement institutions. It had achieved international eminence because of the excellence of its professional work. Its facility for dealing with and resolving problems of vast scale, had given it a primacy in the work of policing. But more than anything else, its public policy, its philosophy of policing, its attitude toward police power, marked it as a progressive institution worthy of the people of New York City.

There are three fundamental components of this public policy: restraint in the use of force because of a respect for human life; the treatment of all citizens on an even-handed basis; and the imposition of uncompromising standards of probity and discipline upon officers of the law, because abuse of authority is repugnant to the social order.

Given the size and scope of our Department, there will always be officers who might not live up to their oaths. I have repeatedly asserted, in the most unambiguous and uncompromising terms, my intolerance of any deviation from the high standards of conduct and fairness required of a New York City police officer.

With reference to the use of excessive force or brutality, I regard it as the most egregious violation of a police officer's oath.

Let me share with you some of the results of our efforts to prevent misconduct. Since the adoption of stringent control mechanisms in 1973, the total number of yearly shootings by police officers has dropped by 39.2%. In 1982, the number of complaints to the Police Department of excessive force involving injury dropped by 31.4%. Studies of police shootings across the country reveal that New York City has the lowest incidence of police shootings of any major American city. At the same time, the number of arrests is up, while the incidence of violent crimes is significantly down.

I believe that these positive figures are largely the result of an institutional commitment by the Police Department to actively promote racial understanding, community outreach and a police force representative of New York's diverse population. This direction is evident in the current composition of the Police Force and the measures which we have taken to train all officers in the proper, use of force.

HIRING AND COMPOSITION OF THE POLICE FORCE

Over 8,000 new, young officers have been hired by this Administration. Since 1978, minority membership in New York's police force has risen by almost 50%, from 2729 to 4077. As a percentage of the force, we have increased minority participation from 11.1% to 17.6%. In part, this increase is due to court-ordered quotas imposed in 1979. More recent hirings, however, have not been pursuant to any quota and have still reflected increased minority hiring. I believe part of the reason lies in the changed

perception of the Police Department as a good place for blacks and Hispanics to be employed. We have actively encouraged this perception through an aggressive affirmative action program.

The Department conducted extensive publicity campaigns in minority areas and expended almost a quarter-of-a-million dollars to set up and conduct tutorial classes at decentralized locations across the City in connection with civil service examinations in 1979, 81 and 82. This enabled us to assist over 18,000 minority candidates in preparing for the qualifying examinations. Partly as a result of these efforts, the most recent examination, conducted last year, has resulted in a passing "pool" including over 30% black and Hispanic candidates.

I have also appointed during my administration three minority Deputy Commissioners, one minority Bureau Chief, one minority borough chief, three minority deputy chiefs, and seven minority inspectors and deputy inspectors. I also appointed a minority as the Department's Chief Surgeon. These appointments represent a welcome increase of influence for blacks and Hispanics in the command structure of the Department. I believe that this increased representation of minorities in all ranks will and should continue. Meanwhile, our Civilianization Program has placed more than 3,000 black and Hispanic civilians in stationhouses and other police facilities throughout the City.

SCREENING OF POLICE OFFICERS

The training and selection of these new officers has been rigorously designed to insure that we have the most capable,

racially sensitive and professional officers on the street. When the Department resumed large scale recruiting in 1977 after the City's hard times of fiscal austerity, it became one of the few police agencies in the nation to screen recruits not only for physical and intellectual fitness, but for psychological fitness to exercise the sensitive public authority inherent in police power. A Candidate Fitness Review Board, was established to carefully review the overall fitness of new applicants. Our procedures, which have withstood repeated court challenges, have since 1979 identified and weeded out unqualified recruits. We regard this screening process as a responsible step to insulate the public from the potential hazards of police power in the hands of persons fundamentally unsuitable to be trusted with it.

I have also instituted an ongoing review of the fitness of our present force. In October 1981, I established the Violence Prone Officer Review Committee, thereby placing directly upon the Department's First Deputy Commissioner the responsibility for removing from public contact officers with personality difficulties that might give rise to violent behavior, even though no established or provable violent conduct had occurred. Many of the officers identified by this program have been referred to our respected Psychological Services Counseling Unit.

ACADEMY AND ONGOING TRAINING

The recruit training program in our Department is another example of the importance accorded to human relations sensitivity in policing. Almost half of the five-month training

curriculum in the Police Academy is devoted to courses in psychology and human rights. Every recruit receives instruction on the evils of racial and religious bigotry. All recruits also receive thorough training in the proper use of firearms and non-lethal force. Special emphasis is also given to the Department's strong intolerance of police abuse of any kind, including discourtesy and verbal abuse.

One area of police procedural reform of particular relevance to this hearing is in the method with which officers deal with emotionally disturbed persons, who often figure in violent or potentially violent situations.

Field procedures for dealing with emotionally disturbed persons were broadly revised in April of 1981 to ensure safe and humane treatment of such persons. First units arriving on the scene are required to send for and await a superior officer before attempting any physical contact with the individual in question. The use of mace, tear gas, restraining instruments, baton and all alternatives to deadly force must be pursued. Only where there is imminent danger of death to the officer or others in the vicinity is deadly force authorized.

In 1982 police officers removed 10,678 emotionally disturbed persons to hospitals, without loss of life either to those aided or to police officers.

POLICY AND RESTRAINT IN THE USE OF FIREARMS AND OTHER DEADLY FORCE

The most relevant measure of respect for human life in the New York City Police Department is, I believe, its record and

procedures regarding restraint in the use of firearms. In 1973, the Police Department adopted an exhaustive series of "Guidelines" for the discharge of weapons. These Guidelines, which went far beyond the Penal Code of New York State, provide that an officer may fire his weapon only to defend his own life, or the life of another. He may not fire at a fleeing suspect or automobile. Indeed, even warning shots are prohibited.

