

POLICE BRUTALITY

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SECOND CONGRESS
FIRST SESSION

MARCH 20 AND APRIL 17, 1991

Serial No. 28



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

50-872

WASHINGTON : 1992

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-037450-2

H521-2 |

COMMITTEE ON THE JUDICIARY

JACK BROOKS, Texas, *Chairman*

DON EDWARDS, California
JOHN CONYERS, Jr., Michigan
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
DAN GLICKMAN, Kansas
BARNEY FRANK, Massachusetts
CHARLES E. SCHUMER, New York
EDWARD F. FEIGHAN, Ohio
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
HARLEY O. STAGGERS, Jr., West Virginia
JOHN BRYANT, Texas
MEL LEVINE, California
GEORGE E. SANGMEISTER, Illinois
CRAIG A. WASHINGTON, Texas
PETER HOAGLAND, Nebraska
MICHAEL J. KOPETSKI, Oregon
JOHN F. REED, Rhode Island

HAMILTON FISH, JR., New York
CARLOS J. MOORHEAD, California
HENRY J. HYDE, Illinois
F. JAMES SENSENBRENNER, Jr.,
Wisconsin
BILL McCOLLUM, Florida
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
D. FRENCH SLAUGHTER, Jr., Virginia
LAMAR S. SMITH, Texas
CRAIG T. JAMES, Florida
TOM CAMPBELL, California
STEVEN SCHIFF, New Mexico
JIM RAMSTAD, Minnesota

JONATHAN R. YAROWSKY, *General Counsel*
ROBERT H. BRINK, *Deputy General Counsel*
ALAN F. COFFEY, Jr., *Minority Chief Counsel*

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

DON EDWARDS, California, *Chairman*

JOHN CONYERS, Jr., Michigan
PATRICIA SCHROEDER, Colorado
CRAIG A. WASHINGTON, Texas
MICHAEL J. KOPETSKI, Oregon

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
BILL McCOLLUM, Florida

CATHERINE LEROY, *Counsel*
IVY L. DAVIS, *Assistant Counsel*
JAMES X. DEMPSEY, *Assistant Counsel*
VIRGINIA SLOAN, *Assistant Counsel*
KATHRYN A. HAZEEM, *Minority Counsel*

CONTENTS

HEARINGS DATES

	Page
March 20, 1991.....	1
April 17, 1991.....	133

OPENING STATEMENT

Edwards, Hon. Don, a Representative in Congress from the State of California, and chairman, Subcommittee on Civil and Constitutional Rights.....	1
--	---

WITNESSES

Baker, William, Assistant Director, Criminal Division, Federal Bureau of Investigation.....	7
Days, Drew S., III, professor of law, Yale Law School.....	170
Dunne, John R., Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, accompanied by David Simon, counsel, and James Turner, Deputy Assistant Attorney General, Civil Rights Division.....	3
Fyfe, James, professor of criminal justice, American University, Washington, DC.....	37
Hampton, Ronald E., executive director, National Black Police Association, Washington, DC.....	223
Henderson, Wade, director, National Association for the Advancement of Colored People, Washington Bureau.....	136
Hoffman, Paul, legal director, ACLU Foundation of Southern California.....	54
Llewellyn, David L., president, Western Center for Law and Religious Freedom, Sacramento, CA.....	188
Williams, Gerald L., chief of police, Aurora Police Department, Aurora, CO, and president, Police Executive Research Forum.....	213

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARINGS

Correspondence concerning the usage of nunchukas by law enforcement officers:	
William S. Sessions, Director, Federal Bureau of Investigation, from Hon. Don Edwards, chairman, Subcommittee on Civil and Constitutional Rights, dated April 24, 1991.....	12
Hon. Don Edwards, chairman, Subcommittee on Civil and Constitutional Rights, from William S. Sessions, Director, Federal Bureau of Investigation, dated May 21, 1991.....	13
Hon. Don Edwards, chairman, Subcommittee on Civil and Constitutional Rights, from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, dated June 18, 1991.....	14
John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, from Hon. Henry J. Hyde, a Representative in Congress from the State of Illinois, dated April 8, 1991.....	16
Hon. Henry J. Hyde, a Representative in Congress from the State of Illinois, from W. Lee Rawls, Assistant Attorney General, U.S. Department of Justice, dated July 2, 1991.....	18
Days, Drew S., III, professor of law, Yale Law School: Prepared statement.....	176
Fyfe, James, professor of criminal justice, American University, Washington, DC: Prepared statement.....	48

IV

	Page
Hampton, Ronald E., executive director, National Black Police Association, Washington, DC: Prepared statement.....	225
Henderson, Wade, director, National Association for the Advancement of Colored People, Washington Bureau: Prepared statement.....	142
Hoffman, Paul, legal director, ACLU Foundation of Southern California: Prepared statement.....	62
Hyde, Henry J., a Representative in Congress from the State of Illinois: Submission of civil rights prosecutions nationwide, 1981-1990, compiled from annual Department of Justice statistics.....	10
Llewellyn, David L., president, Western Center for Law and Religious Freedom, Sacramento, CA: Prepared statement.....	191
Williams, Gerald L., chief of police, Aurora Police Department, Aurora, CO, and president, Police Executive Research Forum: Prepared statement.....	217

APPENDIX

Gracé Flores Hughes, Director, Community Relations Service, U.S. Department of Justice, letter to Chairman Don Edwards.....	237
W. Lee Rawls, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, letter to Chairman Edwards, dated May 22, 1991, transmitting answers to followup questions.....	245
Deposition of Chief Daryl Gates, transcript, <i>Stanley R. John, v. City of Los Angeles</i>	281
Dean E. Swartz, letter to Chairman Edwards, dated May 15, 1991, regarding <i>Swann v. The City of Goldsboro, NC</i>	296
Mary L. Bonauto, staff attorney, Gay and Lesbian Advocates and Defenders, letter to Chairman Edwards, dated May 30, 1991.....	300
Marco E. Lopez, letter to Chairman Edwards, dated March 19, 1991, regarding incidents of police brutality against Mexican nationals in or about Los Angeles.....	309
Department of Justice Civil Rights Investigations for the Central District of California—1982-present.....	320
Department of Justice staffing levels—1981-92.....	321
Summary of significant civil rights prosecutions of police brutality cases (1982-89).....	322

POLICE BRUTALITY

WEDNESDAY, MARCH 20, 1991

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2141, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, John Conyers, Jr., Craig A. Washington, Michael J. Kopetski, Henry J. Hyde, Howard Coble, and Bill McCollum.

Also present: Representative Maxine Waters.

Staff present: Catherine LeRoy, counsel; James K. Dempsey, assistant counsel; and Kathryn A. Hazeem, minority counsel.

Mr. EDWARDS. The subcommittee will come to order.

The gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, I ask unanimous consent for the subcommittee to permit coverage of these hearings in full or in part by television broadcast, still photography, or radio broadcast in accordance with committee rule 5.

Mr. EDWARDS. Without objection, it is so ordered.

OPENING STATEMENT OF CHAIRMAN EDWARDS

This afternoon the subcommittee begins a series of hearings on the question of police misconduct and the Federal response. The Federal Government has statutory jurisdiction in this area under sections 241 and 242 of title 18 of the code.

Police work is dangerous, difficult, and often unappreciated, but there is no excuse for the type of behavior recorded on video tape in Los Angeles. Seeing that man being beaten was offensive to all Americans, particularly to the tens of thousands of dedicated law enforcement officers who would not engage in such conduct.

Our purpose in this subcommittee is not to focus on that incident in isolation, but to examine the issues more broadly. We want to know how widespread is police misconduct in Los Angeles and nationwide. We want to know how effective the Federal Government's response has been. We want to look at the question of training and the question of internal discipline. We want to look at the Federal laws and whether they need to be strengthened.

This is an emotional issue. The subcommittee will address it in a serious, principled way. We have four highly qualified witnesses at our disposal today and there will be additional hearings after this one.

Does the gentleman from North Carolina have a statement?

Mr. COBLE. Mr. Chairman, very briefly, at first blush when I first heard about the beating that occurred in Los Angeles, my initial response was, well, surely the victim did something to provoke this sort of activity on the part of the police officers. It appears that that initial response probably was inaccurate. Unless one has been living under a rock for the past 5, 6, or 7 days, he's had a chance to view the screen clip of this on many occasions, as I have done. I'm very distressed by it.

If I have any concern at all, Mr. Chairman, it is that I would like for this sort of misconduct, for want of a better word, to be resolved internally. Now I'm not suggesting by any means that it is inappropriate for us to be involved. I think it's very obviously appropriate, but it would be my hope that this matter could be resolved internally in Los Angeles.

The fear I have about what occurred on the coast is that many people are probably going to try to bash every law enforcement officer in the country. That's what bothers me. I don't think this is an accurate portrayal of law enforcement in this country. I hope it's not an accurate portrayal of the Los Angeles Police Department. I'm sure we'll learn more about that, Mr. Chairman, as these hearings develop. But, it provides a forum for those who want to go cop bashing to do so, and that's what bothers me.

I look forward to what we will hear today, Mr. Chairman. Did you say, Mr. Chairman, there would be other hearings as well?

Mr. EDWARDS. The gentleman is correct; we will have additional hearings as we examine the Federal involvement and Federal responsibility in this area, which, as I pointed out in my opening statement, we definitely have under the criminal code, U.S. Code, title 18, sections 241-242.

Mr. COBLE. Yes, that's what I meant when I said it's certainly appropriate for us to be here. It's just unfortunate, I guess, that we have to be here. I look forward to what develops, Mr. Chairman, as I know you do.

I yield back my time, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Coble.

We're fortunate to have today from the Department of Justice the very distinguished Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice, our good friend, Mr. John R. Dunne. We also have as a second witness and member of the panel, Mr. William Baker, Assistant Director and head of the Criminal Division of the Federal Bureau of Investigation. Both witnesses have testified frequently before the subcommittee and have always provided very valuable testimony.

Mr. Dunne, we welcome you.

First of all, will you all, including your colleagues, please raise your right hands.

[Witnesses sworn.]

Mr. EDWARDS. Mr. Dunne, you will be the first witness. Will you please proceed, but first introduce your colleagues?

Can you hold on just a moment? We're honored to have with us the long-time member of the subcommittee, the chairman of the House Committee on Government Operations, the gentleman from

Michigan, Mr. Conyers, who has been very helpful on a nationwide basis on this subject.

Mr. Conyers.

Mr. CONYERS. I'll reserve my time.

Mr. EDWARDS. We're also pleased to have with us the gentleman from Texas, Mr. Washington. Mr. Washington, do you have a statement?

Mr. WASHINGTON. Thank you, Mr. Chairman. I will defer at this time.

Mr. EDWARDS. Thank you.

Mr. Dunne.

STATEMENT OF JOHN R. DUNNE, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY DAVID SIMON, COUNSEL, AND JAMES TURNER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION

Mr. DUNNE. Mr. Chairman, sitting to my immediate right is David Simon, my counsel at the Division. Next to Mr. Simon is Mr. James Turner, whom we all recognize as the career Deputy Assistant Attorney General in the Civil Rights Division.

Mr. Chairman, members of the committee, it is a pleasure to have the opportunity to testify today on a matter of such grave concern. The Department of Justice, under the leadership of Attorney General Dick Thornburgh, views its responsibilities to prosecute instances of police misconduct as among the most serious that it possesses. As President Bush reminded the Nation in his State of the Union Address, freedom from crime is one of our most fundamental civil rights, and that surely encompasses the right not to be subjected to criminal violence by the very people sworn to uphold and enforce the law.

The video taped beating of Rodney King in the early morning hours of March 3d has galvanized concern about the problem of police abuse, and properly so. Last week, following his meeting with Congressmen Conyers and Towns, the Attorney General declared his own sentiments about the problem, stating, "Responsible law enforcement officers condemn acts of police brutality by anyone in law enforcement. Those engaged in law enforcement must be among the first to assure the observance of the civil rights and civil liberties of all citizens."

I wholeheartedly agree with these words, and I'm proud of the record of the Civil Rights Division in investigating and prosecuting incidents of police misconduct throughout the Nation. The nature of the Federal enforcement effort in this area, however, should not be overstated. We are not the front line troops in combating instances of police abuse. That role properly lies with the internal affairs bureaus of law enforcement agencies and with State and local prosecutors. The Federal enforcement program is more of a backstop, if you will, to these other resources.

This backstop program is, nonetheless, extensive. I would like to describe for you today the operation and policies of the Civil Rights Division in investigating and prosecuting cases involving misconduct by law enforcement officers. I am sure you are aware the De-

partment of Justice can only investigate alleged criminal activity where it has specific statutory authority from Congress to prosecute the offense. As you are also well aware, the incident involving Rodney King is currently under investigation by the FBI. There is also a pending State prosecution. Thus, I am unable to discuss any of the details of that incident.

The Federal criminal rights statute most often employed in the area of policy misconduct is section 242 of title 18 of the United States Code. Section 242 makes it a crime for anyone acting under color of law willfully to deprive any inhabitant of the United States of a right secured or protected by the Constitution or laws of the United States. This statute, with its four essential elements, dates from the post-Civil War era.

The protected rights, as amplified by court decisions in the ensuing years, have been held to include, among others, the right to be free from unwarranted assaults, the right to be kept free from harm while in official custody, the right to be free from illegal arrests and illegal searches, and the right to be free from deprivation of property without due process of law.

Section 242 protects all inhabitants of the U.S. territory against official misconduct. Section 241 is the statute that protects all inhabitants against conspiracies involving official misconduct. So, both section 241 and 242 are different from other civil rights statutes, such as section 245 of title 18, in that 241 and 242 do not require that race or other classification be a factor or an element in the definition of the crime.

The victims can be of any race, as can the defendants. Thus, we have prosecuted white officers for assaulting black victims, and vice versa, as well as officers who are of the same race as their victims.

The criminal section of our Division reviews a large number of criminal civil rights complaints each year. These take the form of citizen correspondence, phone calls, or personal visits to the Department of Justice, the local U.S. attorney's office, or, most commonly, to the FBI.

The complaints include allegations of official misconduct, many of which involve police brutality as well as racial violence and slavery complaints. For the past several years, approximately 2,500 complaints of official misconduct each year have been of sufficient substance to warrant an investigation, which is almost always conducted by the FBI.

After the local FBI field office has gathered the relevant information, their investigative report is submitted both to the local U.S. attorney's office and to FBI headquarters for dissemination to the Civil Rights Division. The report is then reviewed by the Criminal Section of the Division. The views of the local assistant U.S. attorney are solicited by us, as is their participation in the grand jury presentation.

The grand jury investigation is important for several reasons. We feel it is important to establish the credibility of each witness under oath. As part of that credibility testing process, we find it extremely helpful to have members of the community assess our evidence. We also utilize the grand jury because it is a powerful, investigative mechanism. Its secrecy provisions sometimes provide

an incentive for knowledgeable, yet fearful witnesses to come forward. This can be particularly important in police misconduct cases where obtaining cooperation from the subject officer's colleagues can be critical to developing the evidence for prosecution.

At the conclusion of the grand jury presentation, we make a determination, in consultation once again with the U.S. attorney's office, about whether to request an indictment. We make this decision with care and after a thorough review of all of the evidence that has been developed. We request indictments from the grand jury where we believe that we will establish, to a fair-minded jury, the defendant's guilt beyond a reasonable doubt.

Criminal civil rights prosecutions for police misconduct are among the most difficult under Federal law. Almost always the victims of police abuse have themselves committed some kind of law violation which has brought them to the attention of the police in the first place. Thus, their credibility is not always easy to establish. Community feelings that tend to credit, rather than discredit, the law enforcement representative also make it difficult to obtain sufficient corroboration to support a victim's claim to allow criminal prosecution.

We are thus forced to evaluate our evidence carefully. I must note here that our evaluation of the evidence is not always consistent with that of the grand jurors. We do from time to time get nobilled. Even if we are aware of the possibility that the grand jury may refuse to indict a case, we nonetheless will submit an indictment if we believe that the evidence discloses police misconduct that in our judgment unmistakably violates the rights of the individual victim.

Now you should not assume that the cases we prosecute are the only complaints we believe have substance or merit. Sometimes allegations of police misconduct are adequately addressed by the law enforcement agency itself or by local prosecutors, requiring no further action by us. We monitor any local response before deciding our final course of action. As I mentioned earlier, our role is to provide a backstop. If the local authorities adequately respond to the complaint, there is no need for additional Federal involvement.

What might fall short of adequate local action will depend, obviously, on the facts in each particular case. A slap-on-the-wrist suspension of a few days for a brutal beating would likely be considered insufficient to vindicate the Federal interest under the criminal civil rights laws. At the other extreme, where it appears that the local law enforcement agency, acting in good faith, is moving swiftly and decisively to punish misconduct, we generally defer to that process and do not seek to impose duplicative Federal measures.

I believe that quick and commensurate discipline imposed on police officers by their supervisors or vigorous prosecution by the local district attorney is generally a more effective deterrent to misconduct than is Federal prosecution.

Until fairly recently, State prosecutors generally had available to them more serious offenses and potential penalties with which to prosecute police misconduct cases. Such statutes generally included felony violations, such as aggravated assault, an assault with a dangerous weapon, or with intent to do serious bodily harm. Until

November 1988, violations of section 242 were simply misdemeanors, punishable by no more than 1 year in prison, unless death resulted. The amendment in 1988 increased the penalty to a 10-year felony if bodily injury resulted. We still have some indictments and investigations of incidents from before November 1988 that can only be prosecuted as misdemeanors.

Now, notwithstanding the 1988 amendment, the severity of the victim's injuries has always been a factor that influences our decision to bring criminal charges against a particular defendant. Serious injury is not, however, essential to a Federal prosecution. We have prosecuted cases where no physical injury occurred; for example, in a case where some law enforcement officers had engaged in an extended and prolonged threat to kill someone. In addition to considering the local administrative and prosecution response to a particular allegation of misconduct, we attach great weight to the willfulness of the misconduct.

The Supreme Court has told us that in any prosecution under section 242 the Government must prove the defendant's specific intent to engage in the misconduct that violates the victim's constitutional rights. Thus, the willfulness of the officer's action is critically important in our consideration of a given matter. We realize that police work is dangerous and that often split-second decisions must be made. We are not in the business of second-guessing law enforcement officials. We are precluded from prosecuting conduct that is accidental or merely negligent, but where the misconduct is deliberate and willful, we will not hesitate to prosecute.

This, then, in outline form explains how we receive and evaluate complaints of police misconduct. As I have previously stated, we are careful in choosing cases for Federal prosecution, but we will not shrink from pursuing a case where the facts require such action. Unquestionably, police misconduct cannot be left unaddressed by police and State officials, and should that occur, it is a proper matter for Federal concern.

The care with which we exercise this responsibility—and I really want to emphasize this as strongly as I can—the care with which we exercise this responsibility is perhaps best reflected in the Division's impressive prosecution record in recent years. As we have gained experience over the years in criminal civil rights prosecutions, the number of convictions has steadily risen. While not too long ago we were hovering about a 50- or 60-percent success rate, our conviction rate in official misconduct cases has been 70 percent or higher for all but one of the last 7 fiscal years. The job is, to be sure, largely a thankless one that comes in for a lot of criticism, but let me assure you it is being handled professionally and it is being handled well.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Dunne.

The second member of the panel to testify is Mr. William Baker, Assistant Director in charge of the Criminal Division of the Federal Bureau of Investigation.

Mr. Baker, you are welcome and you may proceed.

**STATEMENT OF WILLIAM BAKER, ASSISTANT DIRECTOR,
CRIMINAL DIVISION, FEDERAL BUREAU OF INVESTIGATION**

Mr. BAKER. Good afternoon, Mr. Chairman.

I would like to introduce Section Chief Joe Jackson, to my immediate left, who has the program responsibility for the FBI's civil rights program.

Mr. Chairman, I join Mr. Dunne in appreciating the opportunity to appear before your subcommittee to discuss the civil rights program of the Federal Bureau of Investigation.

The beating administered to Rodney King on March 3d by members of the Los Angeles Police Department has riveted this Nation's attention away from Desert Storm and focused us on abuse of force by law enforcement officers in arrest situations. The question of whether the timely video taping of this incident by a Los Angeles citizen portrayed an anomaly within the Los Angeles Police Department or did it reveal a more insidious problem in Los Angeles and perhaps elsewhere—that question is on all of our minds.

Los Angeles District Attorney Ira Reiner is now vigorously investigating this incident. Parallel with the ongoing local investigation and prosecution, efforts of the Department of Justice are being carried out by the Civil Rights Division, the U.S. attorney's office in Los Angeles, and the Los Angeles FBI office where this incident is being reviewed in its totality. In order to place this specific investigation of the Department of Justice in broader perspective, I would like to briefly outline for you the civil rights program that we have in the FBI.

The FBI's responsibilities in civil rights matters address the actual or attempted curtailment of rights possessed by citizens and inhabitants of the United States under the Constitution and Federal laws. In carrying out this jurisdiction, the FBI places its highest priority on cases concerning police brutality, which comprise 50 percent of the civil rights inquiries that we initiate. In addition to these types of investigations, the FBI also investigates racial violence, involuntary servitude and slavery, criminal and civil violations of the Civil Rights Act of 1964, discrimination in housing, the Equal Credit Opportunity Act, the Voting Rights Act of 1965, and the Civil Rights of Institutionalized Persons Act.

In fiscal years 1988, 1989, and 1990, the FBI initiated 5,000 cases—plus the first 2 years and 4,800, approximately, in 1990 in the civil rights area. In conducting these—

Mr. CONYERS. Were those investigations?

Mr. BAKER. Yes, sir, those are investigations that we initiated. The exact numbers are 5,506, 5,156, and 4,803 civil rights cases in those years, sir.

In conducting these inquiries, the FBI interviewed thousands of victims and complainants. While the FBI initiates investigations received from any creditable source, investigations are commonly initiated upon information received from victims, civic leaders, and reports from various mass media. Investigations are conducted under guidelines established in cooperation with the Civil Rights Division of our Department of Justice. These guidelines require

that every case that appears to have any merit be timely and vigorously investigated.

The initial report of the investigation is prepared by the investigating special agent within 21 workdays from the date of receipt of the complaint, and it's submitted to FBI headquarters and the U.S. attorney's office. At the conclusion of an investigation, a copy of the report is subsequently forwarded without additional comment by the FBI headquarters to the Civil Rights Division of the Department of Justice.

Supplemental reports are often submitted in cases of a complex and substantial nature. At the conclusion of all investigation, the Civil Rights Division, in coordination with the U.S. attorney's office, issues a prosecutive opinion. To insure a uniform national prosecutive policy in civil rights cases, the final declination authority on each case rests with my colleague, the Assistant Attorney General of the Civil Rights Division. Whenever requested, the FBI conducts additional investigation to aid in his decisionmaking process.

To fulfill the 21-day investigation requirement of the Attorney General guidelines and to ensure that these violations are effectively and thoroughly investigated, the FBI provides training in civil rights matters to each new special agent attending our FBI academy. Periodically, we conduct a 1-week inservice training of special agents. The FBI also runs a 1-week inservice for our supervisory special agents who are responsible for supervision of FBI civil rights enforcement in our field divisions.

The FBI provides civil rights training to each law enforcement officer attending our National Academy via our field police training program.

Mr. EDWARDS. Mr. Baker, how much training do you provide local officers when they come to Quantico, how many hours?

Mr. BAKER. Sir, it's a 4-hour block in civil rights matters and an additional 4-hour block is provided in high-stress situations, which augments the civil rights training.

Mr. EDWARDS. A total of 8 hours?

Mr. BAKER. Correct, sir.

Mr. EDWARDS. Thank you.

Mr. BAKER. This training is afforded to approximately 1,000 State and local police agency executives annually at our academy at Quantico, VA. Approximately 108 members of the Los Angeles Police Department have received this training.

Finally, from October 1988 until January 31 of this year, the FBI conducted 256 civil rights training sessions in our field training program, totaling 855 hours of instruction afforded to 12,582 law enforcement officers.

In conclusion, Mr. Chairman, I would like to stress that the FBI is firmly committed to vigorous and aggressive enforcement of the Federal civil rights statutes. The FBI condemns acts of police brutality such as the recent incident in Los Angeles where Rodney King was victimized. Through training provided to law enforcement managers and aggressive and effective enforcement of the Federal civil rights statutes, it's believed that the FBI has had a positive impact in reducing such acts. The FBI is the lead Federal agency responsible for investigating incidents of police brutality

and racial violence. Although these investigations are often very difficult and consume massive amounts of time and resources, Director Sessions has asked me to advise you that the FBI will expend whatever resources are necessary to effectively investigate all allegations of civil rights violations.

I would like to add that, as an example of his personal commitment to the civil rights program, in this instance investigations of police brutality, the day after the arrest of Rodney King, Director Sessions discussed the FBI investigation with Assistant Attorney General Dunne and, subsequently that week, we met Mr. Dunne for further discussion and coordination of our efforts.

I've provided only a brief overview for you of our civil rights program and how it functions. I'll provide you more details, Mr. Chairman, at your request. I'm pleased to respond to any specific questions you or your colleagues may have.

Thank you.

Mr. EDWARDS. Thank you, Mr. Baker.

The subcommittee will proceed pursuant to House rules under the 5-minute rule. I recognize the gentleman from Illinois, the ranking Republican on this subcommittee, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I note civil rights prosecutions nationwide by year, compiled from annual Department of Justice statistics, and in 1990 there were 7,960 complaints received and 3,050 investigations. I take it a great number of the complaints were found to be without merit or beyond investigation, but cases presented to the grand jury or grand juries are only 46. So, out of 3,050 investigations, there are only 46 that you felt worth taking to a grand jury. Was that right, Mr. Dunne?

Mr. DUNNE. Mr. Hyde, in light of all of the circumstances, specifically the key being whether or not the Federal-State interest had been vindicated, yes, about 1.5 percent. It usually runs about 2 percent each year of the complaints we receive actually go to prosecution.

Mr. HYDE. I notice the same relative figures have obtained since 1981, give or take a few.

[The figures follow:]

CIVIL RIGHTS PROSECUTIONS NATIONWIDE BY YEAR (1981-1990)
 Compiled from annual Department of Justice statistics

<u>Year</u>	<u>Complaints Received</u>	<u>Investigations</u>	<u>Cases Presented to Grand Juries</u>	<u>Indict- ments</u>	<u>Infor- mations</u>	<u>Defendants (Police Officers)</u>	<u>Trials</u>	<u>Convictions/ Acquittals</u>	<u>Guilty Pleas</u>
1990	7,960	3,050	46	30	33	97(35)	14	17/3	51
1989	8,053	3,177	40	26	33	84(21)	23	23/10	68
1988	7,603	2,892	44	35	8	71(49)	30	21/26	50
1987	7,348	2,826	57	40	18	105(74)	24	17/17	36
1986	7,546	2,792	49	35	14	112(70)	34	55/20	41
1985	9,044	2,970	56	35	13	106(67)	30	41/21	36
1984	8,617	3,410	48	36	10	93(*)	29	40/*	33
1983	10,457	3,259	54	31	8	85(*)	21	28/*	23
1982	10,327	3,227	81	50	6	98(*)	43	27/*	25
1981	11,064	3,390	62	42	5	80(*)	32	31/*	18

(* indicates data unavailable)

Mr. HYDE. I just have one other comment. Recently the Los Angeles Police Department has been charged with using nunchukas—they're in martial arts, the chain with the two rods—to remove nonviolent participants in Operation Rescue functions and the abortion demonstrators. I understand there's a civil rights action alleging unconstitutional use of those devices.

Has your office investigated that?

Mr. DUNNE. Indeed, we have. We've given an enormous amount of examination, Congressman Hyde. The basic determinant in our conclusion that there was no basis for a Federal criminal civil rights violation is that the use of chukas sticks or nunchukas, or orcutt control devices, as they might be called on the west coast, is a technique and a device which is authorized and recommended under certain FBI training programs. So, that being the case, you could not prove a willful intention to do injury to a victim. That's why we thought that there was no jurisdiction to bring a criminal prosecution. We have been watching with interest the civil case, however, that the victims have brought for the use of that device.

Mr. HYDE. I'm told that there was a fractured arm using one of those?

Mr. DUNNE. Indeed, there was.

Mr. HYDE. You don't deem that excessive use of force?

Mr. DUNNE. Not in our judgment—it was not in the context and the use of the device and the events leading up to it, which I viewed twice very closely on the video. That was our conclusion, Mr. Hyde.

[Correspondence on this issue follows:]

SESSIONS

MAJORITY MEMBERS

JACK BROOKS, TEXAS, CHAIRMAN
 DON EDWARDS, CALIFORNIA
 JOHN COYNE, JR., MICHIGAN
 RONALD L. MAZZOLI, KENTUCKY
 WILLIAM J. HUGHES, NEW JERSEY
 BRIE STRAIN, OKLAHOMA
 PATRICK SCHROEDER, COLORADO
 GLENN R. HARTZ
 ST. FRANK, MASSACHUSETTS
 ALEX S. SCHAMMA, NEW YORK
 HOWARD F. PEGRAM, OHIO
 HOWARD L. BERMAN, CALIFORNIA
 RICK BOUCHER, VIRGINIA
 HUBERT D. STAGGERS, JR., WEST VIRGINIA
 JOHN BAYHART, TEXAS
 MEL LEVINE, CALIFORNIA
 GEORGE E. SANGAMSTER, ILLINOIS
 CRAIG A. WASHINGTON, TEXAS
 PETER HOAGLAND, NEBRASKA
 MICHAEL J. COFFERTI, OREGON
 JOHN F. BIRD, INDIANAPOLIS

ONE HUNDRED SECOND CONGRESS

Congress of the United States
 House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-0218

MINORITY MEMBERS

HAMILTON PIER, JR., NEW YORK
 CARLOS J. MOONHEAD, CALIFORNIA
 RICHARD J. HENRI, ILLINOIS
 JAMES BISHOP, MINNESOTA
 BILL MCCOLLUM, FLORIDA
 GEORGE W. GEESE, PENNSYLVANIA
 HOWARD COBLE, NORTH CAROLINA
 P. FRENCH BLAUGHTER, JR., VIRGINIA
 LARRY B. SMITH, TEXAS
 CRAIG T. JAMIE, FLORIDA
 TOM CAMPBELL, CALIFORNIA
 STEVEN SCHIFF, NEW MEXICO
 JIM RAMSTAD, MINNESOTA

MAJORITY-125-3981

MINORITY-125-4008

April 24, 1991

The Honorable William S. Sessions
 Director
 Federal Bureau of Investigation
 J. Edgar Hoover Building
 Washington, D.C. 20535

Dear Director Sessions:

In his testimony before the Subcommittee on March 20, 1991, Assistant Attorney General Dunne testified that "the use of chuka sticks or nun-chukas, or orcutt control devices, as they might be called on the West Coast, is a technique and a device which is authorized and recommended under certain FBI training programs."

Is this statement correct? Has the FBI recommended the use of nun-chukas (nun-chucks) or the use of pain compliance techniques with demonstrators in any of its training programs?

Thank you for your attention to this matter.

Sincerely,



Don Edwards
 Chairman
 Subcommittee on Civil and
 Constitutional Rights

DE:jdw



U.S. Department of Justice
Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535
May 21, 1991

Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear Mr. Chairman:

This is in response to your letter, dated April 24, 1991, concerning whether the FBI authorizes or recommends the use of nun-chukas, or chuka-sticks, in our training programs.

The FBI does not authorize or recommend the use of nun-chukas by Special Agents in either basic New Agent training or other specialized instruction including Special Weapons and Tactics (SWAT) training. New Agents are briefly shown the device, along with numerous other weapons and pain compliance devices, during defensive tactics training at the FBI Academy. The purpose is strictly to familiarize Agents with these weapons and other items they may encounter and have to defend against in the field. Special Agents are not trained to use nun-chukas. Further, no recommendations are being considered to incorporate training on the use of this technique into any of our training including our training programs that focus on state and local law enforcement programs.

Sincerely yours,

William S. Sessions
Director



U.S. Department of Justice

Civil Rights Division

COPY

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 18 1991

Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
Committee on the Judiciary
House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Dear Mr. Chairman:

I want to take this opportunity to elaborate on some testimony before your subcommittee regarding the FBI's authorization and/or use of nunchukas in its training programs. Director Sessions has been kind enough to provide me with a copy of his response to your inquiry about this issue, a response which states quite clearly that the FBI does not authorize or recommend the use of nunchukas by Special Agents.

My comments before your subcommittee on March 20th relayed my understanding that pain compliance techniques may be legitimate law enforcement procedures that can be used in certain circumstances to move individuals where needed and that nunchukas could be included in such efforts. This understanding was based on staff research in connection with our evaluation of numerous complaints pertaining to this issue. Information was obtained from a number of police department sources on pain compliance techniques which our attorneys then verified with FBI sources.

During the course of this inquiry, our lawyers received a demonstration of various pain compliance techniques by an instructor from the FBI's National Academy in Quantico. In response to a question about the use of nunchukas by some police agencies, the instructor explained that the use of such devices was frequently justified as a means of achieving some legitimate law enforcement objectives. These included allowing the police officer to keep a greater distance between himself and the arrestee during the application of force, thus defusing the possibility of a violent confrontation with the arrestee. In addition, an officer would expend less energy utilizing nunchukas than utilizing other methods of pain compliance and thus could continue in his or her law enforcement functions for a longer period of time. However, I am advised that the instructor did not imply that the use of nunchukas was specifically authorized, encouraged or approved by the FBI.

- 2 -

I, therefore, was in error when I stated to the subcommittee that the Bureau endorsed the use of nunchukas on passive demonstrators. I regret any confusion created by my testimony. Please understand, however, that I continue to believe that in evaluating the criminal culpability of individual officers whose conduct is alleged to be intentionally excessive, we must consider all relevant information including the use-of-force policies promulgated by local police agencies.

I look forward to continuing to work with you and the members of your subcommittee.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

MAJORITY MEMBERS

JACK BROOKS TEXAS, CHAIRMAN
 DON EDWARDS CALIFORNIA
 JOHN COYNE JR. MICHIGAN
 RONALD I. MALCOLM KENTUCKY
 WELLS W. HUGHES NEW JERSEY
 BILL SYKES DELAWARE
 PATRICK SCHROEDER COLORADO
 DAN GLEESMAN KANSAS
 BARRY FRANK MASSACHUSETTS
 CHARLES E. SCHWABER NEW YORK
 EDWARD F. FISHMAN OHIO
 HOWARD L. BERMAN CALIFORNIA
 RICK BOUCHER VIRGINIA
 HARLEY D. STAGGERS JR. WEST VIRGINIA
 JOHN SPARTAN TEXAS
 MEL LEVINE CALIFORNIA
 GEORGE E. SANDMETER ILLINOIS
 CRAIG A. WASHINGTON TEXAS
 PETER HOAGLAND NEBRASKA
 MICHAEL J. ROFFESS OREGON
 JOHN F. NEED RHODE ISLAND

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

MINORITY MEMBERS

HAMILTON FISH JR. NEW YORK
 CARLOS J. MOOREHEAD CALIFORNIA
 MERVY J. HYDE ALABAMA
 J. JAMES STELLERMAN WISCONSIN
 BILL MCCOLLUM FLORIDA
 GEORGE W. GERALD PENNSYLVANIA
 HOWARD COLE NORTH CAROLINA
 D. FRENCH SLAGGATER JR. VIRGINIA
 LAMAR E. SMITH TEXAS
 CRAIG T. JAMES FLORIDA
 TOM CAMPBELL CALIFORNIA
 STEVEN SCHIFF NEW MEXICO
 JIM KASTNER MINNESOTA

MAJORITY - 225-2661
 MINORITY - 225-4900

April 8, 1991

Hon. John Dunne
 Assistant Attorney General
 Civil Rights Division
 10th and Pennsylvania Ave., N.W.
 Washington, D.C. 20530

Dear Mr. Dunne:

I appreciate your appearance before the Subcommittee on Civil and Constitutional Rights to testify on the role of the Civil Rights Division of the Department of Justice in combating police brutality on Wednesday, March 12, 1991.

During the course of the hearing, I raised a question as to why no criminal prosecution has been brought under Federal civil rights law for the use of "nunchakus" against Operation Rescue protestors during a sit-in in Los Angeles. I am not satisfied with your response, that since the use of this weapon is sanctioned under certain FBI training programs, there is insufficient evidence for the civil rights division to bring a criminal action against the officers at fault.

The FBI has informed me that agents are neither trained nor authorized to use weapons such as nunchakus and, in fact, the only exposure to such a weapon during the training procedure would be in a display of miscellaneous weapons that a new agent might encounter in the field.

In any event, it escapes me why the type of weapon used should be relevant to whether criminal liability should be found. In addition, I cannot believe that it is the policy of the Federal Bureau of Investigation to use a defensive weapon such as a nunchakus, the possession of which is a felony under California law, against nonviolent protesters in peaceful demonstrations.

The video of the beating of Rodney King shows police officers using billy clubs and a Taser gun. Both of these weapons are used routinely by police officers, yet (properly so) the Department of Justice is vigorously investigating the Rodney King case.

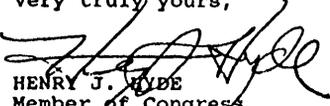
April 8, 1991
Page Two

Like the Rodney King video, the depiction of unnecessary violence and the use of so-called "pain compliance techniques" against Operation Rescue protestors in the video I have viewed is sickening.

I am concerned that the violations of the civil rights of Operation Rescue protesters by the Los Angeles Police Department and in other jurisdictions where such incidents have occurred has not been given the serious attention it deserves and urge a re-evaluation of these cases to determine whether federal action is warranted and would provide a deterrent to such conduct in the future.

I would appreciate your response on this matter.

Very truly yours,



HENRY J. HYDE
Member of Congress

HJH:kht



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 2, 1991

Honorable Henry J. Hyde
House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6219

Dear Congressman Hyde:

Thank you for your letter of April 8, 1991, asking further questions about an exchange between you and John Dunne during his testimony before the Subcommittee on Civil and Constitutional Rights on March 12, 1991.

We appreciate your concern about allegations of police abuse made by Operation Rescue demonstrators throughout the country, including Los Angeles. As you may know, the Civil Rights Division received numerous allegations of this kind and reviewed them carefully for appropriate action. In some instances, the FBI was requested to conduct an investigation, and the investigative reports were carefully reviewed and evaluated by the Criminal Section of the Civil Rights Division. Most of those investigative reports have now been reviewed and the decision has been made that prosecutable incidents of the federal criminal civil rights statutes have not been disclosed. This decision includes those allegations of abuse that arose when the Los Angeles Police Department used "nunchukas" against Operation Rescue demonstrators.