In 1973, the Department created its Firearms Discharge Review Board, a three-tiered investigative, assessment and disciplinary process under which every shot fired by a New York City police officer, is formally investigated be it accidental or intentional, whether a bullet hits someone or not. The investigation begins at the precinct or squad level, then by a Borough Board comprised of both senior and junior officers, and finally by a Headquarters Board of the most senior and responsible service and civilian officials of the Department. This procedure administers the formal firearms discharge guidelines of the Department, and determines whether each firing was acceptable under the guidelines. In the case of violators, it orders retraining of the officer or the filing of formal disciplinary charges against him. As I indicated earlier, since the creation of the Firearms guidelines and the Review Board in 1973, shooting incidents involving New York City Police have declined by 39.2%.

The firearms discharge, control and disciplinary mechanism of the Department has been the subject of wide commentary in the professional journals. Professor James Fyfe of American

University has done extensive research in this area. The primary conclusion of his study of New York police shooting patterns, which was concurred in by Professor James Q. Wilson of Harvard in a 1981 article, was that racial antagonism plays no part in the record of police shooting incidents in New York City. The geographical distribution of shootings across the City was found to be directly related to those areas in which there is a high incidence of violent crime. In addition, Fyfe also concluded that the guidelines have resulted in a significant reduction in overall police shootings.

In 1980, a nationally televised documentary highlighted the conclusions of a study commissioned by the United States Department of Justice. That documentary, which compared police shootings of unarmed persons who had not assaulted officers and were fleeing, concluded that Philadelphia police shot at a rate 34 times higher than New York police. In overall shootings, their rate was 50% higher.

Consistent with these findings, a study commissioned by the International Association of Chiefs of Police and released in 1982 found that New York City was a leader in firearms restraint among 54 major metropolitan police departments. Among its conclusions are the following, some of which are graphically illustrated on a set of charts to which I direct your attention.

The rate of police homicide per
100,000 population is at least 50%
lower in New York than in Chicago,

Los Angeles and Philadelphia, 100% lower in New York than in Cleveland, Washington, Baltimore and Houston, 150% lower in New York than in Detroit, and 200% lower in New York than in New Orleans.

The rate of police homicide per number of violent crimes, demonstrated that police in Los Angeles, Chicago, Philadelphia and Detroit fire their weapons at least 2½ times the frequency of New York police.

In Houston the rate is six times higher.

The rate of homicide per 100 police officers further showed that the individual Los Angeles officer is 2½ times, the individual Detroit officer three times and the individual New Orleans officer five times as likely to have killed a citizen as an individual New York officer.

As measured by these indicators, therefore, it is apparent that the number of deaths resulting from police shootings within the City of New York is substantially less than that of

other comparable major American Cities.

Finally, it must be noted that the absolute as well as the comparative number of police shooting incidents has dramatically declined in recent years. The Firearms Discharge Review Board's annual report for 1982 shows a 23.2% reduction in shooting incidents over 1981, a 32% reduction in violations of the Guidelines, and a 19.4% decrease in the number of members involved in shooting incidents. These results were achieved in spite of a significant increase in injuries to officers and weapons recovered from offenders involved in these incidents. The reductions have further occurred despite the fact that, during my service as Police Commissioner, 27 officers have been killed and 113 wounded by offenders in the course of commission of crimes.

CIVILIAN COMPLAINT REVIEW BOARD

Another valuable institutional innovation for the restraint and inhibition of improper police conduct is the Department's Civilian Complaint Review Board, which provides our citizens with complaint access to an investigative process supervised by civilians. Many American cities provide their citizens with no such machinery of this type. The Board's Director, Assistant Commissioner Charles Adams, is here with us today. Let me say that this Board is not in all respects satisfactory to all those with differing and understandable interests in its function and operation. There are many people who believe that the Board's disciplinary authority should be independent of the Police Department. That is a political

judgment, however, which has previously been passed upon by the voters of New York City. The seven member Board includes three minority persons. All members are civilian employees of the Department entirely outside the membership and command structure of the police force, and as long as I have been Police Commissioner, I have not heard or received any complaint questioning their integrity, diligence or objectivity. The Board has been increasingly utilized by citizens over the past several years, in part, I believe, as the result of our distribution in 1981 of 300,000 pamphlets describing its location and function.

In functional and practical terms, this is what the Board does: it receives complaints directly from the public and initiates investigations of police misconduct. In many cases, the Board is able to conciliate complaints in an informal manner. The Board also serves as a vital identifier of problem officers who may have difficulties in dealing with the public. It provides pertinent information where patterns of questionable behavior suggest that social or psychological counseling may be necessary. I want to emphasize that this may occur even in cases where complaints against an officer may be unsubstantiated because of lack of evidence, or failure of complainants to press their complaints.

A critical role of the Civilian Complaint Review Board is thus to provide yet another layer of control, monitoring and investigation of alleged police misconduct. Like other measurements I have referred to, the number and analysis of cases

prosecuted by the Board indicates that the Department has been generally successful in this area, although some problems remain.

The 1982 statistics, for example, show a disturbing overall increase of 33% in complaints filed. The increase, has come predominantly in the category of discourtesy and offensive ethnic, racial or obscene language of these there were 115 ethnic or racial slur complaints. However, allegations of force where some injury is claimed have dropped by 31.4% from 1296 to 869.

Of course, 869 incidents of excessive force, if proven, are far too many. But it must be borne in mind that 664 of these cases, or 80%, involved cases where there was no documented injury. Furthermore, of the 869 cases filed, 393 of the complainants did not choose to follow through, or formally withdrew their complaints. Another 125 cases were conciliated by the parties.

The primary mechanism for maintaining discipline in the Department in these and other similar cases in the Advocates Office, which brings charges and specifications before Trial Commissioners against any officer who is found to have violated the Rules and Procedures of the Department. Final disciplinary and penalty authority rests with me. I have made it unmistakably clear to all members of the Department that excessive force will be met with severe punishment.

Indeed, during the past 5½ years, 54 police officers were arrested for a variety of assault-related crimes, including homicide, assault and reckless endangerment. Nine of these

officers were convicted in the criminal courts and dismissed from the police service by the Department. Four other police officers who were acquitted in the criminal courts were nonetheless dismissed from the Department. Six of these cases are still pending in the criminal courts. Furthermore, in 64 other cases involving allegations of unnecessary force, but no criminal proceedings, five officers were fired and 59 officers were disciplined with penalties including suspensions or fines.