As you know, law enforcement officers are entitled to use the amount of force necessary to effect an arrest. A violation of the federal criminal civil rights statutes is established only when there is proof, beyond a reasonable doubt, that police officers specifically intended to use force that they knew at the time was excessive and unreasonable. The Department decided this standard was not met in our investigations into the allegations of the Operation Rescue demonstrators.

During the course of its investigation, the Civil Rights Division made special inquiry about the use of "pain compliance" techniques and learned that they are commonly taught in state police academies across the country as an appropriate way to induce a resisting arrestee to move from one point to another. Reasons given for the use of these techniques include: (1) greater control over the arrestee which enhances the safety of both the officer and the arrestee; (2) the need for fewer officers in a given situation, *i.e.*, only one officer may be needed to move the prisoner as opposed to two or more; and (3) less physical involvement and exertion by the officer which reduces the risk of injury to the officer.

The Civil Rights Division also made special inquiry about the Los Angeles Police Department's use of "nunchukas" to assist in the arrest of Operation Rescue demonstrators and learned that they were specifically authorized for a six month "field test" by the Los Angeles Police Department after it was determined that their use could be an effective alternative to other methods of force that had been previously used in making arrests during mass demonstrations. The Los Angeles Police Department instituted a nunchukas training course that focused on using the nunchukas to induce passive, resistant arrestees to submit to arrest, and individual officers received training before deploying the nunchukas in the field.

Thus our investigation revealed that the officers across the country who utilized pain compliance techniques, including nunchukas, against Operation Rescue demonstrators did so only after they had been taught and trained that such force was reasonable to utilize against individuals who were resistant to the lawful commands of a police officer. We accordingly decided that under such circumstances we could not establish that the officers, in using these methods, intended to employ force that they knew at the time was excessive or unreasonable.

The wisdom of using pain compliance measures is a separate issue and beyond the scope of the Civil Rights Division's mandate to determine whether prosecutable violations of the federal civil rights statutes occurred in these instances. In this regard, you may be interested to know that a civil lawsuit has been brought in Los Angeles by Operation Rescue demonstrators because of the Police Department's use of nunchukas during their arrests. We have been advised that the plaintiffs' request for an injunction has been denied and that the case is proceeding to trial on the merits.

In closing, let me assure you that the Civil Rights Division and other components of the Department have carefully reviewed the complaints of police abuse that have been made involving

- 3 -

Operation Rescue demonstrators. Numerous videotapes of the incidents have been reviewed by numerous individuals. We are always willing to receive any additional information that anyone may have about any particular incident of abuse. However, based on the vast amount of information that has been carefully considered by us, we believe that prosecutable incidents of the federal criminal civil rights statutes have not been disclosed.

Thank you again for advising us of your concerns about this very important issue.

Sincerely,



W. Lee Rawls
Assistant Attorney General

Mr. HYDE. Do big civil rights verdicts ever come in on cases that you have not taken to the grand jury?

Mr. DUNNE. Oh, indeed, they have. In fact, if I may, I think as part of our investigation—in fact, I only made the request yesterday of Director Sessions that he examine into the 1983 civil cases, the section 1983 civil cases which victims have brought against the police department in Los Angeles to see if there is, indeed, any pattern there. But, we do watch them with great interest.

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

Mr. EDWARDS. The gentleman from Texas, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman. Before I use my 5 minutes under the rules, would it be in order and appropriate at this time to make an opening statement?

Mr. EDWARDS. Of course.

Mr. WASHINGTON. OK. Good afternoon, Mr. Dunne. It's good to see you again.

I think before I ask several questions I need to put a few things in perspective, so that you'll understand a little bit more about me and where I'm coming from or how I'm thinking. I'm happy to see you here today, although I certainly regret, as we all do, the circumstances that bring us here together.

Most of the time I'm proud of being from Texas. In this area, of course, there's good reason why I'm not proud of being from Texas. You have demonstrated with statistics that Texas has the dishonorable distinction of leading the Nation in the number of complaints at least of police misconduct. I am also from Houston. Your history and your memory will serve you that it was not in the too distant past that Houston had the dishonorable distinction of leading the Nation, and perhaps the world, in police misconduct, complaints, and litigation.

I graduated from law school in June 1969. I took at that time what probably would have been a career assignment for me as assistant dean and assistant professor at the law school from which I had just graduated. I looked forward as many of us do, to graduating from law school and not really sure about which way they wish to go in life. I don't know what I was paid, probably \$8,000. By today's standards, it wasn't a large sum of money, but it was an honor for me, as you might imagine, being the distinguished lawyer that you are, to be called upon, invited to become a member of the staff, especially at such a young age, which I accepted.

Except for an incident that occurred in January 1970, some 3 to 4 months after I had taken this position at Texas Southern University's law school, I probably would still be there. I perhaps would have retired by now. An incident involving police misconduct changed my life. In no small part, it's as much responsible for my being here as a Member of Congress today as any other thing that I can think of.

In January 1970, a small community, a bedroom community to the city of Houston, in which I had grown up, called Galena Park, had an incident in which a high speed chase had occurred with some Galena Park officers who were assisted by some Houston police officers that led to the ultimate arrest of two young men. Just by leave of the grace of God, the providence of God, a certain

coincidence, I had attended high school with both of these young men's older brothers and sisters.

I got up and read the paper this particular Saturday morning in January to learn that one of these young men was dead on arrival at the local county-sponsored hospital. The report in the newspaper from the police department indicated that the young man had injured himself while running from the police attempting to jump over a chain link fence.

Because I happened to have known the family of these two young men, I involved myself in something that was not my business as an assistant professor and assistant dean of the law school. As a matter of fact, I lost my job because of it. But, I went out to the community and I took affidavits because the district attorney had indicated that, based upon the hue and cry from the community, he was going to present the case to the grand jury Monday morning. You and I both know what would have been presented to the grand jury Monday morning, not prejudging them, but based upon what I know in light of history, most likely was a police account. Parenthetically, I think we both can agree as men of good will that, had there been no video tape of the incident in California that precipitated all of us being together here, I doubt seriously we would be having this meeting. Close the parentheses and go back to this particular situation.

I took affidavits from all the people who had seen these young men over the course of going to a social function of some sort up until the time they dropped their girl friends off, and I traced their steps from house to house as they were being chased by the police with the people being awakened by the dogs barking. I won't burden you with the details of all of it, but it was clearly shown that they were arrested. They were not injured. They were taken to the police station. Several Houston police officers, when called before the grand jury, finally gave the straight story of it.

They had been stripped. They had been made to stand against a wall spread eagle, as we call it, with their hands against the wall while they were kicked repeatedly in the stomach until the attending physician and the person who performed the autopsy said that the liver and spleen of the one who died had been so badly damaged inside his body that it was found all over his abdominal cavity. That, to my knowledge, was the first time in Houston, TX, that a police officer had ever been indicted for killing a person.

It doesn't matter to me whether the person is black or white, and I don't think it matters to you; I'm certain that it doesn't matter to you because those of us who love the law know that at the bottom there, but for the grace of God, go I. The person who does not respect our law enough to respect the uniform and trust that we give him or her does a disservice not only to the people who have to stand the administration of the beating that they give, but they do a disservice to all of us.

That incident changed my life. I went on to try many police misconduct cases under section 1983 of the civil statutes, as you know. Long before *Monell v. New York* was the law, I believe then, as I do now, that if you don't hold accountable those who are in a superior position to the person, if you don't make them toe the line to a standard of conduct that makes it clear and unequivocal that

never, ever, ever—black, white, brown, old or young, any other color, any other circumstance, rich or poor—will we in this country, which is a country of laws, tolerate a police officer, black beating a black, white beating a black, woman beating a woman—we've had incidents, as you very well know, General, in Houston where police officers found it necessary to kill a woman, shooting a woman in a car because she was afraid. They were out of uniform and she didn't know that they were police officers.

The mentality that allows that to exist and affect other good, law-abiding, upstanding police officers who deserve our honor and praise, it seems to me something that you and I, this committee and this Congress, and the administration ought to be able to find a way to solve once and for all. It seems to me that we must find a way because, if there is no justice, then there is violence, and if there is no justice—I read in the paper where Chief Gates, and I'm not picking on him, somehow found it necessary to bring up Mr. King's criminal record. I'll get to my questions in a moment.

But, I believe, I fundamentally do believe, and I'm suspicious when someone, after having administered such a beating to an individual, finds it necessary to mention that criminal record. It doesn't make any difference what he had done. Even if he was in the commission of a crime at the moment, our law says that those people are not the executors of our law. We have courtrooms where we tell people, "Don't fight your battles on the street. Go to the courtroom and solve them in a civil way."

This is a nation of laws and not of men. It seems that I lose respect for a person—and I had no personal feelings one way or the other about Chief Gates before I read in the New York Times or the Wall Street Journal, I believe, that he found it necessary to say that maybe this will help Rodney King change his life; maybe he'll straighten his life up. That is the most despicable statement that can come from a person who has been sworn to uphold our laws, because he suggests with that remark that it's OK to beat an ex-con, and it's not. It's no more OK to beat an ex-con than it would be to beat a Member of Congress or the head of the Civil Rights Division of the U.S. Department of Justice, because we don't pay them—do we, Mr. Chairman—we don't pay them to beat up; we pay them to make arrests. We have a judicial system. That is where people are supposed to go. If Mr. Rodney King had committed some crime, then we expect, when we wear our badge and our gun, that you go to the courtroom.

I want you to know my background because I have some specific things that I want to talk about. I'm not here to preach or pray, but I want you to understand where I'm coming from. I have probably tried fifty 1983 cases never expecting to get a dime, because you may have noticed I'm black, and I thought it was my obligation to my community, not just for black people; I represented the Ku Klux Klan when their rights were being taken away. I believe in the Constitution.

I was a kid who had a chance to go to law school who probably wouldn't have had that chance but for the grace of God, and I took that responsibility then, as I do now, as a sacred responsibility. Any time anyone violates that sacred trust, I have a problem with it. I make no quarrel about that because it seems to me that, since

we have this opportunity, by virtue of this unfortunate incident, we ought to do more than pay lipservice to it.

I respect the work that you all are doing. I have tried cases, defended persons charged with crimes. I have prosecuted police misconduct cases. I know the difficulties and the nuances you have. The first thing you have to face is that, all other things being equal, unless you have something like a video tape, the jury is going to believe the police officer rather than the person, whether that person is black, white, a banker, or whomever. I've seen them pulled out on all kinds of cases.

You have an uphill battle to begin with, but it seems to me that we ought to find ways to tighten our laws. I'm not saying lower the standard. I don't think that there should be any less qualitative or quantitative evidence required to convict a person of this despicable act than there would be for robbery or murder or shoplifting or any other crime. I don't think we should change our standard, but it seems to me that people of good will, such as the members of this committee, you and I and other Members of Congress, it seems to me that we should be able not only to talk about this specific incident, but the fact that it happens a lot more often than any of us would like for it to happen. If it happens once, then that's too often.

It seems to me that we ought to fashion out of this tragedy an opportunity to strengthen our laws and to send a signal that ought to be sent. If Mayor Bradley doesn't have the guts to stand up and be the mayor of the city and dictate—if he doesn't have the authority, in my view, to fire the chief of police, then the people in that community ought to find them another mayor. If the chief of police doesn't have the authority, because of the way that the commission is set up, to be able to discipline—I know what would happen to the FBI if you had nine of your men, men and women, out on the street doing something like this because we have a system that is accountable.

There is no way anybody could make me believe that the 9 FBI officers, or 15 FBI officers, would be involved in something like this, but if they were, I know that from the President of the United States to the Director of the FBI, down to the men and women involved, there would be a clear message sent. If you don't send a clear message in this incident, it is going to happen again. It will happen tonight somewhere in America; it will happen tomorrow somewhere in America. Unless we stop it both by strengthening the procedure by which our criminal laws are enforced and by making, in my judgment, perhaps cities liable, so that the people in the community can hold the mayor accountable, because if there is no criminal remedy, there at least ought to be a civil remedy.

In answer I think to Mr. Hyde's question, most of the cases that I tried were ones where there wasn't enough evidence to get a criminal conviction, but there was enough to convince a jury that the person's civil rights had been violated and resulted in a judgment under 1983. I'll cite two examples and then I'll quit.

In a closing argument in one case, a lawyer who was representing the person on the other side cried during the closing argument because I believe that lawyers love the law, and certainly he had a responsibility to represent his client, but he certainly knew that

our law, the law that we love so much, the Constitution that we hold so dearly, was being trampled upon by this individual who was hiding behind the shield and the badge that we gave him.

In another instance where a person had been killed who was shot six times in the back while "attempting to attack the officer," going down a set of steps, by the way, the judge, a U.S. district judge in the Southern District of Texas cried when the jury brought in a verdict finding that police officer liable. A person will never collect a dime in damages for the loss of their son.

But, it seems to me we as the Congress, with your help and with your leadership, ought to send a clear message. We love our police officers. We respect the work that they do, but we hold them accountable. We don't hire them to beat people. We don't hire them to determine what the punishment ought to be. We hire them to make arrests, to ferret out crime, and to take people to jail where they ought to be taken.

Any time any police officer does this, it is not only the duty of those who are standing around, but those who learn of it to go and tell. That's the way you stop them. Somebody has to be accountable, not just the ones who hold the night sticks and beat people, but it seems to me that every police officer who was sworn to uphold the law—you can't make me believe that if they had seen Rodney King or someone else committing a felony in their presence—they have a sworn duty to stop a felony in progress. They witnessed a felony in progress.

The last thing I want to say is I didn't go to law school all those years to have myself called a "gorilla in the mist." I think that's the most despicable thing that I've heard in a long, long time. I thought that California was different from Houston, TX. I'm sad to find out that it isn't.

Now let me ask you just a couple of questions. It has been my experience—and I don't know if you have the statistics to bear this out or not, but if you don't, there's one thing I'd like you to look at. There's obviously no justification or excuse on my part for the conduct of these officers.

Over the course of these 20 years that I've indicated to you I have been involved in this kind of litigation, it has come to my attention that the most egregious conduct most of the time has occurred after a high speed chase or after an incident of resisting arrest, when the juices start to flow, when the blood pressure goes up, when cars are driving 100 miles an hour, or whatever.

Randall Webster, you will recall, was an incident in Houston about which a movie was made, where a thrown-down gun was thrown down after a high speed chase and the young man, who happened to have been white, although that's of no moment, was shot in the head by the police officer after a high speed chase.

The incident that brought me out of teaching at the law school of Texas Southern University into where I ultimately end up sitting before you today was a high speed chase. I'm not saying that there is something unique about them, but I'm saying that they're something that we as persons who are interested in stopping this despicable kind of conduct should take a look at.

My first question is: Do you have any information that bears up that? If you do, it seems to me that there are some specific ways in

which we can get in and counsel these officers, perhaps require, for instance, that after the stop is made after a high speed chase, that other fresh officers, if you will, who have not been involved in the chase will be the ones who will come in and take over at the scene.

Mr. DUNNE. May I share this, Mr. Chairman, with Mr. Baker? I think he has indicated he has a response.

Mr. WASHINGTON. Please do.

Mr. BAKER. Congressman, your personal observations are well heeded by this table. You're correct in the fact that the high risk situations do get the adrenalin going in the law enforcement officer, and our behavioral science unit at our FBI Academy has studied those very instances you referred to where the officer is engaged in an arrest situation at either high speed or high risk due to an armed confrontation. That does create an opportunity for that adrenalin, and, therefore, it's more important than ever to have the discipline and control of the officers.

That, too, is an area—when the chairman asked about the type of training we provide to the National Academy—and, by the way, those men and women are the current and future leaders of the various police agencies around the United States. That is why, in addition to the civil rights segment, we include this segment on stress management and crisis management.

Mr. WASHINGTON. I have another question. Perhaps you can't answer it now. Would you mull around the possibility that we need to impose a uniform standard on law enforcement officers in general that would include some specific language in the oath that they take when they become police officers, not only that they would uphold the Constitution of the United States in that intellectual concept, but make specific reference to the fact that in upholding that they are not to violate the rights or the civil liberties of any citizen who comes under their jurisdiction?

Mr. DUNNE. Before I could recommend the endorsement of that idea, Congressman Washington, I'd actually like to get some more facts and see if, indeed, the results of our review would indicate that that would be appropriate. But, I think that probably the proper place for that decision to be made is at the local level.

For example, you made reference to your own home city of Houston. You had a very bad situation there in the police department, and the folks in Houston recognize that something had to be done. They did a lot of things. In fact, the State legislature passed a statute specifically protecting citizens' rights against abuse by law enforcement people. The district attorney's office in Harris County set up new procedures, and under new leadership for the police department, there was almost a complete turnaround.

I think that the response to some of these problems, whatever their dimension may be, should begin locally. However, certainly, sir, it will be one of the things we would consider as our review continues and whatever the evidence reveals.

Mr. WASHINGTON. Thank you, Mr. Dunne. I was the author of that legislation in the Texas legislature.

[Laughter.]

Mr. WASHINGTON. One other thing I think that has helped us in Houston—I would not here suggest that we do not have a problem in Houston, but I think it has been lessened. What would you think

if the Justice Department had enforcement authority under 42 United States Code, section 1983, in those cases where there was a pattern or practice, for instance, or in those cases where a private litigant was unable to go and hire a lawyer because the nature of the damages was minimal, or something like that? Since the Justice Department is the law enforcement authority and the lawyer for all us, what would you think about the Justice Department going in in those kinds of cases and prosecuting on the civil side?

Mr. DUNNE. On three separate occasions, Mr. Washington, this Congress has received that proposal and has rejected it: 1957, when the first Civil Rights Act was passed and amendments were being considered in 1959, and in 1964, when the legendary Civil Rights Act was under consideration, Attorney General Robert Kennedy came before—probably it was this committee—suggesting that that was an inappropriate power for the Department of Justice. Subsequent thereto, when Assistant Attorney General Drew Days, on behalf of the U.S. Government, sought to obtain similar relief in the city of Philadelphia when there were reports of rampant improprieties, we were thrown out of court. The Third Circuit clearly said: You folks have no authority; Congress has chosen not to give it to you. If, indeed, they want you to have it, then let them decide whether the Department should have it.

That's been the history of it. There has been interest in it, but your colleagues have deemed it inappropriate.

Mr. WASHINGTON. Thank you, Mr. Dunne. Thank you, Mr. Baker. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Washington.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Gentlemen, it's good to have you all with us.

Mr. Chairman, I pretty well stated my views on this matter at the outset. I won't reiterate those. I'll have a couple of questions, if I may.

Mr. Baker, in response to the chairman's question concerning the number of hours allotted to civil rights in your training program at the center in Quantico, you indicated that there were 4 hours devoted to civil rights, but an additional 4 hours on the stress situation, which I guess is closely related to civil rights. What's the total number of hours in the entire program?

Mr. BAKER. For our special agents, that block is 4 hours for civil rights. For all law enforcement officers who attend the FBI National Academy, they receive 4 hours of required instruction in civil rights. Two hours are provided by FBI agents trained in our civil rights unit, and the remaining 2 hours are provided by our Assistant Attorney General and his staff. Their instruction concentrates on prosecutive guidelines, specifically that are used in police brutality cases.