Beyond the internal, investigative and disciplinary mechanisms of the Police Department, there are numerous external governmental entities that monitor and punish police misconduct. The five District Attorneys Offices, Grand Juries, the United States Attorneys offices, and the United States Justice Department play critical roles in this area.

However, no mechanism, internal or external, can effectively serve the public if those who have complaints refuse to submit to lawful and systematic procedures designed to assess such complaints. In one recently celebrated case, the Reverend Lee Johnson refused to submit himself to the formal processes of the Civilian Complaint Review Board, the District Attorney, or the FBI. While the Department has instituted its own complaint and investigation in this case, our efforts have been stymied by Rev. Johnson's failure to cooperate.

THE INCREASED EFFECTIVENESS OF POLICE ACTIVITY

As Police Commissioner, I believe that any complaints of police misconduct are cause for concern. However, in evaluating

the number of complaints, it must be borne in mind that the 24,000 New York City Police Officers have many millions of documented contacts with the public. Indeed, if one compares the total number of complaints of police misconduct against the approximately one million arrests made and summonses issued, the approximately one million moving violations in traffic incidents, the approximately three million responses to 911 calls, and the many millions of daily contacts, the rate of complaint is placed in some perspective. The increase in some of our activities in these areas is illustrated on another chart to which I direct your attention.

Beyond the sheer size of the police effort in 1982, the central point is that at the same time that force complaints and shooting incidents were down, violent crime in this city was vigorously attacked and substantially reduced. This reduction has been accomplished with a minimum of force. In 1982, for example, the police seized 9,864 handguns from individuals without shots being fired by anyone. This reflects the professional restraint of New York City officers even when they are at risk.

While these results against violent crime were being achieved, a broad-based campaign was undertaken to win back the streets, the parks and the public areas of our neighborhoods for their residents. As Harvard Professor James Q. Wilson noted in the March, 1982 issue of The Atlantic, when visible police street presence and patrols disappear from the public life of the City, the whole range of petty offenders from red light runners and marijuana pushers, to prostitutes, derelicts and disorderly youths

will seize the streets. No one can deny this happened to the quality of life in many sections of our City as the Police Force dwindled, by 30%, in the lean years of the late 1970's. New Yorkers became accustomed to ignoring quality of life laws because there was so little enforcement. That long ordeal, for the Department and for the City, has come to an end. The rebuilding of the Force is underway. Overall, the number of arrests for narcotics, prostitution, disorderly conduct and gambling has increased by over 50% during the past two years.

This substantial effort was not made without a clash of wills between police officers and the loiterers, disorderly teenagers and traffic offenders. I believe that this increased activity with respect to both major and minor offenses, when combined with the relative youth and unquestionable zeal of our new officers, is at least one of the causes for the increase in "discourtesy" complaints at the Civilian Complaint Review Board. This is a problem which we can and must address through additional training, close supervision and, where necessary, appropriate discipline.

COMMUNITY OUTREACH

Finally, I would like to describe the specific community outreach programs which we have created to directly improve the Department's relationship with the public.

The comprehensive community relations program maintained

by the Department reinforces the strong policy encouraging racial sensitivity and community understanding. In sheer size and scope, the community outreach program of this Department has no equal in the country. Our community relations operations have an annual budget of \$16.9 million. The full-time staff involved in these efforts is 399 persons. New York City's budget and staff commitment are larger than those of Los Angeles, Chicago, Detroit, Baltimore and Houston combined. We have a Deputy Commissioner, William Perry, whose responsibilities are exclusively devoted to hearing and assisting the communities and neighborhoods of the City as they struggle to deal with crime and its consequences. His direct contacts with almost all major community organizations in the City, through visits, telephone conversations and letters, number in the thousands each year.

Parenthetically, it has been suggested that I have personally been unavailable to community groups and leaders. This is not true. Since assuming office, I have had over 200 formal meetings with such groups, and my door remains open.

We have during the past five years doubled the size of the Auxiliary Police, to the imposing number of 8,000 members, over 50% of whom are minority citizens. The participation of these officers has brought enormous mutual benefits to all City neighborhoods and the members of the regular police force.

Our community youth programs are large and diverse. Eight hundred eighty-five disadvantaged youths have been provided with jobs in the Police Department this summer. Our Youth

Dialogue Program, which seeks to put concerned officers and minority boys and girls together for constructive discussion about self-improvement, the value of education and the importance of community service, involves approximately 4,000 young people and 350 police officers. The Summer Youth Recreation Program has ongoing sports, crafts and day trips for over 43,000 youngsters, three-quarters of whom are from minority families.

Our Model Block Program in the minority neighborhoods of northern Brooklyn is a joint police-community program to reduce crime and eliminate destabilizing features of inner city life. .

In every precinct of our City we foster dialogue and involvement with the police through our community councils. Our files are full of letters from neighborhood merchants, businessmen, parents, teachers and young people praising our commanders and our patrol officers for their bravery, their courtesy and their concern for the neighborhoods they protect. These expressions of support come no less from minority communities than from other neighborhoods.

One of the most innovative programs which we have created to preserve good community relations and effective law enforcement is the Bias Incident Investigation Unit established in 1980. To my knowledge, it is the first permanently staffed, single mission command of its type in the nation. Since its creation it has successfully investigated numerous incidents of racial, ethnic or religiously biased criminal behavior. The BIAS Unit is a concrete manifestation of this Administration's

commitment to racial, ethnic and religious harmony in this city.