In the past 5 years, over 5,000 law enforcement officers—executives, mind you—have received this type of instruction from the two of us in collaboration.

Mr. COBLE. During the training period, of which 8 hours is set aside for this purpose, what's the total block? I mean, do they come there for a 2 weeks' stint or a 5 weeks' stint?

Mr. BAKER. Sir, that's a 12-week instructional course in the total ramifications of police leadership, law enforcement leadership.

Mr. COBLE. OK. Mr. Dunne, what role, if any, does the Community Relations Service of the Department of Justice—and I'm told that's the group that may go to these different local areas to mediate, to hopefully relax anxieties and tensions surrounding civil rights disturbances—what role, if any, has this service played in attempting to reduce tensions in the Los Angeles area, Mr. Dunne, generally and specifically as to this matter, if anything at all has been done?

Mr. DUNNE. To my knowledge, Mr. Coble, CRS, Community Relations Service, under Ms. Hughes, has not been involved with the events in Los Angeles since the occurrence 2 weeks ago.

[Information on the CRS' involvement in Los Angeles appears in the appendix.]

Mr. DUNNE. Let's take a hypothetical. If, indeed—and I must credit Mr. King for his observation when he was asked, did he think that this was racially motivated, he said, "I don't want to pass any question because I don't want to cause any problem in the community"—if, indeed, some problem had arisen as a result of this incident, and community tensions heightened and there was a prospect of a confrontation, then the Community Relations Service would appropriately move in as it had in many other events, quite successfully, across the country.

But, I'm not familiar with their record previous to this event. I am familiar with their record generally around the country, which is admirable, but I'm not just certain with regard to Los Angeles.

Mr. COBLE. OK. Thank you, sir. Thank you, gentlemen. Thank you, Mr. Chairman.

Mr. EDWARDS. That was a good question because this subcommittee has jurisdiction over the Community Relations Service, and we'll have them in here on these kinds of situations. They work in the inner cities all over the United States.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I welcome you here, gentlemen. I have a few questions. I'm going to waive my opening statement at this point.

The thing that we want to get to is the nature of our agreement in terms of how important it is for the Federal Government to bring its presence into this evil phenomenon of police brutality. Our meeting with you and the Attorney General I think was a signal in that regard. I'd like to have you reiterate what the nature of the agreement is and how we expect that you would operate under that agreement.

Mr. DUNNE. As was discussed and agreed upon at our meeting—and may I say how much the Justice Department appreciates the continued working relationship, expressed as recently as this morning in communication with your office, Congressman Conyers—we have agreed that we will review the approximately 15,000 cases which have been presented to the Civil Rights Division with regard to police misconduct over the past 6 years, and we will attempt to identify first, is there some disproportionate repeating of these occurrences in a given jurisdictional area over which a particular law

enforcement agency is involved? This study will be nationwide, naturally including the city of Los Angeles.

Also, once having identified those incidents, we will attempt to determine whether there is some kind of pattern with regard to the incidents which have been reported. As I mentioned earlier, only in the last day I have requested of Director Sessions that his people review the files in the 1983 cases which were matters which had not been subject of criminal—possibly not the subject of initial criminal investigation.

Mr. CONYERS. Could you just amplify on that for the record, that you're adding this class of civil cases into your investigation?

Mr. DUNNE. Yes, we will, to enhance—hopefully; whatever it shows—enhance our understanding and better feeling for the Los Angeles community. Once having acquired these statistics, if they permit us to target a particular jurisdiction where a law enforcement agency has a significantly high number of complaints, then the Attorney General had indicated he would talk to the Office of Justice Program, particularly the National Institute of Justice. They will attempt to analyze the activities of the particular department with regard to what are their methods for reviewing complaints of this sort; what is their record with regard to taking action within the Department; and what, if you will, sensitivity training, or the type of training which was outlined by Mr. Baker, is part of their local training programs. That, I sense, was pretty much the basic agreement.

Mr. CONYERS. Now that is a historic agreement that has never been undertaken before by the Department of Justice in the area of police brutality and 241 and 242 violations. Is that correct?

Mr. DUNNE. Well, we have analyzed every single one of those cases in the past, but not with a geographical focus. That's the uniqueness of this undertaking. Believe me, just because we closed out thousands of cases without prosecution, no one should be left with the idea that they've been given short shrift. They have been examined thoroughly, outlined as Mr. Baker set forth.

We have never tried to localize or identify pattern or practices of given law enforcement agencies. That's the historic uniqueness of this effort.

Mr. CONYERS. And we're adding the General Accounting Office, the investigative arm of the Congress in other particular studies. So, in addition to these hearings and in addition to your systemic investigations, and in addition to the institute within DOJ, we have GAO as well conducting a more particularized investigation.

I would like to refer you to the hearings that we conducted in another subcommittee in which Maxine Waters was a witness and perhaps other witnesses that will be before this panel testified about Los Angeles police brutality, and the present police chief was still then the police chief, in which many of the witnesses came to the conclusion that there was, indeed, a systemic condition of violence and abuse that was condoned within the police department. I'd like to make sure that that material is taken into full account because it could have been—it sounds like a hearing that could have happened in 1990 as easily as it did in 1980.

Can you assure us that you will review the findings of that subcommittee?

Mr. DUNNE. Certainly, in the spirit which has pervaded our relationship in the last 2 weeks, we would certainly be willing to examine any relevant evidence. However, I would not want to suggest to you that we are going to second-guess or reevaluate evidence which has previously been submitted to your committee. I don't want to get distracted here, Mr. Conyers. We are, as you said, undertaking a unique investigation. I don't want to retread what had previously been presented to you. I think we have a unique service to provide by undertaking this study. Frankly, I'd like to have us concentrate our efforts on what was the agreed agenda, but happily we welcome any enlightenment, but I would not want to say to you that we will come forward and evaluate or come up with some sort of judgment as to evidence which you had previously had under consideration.

Mr. CONYERS. Well, we're going back for 6 years to the limitations period in the agreement that we've reached; is that correct?

Mr. DUNNE. We're going back 6 years; yes, sir.

Mr. CONYERS. All right. Two more questions, Mr. Chairman, if I may. One is a question that has been raised here: The year 1990, complaints received in terms of civil rights prosecutions, 7,960; Federal investigations, 3,050; cases presented to the grand jury, 46. Now in between the 7,000 complaints and the 3,000 investigations there's 50 percent difference, and then between the investigations and the cases presented to the grand jury we get 46 presented, and 3,004 investigations are question marked. What happened to them? This is the same comparable ratio of figures from 1981 to 1990, as provided by your Department. Can you explain where those 3,004 cases went, and will that be part of the study that we make?

Mr. DUNNE. With the help of Mr. Baker, I'll provide you the answer.

Mr. CONYERS. Well, it becomes critical, doesn't it?

Mr. DUNNE. Indeed, it does. Perhaps you would like to hear his response; then I can amplify it.

Mr. CONYERS. All right.

Mr. BAKER. Mr. Congressman, the numbers in and of themselves do not accurately describe the intensity of our program, as Mr. Dunne briefly addressed in his opening remarks. Of those complaints received, many of them on their surface have no statutory merit for further investigation. The range of arrests in this country, the number of arrests is enormous, as we all know. And, then, the number of these complaints received is an infinitesimal fraction of that overall number of arrests. So, if you really need to put it into perspective, there are hundreds of thousands of arrests made without that initial complaint to start this chart.

But, to focus on your concern, those investigations that are initiated are conducted after we look at the basic complaint, contact the internal affairs department in many cases, and determine whether an investigation is merited. From that, I think it might be time—they range from complaints that the handcuffs were too tight to absolute legitimate violations that demand our backstopping review.

I think, after that, I would turn it over to Mr. Dunne to explain the convictions and how we arrive at those cases presented to the grand jury.

Mr. DUNNE. First of all, Mr. Conyers, the 3,050 cases from 1990 will be part of the study.

Mr. CONYERS. OK.

Mr. DUNNE. When we attempt to evaluate whether there should be a prosecution, the first touchstone is, has there been an adequate response at the State or local level in terms of penalizing the events which we have already evaluated with regard to severity? In most cases we find that there has been.

As a backstop, we get the fast balls and the wild pitches, those where, perhaps to carry the analogy a little further, perhaps the local people drop the ball. There was inadequate prosecution. In addition to that, we're weighing in the fact, Is there corroboration; what's the credibility of the various witnesses? All of those factors come into play, and that's why we have so very few of these actual indictments and prosecutions. They are extremely difficult cases to prove, as Mr. Washington pointed out.

Mr. EDWARDS. Will the gentleman yield to me?

Mr. CONYERS. Of course.

Mr. DUNNE. Really, they are extremely difficult to prove.

Mr. EDWARDS. I think we understand the difficulty of these cases, Mr. Dunne, but the personnel of the entire Department of Justice since 1981 to 1990 increased 55 percent, but the personnel responsible for handling these particular cases stayed approximately the same since 1981, at about a little over 40 people. What does that indicate? Does that indicate lack of interest?

Mr. DUNNE. Oh, no. No, not—

Mr. EDWARDS. Then why wouldn't the personnel be larger?

Mr. DUNNE. Pardon me?

Mr. EDWARDS. Why wouldn't the personnel have increased rather than staying almost exactly the same for nearly 10 years?

Mr. DUNNE. Because we have very studiously concentrated on working out an effective relationship with the U.S. attorneys in their 94 districts across the country. We now have greater involvement, Mr. Chairman, by the U.S. attorney's office in not only the investigation, but the presentation to the grand jury and prosecution of these cases. So that we have, much to the credit of the criminal section, we have done a lot more with the same personnel.

The other piece, if I may, is that in the recent 4 or 5 years the phenomenon of hate crimes has grown so significantly, demanding an increased amount of our time, that that has involved much of our personnel. But, I think the key to why we've been able to do what we have with the same number of people is that we have an excellent working relationship with the U.S. attorneys.

Mr. EDWARDS. Well, Mr. Dunne, in Texas, for example, you have four U.S. attorney's offices; only one has a designated civil rights division. According to the Dallas Morning News, that division has been reduced from three attorneys 5 years ago down to one now.

Mr. DUNNE. What division is that?

Mr. EDWARDS. The patterns seems to run through the Department on these civil rights cases.

Mr. DUNNE. I missed—the personnel in which unit has been reduced from three to one?

Mr. EDWARDS. In the four districts in Texas, only one has a civil rights division. And, according to the Dallas Morning News, that

division has been reduced from three attorneys 5 years ago to one today, and that attorney is now devoted just exclusively to drug cases. What is that?

Mr. DUNNE. I'm sorry that I cannot account for what was done—

Mr. EDWARDS. You can provide that to us because—

Mr. DUNNE. Yes, I would.

Mr. EDWARDS [continuing]. It's something that just won't go away—both the problem of the number of attorneys in 1981 and 1990 and the Texas situation.

Forgive me, Mr. Conyers.

Mr. CONYERS. No, that's very important because Texas is the place that has more police brutality than any place in the country.

Mr. DUNNE. Let me clarify that for the record, if I may, and I'm not defending—

Mr. EDWARDS. Yes, we'd appreciate that.

Mr. DUNNE. The 383 complaints, or whatever gave Mr. Washington the embarrassing honor of having a State at the top of the hit parade, the large majority of those were complaints against corrections officers. They were not against police. That's why I think our study is going to be so much more productive. We're going to refine those figures. We're going to say, oh, now wait a minute, these are folks acting under color of authority, color of law; were they police on the beat or were they, indeed, representing a serious problem which came to light, particularly as a result of litigation brought by our Department with regard to abuse of prisoners in the corrections system in Texas?

Before you get unduly embarrassed or you're talking about Texas having the highest incidence of police brutality, we're not sure that that's really the proper conclusion.

Mr. CONYERS. I'm as concerned about a person that's subjected to brutality in a prison as a person outside of a prison.

Mr. DUNNE. We share that. We share that.

Mr. CONYERS. That's a distinction without a difference.

Finally, my purpose here, as with our meeting, is to inspire the Department of Justice to make a Federal case out of the phenomenon of police brutality. For the first time in my tenure in the Congress, I think we may be on the way toward it.

The Rodney King case is different from all the other cases I've ever encountered in that we have irrefutable evidence that makes all the defenses and all the alibis that frequently cloud and make a case difficult to prosecute all gone. Then, in addition, we get an audio tape that brings another set of shock waves across the country—to actually hear the police officers discussing the heinous acts that have been committed, which make the case—they tell you that they do that on some sort of intermittent basis and that this goes on; this isn't anything new; and how long it's been since they've done this kind of act; and what it feels like; and the joking that goes on. This is an incredible additional revelation to the actual photographs.

So, my purpose in this hearing, in our meetings, in the subsequent hearings when we go to Los Angeles is to get the Federal Government to finally act on these cases in a meaningful, timely

fashion because we know frequently it won't happen any other way.

I just got a call from a police woman in Elkhart, IN, who was fired yesterday for reporting a police brutality case. Guess what? Not only was she fired, but there's no lawyer in Elkhart that will take the case. In many of these small cities, nobody wants the grief of going up against the local law enforcement. We want to add that case of this police woman and others like her to our investigation roster.

But, only last month, Mr. Chairman, we had to call the Director of the FBI before this same subcommittee because they were out in the community, in Arab communities all over America, calling in legitimate citizens, businessmen, leaders in the community, inquiring who's likely to be a terrorist; who might be likely to use bombs or explosives? We had to call in the FBI and rein them in. Now why can't we get that same enthusiasm in police brutality cases? Why don't we get our men out there? There's no law preventing us from really getting the FBI presence out. Community Relations sounds like it's asleep at the switch out there. I don't really know how large they are.

But, the whole question of getting an affirmative response—I have to say that I feel like we're doing heavy lifting here. We meet with you; we get you to do something; we get a commitment; we move out; you tell us how difficult it is; you tell us the law is inadequate; you remind us how Congress has rejected previous attempts to liberalize—but the real question is that we need affirmative action by our Federal law enforcement in which they use the same enthusiasm legally to not just go out and ask people in Los Angeles about police brutality. There are police brutality victims that are eager to come forward. Many of them have never known that there was a Federal remedy; they don't know about 241 or 1983. There's no way they can know that.

It seems to me that, once I can get the Attorney General and the Director of the FBI, and you as head of the Civil Rights Division, to say, in addition to these studies, that we're going out there and that you make recommendations to us—it's not enough to tell this member that we turned down the remedy that would improve the law; we need you to come up and testify in favor affirmatively of those changes, instead of leaving it to us. We need your affirmative help.

Like the way the FBI went into Arab communities in Detroit and all across the country, we need you to do that, for people who have been beaten, who have sustained injury, and who need to see the Federal presence there.

Mr. DUNNE. I think Mr. Baker has a full response to that.

Mr. BAKER. Mr. Chairman, in regard, briefly, to the Arab interviews, we have opened 63 civil rights investigations where Arab-Americans have been victimized as a result of ignorant backlash or criminal motive. That was the other side, as we have discussed, with those contacts.

We have not been negligent and take heed, with your encouragement, to do more in the area of community liaison, but Director Sessions has ordered each of our special agents in charge to get in the community and make contact with the Urban League, NOBLE,

the Community Relations Service of DOJ, the National Institute Against Prejudice and Violence, and the Southern Poverty Law Center.

Mr. CONYERS. That's what I want to hear. We didn't get into that in our meeting.

Mr. BAKER. I realize that.

Mr. CONYERS. This is very important information going out across these airwaves to the citizens not only in Los Angeles, but in America.

Mr. BAKER. While you did mention that you asked for the Director to come, I happened to be with him when that was—he was looking forward eagerly to appearing before the Black Caucus and appreciated that opportunity.

Mr. EDWARDS. We're going to have to move along. We have two more very valuable witnesses and I'm going to forgo my questions. However, the gentleman from Oregon, Mr. Kopetski.

Mr. KOPETSKI. Mr. Chairman, thank you, but in the interest of time, I'm going to yield my time back.

Mr. EDWARDS. Well, we certainly didn't mean to cut you off.

Although not a member of the subcommittee, we welcome the gentlewoman from California, Ms. Waters. We are glad to have you here, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I really do appreciate the opportunity to sit in with you at this hearing. I am from Los Angeles. I've spent many years on this question of police abuse.

The testimony that Congressman Conyers refers to was taken almost 10 years ago, and it was at that time that I tried to encourage the Los Angeles community to insist on Mr. Daryl Gates' firing or resignation. Many people were not willing to do that, felt intimidated, and some other kinds of things.

I want to find out, if I may, Mr. Chairman, a few things about what is being attempted in the agreement that has been made with the Department of Justice relative to this development, this investigation on pattern-of-abuse possibilities.

As I understand it—let me just ask you this: Has there been any conversation with Chief Daryl Gates in Los Angeles following the Rodney King incident with anyone from your office?

Mr. DUNNE. I do not know, but I think—

Ms. WATERS. Have you had any conversation with Mr. Gates?

Mr. DUNNE. I think it would be inappropriate—pardon me?

Ms. WATERS. Have you had any conversation with Mr. Daryl Gates, say 3 days after this incident—

Mr. DUNNE. None whatsoever, but I think I could not really divulge at this point any steps that we have taken as part of our investigation, but I can tell you I did not, and have not had, any discussions with Chief Gates whatsoever.

Ms. WATERS. Do you know if anyone in your office or Mr. Thornburgh had any conversation with Mr. Daryl Gates 3 days after the incident?

Mr. DUNNE. I have no idea whatsoever.

Ms. WATERS. Can you tell us whether or not the agreement which you fashioned after our meeting with Mr. Sessions to look

into these patterns, was an agreement that was discussed with Daryl Gates at all?

Mr. DUNNE. I have no idea whatsoever. The proposal was initiated by the Attorney General at the meeting with Mr. Conyers and Congressman Towns, and I had no prior discussion with the Attorney General on that.

Ms. WATERS. Was that proposal prepared prior to the meeting with members of the Congressional Black Caucus, Mr. Conyers in particular?

Mr. DUNNE. I have no idea. I have no idea whatsoever.

Ms. WATERS. So you don't know whether or not the proposal was developed then on the spot or whether or not it was prepared in advance of the meeting—

Mr. DUNNE. Well, it was a major commitment by the Attorney General. If you know Dick Thornburgh at all, he doesn't just throw out ideas. I'm sure it was very thoughtful and very deliberate. I think so far the indication is that it was a very sensible proposal, but it wasn't something he just pulled out of the air and said to our friend Congressman Conyers, "What do you think about it?" It was a solid proposal—

Ms. WATERS. I guess my bottom-line question is—and I'm going to ask it—

Mr. DUNNE. Pardon me?

Ms. WATERS [continuing]. Was the proposal developed in conjunction with any conversations or deliberations with Chief Daryl Gates at all?

Mr. DUNNE. I have no—

Ms. WATERS. Was he involved in—

Mr. DUNNE. I have no knowledge whatsoever, and I have no reason whatsoever to think so.

Ms. WATERS. Does anyone know? Can I go back and also ask you, despite the fact that we understand the statute of limitations, I suppose: Is there any reason why, other than that, why we have a 6-year timeframe for the investigations other than possible statute of limitations?