This has been a long statement on a very serious subject. I would like to close with a quotation from a speech I gave this Spring to over 1,600 new police recruits in a graduation ceremony held at Madison Square Garden:

You are members of the finest police department in the world, which provides key services in the most complicated city in the world, with the most diverse population of any city in the history of the world. As such, you are the personal representative of your department in your everyday relationship with our citizens and with visitors to our city. It is essential that you always remember, whether you are on or off duty, that you are a police officer. You have taken an oath to enforce the law, Equally important and implicit in your oath is the obligation to obey the law in your own lives. You will be held to a

higher standard of conduct than your fellow citizens, and by the Department, and this is how it must be. For you alone have been given the legal authority backed up by a shield and a gun to enforce the law, to arrest people and, if necessary to take a life in the performance of your duties. No other group in our society has that power and it is an awesome responsibility. Thus it is perfectly appropriate for your fellow citizens to demand that their police officers demonstrate, both in their public and private lives, good judgment, restraint in the use of force, the highest level of integrity, and respect for the law and for legal process. How can we ask the public to place its confidence in a police officer who is either unwilling or

unable to live up to these high standards. How can we ask our fellow citizens to support a police officer who violates the narcotics laws or the vehicle and traffic laws, or uses excessive or unnecessary force in the execution of his or her duties; who is unable to control the use of alcohol, or is rude and vulgar, or engages in the use of ethnic or racial slurs. Make no mistake about it, you will be held to very high standards, and the reason for this is clear. You are the law enforcers and the peace keepers in our society and your fellow citizens are willing to trust you with that power only so long as you demonstrate that you are capable of handling it properly and with professional restraint.

Thank you for your attention.

Exhibit to the testimony of Robert J. McGuire, House Committee
on the Judiciary, Subcommittee on Criminal Justice, July 18, 1983

TOTAL FIREARM DISCHARGES BY POLICE

PERIOD 1970 - 1973

1970	-	634	
1971	-	810	
1972	-	994	
1973	-	<u>665</u>	
		3103	776 annual average

PERIOD 1974 - 1978

1974	-	526	
1975	-	454	
1976	-	378	
1977	-	<u>434</u>	
		1792	448 annual average

PERIOD 1978 - Present

1978	-	418	
1979	-	394	
1980	-	425	
1981	-	452	
1982	-	375	
1983	-	<u>* *</u>	
		2064	413 annual average

decline of 46.8% from 1970 - 1973 average

decline of 7.8% from 1974 - 1978

* 1983 statistics unavailable

Source: New York City Police Department

SHOOTING HOMICIDES OF MINORITIES (Blacks & Hispanics) *PERIOD 1974 - 1978

1974	-	40
1975	-	37
1976	-	22
1977	-	<u>23</u>

122

Annual average 30.5

PERIOD 1978 - Present

1978	-	30
1979	-	32
1980	-	24
1981	-	27
1982	-	30

(to date)

1983

-

15

158

Annual average 28.72

5.8% decrease from 1974-78

* Statistics on race of shooting opponents unavailable prior to 1974.

SHOOTING HOMICIDES BY POLICE:PERIOD 1970 - 1973

1970	-	50
1971	-	93
1972	-	66
1973	-	<u>58</u>

267

66.7 annual average

PERIOD 1974 - 1978

1974	-	43
1975	-	42
1976	-	27
1977	-	<u>30</u>

142

35.5 annual average

PERIOD 1978 - Present

1978	-	40
1979	-	36
1980	-	28
1981	-	36
1982	-	39
date) 1983	-	<u>18</u>

197

35.8 annual average

46.3% decrease from 1970 - 73 average

0.8% increase from 1974 - 78 average

SHOOTING HOMICIDE OF BLACKS BY POLICE (Hispanics excluded) *PERIOD 1974 - 1978

1974	-	26
1975	-	25
1976	-	14
1977	-	<u>14</u>
		79

Annual average 19.75

PERIOD 1978 - Present

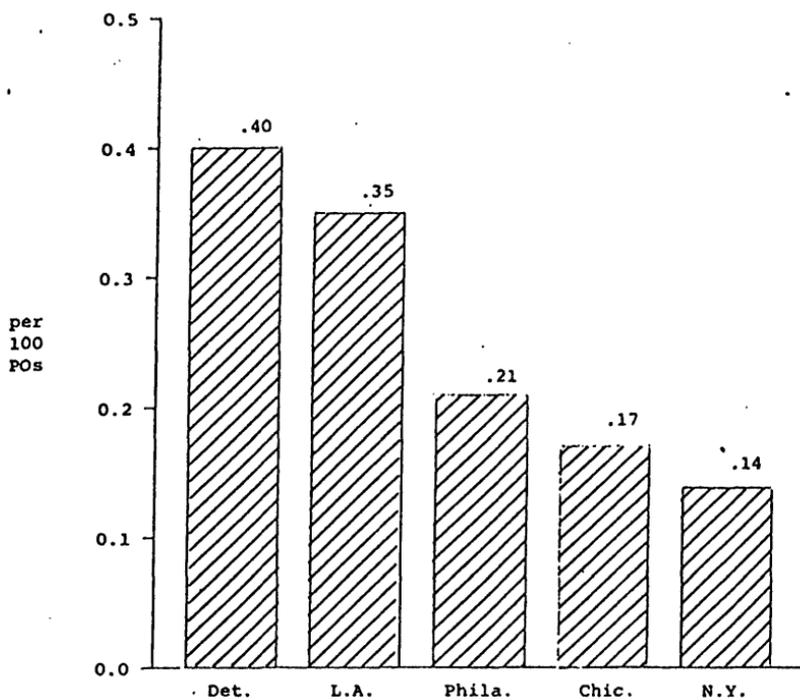
1978	-	18
1979	-	18
1980	-	19
1981	-	13
1982	-	10
(to date) 1983	-	<u>10</u>

88 Annual average 16.0

18.9% decrease from 1974-78

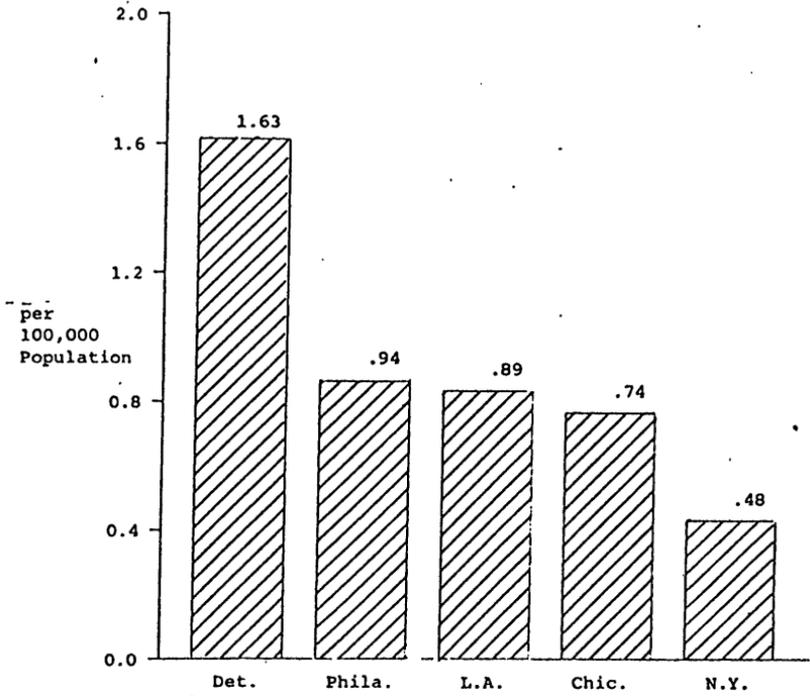
* Statistics on race of shooting opponents unavailable prior to 1974.

RATE OF HOMICIDE BY POLICE



Matulia, Kenneth J. "A Balance of Forces"; IACP, 1982

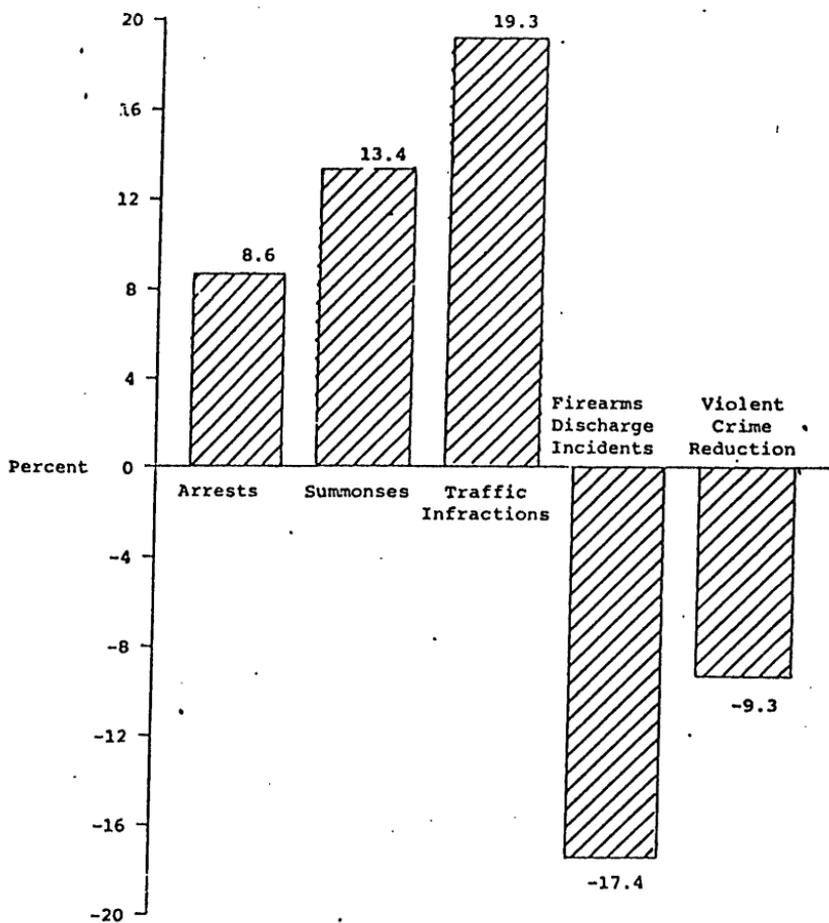
RATE OF HOMICIDE BY POLICE



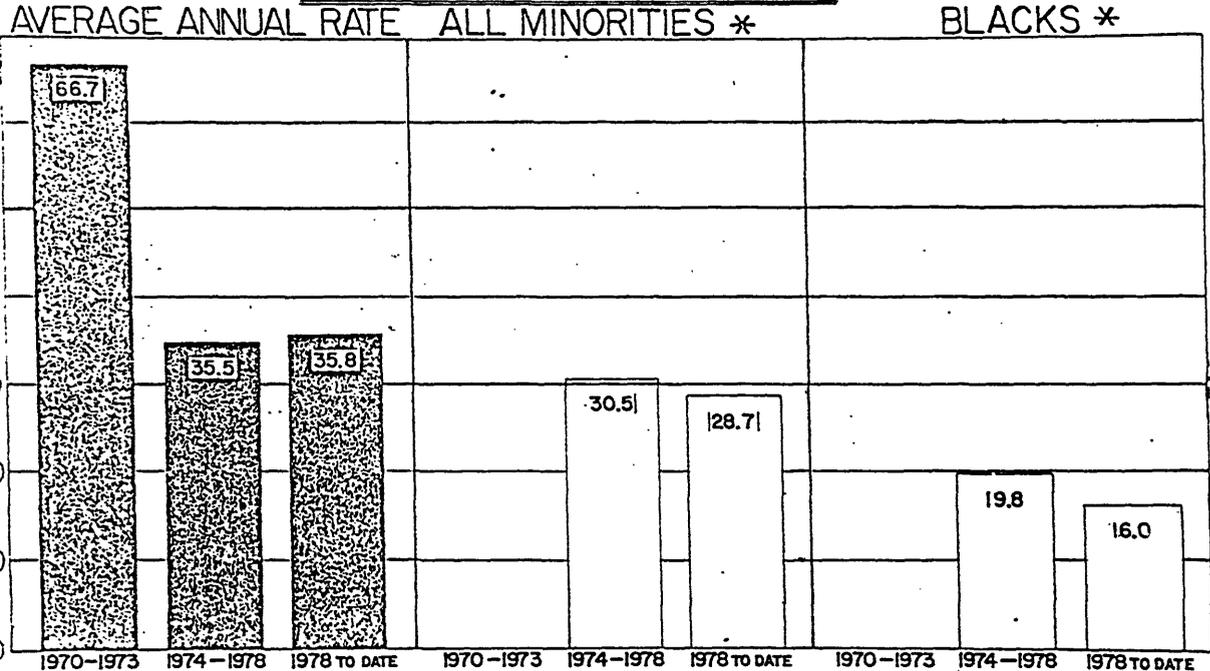
Matulia, Kenneth J. "A Balance of Forces"; IACP, 1982

N.Y.P.D. ENFORCEMENT ACTIVITY

Change from 1981 to 1982



HOMICIDES BY POLICE



PRIOR TO 1974, DATA ON RACE OF PERSONS KILLED BY POLICE NOT AVAILABLE.