Mr. DUNNE. No, I don't know. I supposed there had to be some realistic limitation, and 5 or 6 years sounded like a sensible basis for a good sampling. I do not know what the basis of it otherwise would have been.

Ms. WATERS. Do you know whether or not the 6-year length of time excludes the period of time in Los Angeles when there were a number of serious allegations based on the chokehold that was administered by the Los Angeles Police Department?

Mr. DUNNE. I do not.

Ms. WATERS. Could you check into that, please? Is there some way you could take a look at that?

Mr. DUNNE. I would be pleased to.

Ms. WATERS. I, for one, Mr. Chairman, believe that that eliminates a number of complaints that took place prior to the 6-year period that you're identifying that will show a pattern of abuse that needs to be investigated in these investigations that you're moving forward with.

Mr. DUNNE. You should understand that one of the purposes of this study is not—is not—for the purpose of reopening cases which

heretofore have been closed. What we are trying to determine is, can we identify given geographic areas where there is an inordinately high incidence of these complaints and what is the nature of them, and what can we suggest as a response to them? We are not proposing reopening the prosecution of those matters.

Ms. WATERS. Mr. Chairman, I understand that very well. Let me just say that in a case such as Los Angeles, where we have been complaining for such a long period of time, where the cases are celebrated cases that you have been involved in, going back to the Ula Love killing, and after that with the chokeholds and the other kinds of things, the pronouncements of Chief Daryl Gates that are international in scope—I mean, everybody knows about them, all of these things.

A city council that's either intimidated or somehow feels that it does not have the oversight responsibility to do anything about Daryl Gates or the police department, a mayor who continuously says he does not have appointing power and he does not have the power to fire, a police commission that denies that it has the power, a civil servant who supposedly can only be fired under very, very narrow conditions—where you appear to have a police department that answers to no one, where the incidents over the years continue to pile up—what do you think is your responsibility, aside from what we have urged you to do in this case, what we have met with you to do?

If all oversight and law seems to break down and the police are absolutely in charge, people are getting killed, maimed, and beaten, what is the responsibility of the Justice Department and the United States of America when they see that kind of pattern?

Mr. DUNNE. Ms. Waters, I'm not qualified to comment on the series of items which you outlined, but I can respond to you that I—

Ms. WATERS. How long have you been in your position?

Mr. DUNNE. Just 12 months.

Ms. WATERS. Twelve months?

Mr. DUNNE. Yes, ma'am.

Ms. WATERS. So you don't know anything about what I'm talking about?

Mr. DUNNE. I know—I am familiar with some of those specifics. It's not my responsibility, particularly in light of the pending charges, to comment on those matters. That's not my responsibility. My responsibility is one that I think the Department has been faithful to, and that is to enforce the laws as they have been defined by the Congress, and that's what we have been doing. It is the purpose of this inquiry to see, indeed, if there is something in addition that should be done. But, I suggest quite clearly, and without any question, that we have been enforcing the laws that you have given us. I think we have been enforcing them in the spirit in which you gave them to us.

Mr. EDWARDS. The time of the gentlelady has expired.

Ms. WATERS. Mr. Chairman, may I just, if I may without imposing upon you, say that it just so happens that we have a group of young people who are visiting today from California, from an area that I represent where the police brutality complaints go on day-in and day-out, and my office receives these complaints. I have at-

tempted to get police hearings, other kinds of things there. They just happen to be visiting today, sitting in the front row behind the representatives from the Justice Department, and I know they're wondering, what, if anything, we can do to deal with the complaints. Every one of them sitting there can recite to you friends and relatives who have been beaten by the Los Angeles Police Department.

Mr. CONYERS. Let's get their statement before they leave.

Mr. EDWARDS. Yes.

Well, thank you very much. However, in parting, Mr. Dunne, I'm not satisfied with the statistics, and I wish you would report to us why for the last 10 years you haven't increased the size of the particular department handling these prosecutions and yet the Department of Justice has more than increased by 55 percent. There must be some reason for it.

We thank you very much. You've been very helpful.

Mr. DUNNE. Thank you very much, Mr. Chairman. I appreciate your kindness.

Mr. EDWARDS. The last two witnesses, who will also constitute a panel, are Mr. James Fyfe, professor of justice, American University, Washington, DC, and Paul Hoffman, of the ACLU of Southern California, Los Angeles.

[Witnesses sworn.]

Mr. EDWARDS. Professor Fyfe, we recognize you first. You may proceed.

STATEMENT OF JAMES FYFE, PROFESSOR OF CRIMINAL JUSTICE, AMERICAN UNIVERSITY, WASHINGTON, DC

Mr. FYFE. Thank you. It's a pleasure to be here again before this committee to discuss this important issue. I've prepared a written statement for the committee and I think it has been distributed. What I would like to do is just summarize it very quickly.

Mr. EDWARDS. Without objection, it will be made a part of the record in full.

Mr. FYFE. Thank you, sir.

I was a New York City police officer for 16 years. I guess I should tell you where I'm coming from, as did Mr. Washington. I teach at American University, where I have been for about 12 years. My primary interest is in law enforcement. I've consulted with Federal, State, and local law enforcement agencies, and I'm a member of the commission that accredits police departments around the country.

My involvement with the Los Angeles Police Department began about 10 years ago when the Justice Department funded the study of a program called Operation Rollout, which was a program of the Los Angeles County district attorney, who instituted it because he felt that some Los Angeles area police departments were not investigating police shootings fairly. We reported in our report of that study that the Los Angeles Police Department was actively trying to obstruct the district attorney's investigations of police shootings.

Since that time, I've frequently testified in civil rights litigation involving the police, usually on behalf of the police, but in southern California only on behalf of plaintiffs. I didn't come here to

smear the police department in Los Angeles, but I think that there are some weaknesses in that police system that must be addressed.

The police system in Los Angeles is unique among American cities. American cities' police departments, especially in Los Angeles, are based upon a military organizational model. In our system a military organizational model depends upon accountability to elected civilian authority. As we just saw in Desert Storm, for example, it's really imperative that President Bush have the authority to determine how far the generals can go and that he can dismiss them with a stroke of the pen when it's necessary.

Los Angeles is unique among American cities in that the mayor does not have the authority to dismiss the police chief with a stroke of a pen. In fact, there is no accountability in the Los Angeles Police Department. In Los Angeles, the police officers report to the chief, and the chief reports to no one. The way that system came about is interesting.

About 45 years ago, the Los Angeles Police Department and the city of Los Angeles were generally pretty corrupt places. A reform mayor appointed Chief Bill Parker, the famous and great reform chief of Los Angeles, to turn the police department around. To do it, he insulated the police chief from city hall, because city hall was a dirty place at the time.

Chief Parker did turn the police department around. He made it an excellent crime-fighting machine. Over the years, however, what we have seen is that the insulation of the police department from dirty politics has also insulated it from any political accountability, and it is, in fact, not accountable to the mayor at all. That's a situation that's not without precedent in American law enforcement agencies.

In 1924, J. Edgar Hoover took over the Bureau of Investigation, which at that time was a corrupt, incompetent, and very politicized organization. Director Hoover managed to gain insulation from political accountability and reform that agency and made it an excellent law enforcement agency. Over the years, however, we saw that the insulation of J. Edgar Hoover and the FBI from political accountability also insulated him from any reasonable accountability, and some of his agents began to engage in abuses.

That's what's occurring in Los Angeles now. The era when that could occur in the FBI has long since been ended. No Director of the FBI since Mr. Hoover has enjoyed lifetime tenure. As we just saw here, you gentlemen exercise considerable oversight over the FBI. No FBI Director can be as arbitrary as J. Edgar Hoover was alleged to have been in his later years.

That's not true in the Los Angeles Police Department where the chief is the boss and has no other boss. The evidence of this—I think it's made very plain in the Rodney King video tape, and other witnesses have and will talk about it, so I won't. But, I will say only about that, that I don't think that was an aberration. Over the last 10 years I have been involved in several civil rights actions involving the Los Angeles Police Department. I testified as an expert against them in several cases, and it's always been my conclusion that in Los Angeles getting caught at brutality is much worse than brutality itself.

It was said of J. Edgar Hoover in his later years that he lived by the credo: don't embarrass the Bureau. In my view, that seems to be the position of the current administration of the Los Angeles Police Department: Do it, but don't get caught, and don't embarrass us.

If you look officially at what the Los Angeles Police Department has done regarding the use of force, it's for a long time been at the cusp of acceptability. Those of us who were engaged in policing in other areas of the country can trace. In 1975, the Los Angeles Police Department became involved in a shootout with Symbionese Liberation Army, which was a very unsympathetic group, but it fired thousands of shots into their hideout, eventually set the place on fire, as I recall, with a tear gas bomb, and the place burned with six deaths.

Later in the 1970's and the early 1980's, the Los Angeles Police Department trained its officers in carotid control holds, what the police called pain compliance techniques, that they were at the same level as a wrist lock or an arm lock, the kind of technique that police officers use to get people to do what they want by temporarily inflicting pain that causes no lasting damage. No other police department, to my knowledge, has engaged in that. I recall a study that showed that over a 5-year period twice as many people died in Los Angeles after application of police chokeholds as died in the other 20 largest cities in the United States combined.

Last year I testified in a civil rights action *Berry v. Gates*, which involved the Los Angeles Police Department special investigation section. That's an elite unit that apparently received information about forthcoming crimes and followed a policy of waiting and watching suspects while they committed burglaries and armed robberies that they knew were going to happen, without advising the victims. They did this on the grounds that waiting until after a violent crime had been committed by these folks would lead to a more successful prosecution than grabbing them on the way to a scene in which they victimized people.

The civil rights action I testified in was one that has a lot of the characteristics of cases Mr. Washington raised. It involved a very unsympathetic plaintiff. The plaintiff was a bank robber who was suing the police. In that case, the bank robber was one of two, a female and a male, her companion, who was shot fatally.

In that case, the police department's reports indicate that the victim had sustained "multiple gunshot wounds to the chest and legs." That's what the board of police commissions was told. According to the coroner's report, 11 gunshot pellets hit the decedent in the arms and hands, none that could be traced to the front. Six hit the right side of his back; 1 hit the left side of his back; 13 his right buttock and thigh; 6 hit his left buttock and thigh; 2 hit the rear of his right leg; and 4 hit the soles of his feet and traveled through the soles of his shoes into his body.

The records in that case show that the 11 special investigation section officers involved in that shooting had been the subject of 28 suits in the prior 13 years. The shooting was found to have been justified.

The Operation Rollout Program I already mentioned. In that case, the former district attorney of Los Angeles County believed,

with good reason, that Los Angeles Police Department was obstructing his investigation of shootings by his police officers. More recently, I testified in *Lares v. Los Angeles*, the case in which Chief Gates was held personally liable. In that case—I was kind of disappointed in Mayor Bradley—Chief Gates approved conduct in a case which, in essence, there's 16 officers involved and all gave different accounts of the event; were shown to have obstructed or executed a search warrant improperly and to have assaulted people.

A second part of that case, incidentally, begins on Monday. Mr. Lares, Sr., sued the police department in a case that has been resolved. A case that comes out of the alleged assault of his daughter I understand is due to start trial Monday in the Federal district court of Los Angeles.

In that case, when the police department and Chief Gates personally suffered a \$170,000 verdict, Mayor Bradley issued a statement saying, in effect, that this was a deterrent to effective law enforcement, and it was not, because what happened out there was not effective law enforcement.

I brought a video tape in that I know won't be shown here, but that I will make available to the committee that shows the Los Angeles Police Department's use of nunchukas on antiabortion demonstrators. I'm not sympathetic to their point of view; however, I am involved in the case as a consultant because I think the police conduct in it was outrageous. This was a situation in which people were sitting in peacefully, and police used these nunchukas on their arms and wrists to move them. The video tape shows very graphically the breaking of an arm of a nonresisting demonstrator.

The police department in court papers has justified the use of these in part on an interesting basis. It says in some of its court papers that, "Normal crowd control techniques are not useful with the Operation Rescue demonstrators because so many of them are police officers who know what our normal techniques are." This, in part, is a special technique devised precisely for police officers.

About 10 years ago, I testified in a chokehold case involving a man who had been stopped for drunk driving. On two successive alcohol tests, his blood-alcohol content was .02 and .01, as against a level of .10, which is a presumptive level for drunk driving. The facts of the case are a little bit murky, but he alleges that a chokehold was applied to him and that he was thrown through a plate glass window. The police officer's version of that is somewhat different.

But, in that case I was given access to the summaries of civilian complaints against police officers that are presented to the Los Angeles Board of Police Commissioners by the police department for their review. I had about 2 years' worth of those and was given about 24 hours to review them; then had to return them to the city. I found that these reports were very hasty. They were incomplete. The generally accepted custom of the police is that complaints against officers should be considered in the context of the officer's whole career history. The career histories that were presented in these were presented in a very skewed fashion, so that a report might say, for example, that "Officer Jones has no prior complaints." On another report it might say that, "Officer Jones has no prior sustained complaints." Another report might say, "Of-

ficer Jones has no prior complaints of a similar nature." And another might say that, "Officer Jones has no prior sustained complaints of a similar nature." So, it seems to me that they were very skewed.

In those cases I was very surprised to see how frequently at that time Los Angeles Police Department employed the chokehold. To most police where I come from it was a foreign technique that was to be used only when you really had no other way to defend yourself. In Los Angeles it was used routinely against people who did such things as give the police officers a hard time, like traffic tickets, which was the case involving *Lyons v. Los Angeles*, the incident that went to the Supreme Court.

More recently, I testified in a case called *Melgar v. Klee*. There's probably no other case in my experience that better captures the attitude of the Los Angeles Police Department toward the use of force. Ronnie Melgar at the time of this incident was about a 19-year-old Hispanic. He came home from work, had had a few drinks on a hot night, had a visit from a friend who convinced him that they should go to a local construction site and steal some plywood. Ronnie admits all this. They went to the construction site. Someone saw them and called the police, but the police were backlogged and at first did not send a police car for a half hour or so.

When the police showed up, Ronnie took off. He subsequently sustained a bullet wound that, as I recall, went squarely into his back about 2 inches right at the spinal column and passed straight through the body and exited his chest about 2 inches to the right of the spinal column. The officer in the case said that he had fired a shot at Ronnie when Ronnie had turned on him with some sort of object in his hand. He had fired two shots at Ronnie. He had fired one at Ronnie while Ronnie was fleeing and apparently had turned on the officer with an object in his hand. The object turned out to have been a signal orange, an international orange plastic flashlight which apparently Ronnie dropped and proceeded to run another 30 yards or 35 yards and then was shot again by the officer who claimed that Ronnie was facing him. The problem with the officer's version of the account of the second shot was that the bullet apparently entered the back and exited the front.

The police chief in the case, Chief Gates, disciplined the officer by giving him an oral reprimand in this matter. The officer then appealed it during Chief Gates' absence. An assistant chief was the acting chief. The assistant chief wrote an interesting memo. Chief Gates' determination apparently had to go to the board of police commissioners for review. The board of police commissioners, as you know, is a board of civilian appointees of the mayor.

The assistant chief increased the officer's penalty to a 1-day suspension from the reprimand, but he did it not to increase the severity of the punishment, but to give the officer standing to appeal this finding, because the chief wrote that in his view the civilians on the board of police commissioners were not competent to adjudicate police shootings. The officer subsequently appealed the case.

The evidence that was introduced at his appeal consisted of several theories. One was that Ronnie was actually shot in the front of his torso—this was a year or so after the shooting happened—but that the emergency room doctor who reported otherwise may have

been confused. That could have easily been checked by looking at the entrance and exit wounds in Ronnie's back and torso, but it was not done.

A second theory was that Ronnie was facing the officer when the officer pulled the trigger on his revolver, but that Ronnie was able to turn completely around during the time it took the bullet, which was traveling faster than sound, to strike him squarely in the back, or that the flashlight that Ronnie had reportedly dropped about 30 yards before he was shot could have been the metallic object that the officer reportedly later perceived in Ronnie's hand, or the fact that the bullet hole in Ronnie's T-shirt that went from front to back—I'm sorry, from back to front—was explainable by his probable membership in an unidentified gang that, instead of wearing colors like the Bloods and the Crips did, identified themselves by wearing a T-shirt backward, or backward and inside out. On the basis of those theories, the shooting was found to have been justified by the police department.

I think as I look at the Rodney King incident, I recall another incident in the Southeastern United States, in Dade County, FL, about 10 years, which was very similar to this. After a vehicle pursuit, officers of the Dade County Police Department apprehended a black man and essentially beat him to death. It went to trial and, despite the best efforts of the country attorney, were acquitted, and the acquittal in that case started the Liberty City riot.

What has come out of that is very interesting. I've done some work with the Metro Dade Police Department. We all know about the troubles between police and communities in southeastern Florida. The largest police agency there is the Metro Dade Police Department. Virtually none of the troubles in southeastern Florida have involved the Metro Dade Police Department. That incident, that tragic incident and the riot led to changes in that police department. It became accountable to the community. The community insisted on input into its policies. It's a well-led department that spends all its time sensitizing officers and trying to make them relate back to the community. It's also a very effective police department and a police department that has gained tremendous respect in that area of the country. That's not to say that it is a perfect police department; it still has its troubles, but it is a police department that came out of that as one that was perceived as not tolerating the kind of conduct we have seen in Los Angeles, and, in my view, the kind of conduct we have seen in Los Angeles has been tolerated by the administration of that department.

I think the only way to deal with that is to build some accountability into the system. I'm not sure what this committee can do. I think that this is a local issue. We have to have an outraged citizenry in Los Angeles that makes sure the police chief is accountable to the mayor.

I guess that's all I have to say, and I thank you, Mr. Chairman.

Mr. EDWARDS. Well, thank you. We'll have some questions for you, Professor Fyfe.

[The prepared statement of Mr. Fyfe follows:]

PREPARED STATEMENT OF JAMES J. FYFE, PROFESSOR OF CRIMINAL JUSTICE, AMERICAN UNIVERSITY, WASHINGTON, DC

Mr. Chairman and Members of the Subcommittee:

I am pleased and honored to appear before you today to discuss the evidence of brutality by officers of the Los Angeles Police Department.

Before doing so, I should put my remarks in the context of my own professional background and experiences.

Until I came to Washington to teach at The American University in 1979, I was a New York City police officer for sixteen years. I worked on patrol for nine years in Brooklyn, Times Square, and Queens. In 1978, I earned a doctorate in criminal justice. A year later, I left the department as a lieutenant after having served in the Police Academy for nearly six years. Since then, my research and other professional activities have focused on local law enforcement.

For more than eight years, I was a senior fellow of the Police Foundation. I have consulted with federal, state, and local law enforcement agencies, and have lectured on police issues throughout the country. My work has been published extensively. I have worked with civil rights groups concerned with police practices. I am a member of the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), and am the editor of Justice Quarterly, the official journal of the Academy of Criminal Justice Sciences.

About ten years ago, I was part of a team that evaluated Operation Rollout, a program of the Los Angeles County District Attorney to investigate shootings by police officers in Los

Angeles County, including the Los Angeles Police Department (LAPD). At that time, it was my observation and conclusion that LAPD's administration greatly resented the District Attorney's appropriate attempt to assure that shooting investigations were conducted objectively and fairly, and that LAPD actively attempted to obstruct the DA's investigations.

Since that time, I have consulted and/or testified as an expert on police practices in several civil rights and state tort actions in which LAPD and/or its personnel were defendants. While I frequently have testified on behalf of defendant police officers in California and elsewhere, my work in the Los Angeles area has exclusively been on behalf of plaintiffs.

I want to make it clear that I did not come here with the broad brush that is so often used to smear entire police departments or, indeed, the entire police profession. All of my adult life has been devoted to doing and studying policing, and I have had the pleasure of working with thousands of police officers from departments throughout the country, including Los Angeles. I know at first hand how tough the cop's job is, and I know also how well it is performed by the vast majority of LAPD officers. I came here to talk about a police system that needs change: the LAPD police system.

I. The Need for Police Accountability to Civilian Authority

Our police are organized in military fashion. Police organizational charts, like those of the military, are pyramids.

At the top of our military organizational charts sits the Commander-in-Chief, the elected President of the United States. Our democratic principles demand that the military be led by elected, civilian authority and, as General MacArthur found out, even our greatest soldiers must be held accountable to their Commander-in-Chief, an elected, civilian, politician.

This same principle applies in big American police agencies. In New York, Chicago, Houston, Philadelphia, and every other big city -- save the one under scrutiny today-- elected mayors appoint police chief executives. Regardless of their expertise in police administration, the chiefs of these big cities all serve at the pleasure of their mayors. This form of accountability is critical because, without it, police chiefs report to nobody.

II. Autonomy of the Los Angeles Police

In Los Angeles, this form of accountability does not exist. Instead, the police chief of Los Angeles enjoys civil service tenure and cannot be removed from office except for cause. In essence, the chief is answerable to nobody and, in turn, LAPD officers are answerable to nobody but the chief. This is a system in which success is totally dependent upon the good intentions and judgment of the individual who sits in the LAPD chief's chair. As we have seen, the present chief's judgments often are indefensible.

Regardless of the qualities of the current chief, however, this is a system that simply is incompatible with democratic

principles. In our system of justice, only the nine members of the Supreme Court should be accountable to nobody. As the past teaches, insulation from "politics" sometimes has been necessary so that law enforcement agencies could be cleansed of improper and corruptive political influences. For example, it is doubtful that J. Edgar Hoover could have turned the corrupt, politicized, and incompetent Bureau of Investigation into a fine law enforcement agency had he and the FBI not enjoyed such insulation. Over time, however, we learned that providing Hoover and the FBI with independence from dirty politics also freed the Bureau from appropriate oversight and accountability. When this happened, some members of the Bureau engaged in abusive conduct, safe in the knowledge that they had to answer only to The Director.

That era has passed where the FBI is concerned. The current director serves a ten-year term, and is more directly accountable to the President, the Attorney General, and the oversight of this Congress. FBI personnel know that their accountability goes beyond the director of their agency, and that they are no longer subject to the potential arbitrariness of any law enforcement executive who enjoys absolute power.

William Parker, the great reform police chief of Los Angeles, could not have turned around his department without also enjoying insulation from the dirty political influences that permeated his City Hall forty years ago. But, like Hoover's FBI, LAPD has enjoyed insulation from accountability to elected

officials for far longer than necessary. As a consequence, some number of LAPD officers abuse their authority, safe in the knowledge that they must answer only to their chief and that, like J. Edgar Hoover, their chief's primary concern is to avoid tarnishing his agency's image rather than to see that his personnel do their job constitutionally and humanely.

III. The Rodney King Videotape

The evidence of this is plain in the Rodney King videotape. This was not a spontaneous and quick back alley beating by a rogue officer who knew that he would be punished severely if his dirty work were discovered. This was a protracted public beating by a group of officers who were confident of their colleagues' silence, and who knew that their department would reject any citizen witness' account of what really happened on that street. Indeed, the officers who engaged in this outrage were so confident of their immunity from accountability that they used an official police computer system to boast of -- and to memorialize -- their wrongdoing with jokes and racist allusions. Predictably, their chief's response to all of this has proceeded from denial through condemnation of the officers' "thoughtlessness" in embarrassing his department. I have heard no official indication that the administration of LAPD suspects that this brazen, arrogant, public outrage was a sign of something more than an isolated aberration.

My experience leads me to conclude that this was no aberration. I am not suggesting that it was routine behavior or

that a great number of LAPD officers engage in conduct of this type. I do believe, however, that there exists in LAPD a culture in which officers who choose to be brutal and abusive are left to do so without fear of interference. In LAPD, getting caught at brutality is a far worse sin than brutality itself. Because LAPD is accountable to nobody, it can do as it pleases with allegations of brutality and excessive force that are not captured on tape.

IV. LAPD and Use of Force

I draw this conclusion for several reasons. First, in both its official policies and its street practices regarding use of force, LAPD has long been the outlaw among big American police departments. Look at the record:

-Police throughout the country still talk about the ferocious 1975 LAPD confrontation with the Symbionese Liberation Army. Officers fired tear gas and thousands of shots into the SLA's hideout, setting it afire and killing six members of that unsympathetic group.

-Later in the 70s and early 80s, LAPD equated choke holds -- euphemistically, "carotid control holds" -- with wrist locks and other nonlethal police control techniques, and trained officers to use them to subdue motorists guilty of nothing more than loudly protesting traffic tickets. During one five year stretch, twice as many Angelenos -- mostly black -- died after application of these holds twice as often as was true in the 20 other largest American cities combined. As we know, Chief Gates' response to

this was a call for research to determine whether black people had circulatory systems that differed from those of "normal" people. Another executive in a Los Angeles institution -- Al Campanis of the Dodgers -- lost his job for remarks far more benign than this, but the chief kept his.

-For years, when LAPD's elite Special Investigation Section received information about forthcoming crimes, its policy apparently was to wait and watch suspects while committed burglaries and armed robberies -- without giving any warning to the victims of these crimes -- and to confront suspects afterwards, often with bloody results.

I testified in a civil rights action (Berry v. Gates) that arose from one such confrontation that involved a fatal 1982 shooting of a robbery suspect. SIS reported that the victim had sustained "multiple gunshot wounds to the chest and legs." According to the coroner, 11 shotgun pellets hit the decedent in the arms and hands, six hit the right side of his back, one hit the left side of his back, 13 hit his right hip, buttock, and thigh; six hit his left buttock and thigh; two hit the rear of his right leg, and four hit the soles of his feet. The records in that case show that the 11 SIS officers involved had been named as defendants in 28 prior suits over the previous 13 years.

-In 1980, former District Attorney John Van de Kamp initiated "Operation Rollout," a program that made assistant DA's and investigators available to "roll out" immediately to begin investigations of police shootings. I was

part of a team of three people who evaluated this program on a U.S. Justice Department grant, and found that LAPD routinely obstructed the DA's investigations.

-After a federal jury found that LAPD officers had acted unconstitutionally in executing a search warrant (for a gun that was not found) and in using force on the family who lived in the house involved, Chief Gates told an LA Times reporter that the man of the house was lucky that he received only a broken nose, and that no broken nose was worth the jury's \$90,000 verdict. When the jury in this case (Lares v. Los Angeles) subsequently found that Chief Gates had encouraged or tolerated the officers' wrongful behavior, Mayor Bradley said that their verdict damaged the cause of law enforcement. I testified for plaintiff in this case, as well, and I know that, however well intended, Mayor Bradley's assessment was wrong.

-More recently, LAPD has used nun-chukas -- again, euphemistically "Orcutt Control Devices" -- to remove non-violent participants in peaceful anti-abortion demonstrations. In California, the mere possession of these martial arts devices is a felony comparable to possession of a switchblade knife or other thug's weapon. LAPD currently is embroiled in a civil rights action alleging unconstitutional use of these devices, and I am working with plaintiffs on this matter.

The record with which I am familiar also includes many less notorious, but no less egregious, cases. Heller v. Bushey was a case in which an alleged drunk driving suspect (whose blood

alcohol content was found on successive tests to be one-fifth and one-tenth the level necessary for a presumption of drunkenness) was the subject of an LAPD carotid control hold. While this hold was being applied to him, Heller fell or was pushed through a plate glass store window. I consulted and testified in this case, and had the opportunity to examine hundreds of summaries of complaints against LAPD officers. These reports were hasty and incomplete. They twisted officers' career histories in deceptively favorable ways, frequently treated minor administrative violations far more severely than serious abuses of citizens, and routinely found that use of choke holds to subdue such people as protesting traffic violators was a justifiable "application of the departmentally approved control hold." In no other police agency of which I am aware would chokeholds have been approved in this way.

More recently, before testifying in Melgar v. Klee, I reviewed documents that demonstrated that LAPD had cleared an officer of wrongdoing in the backshooting of an unarmed fleeing suspect in the theft of plywood sheets at a construction site. To do this, LAPD apparently based its conclusion on one or more of the following defenses, all of which were offered by this officer:

-the young man was actually shot in the front of his torso, but the emergency room doctor who reported otherwise may have been confused. This theory could easily have been checked by examining the young man's wounds, which clearly

- are through-and-through, back to front. Or;
- the young man was facing the officer when the officer pulled the trigger on his revolver, but was able to turn completely around during the time it took the bullet -- travelling faster than sound -- to strike him squarely in the back. Or;
- the International Orange plastic flashlight that the young man had reportedly dropped about 30 yards before he was shot could have been the metallic object that the officer reportedly later perceived in the young man's hand, or; ---
- the fact that the bullet holes in the young man's tee-shirt went from front to back was explainable by his probable membership in an unidentified gang that, in lieu of "colors" wore a uniform that consisted of tee-shirts put on backwards and/or inside out.

V. The Lesson of History

LAPD clearly is at a turning point in its history. If accountability comes out of the current trauma, LAPD and all Angelenos eventually will look at this event as a new beginning. Such a new beginning took place in Dade County, Florida, where police also engaged in a brutal beating, this one fatal, after a vehicle pursuit. That incident, and the subsequent acquittal of the officers involved, led to the terrible Liberty City riot.

Out of the ashes of that tragedy, however, has arisen an excellent, humane, and accountable police department. Despite all the well-known police "troubles" in Southeastern Florida, the

Metro-Dade Police Department -- the largest police agency in the area and the very same one whose officers killed Arthur McDuffie -- has avoided major scandal. This has happened because the citizens of Dade County demanded and got reform in their police department. They now have a department that is more concerned with doing good than with looking good.

I am not sure what the members of this Subcommittee can do to see that Los Angeles emerges from this trauma with a police department led by people who strive to do good rather than to look good. In the end, this is a local problem. Federal investigations can bring sunlight to dirty linen and can attempt to remedy wrongs that already have occurred, but I fear that only local action can make real accountability to civilian authority a part of the LAPD system and put an end to abuses such as the beating of Rodney King.

I do know that Los Angeles needs a department that is accountable for its actions, and that the vast majority of hard-working and dedicated LAPD officers are anxious to see that their agency becomes such a department. Thus, I urge you to do all in your power to see that Los Angeles and its officers get the police system they need and deserve.

Thank you.

Mr. EDWARDS. We'll now hear from Paul Hoffman, who came from Los Angeles. I think you're an officer in the ACLU Foundation of Southern California; isn't that correct?

**STATEMENT OF PAUL HOFFMAN, LEGAL DIRECTOR, ACLU
FOUNDATION OF SOUTHERN CALIFORNIA**

Mr. HOFFMAN. Mr. Chairman, I'm the legal director of the ACLU of Southern California.

Mr. EDWARDS. You're the legal director. We welcome you and you may proceed.

Mr. HOFFMAN. Thank you, Mr. Chairman. Thank you for inviting me to give this testimony this afternoon. I would appreciate it if my full remarks could be included in the record.

Mr. EDWARDS. Without objection, so ordered.

Mr. HOFFMAN. Thank you. I'll try to summarize the testimony rather than go through all of it.

I would want to add, as Professor Fyfe indicated his experience, I've been a civil rights lawyer for a long time. One of my first experiences with the Los Angeles Police Department was suing them and being the lead counsel in a suit challenging political surveillance by the Los Angeles Police Department. One of the main themes of that case was that the Los Angeles Police Department, during Chief Gates' tenure, and even before that but definitely during Chief Gates' tenure, engaged in a practice of infiltrating community groups that attempted to protest against police abuse. So many of the cases, the chokehold cases, the Ula Love shooting, the main response from the Los Angeles Police Department was not dealing with those problems; it was infiltrating undercover officers in to make sure that Chief Gates would not be challenged by the community and that he would have knowledge of who was saying what about him and the other officers. That was a case, by the way, that was settled on terms very favorable to the plaintiffs and where the city of Los Angeles paid \$2 million to the plaintiffs and entered into a consent decree.

The beating of Rodney King by the Los Angeles Police Department has brought much-needed attention to the problem of police brutality in southern California. But, frankly, to those of us who are familiar with the problem of police brutality in Los Angeles, the casual brutality that's displayed in that video tape is a familiar story. There are so many incidents of police brutality in our community that it truly has become a fabric of our daily lives, particularly the daily lives of African-Americans and Latinos in Los Angeles.

In my remarks today I would like to deal with two main points. One is I would like to describe some more of the landscape of police abuse in Los Angeles, particularly in light of the Justice Department's announcement of its investigation, as that has been clarified this morning, because we would like to assure, as the members of this committee want to assure with that investigation, that it is going to be a meaningful one. Frankly, those of us in the civil rights community in Los Angeles have a great deal of skepticism about the Justice Department and the FBI role. We are concerned, in light of the historical invisibility and effectiveness of the Federal

Government in this area in Los Angeles, that this could be a white-wash and not something meaningful for this problem.

Second, I would like to address some of the limitations on the Justice Department's role, and particularly the absence of a Justice Department authority to bring pattern-and-practice cases in situations of widespread abuse as exist in the city of Los Angeles. Before getting to the ugly terrain of police abuse in Los Angeles, a couple of words about the Rodney King incident I think are appropriate, although much has been said.

As has been mentioned, there's a tape that has been released of computer communications between some of the officers on Monday in which Mr. King was described as a "lizard" by one of the officers. There were references, as has been mentioned before, to "gorillas in the mist." The officers—the main response of the sergeant in charge was that he needed some more darts for his taser gun. There was no concern expressed for Mr. King's injuries. I saw Mr. King within a couple of days of his injuries, and these injuries were truly severe, and one looking at them, it was really a terrible sight to behold.

I would want to say that this is not unusual, either, the tapes. One who is familiar with police abuse cases in Los Angeles knows about these tapes. It's common knowledge that these kinds of epithets are used by officers.

Mr. CONYERS. Do you mean that there are other tapes like this in existence, and these tapings have happened before, or the computer voicing?

Mr. HOFFMAN. Yes, there are other tapes, although one of the problems is that ordinarily tapes are destroyed within a very short period of time, so it's difficult to get that evidence.

The most recent experience I've had is a case I've litigated against the City of Hawthorne Police Department last spring, in which there was testimony by at least two former Hawthorne police officers that these kinds of epithets occurred on a regular basis and were mainly directed to minority communities in Hawthorne. I won't repeat what they were. I mean, there's truly gruesome testimony about the overt nature of racism in terms of police departments in this community.

One of the things I would add, just on that point on Hawthorne, Hawthorne is a case in which the Justice Department did review police abuse in the early 1980's, and nothing came of that. Yet, there have been a number of judgments about those cases and just an absolutely clear pattern of police abuse by that department. Yet, the Justice Department did nothing in that case.

In light of the time, let me just proceed with what the Justice Department should look at. What is the Justice Department going to find when it looks at police abuse in Los Angeles? Well, frankly, over the last decade the Justice Department has essentially seen nothing, so it's unclear what they're going to see this time. I've been in contact with a number of civil rights attorneys in Los Angeles over the last few days in preparation for this testimony, and in a sense I feel responsible to that community as well as the ACLU in conveying this information. Frankly, there's not a one of them that thinks that the Justice Department efforts in this area are worth anything, and they don't, as a matter of practice, look to

the Federal Government for any assistance. No one that I've been able to talk to can recall a single instance in Los Angeles in the last decade when a law enforcement officer was prosecuted or where there were any serious results of an investigation. This is not because cases have not been brought to the Justice Department's attention. Cases have been brought to the Justice Department's attention, and I'll mention a couple of those.

One of these cases—and I'll just skip ahead for a second—let me mention two cases. One was the case of William McCall. Mr. McCall was 41 years old when he died in January 1988. He had been a U.S. postal worker for 16 years. He was the father of two girls. The Los Angeles Police Department came to a reported disturbance at his home near 53d and Broadway in the 77th Division of the Los Angeles Police Department. He was hit by a taser gun, handcuffed, and hog tied, and put into a chokehold. At the end of all this, he was beaten to death while he was handcuffed. But, of course, there was no video tape in this particular situation. The Justice Department was informed of this case. They have done nothing about it as far as anyone can tell.

Another example is the case of Stuart Vigil who died on December 4, 1987. Mr. Vigil was picked up by the Los Angeles Police Department and brought to a hospital because they believed he was mentally disturbed, which he probably was. He became alarmed when the Los Angeles Police Department car approached the hospital and he started shouting that he might be killed if he was taken to this hospital. Well, the officers forcibly took him in the car, and when he held onto the car—he was handcuffed all along—they beat him with batons on his hands to free him from the car. Then, with by this time as many as 12 other officers around, 2 officers beat him as though he were a pinata. There is evidence that there were probably at least 80 baton blows, including many baton blows to his head.

Officers jumped on him during this. He was tasered as many as four or five, perhaps six times during the course of this. While he was lying in a pool of blood, the officers continued to hit him with a baton. This comes from statements of independent witnesses, doctors in the hospital that watched this event.

He was posing absolutely no threat by the time he was beaten, hog tied, and handcuffed on the ground. When the officers wheeled him next door to the hospital, he was pronounced dead on arrival.

The attorneys representing the Vigil family informed the Justice Department of this case, and they have as yet received no response to their letters. So, this is one of the reasons why lawyers in the Los Angeles community are more than a little skeptical. From the responses I've gotten from ACLU lawyers around the country, there is some concern and skepticism around the country.

One of the things that I think is important about the investigation that's about to occur, if it is to be meaningful, is that it really must deal with patterns and practices; it can't deal with individual aberrations because then there's just a series of aberrations, and no one looks at the pattern. Without looking at this pattern, it's impossible to understand what is going on in the Los Angeles area.

Let me deal with another couple of cases that I think the Justice Department ought to look to that reveal the problem in our com-

munity. One of these cases is the Dalton Street case, which has acquired a great deal of notoriety in Los Angeles, but it is unclear that it has received any notoriety in the Justice Department's estimation.

In the Dalton Street case, as many as 70 Los Angeles Police Department officers essentially went on a rampage in four houses in south central Los Angeles. They claim that the reason they did all this was that the people who lived in the houses were associated with a street gang. So, essentially what this became is another exercise in street justice—the implementation of the sentence before apprehension.

Essentially, what happened is these houses were destroyed with axes. Property was totally demolished. People were terrorized and humiliated for hours, taken in and made to lay face down on the ground. Essentially, it was a police department completely run amuck.

The city has settled the main civil lawsuit arising out of this for \$3 million. There are still other cases where that number may go on even higher than that, but so far, at least, the internal discipline has been woefully inadequate. Despite the massive brutality that took place in this case, not a single officer was charged with excessive force, and only a couple of officers are facing misdemeanor or property damage charges, which I think is another significant point.