SOURCE: NEW YORK POLICE DEPARTMENT





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FOR RELEASE May 5, 1983

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STATEMENT BY THE REVEREND DONALD W. SHRIVER, JR., PRESIDENT,
UNION THEOLOGICAL SEMINARY, NEW YORK

I am Donald Shriver, the President of Union Theological Seminary in the City of New York.

I am speaking to you today as head of Union Seminary, an institution of higher learning whose life and history have been intertwined with those of New York City for nearly 150 years. I am speaking also as a teacher and pastor. In all three of these ways I have very central responsibilities toward Union's students. And I am speaking, too, as a citizen of this city.

Early last Saturday evening, a first-year graduate student at Union Theological Seminary, the Reverend Lee Johnson, was stopped by two New York City police officers as he, accompanied by two friends, was driving his car on Lenox Avenue.

One of the police officers approached the Reverend Mr. Johnson's stopped car and requested his driver's license, registration, and insurance card. Mr. Johnson asked to be allowed to get out of the car in order to get at the documents; the request was denied and the officer locked the car door. Mr. Johnson asked why he had been stopped; his question received only profanity in response. Mr. Johnson identified himself as a clergyman and remarked that the officer must be inexperienced if he addressed any citizen in that way.

The officer unlocked and opened the car door, attempted to strike Mr. Johnson in the face, then struck him repeatedly on the leg with a flashlight, and ultimately pulled him from the car.

A second officer joined the first. Mr. Johnson was handcuffed and, while handcuffed, was repeatedly struck with a nightstick and thrown against the car.

He was put into the front seat of a police van and told that he was under arrest. He was not told his offense.

At the 28th Precinct Mr. Johnson was attacked verbally, both with explicit racial epithets such as "nigger" and with disparaging remarks about his religious beliefs and affiliations ("I don't believe in that shit anyway, Reverend" and "You don't pay no taxes anyway").

He was removed to a stairwell and then taken upstairs to a room containing a cell; in both places, while handcuffed, he was again beaten, choked, and kicked by the same two officers who had arrested him. He was told, "I am going to teach you a lesson, nigger" and "When you open your mouth, nigger, you had better say Sir."

Mr. Johnson was released by the police at about 9:30 that evening. As far as he knows, he is not charged with any crime. He was, however, given three summonses for motor vehicle violations.

Mr. Johnson was then able to return to his apartment at Union Seminary and to his wife and baby daughter. Accompanied by a Seminary security guard, he then sought and received treatment of his injuries at the emergency room at St. Luke's Hospital.

I hardly know how to express to you the degree of outrage, shame and despair that I feel as I recount these events..

I feel outrage that this young man was threatened, insulted, humiliated and beaten by the police of this city.

I feel shame that my institution, which had invited this young man to join its community, is unable to assure him of protection by the police, protection of life and limb and of dignity. Shame, too,

STATEMENT

Donald W. Shriver, Jr.

3.

May 5, 1963

that I cannot assure our other students, who are from all over this country and from 18 countries around the world, of this same protection.

And I feel despair that yet again, yet again, a black person in this city has been subjected to unlawful violence, carried out by those appointed to uphold the law.

There is no question but that because Lee Johnson is black it was assumed that he was a troublemaker, a public danger, that he was not worthy of respect, that his civil and human rights could be denied him, and that he could be physically injured with impunity.

Nothing in the ~~misdemeanors~~ ^{minor traffic violations} with which he was ultimately charged could in any way justify the treatment accorded him by New York City police officers. Such physical and emotional abuse is unprofessional; it is unmoral; it is inexcusable.

I cannot restore to Lee Johnson what has been taken away from him by this police attack. I cannot alleviate his rage, his frustration, his despair.

I can only state that Union Theological Seminary will bend every effort, will use whatever influence and resources it has available to help ensure that this kind of event will not be tolerated and will not recur. In this effort, we will, at the start, do all we can to make sure that the two arresting officers, who have demonstrated such hatred, contempt, and fear in their attack on Lee Johnson, do not continue to serve on the police force of the City of New York.

END

See also LEE JOHNSON BIOGRAPHICAL STATEMENT

NAACP report hits violence by policemen

New Orleans (UPI)—Police violence and killing of blacks is increasing because of racism, poor police training and refusal of federal authorities to prosecute officers, an NAACP official said yesterday.

"Policemen feel they have the authority to execute street justice," said general counsel Thomas Atkins.

"They make a determination a person is guilty and needs to be punished. And sometimes the punishment results in death."

Atkins released the results of a major NAACP study that concluded that nonwhite Americans comprised 47% to 50% of persons who were killed by police.

"THE INCIDENCE of police violence has been growing around the country," he said. "A disproportionate percentage of those victimized by police violence are minorities and the highest proportion are black males."

Officials said the study was based on federal crime reports, research and interviews with victims and local officials in each of the NAACP's seven regions.

Atkins said vestiges of traditional racism, poor training procedures and ineffective leadership by police chiefs contributed to the growing problem of police violence toward citizens.

The federal government's decision not to prosecute officers involved in shootings has exacerbated the problem, Atkins said.

THE STUDY recommends that police be prevented from shooting at fleeing felons and discontinue the policy of shooting at speeding cars, which sometimes results in injuries to innocent bystanders.

Atkins called for firm state laws, local ordinances and departmental policies "to provide incentive for policemen to think rather than shoot, talk rather than choke and reason with people rather than to harass, intimidate and engage in other forms of street justice."

Atkins singled out Milwaukee and New York as particular problems.