Assistant Attorney General Dunne mentioned that the Justice Department is a backstop. Well, the problem, I think as Professor Fyfe has indicated, is that there isn't anything between them and the backstop. There's no internal discipline that's meaningful. The district attorney doesn't charge and doesn't really prosecute these cases. The King case is an aberration from that standpoint, because there's no way to avoid prosecution in this case.

So, when you don't have discipline, if you don't have a chief that's accountable, if you have a department completely out of control, as this department has been for more than a decade, where has the backstop been? Even if that's their role, why is there not a single prosecution that anyone can mention of a Los Angeles Police Department officer for any of these events?

Let me mention another couple of problems that the Justice Department should look into. There's Operation Hammer in Los Angeles. Beginning in February 1988, the Los Angeles Police Department mounted a massive military-style show of force, mainly in south central Los Angeles. Tens of thousands of African-American young men have been rounded up based on their race and appearance, with no pretense of probable cause. The police department goes into neighborhoods, and if they think that people are gang members or if they think maybe they'll become gang members, or maybe they are people who look like they're going to commit a crime in the future, they're going to be rousted up, handcuffed, harassed, and some of them are going to be arrested.

Essentially, it's unclear how many people have actually been detained. Some lawyers in the community believe it's as many as a quarter of a million people in the last 3 years that have actually been rounded up in this Operation Hammer. We know in at least recent times that at least 25,000 have been arrested, but what usu-

ally happens is no one is charged. Out of that 25,000, about 1,300 were charged. So, people are run through the system for the purpose of harassment, but essentially for the police to show that they control the turf. It's hardly surprising that, with that kind of program which has been endorsed by the leadership of the Los Angeles Police Department, and, in fact, trumpeted as good, aggressive police work, that an incident like the Rodney King incident could happen.

Operation Hammer is not the only Los Angeles Police Department program that is based on pretext rather than principle. In Los Angeles, pretext has become principle. Recently Hall of Famer Joe Morgan won a jury award of \$540,000 because he was picked up and beaten because he matched the so-called drug courier profile at Los Angeles Airport. Former Los Angeles Laker star Gimmelle Wilkes was stopped because he was a black driving a late model car in the wrong part of Los Angeles and, according to the police initially, he had registration tags that were about to expire.

Mr. CONYERS [presiding]. Mr. Hoffman, forgive my interruption, but we do have a recorded vote pending on the floor. So what we propose to do is take a very brief break until Chairman Edwards return and then we'll resume your testimony.

Mr. HOFFMAN. Thank you.

Mr. CONYERS. All right.

[Recess.]

Mr. EDWARDS [presiding]. Mr. Hoffman, we apologize for the delay. You may proceed.

Mr. HOFFMAN. Thank you, Mr. Chairman.

Let me, before moving on to the question of the Federal role in dealing with the patterns of abuse that have been described today, mention one other form of abuse which has recently gotten a great deal of attention in Los Angeles, but which has not received enough attention over the last few years, and it's an area where I think the Justice Department would need to take a look. That is abuses by police canine units in Los Angeles.

Local civil rights attorneys involved in this issue have documented numerous cases of severe, sometimes grotesque, injuries caused by Los Angeles Police Department police dogs in situations where police dogs ought not to have been used and where they have been used in areas that have caused incredible injuries by people who have been bitten and mauled by the dogs. In fact, some of the physical evidence of the injuries that people have sustained are really so gruesome that it's hard to really look at the pictures of people who have suffered these kinds of abuses. At least one person has nearly been killed by a Los Angeles Police Department dog and many have been hospitalized for severe injuries after this has happened.

I think that these—one of the things that's a very serious concern in this issue is the evidence of a racially discriminatory use of the dogs. It's very difficult to document the way that this breaks down, but all the evidence and research that has come to light in the last several years shows that overwhelmingly—in fact, almost all of the cases that we have been able to document in the community have involved African-American and Latino people who have

suffered these dog bite injuries. You don't find many Caucasians suffering dog bite injuries in this context.

The Los Angeles Police Department statistics that we have been able to compile show that in connection with arrests over 50 percent of people arrested by canine units are bitten in Los Angeles, over 50 percent of the cases where arrests are undertaken. So, you're talking about a very severe abuse and also a situation where, like many of the other areas that have been described, there's no adequate training as far as anyone can tell. In fact, it appears that the training and supervision encourages biting rather than restraining it. This is another major area, I think, that needs to be looked at like the other ones that have been mentioned.

One of the things I would want to comment about in terms of the issue of race, in terms of police abuse, it's clear I think from everything that's been said and from the reality of police abuse in our community, that the African-American and Latino communities bear the brunt of police abuse in Los Angeles. I mean there's just no question about that when one looks at the cases.

On the other hand, I think that it is a problem that does go beyond race in terms of the instances of abuse. For example, the *Vigil* case that I described of the man beaten to death, he was white and it's clear that there are whites who suffer police abuse at the hands of the Los Angeles Police Department.

The other example of the pain compliance holds in the Operation Rescue situation, which is another example where, like Professor Fyfe, our organization has had major differences with Operation Rescue protesters. In fact, we were suing them at the time that they were engaged in these protests. On the other hand, we have also filed the brief on their behalf challenging the pain compliance holds that were used by the Los Angeles Police Department. I think it's just another example of essentially the militarization of police work in Los Angeles, where the Los Angeles Police Department tends to become a military occupying force at war with the community, and the battle zone happens to fall more in the African-American and Latino communities than elsewhere, which is why there is a racial component to the pattern of abuse in the Los Angeles community.

Let me turn, since I know the time is limited, to the question of what the Federal role should be. Much has been made of the question of sections 241 and 242. I think that there are some problems with 241 and 242 that might require legislative reform, but it seems to us that that should not mean that the Justice Department should fail to bring more cases. If the Justice Department can't find cases of police abuse to prosecute in Los Angeles County, there's a big problem. No matter how those laws are interpreted, there are many cases that warrant criminal prosecution of officers, not only of the Los Angeles Police Department, but of other law enforcement agencies.

Mr. CONYERS. Excuse me, Mr. Hoffman. Wouldn't the kind of qualitative investigation systemically that we are now embarking on bring forward those cases?

Mr. HOFFMAN. I would hope so.

Mr. CONYERS. Yes, and especially with other organizations who are now tracking cases—a totally alerted citizenry who are now

going around with video cameras. All of our offices are being besieged across the country. So, it seems to me that that might be an important remedy. One of the things I'm very interested in is how we keep or get an affirmative Federal presence in this area. This may be one of the most important hearings on police brutality that I've ever attended and you two are very important, and we look to you to help supplement the modest attempts we are making in this area.

Mr. HOFFMAN. My concern is the concern, Representative Conyers, that you expressed before. It's more a question of will, and not information. I think the information has always been there. One only would have to read the Los Angeles Times to figure out where one had to look for the cases. It has never been a problem of where the information is. The question is, Are those cases going to be brought?

I think the other issue which I want to turn to which I think is of paramount importance, in terms of the legislative role of the Congress, is the question of pattern-and-practice authority for the Justice Department. Mr. Dunne referred to the Philadelphia case which has been a bar to the Justice Department becoming involved in pattern-and-practice cases, of situations like the situation which presents itself in Los Angeles.

In addition to that, there is an additional problem which is the Supreme Court cases, particularly the *Lyons* case, which ironically came in the context of a challenge to the use of chokeholds in Los Angeles, which makes it almost impossible for private civil rights lawyers to bring pattern-and-practice cases. As was the case in *Lyons*, a person who is choked or beaten or mauled by a police dog, will not be able to show that it's likely to happen again. And so they will not have standing under the *Lyons* case to bring a 1983 action to get protective relief. One can only get damages.

Our experience in Los Angeles has not been that damages makes much of a difference. In 1990 there were \$10 million in damage awards in the city of Los Angeles, and it hasn't seemed to make a dent at all. It's sort of a pay-as-you-go policy, that one can just pay for civil rights violations because you are a big city and you can tax the taxpayers to pay for it, and the police can conduct their business as usual without restraint.

I think it is important that the Justice Department be given the authority, whether it is to enforce 1983 cases for individuals who can't afford it, or, more importantly, to identify patterns and practices consistently, not just this one time, but all the time, and be given the authority to engage in that kind of litigation. Frankly, when the Justice Department really becomes engaged, when there is a decision to investigate, and when the professional staff of the Justice Department and the lawyers in the Civil Rights Division are engaged on a problem, they are an awesome force to be dealt with.

We just finished a case in the county of Los Angeles involving voting rights where the Justice Department and the ACLU and the Mexican/American Legal Defense and Education Fund were on the same side, and that resulted in the election of the first Latino to the board of supervisors in our history, and it's a case that could not have been brought without Justice Department resources, and

they did a wonderful job and Mr. Dunne argued one of the hearings in that case.

So, if that power can be brought to bear to achieve justice in dealing with patterns and practices of police abuse, it's possible that that could be part of a solution, which involves local issues, I think as Professor Fyfe says, but it doesn't only involve local issues. I think that the issue of a pattern and practice of police abuse in violation of the Constitution of the United States involves issues of national importance, whether they occur in a city like Los Angeles or a small town in Texas or any place.

If there is a pattern or practice of abuse, the Justice Department ought to be able to deal with it, and I think it should be unacceptable to the people of this country and the Congress of this country, that if one could show incidents like Rodney King's occur on a regular basis in any community—if people knew that the Justice Department couldn't do anything about that, preemptive—I think most people in this country would be astounded to know that the Justice Department can't go into Federal court and get an order from a Federal judge getting some protective relief for citizens in their community from a pattern of police abuse. It seems to me that the Congress has to put an end to that, and it's just overdue for that to occur. I was disappointed that Mr. Dunne did not get up here and say not only there had been this history, but that this administration had decided that it was time to ask to be given that authority and that they intended to use it.

In closing, let me just remind the members of the committee and the public, that on the very day of the broadcast of the King beating, President Bush praised Daryl Gates as one the model police chiefs in the Nation, and obviously I don't expect the President of the United States to know a lot about exactly what goes on in communities on police abuse issues. It seems to me that singling out Gates shows, for one thing, that the Justice Department really hadn't briefed the President on the problems of police abuse in our community, because he clearly could not have said that if he had known about the kind of testimony that you are getting.

Mr. EDWARDS. Did he not see the video tape?

Mr. HOFFMAN. But, it also seems to me that there is an issue of the President and the administration setting a tone as well. There has been a lot of criticism of Chief Gates, and proper criticism, that he does not set the tone that will eliminate police abuse in our community. In fact, it is the reverse. His tone, his leadership contributes to police abuse. It seems to me the President, the Attorney General, and the Civil Rights Division have to set a tone also, and that they have to come out and ask for authority to deal with this problem. They have to exercise the authority that they've got more effectively, and they have to speak out more aggressively.

For example, the Justice Department hasn't been going out asking for complaints. No one heard it in our community. You didn't hear the local FBI agents in Los Angeles saying, "Bring us your police abuse complaints." There was silence. I mean that says something to a community when the Federal Government isn't out in the public saying that they are going to deal with a problem and using the powers that they've got and asking for the power that they need.

I thank you for allowing me to give you this testimony.
 Mr. Edwards Thank you very much, Mr. Hoffman.
 [The prepared statement of Mr. Hoffman follows:]

TESTIMONY OF PAUL L. HOFFMAN
 LEGAL DIRECTOR, ACLU FOUNDATION
 OF SOUTHERN CALIFORNIA

BEFORE THE
 HOUSE SUB-COMMITTEE ON CIVIL
 AND CONSTITUTIONAL RIGHTS
 OF THE HOUSE COMMITTEE
 ON THE JUDICIARY

MARCH 20, 1991

The vicious beating of Rodney King by Los Angeles Police Department officers has brought desperately needed attention to the problem of police brutality in Southern California and in the nation. To those familiar with police abuse issues in Los Angeles, the casual brutality graphically displayed in the video tape is a familiar story. There are so many incidents of police brutality in our community that it has become part of the fabric of our daily lives, especially the lives of the African-Americans and Latinos in Los Angeles.

I would like to thank the sub-committee for giving the ACLU the opportunity to address this issue at this crucial time. In my remarks, I will address two main points. First, I will describe some of the landscape of police abuse in Los Angeles. In light of the Justice Department's announcement that it will launch an investigation of instances of police abuse across the country, the ACLU wants to assure that this investigation will have a meaningful impact on the problem. I will also address the real fears that many in my community have that this investigation will be a whitewash given the historical invisibility and ineffectiveness of the Justice Department's efforts in this area.

Second, I will address existing limitations on the Justice

Department's role. The primary problem here is the absence of authority for the Justice Department to bring pattern and practice cases in response to police brutality on the scale it is practiced in a metropolitan area like Los Angeles.

Before describing the ugly terrain of police abuse in Los Angeles, a few words about the Rodney King case itself are appropriate. A transcript of the computer communications of some of the officers was released on Monday. Minutes after the beating, the following exchange took place:

Sergeant Stacy Koon to Foothill Division Watch Commander's office: "You just had a big time use of force...tased and beat the suspect of CHP pursuit, Big Time."

Response to Sergeant Koon: "Oh well....I'm sure the lizard didn't deserve it...HAHA I'll let them know O.K."

About fifteen minutes later two of the officers charged in the assault, Lawrence Powell and Timothy Wind, had the following exchange with a foot patrol officer:

From Powell and Wind to foot patrol officer: "...coops"

Response: "...coops, what?"

From Powell and Wind to foot patrol officer: "...I haven't beaten anyone this bad in a long time."

Response: "...Oh not again....Why for you do that....I

thought you agreed to chill out for awhile....What did he do...."

Having just been beaten nearly to death without reason, Rodney King was a mere "lizard" in the eyes of the LAPD. Moments before the King assault, officers Powell and Wind, are recorded making derogatory racial comments about a previous incident that night involving a Black family, referring to the situation as something out of "Gorillas in the Mist."

The computer tape demonstrates what happens when police officers stop thinking of suspects as people and start thinking of them as "lizards." A dozen or more LAPD officers stood by and simply watched Rodney King as he was beaten and kicked scores of times for no reason. The supervising Sergeant took no action to prevent the carnage. The computer tape reveals that his main concern after the incident was replenishing his stock of taser darts.

The fact that there were numerous nearby residents watching and calling out that Rodney King's life be spared had no impact at all on the officers' conduct. The others left King, by then seriously injured with numerous skull fractures, including some near his right eye, and a broken leg, hogtied on the pavement until an ambulance arrived. The computer tape transmission reveals that the officers found only humor in this incident. Absent was a shred of human compassion or concern about Mr. King's injuries. Why? Because these officers knew that in the ordinary course of events they would not have to answer for this conduct.

I have personally received hundreds of accounts of police

brutality in my time at the ACLU. Some of these accounts are more revolting than the King incident. Many have been of a lesser degree of severity. In the King video I saw these accounts played out on a world stage beyond the capacity of any observer to explain away.

This is why the King incident has struck such a chord in the public consciousness; it is because we in the Los Angeles community know, as the world now knows, that the King beating was no "aberration," as Chief Gates would have us believe. What appears on the video tape is an accurate, uncompromising vision of a police department at war with its own community.

THE LANDSCAPE OF POLICE ABUSE IN LOS ANGELES

When the Justice Department investigates police abuse allegations in Los Angeles what will it see?

Over the past decade, perhaps much longer, the Justice Department has seen nothing. I have been in contact with many of my civil rights colleagues in Los Angeles to find out what they think about the role and performance of the Justice Department on police abuse issues. So far, no one can recall a single instance in which a law enforcement officer in Los Angeles has been prosecuted by the Justice Department for violating a person's civil rights.

This is not because cases have not been brought to the attention of the Justice Department. One prominent civil rights attorney told me that over the past decade he has informed the Civil Rights Division about a number of cases involving instances of brutality similar to or exceeding the King case, including

several deaths at the hands of LAPD officers. Not one of these cases has led to a prosecution. Indeed, he said that often he has received no response at all to his letters.

The Justice Department's own statistics bear out this skepticism. Last year only 35 law enforcement officers in the entire country were brought up on criminal charges under the civil rights statutes. Even those most optimistic about the level of police brutality should find it hard to believe that only 35 cases in a year in the entire country are appropriate for presentation to a grand jury. One can tell simply by looking at these statistics that the Justice Department isn't addressing the problem of police abuse in a meaningful way.

It is not surprising that civil rights lawyers, their clients and the Los Angeles community at large do not have confidence in the help the Justice Department might provide in solving the police abuse problem in Los Angeles. Why contact the Justice Department or the FBI if there is no chance that serious action will be taken? My contacts with other ACLU lawyers around the country indicate that this skepticism extends beyond Los Angeles and is indeed a nationwide conviction.

Attorney General Thornburgh's announcement that old cases would not be reopened also raises the questions about the purpose of this new investigation. An investigation without a purpose is probably worse than no investigation at all. Victims of police abuse and their lawyers will be asked to spend their precious time briefing Justice Department investigators for no purpose, instead of pursuing their claims for justice.

A serious Justice Department investigation into the problem of

police abuse in Los Angeles alone would be a massive undertaking, including, as it must, the Los Angeles Sheriff's Department and other area police departments with reputations for brutality. I will limit my comments here to the pattern and practice of police abuse by the LAPD during the tenure of Chief Daryl Gates. These are just a few examples of what a serious investigation must consider.

Individual incidents of police abuse by the LAPD cannot be considered in isolation. Without looking at the full picture the Justice Department might find a series of "aberrations" or might not comprehend the extent to which brutality and lawlessness have become an integral part of the system.

The Justice Department must consider the ineffectiveness and secrecy of internal LAPD investigations into police misconduct, the failure to refer cases for prosecution, and the failure of the Los Angeles District Attorney's office to impose criminal sanctions on police officers involved in brutality. The systems which are supposed to guarantee the accountability of police officers are fundamentally flawed and do not operate as adequate safeguards against police abuse. That the numerous officers in the King case believed they could brutalize Rodney King with impunity and laugh about it afterwards demonstrates the failure of the system more graphically than any statistics.

The war on drugs and crime has also become a full-scale assault on the community. The escalation of force by the LAPD reflected in the use of battering rams, street sweeps, barricades and enhanced weaponry contributes to the atmosphere in which an incident like the King beating could occur before a dozen LAPD officers who did nothing to protect Mr. King's life.

No one doubts the extraordinary problems of gang violence and crime confronting the public and the police in Los Angeles. No one suggests that every LAPD officer is brutal. No one suggests that every complaint of police abuse is valid. But the Justice Department will blind itself to reality if it ignores the cumulative weight of police abuse in our community or the role played by the policies and practices of the Gates' administration in creating the climate that led to the King beating.

Police Beatings -- The King incident was remarkable mainly because we all saw it. One of the officers involved in the King beating had previously been suspended for 66 days for beating and kicking a handcuffed suspect and seeking to enlist another officer in a cover-up. Would he have been on the street again if that incident had been televised? The Justice Department should find out both how such a person could be permitted to remain on patrol, continuing to interact with the public, and why this earlier case was not prosecuted.

There are many other beatings that must be reviewed. Take the case of William McCall. McCall, an African-American, was 41 years old at the time of his death in January 1988. He had been a U.S. Postal worker for 16 years and was the father of two girls. The LAPD came to a reported disturbance at his home near 53rd and Broadway in the 77th Division. He was hit by a taser gun, handcuffed, hog-tied with a nylon cord, put in a chokehold and beaten to death by the LAPD when, like Rodney King, he was no threat to anyone. The Justice Department was informed of the case but it did nothing.