He accused New York's Mavor Koch of "shooting off his mouth without the facts" when he dismissed statistics showing increased police violence against blacks.

In Milwaukee, Atkins said, the problem is severe because the police chief serves for life and a poor attitude exists among department leaders.

COMPARISON OF THE NAACP'S MODEL POLICY ON USE OF
DEADLY FORCE WITH NEW YORK CITY POLICE DEPARTMENT
GUIDELINES

On page 36 of its manual on policy citizen violence, the Association lists 20 features that ought to characterize a governing policy of a police agency with respect to the use of deadly force and the use of firearms.

Of these 20 characteristics, 18 are incorporated in the New York City Police Department's pioneering procedures in this area. Indeed, the Department's leadership in this regard is acknowledged by the manual on pages 65-66.

The Association's 2 characteristics that are not incorporated in the Department's procedures:

- (a) Require all officers who discharge firearms to attend post-shooting psychological counselling. New York procedures include such counselling as one of a range of possible measures in cases where officers have been found to have violated the guidelines; and
- (b) Require the Police Chief or Commissioner to act upon the recommendations of the Firearms Discharge Review Board. In New York, the City Charter places sole disciplinary authority upon the Police Commissioner, who may not legally share it with the Firearms Board, or indeed any other component of the Department. However, the present Police Commissioner cannot recall a single instance where he rejected a recommendation of the Department's Firearms Control Board.

EXHIBIT TO TESTIMONY OF ROBERT J. MCGUIRE, House Committee on the Judiciary, Subcommittee on Criminal Justice, July 18, 1983

RE: NAACP COMMENTS ON POLICE MISCONDUCT

"On Thursday, July 14 United Press International reported that the NAACP General Counsel Thomas I. Atkins had given a speech to the NAACP Convention in New Orleans decrying an increase in police brutality. Mr. Atkins reportedly singled out New York and Milwaukee "particular problems" and stated that Mayor Koch had exacerbated the problem by "shooting off his mouth without the facts."

The actual NAACP report on which Mr. Atkins reportedly based his speech contradicts his statements with regard to New York. Rather than reporting on incidents of police violence, the NAACP project was merely an "organizing guide for community leaders" which, (1) in fact, contains no criticism whatsoever of New York City, and (2) indicates that New York City's procedures for the dealing with misconduct are in accordance with what NAACP would recommend. In particular:

1. The report implicitly recognizes the validity of New York City model by stating that "it is significant that data shows that a more restrictive deadly force policy does not lead to increased injuries to police officers. In New York City, average monthly injuries dropped 43% after the more restrictive deadly force policy was adopted." (p.8) The report further notes at a later point that shootings by New York City police officers dropped "dramatically" after the adoption of Firearms

Discharge Guidelines. (NAACP Report, p.66)

2. The report specifically chronicles three instances of effective changes in firearms policy. The first such example cited is New York City. (NAACP Report, p. 65) The two other examples of changes of policy were Kansas City and Seattle, both of which were headed by police commissioners who had gained their experience as veterans of the New York City Police Department.
3. The organizing guide sets forth 20 specific recommendations for a "model police department policy on use of deadly force and firearms." (NAACP Report, p.14) Eighteen of the 20 suggestions describe the existing policy utilized by the New York City Police Department and its firearms discharge control board.

Finally, it should be noted that the report gives instructions to NAACP officers on how to handle specific incidents of police misconduct which indicate that the comments made by Union Theological Seminary President Donald Shriver in response to the alleged beating of Reverend Johnson are precisely what should not be done. As it is stated in the report: "do not make declarative statements such as 'police officer John Doe murdered this boy'...for example you may say 'if it is shown that the incident was a deliberate action on the part of the police officer or if this is to be found an unnecessary shooting or crime that we insist that disciplinary action be taken'." The report emphasizes that anyone making statements should seek to "dispel rumors and

'cause the legal rights of all parties to be respected." (NAACP Report, p. 16). The Rev. Shriver's categorical statements that Rev. Johnson was repeatedly struck, that he was verbally abused, and that "while handcuffed, he was again beaten, choked and kicked" in the 28th Precinct stationhouse unfortunately violated these precepts at every turn.

ATTACHMENTS:

- (1) NAACP Report, "Police-Citizen Violence: An Organizing Guide for Community Leaders," July, 1982.
- (2) Comparison of NAACP Model Policy with New York City Guidelines.
- (3) United Press International Wire story regarding Speech by Thomas Atkins, Esq., NAACP General Counsel, dated July 14, 1983.
- (4) Press Release by Rev. Donald W. Shriver, Jr., May 5, 1983.

Mr. CONYERS. I am very glad that we were not under oath, by the way, and I would like to have this matter pursued as far as you can. I want to commend you on the examination and analysis that you have made that makes our record much clearer and much more understandable in reference to those two statements prepared by the mayor and the police chief.

Thank you again, Prof. Douglas Colbert.

Mr. COLBERT. Thank you very much.

Mr. CONYERS. We have one witness before we close, but I would like to thank, on behalf of the committee, the Emergency Medical Services Bloc, Latino Guardians Association that provided any free medical services or first aid for anybody that may have needed them during this day. We appreciate the work of that organization.

We are very pleased to welcome, to close today's hearings, the president of the New York Americans for Democratic Action, Mr. Allen Roskoff, who has been working very assiduously on this matter. We welcome you before this committee, sir. We apologize, as we have to all the witnesses that have ended up on the last part of the program, but be assured that your testimony will be reported and recorded and will be as important as all the other testimony, and we again express our thanks for your patience and we would look forward to any remarks that you would care to make at this time.

Welcome to the subcommittee hearing.

**TESTIMONY OF ALLEN ROSKOFF, PRESIDENT OF THE NEW YORK
CHAPTER, AMERICANS FOR DEMOCRATIC ACTION**

Mr. ROSKOFF. Thank you, Congressman.

My name is Allen Roskoff. I am president of the New York chapter of the Americans for Democratic Action. ADA, the largest and oldest progressive organization in the country, in keeping with its long tradition of opposing any infringement of human rights and civil liberties, expresses today its deepest and most urgent concern over the issue before us, that of police brutality.

I come here today to speak on behalf of our State board of directors, which at a meeting last Thursday listened to a panel of three spokespeople knowledgeable of the undue violence, particularly violence which is racially motivated, committed by the New York Police Department against the citizens of this city.

Most of us listened in shock and horror to the cases of vicious and unprovoked abuse on the part of the police. I expect that the entire community, indeed nearly everyone gathered in this room is experiencing the same revulsion, the same sickening gut reaction, to the acts described in today's testimony.

The incidents of police brutality is indisputably on the rise. Each day, in this city, who knows how many men, women and children are verbally abused, hit, kicked, beaten, or worse, by members of New York's finest?

Police Commissioner McGuire claims that police brutality is neither a citywide problem nor is it condoned or instituted by his commission and yet as we sit here and listen to so many tales of violence and brutality; if we consider the more than 43,000 complaints lodged against the police department during the Koch administration; when we consider that neither the mayor nor any State agency has come to testify, that is an appalling and inexcusable action.

Must not we ask ourselves one fundamental question: What are Police Commissioner McGuire and Mayor Koch—hopefully soon to be former Mayor Koch—trying to hide? What horrible, unreported deeds do they not wish to reveal to us?

Members of the committee, we are dealing here with anger, fear, and a feeling of hopelessness. The mayor refused to come here today, claiming these hearings would be nothing short of a circus. I believe what is going on at city hall is nothing short of a circus.

What Mr. Koch was actually afraid of, we believe, was the angry reaction of thousands of people, frustrated by the fact that they have no effective legal recourse to the heinous treatment of the NYPD.

People have come here today from all over the city. The commissioner and the mayor are wrong, the problem is citywide. Police brutality is rampant, and its frequency is growing at an insidious and alarming rate, and the problem is not going to go away of its own volition. Hopefully in 2 years the mayor will be removed and that will help alleviate some of the problems.

Allow me to cite just one incident of blatant, unabashed violent racist behavior on the part of the police. I am referring to the two raids on a bar called the Blues Bar, a predominately black gay bar. Twice last year, in September and October, police entered the bar

and completely unprovoked, began to beat, kick, and even rob its patrons. Through both of these incidents the police used racist epithets while beating their victims.

The first incident sent approximately 12 people to the hospital. The second incident took place less than 1 week later, and according to some of the officers involved, they came back because of the extensive coverage in the first incident, in the Village Voice and other newspapers.

This incident also sent people to the hospital.

The lesbian and gay communities, under the leadership of black and other third world gay people, organized a very successful multiracial demonstration against police brutality in the gay, black, and other communities.

At a recent forum on police violence, several black lesbians described being beaten by the police in and around Washington Square Park. No explanation for this horrifying incident was ever released, and to this day, the district attorney, Mayor Koch's friend, has still not completed a full investigation on the raid.

The effects of racial police brutality of the minority community is staggering. When one considers the poor record of the current administration, the Koch administration, in regards to minority hiring, health care, and housing, and a basic attitude of indifference and negligence and racist condemnation, when one sees Koch blatantly mocking the city's blacks by donning an African wig and sauntering around the Inner Circle press dinner, how can one expect anything more?

And then, as if it were the final most literal slap in the face, New York's predominantly white police force has embarked on a brutal, malicious campaign to terrorize and harass minorities through the city.

It is clear then that the occurrence of police brutality is simply another tactic of the Koch administration to maintain its wrenching control over the potential problem sectors of this city.

It must also be pointed out, of course, that police brutality has increased outside the black, Hispanic communities. Today in New York, women, gays, whites, Asians, also fall prey to the brutal swing of the police club. I ask you, is no one safe? Are we plunging headlong into an Orwellian intimidation, subordination and complete control? Are you, honorable Members of Congress, going to sit idly by while the citizens of this country become more and more fearful of the very person they employed to protect them in times of danger?

The fundamental question then is one of redress and resolution. How are we collectively going to bring about an end to this horrifying, repugnant issue? New York Americans for Democratic Action joins with other individuals and organizations in this room and across the city in demanding the establishment of an impartial, independent police review board to effectively investigate, monitor, and bring to justice the thousands of cases of police brutality committed annually in New York City.

Such a panel should have few or no police personnel among its members. The panel should represent every sector of this city and should exemplify the dynamics of good government by its integrity, impartiality, and rapid and insistent penalization of undue police

violence. The creation of such a review board is not a difficult task, nor is it an unreasonable or politically motivated demand, it is rather a rational and needed response to the problem which we all face today.

The blood of New York that is spilled by the police belongs on the steps of city hall and Gracie Mansion. If there was no problem, as Mayor Koch and Commissioner McGuire would have us believe, there would be no congressional hearing and the thousands of people packed into this room today would not be here.

Distinguished members of the committee, look around you. I implore you to listen very carefully to the testimony delivered here today, consider the frustration and anger of people in this room. They have no where to turn in New York. They are turning to you, members of the highest legislative body in the land, in a desperate plea for equal justice under the law and guaranteed by the Constitution of the United States. Please hear our cry, listen to our demands, help us to rectify a problem which threatens the most fundamental principles upon which this Nation of ours was created.

To everybody here, I would like to say that ADA stands firm in its commitment to erase any police brutality and we will work with you in 1985 for a new mayor for the city of New York. Thank you.

Mr. CONYERS. Thank you very much. Your closing remarks are appropriate for the end of a long day of hearings. I want to thank you very much as the final witness, and I should also like to extend my appreciation to those who worked the sound system, which was provided by the Coalition of Black Trade Unions.

I would like to thank the Organization of Afro-American Clergy, Rev. Sharon Williams, for providing the chairs and tables.

I would like to thank my own staff, who worked so hard here today.

But most of all, I think our appreciation goes out to the people of Harlem, whose determination to change things have brought this congressional committee here for the beginning of what is going to be a long struggle to turn around the police violence that has been uncovered here in the first of I don't know how many hearings it will take.

Thank you all for your cooperation, and as chairman of this subcommittee, I declare the meeting to be officially adjourned.

[Whereupon, at 5:30 p.m., the subcommittee was adjourned.]