Stuart Vigil died on December 4, 1987, clutching taser wires

and begging for mercy, according to witnesses at UCLA Harbor General Hospital. The LAPD took him to the hospital because they believed he was mentally ill. He became alarmed as the police car approached the hospital and started shouting that he would be killed if he were taken to the hospital. The officers forcibly removed him from the police car and then began to hit him with night sticks as many as 80 times, as though he were a pinata, while as many as twelve other officers watched. He was tasered several times. The officers jumped on him. All the while he was handcuffed. Witnesses to the event have described a relentless police assault in which Vigil was beaten and tasered to death by numerous officers, an ordeal including blows to the head after he was on the ground, hogtied and posing no threat whatsoever to anyone. He was pronounced dead when he was wheeled into the hospital.

The Justice Department was informed about this case. The attorneys for the Vigil family received no reply.

The McCall and Vigil civil rights damages actions go to trial later this year in federal district court in Los Angeles. These cases suggest that the only aberrational feature of the King case is the videotape, and only that.

There are dozens of cases of LAPD beatings which should concern the Justice Department and where evidence is readily available in pending or completed civil rights cases.

The Police Misconduct Lawyer Referral Service ("PMLRS"), a civil rights organization dedicated to finding legal representation for police abuse victims and ending these abuses, receives hundreds

of complaints about misconduct by the LAPD annually.¹ In 1990 PMLRS received more than 2,600 complaints against law enforcement agencies in the Los Angeles area, 616 of which concerned the LAPD. In the first two months of 1991 PMLRS received 127 complaints against the LAPD and the level of complaints has increased since the King incident. The ACLU and other civil rights organizations, such as MALDEF and the NAACP, have received many additional complaints. These statistics do not include people who bring their complaints directly to individual attorneys for redress. In sum, there is a large body of complaints and information about police abuse in our community. This alone should convince the Justice Department to take this investigation seriously.

The Dalton Street Case -- One of the most notorious recent cases of LAPD lawlessness involved the demolition of a series of homes at 39th and Dalton streets in 1988. More than seventy LAPD officers, including supervisors, were involved in this unbridled police rampage. Homes were destroyed. The occupants were beaten, terrorized and humiliated for hours during the course of the LAPD's search and destroy mission. The officers explained their behavior by saying they had believed the occupants were associated with a street gang. Therefore, this was to be another exercise in street justice.

The City settled the primary civil case arising out of these events for \$3 million, but much of the discovery in the case is under a protective order. Some other cases arising out of these events are still pending which may drive the total damages paid

¹ Attached to this testimony is the most recent compilation of PMLRS statistics concerning police abuse complaints in the Los Angeles area.

still higher. But internal discipline in this case has been woefully inadequate. Despite the massive brutality that took place, not a single officer was charged with excessive force. Instead the City is simply prosecuting two of the officers for misdemeanor conspiracy to commit vandalism, in other words, property damage. This case cries out for a federal criminal prosecution against many of the officers involved.

Operation Hammer -- Beginning in February 1988 the LAPD has mounted a massive military style show of force in the predominantly Black neighborhoods of South-Central Los Angeles under the name Operation Hammer. Tens of thousands of African-American young men were rounded up based only on their race and appearance without any cause to believe they had committed a criminal offense. What this has meant to youths in the community is the humiliation and terror of police stops, handcuffing, and arrest without any intention of filing criminal charges, as the statistics bear out.

In the course of Operation Hammer sweeps in 1990 more than 25,000 youths had been arrested, yet fewer than 1,500 of them were ever actually charged with a criminal offense. Tens of thousands of additional youths were stopped, detained and harassed without arrest but with humiliation and loss of rights. Daryl Gates has explained the philosophy of Operation Hammer as one of "aggressive" law enforcement. That means stopping and arresting individuals because they look like they might have committed a crime in the past, or might be inclined to commit an offense in the future.

It is small wonder that the officers who nearly murdered Rodney King felt secure in their actions given the nature of the Operation Hammer Program. If thousands of minority youths can be

harassed by roving LAPD squads in an effort to demonstrate that the LAPD controls their turf, why not stronger measures in other contexts? What occurred during these operations, especially the charging statistics, is no mystery to the leadership of the LAPD, yet this program is firmly endorsed by the leaders of the department.

Operation Hammer must be seen as a show of military force in the African-American community in which the constitutional rights of thousands of African-American youths have been trampled in the LAPD's gang control efforts. Operation Hammer is part of a pattern of law enforcement that does not respect the law.

Operation Hammer is not the only LAPD program based on pretext. Recently, Hall of Famer Joe Morgan won a jury award of \$540,000, as a result of a police beating he received when he was stopped at Los Angeles Airport based on a "drug courier" profile. Similarly, former L.A. Laker star Jamaal Wilkes was stopped and handcuffed while driving in the mid-Wilshire District on the pretext that his registration was about to expire, simply because he was an African-American driving a late model care in the wrong part of the city. An LAPD official stated that such pretextual stops were not uncommon in the area.

Pretext has replaced constitutional principle and the rule of law in the practices of the LAPD and the result is incidents like the March 3rd beating of Rodney King as the police aggressively dispense their version of justice on the streets.

Abuse By Police Canine Units -- Police brutality in Los Angeles comes in many forms. The abuse by police canine units is a practice that has only recently drawn the attention it deserves.

Hundreds of Los Angeles residents are bitten, often severely, by police dogs in connection with arrests and other detentions.

Local civil rights attorneys involved in this issue have documented numerous cases of severe, sometimes grotesque injuries, caused by LAPD police dogs. The majority of people located by LAPD dogs are bitten or mauled by the dogs. The physical evidence of these injuries is sometimes too gruesome to behold. At least one person was nearly killed by an LAPD dog while frequently many others must be hospitalized for their dog-inflicted injuries. Yet despite the severity and frequency of injuries these dogs inflict, research shows that LAPD supervisors exercise no supervisory control over LAPD canine handlers.

Equally frightening is the evidence of racially discriminatory use of the dogs. Based on LAPD statistics, dogs are most often deployed in the lower income, Black and Latino neighborhoods even though the crimes for which the dogs are most often deployed occur with equal regularity (if not with more frequency) in the wealthier Caucasian neighborhoods. Moreover, research to date shows the overwhelming bulk of those bitten by the dogs (more than 90%) are either of Black or Latino descent.

Here again the Justice Department must consider the overall pattern and practice. Any individual case cannot be evaluated apart from the overall pattern and practice of which it is but a part. This is true for all of the aspects of police abuse in Los Angeles. The Justice Department investigation will be a whitewash if it is merely a review of past individual complaints without any effort to assess the overall picture of police abuse in the Los Angeles area.

LIMITATIONS ON THE JUSTICE DEPARTMENT'S
AUTHORITY TO PURSUE POLICE ABUSE CASES

Limits On Federal Criminal Jurisdiction -- The Justice Department is not viewed as a significant actor on police abuse issues in the Los Angeles community. This is a fact. While there are grave doubts about the Department's genuine interest in ferreting out civil rights violations by local law enforcement officers and taking action, there are also problems with the legislative framework for Justice Department action in this area.

The primary basis for federal civil rights prosecutions are 18 U.S. §§ 241 and 242, which prohibit conspiracies to violate civil rights and official, willful violations of civil rights, respectively. From their inception, these statutes have been criticized as poorly drafted and vague. For at least fifty years it has been common knowledge that these statutes make it difficult to bring federal civil rights prosecutions.

In Screws v. United States, the Supreme Court held that §242 required the defendant specifically to intend to deprive the victim of a constitutional right. Twenty years later, in United States v. Price, a case arising out of the infamous murders of civil rights workers Goodman, Schwerner and Cheney, the Supreme Court read this same requirement into §241.

As early as 1947, then federal prosecutor and future Supreme Court Justice Tom Clark concluded that section 241 was of limited effectiveness as an instrument of criminal law and bemoaned the difficulty of proving willfulness even in cases where the conduct was the most heinous imaginable. Fifteen years later another commentator noted that there were "serious obstacles to effective prosecution" of violators of civil rights laws. He concluded that

"prosecution under section 242 is a delicate and difficult task." The prosecution problem was so great that the commentator feared the Civil Rights Division would fail to realize the goals that inspired its creation.

The numbers speak for themselves. In 1958-59 there were 2430 complaints of criminal civil rights violations received by the Justice Department. Only 27 of those 2430 complaints were presented by the Civil Rights Division to a grand jury.

Apparently, this pattern hasn't changed much over the years. In the past five years, the Department of Justice has received between 7500 and 8000 complaints per year. The Department of Justice investigates about 3,000 of these complaints in any given year. Yet only about 50 cases a year are brought before the grand jury.

Congress has talked about reforming the criminal civil rights statutes for a long time. As recently as a decade ago a systematic recodification of federal criminal law was proposed but not adopted. As part of any comprehensive look at solutions to the pervasive nationwide problem of law enforcement brutality, Congress should consider yet again whether the criminal civil rights statutes provide adequate protection for the civil rights of all Americans.

This should not be an excuse for inaction by the Justice Department. Even with the difficulties posed by the language of sections 241 and 242, a serious Justice Department investigation into police abuse in Los Angeles would result in prosecutions of at least some LAPD officers and supervisors and the message in such prosecutions would be welcome.

The Absence Of Pattern And Practice Authority -- Perhaps a more fundamental problem is the inability of the Justice Department to undertake pattern and practice lawsuits where police abuse is widespread in a community. This is especially important because of the limitations placed on private litigants under the civil rights laws and Article III of the Constitution. They prevent many private pattern and practice police abuse suits from being brought because no individual or class of plaintiffs has standing in federal court.

This principle is illustrated most vividly in City of Los Angeles v. Lyons, an ACLU case challenging the use of chokeholds by the LAPD. Since 1978, 27 people, most of them African American, have died as a result of LAPD chokeholds. Most of these occurred before 1982 Police Commission restrictions on the use of the practice. In Lyons, the Supreme Court found that the plaintiff, who had previously been choked unconscious, had no standing to challenge the practice because he could not demonstrate that he was likely to be choked again. As a result no one had the ability to bring a lawsuit to stop this deadly practice. The Lyons principle prevents private civil rights plaintiffs from obtaining truly effective relief to put a stop to even the most egregious of police practices.

In the late 1970's the Justice Department embarked on an eight-month investigation into complaints of police abuse in Philadelphia and filed a pattern and practice suit challenging the widespread abuses discovered in the course of this investigation. But in United States v. City of Philadelphia, 644 F.2d 187 (3d Cir. 1980), the Court of Appeals for the Third Circuit found that the

Justice Department lacked the authority to bring such pattern and practice suits in the absence of specific statutory authority.

The Justice Department has been given this authority in many areas involving constitutional and civil rights, including the rights of prisoners under the Civil Rights of Institutionalized Persons Act; voting rights under Title VI of the Civil Rights Act of 1960; public accommodations, under Title II, prohibitions on segregation in jails, under Title III, and rights against employment discrimination, under Title VII, of the Civil Rights Act of 1964. But it appears that the Justice Department may not have the same authority to protect people from a pattern and practice of police abuse of the kind that has shocked the nation in the King incident.

Without the availability of private or public enforcement of constitutional rights in this area, local governments are free simply to pay as they go for the violation of the rights of their people without any possibility of judicial intervention to prevent abuses before they occur. In Los Angeles even the payment of more than \$10 million in police abuse judgments in 1990 alone (more than \$1,000 per sworn officer in the LAPD) has had no perceptible impact on these problems. In fact, as recently as two days ago a federal jury in Los Angeles awarded a Latino man \$25,000 against the LAPD for being "hog-tied" after a pretextual stop. On that same Monday, the Los Angeles County Claims Board approved settlements in four separate brutality lawsuits against the Los Angeles Sheriffs Department, totaling \$1.2 million. This is not a situation which can be long tolerated in a society committed to the rule of the law.

If the Justice Department really looks at complaints of police abuse in Los Angeles, it will be compelled by the evidence to bring a pattern and practice case. The City of Philadelphia case will surely inhibit this essential program of action, in the absence of a Supreme Court decision to the contrary, even though it is not the final word on this issue. The Congress should resolve any doubt about the Justice Department's authority to bring pattern and practice cases so that the investigation upon which the Department is about to embark will have real meaning.

CONCLUSION

In closing let me remind the committee members here that on the very day the broadcast of the brutal beating of Rodney King sent television viewers across the nation reeling, President George Bush praised Los Angeles Police Chief Daryl Gates as the model police chief in the nation. The President singled out Gates for his purported success in the war on crime, but, as the video of the King beating shows, the war on crime, in truth, often winds up being an assault on our poor and minority communities.

Just as Chief Gates sets the tone for the attitudes of LAPD officers, the President and the Attorney General -- as the country's chief law enforcement officer -- set the tone for the nation. The message so far is that this Administration will not act to guarantee constitutional protections to the future victims of police abuse and the announcement of the planned investigation is not enough. Real action to prevent police brutality is required.

I urge the subcommittee to consider legislative reform now to address the problem of police abuse in our communities. I also

urge the sub-committee to come to Los Angeles to hear firsthand from the victims of police abuse, as you consider the role of the federal government in the solution to this corrosive, urgent problem.

POLICE MISCONDUCT LAWYER REFERRAL SERVICE
633 S. Shatto Place
Los Angeles, CA 90005
213-387-3435

SUMMARY OF STATISTICS

<u>YEAR</u>	<u>ALL POLICE/SHERIFFS DEPARTMENTS</u>	<u>LAPD</u>	<u>FOOTHILL DIVISION</u>
1987	APPROX. 1000		
1988	2006	652	
1989	1665		
1990	2654	616	8
1991 (JAN. & FEB.)	531	127	7

SEE ATTACHED MATERIALS FOR A MORE SPECIFIC BREAK DOWN OF THESE STATISTICS

Police Misconduct Lawyer Referral Service

633 S. Shatto Place Los Angeles, CA 90005
 Intakes (213) 387-3325
 Business (213) 387-3435

Board of Directors

1988

President

Carol Watson
 Attorney at Law

Secretary

Kwaku Duren
 Community Services Unlimited

Treasurer

Cathy Gardner
 Attorney at Law

Tom Beck
 Attorney at Law

John Burton
 Attorney at Law

George Denny
 Attorney at Law

Richard Eiden
 Attorney at Law

James Foster
 Attorney at Law

Charles Hamel
 Attorney at Law

Don Jackson
 Law Enforcement Officers
 for Justice

David Kyle
 Attorney at Law

Mary Lee
 Attorney at Law
 Legal Aid Foundation

David Lumian
 Consultant

Hugh Manes
 Attorney at Law

Robert Mann
 Attorney at Law

Javier Rodriguez
 Latino Community
 Justice Center

Geri Silvia
 Equal Rights Congress

Ken Weston
 Attorney at Law

Michael Zinzun
 Coalition Against Police Abuse

David Lynn
 Staff Coordinator

**OVERVIEW OF COMPLAINTS RECEIVED REGARDING
 THE LOS ANGELES POLICE DEPARTMENT**

TOTAL NUMBER OF COMPLAINTS ***** 652

SEX

MALE ***** 443
 FEMALE ***** 209

ETHNICITY

AFRICAN AMERICAN ***** 341
 WHITE ***** 159
 LATINO ***** 131*
 ASIAN ***** 8
 OTHER ***** 13

TYPE OF MISCONDUCT

ASSAULT ***** 342
 FALSE ARREST ***** 212
 STOLEN OR DAMAGED PROPERTY ***** 100
 ILLEGAL SEARCH ***** 90
 GENERAL HARASSMENT ***** 89
 TIGHT CUFFS ***** 74
 RACIAL REMARKS ***** 32
 NEGLIGENCE ***** 24
 DENIED MEDICAL TREATMENT ***** 17
 SEXUAL REMARKS ***** 15
 DOG ATTACK ***** 9
 OTHER ***** 25

* The number of Latino complainants is felt to be low due to fear of deportation if complaints are reported.

Certified by the State Bar of California

Police Misconduct Lawyer Referral Service

633 S. Shatto Place, Suite 199, Los Angeles, CA 90005
(213) 387-3325

POLICE AGENCIES

WITH TEN OR MORE COMPLAINTS

DURING 1988 CALANDAR YEAR

Board of Directors
Executive Committee

Kwaku Duren
Community Services
Unlimited

Mary Lee
Attorney at Law

Carol Watson
Attorney at Law

<u>DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
Los Angeles Police Department (PD)	652
Los Angeles Sheriffs Department (SD)	401
San Bernardino SD	76
Long Beach PD	50
Compton PD	36
Santa Monica PD	29
Torrance PD	24
Riverside SD	24
Pasadena PD	17
Perris PD	17
Glendale PD	17
Pomona PD	15
San Bernardino PD	15
Private Security	13
Burbank PD	12
South Gate PD	11
Santa Ana PD	10
Westminister PD	10
Culver City PD	10
West Covina PD	10
California Highway Patrol	31

TOTAL NUMBER OF POLICE AGENCIES REPORTED 1988

146

TOTAL NUMBER OF COMPLAINTS 1988

2,006

AVERAGE PER MONTH 1988

167

AVERAGE NUMBER OF COMPLAINTS REPORTED IN YEARS 1986-87

886

PERCENT INCREASE OF COMPLAINTS DURING LAST THREE YEARS

+226%

 Certified by the State Bar of California

David Lynn
Coordinator
PMLRS

POLICE MISCONDUCT DIVISION
 633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 387-3325

JANUARY 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....170

SEX

MALE.....133
 FEMALE.....37

ETHNICITY

WHITE.....56
 LATINO.....45
 AFRICAN AMERICAN.....41
 ASIAN.....3
 AMERICAN INDIAN.....1
 OTHER/UNKNOWN.....15

TYPE OF MISCONDUCT

ASSAULT.....55
 GENERAL HARASSMENT.....44
 VERBAL ABUSE.....34
 FALSE ARREST.....24
 FALSE IMPRISONMENT.....19
 DAMAGE TO PROPERTY.....10
 HOUSE SEARCH.....10
 ASSAULT WHILE CUFFED.....10
 CUFFS TO TIGHT.....8
 FLASHLIGHT ASSAULT.....7
 BATON ASSAULT.....7
 DOG BIT.....6
 RACIAL REMARKS.....5
 PROPERTY STOLEN.....4
 SHOOTING.....4
 GENERAL NEGLIGENCE.....3
 CHOKE HOLD.....3
 KILLING.....3
 TASER ASSAULT.....2
 BAD WARRANT.....2
 SEXUAL REMARKS.....1

633 S. SHATTO PLACE #199
LOS ANGELES, CA 90005
(213) 387-3325

JANUARY 1990 INTAKE STATISTICS

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
Los Angeles County Sheriffs Department.....	10
East Los Angeles Shariffs Department.....	7
Long Beach Police Dept.....	6
San Bernardino County Sheriffs.....	6
Los Angeles Police Department (PD).....	5
Los Angele Police Dept. Hollywood Div.....	4
LAPD N. Hollywood Div.....	4
Norwalk Sheriffs Dept.....	4
Riverside Sheriffs Dept.....	4
Compton Police Department (PD).....	3
Lennox Sheriff Dept.....	3
Cypress Police Dept.....	3
LAPD Southwest Div.....	3
Santa Ana Police Dept.....	3
Santa Monica Police Dept.....	3
Alhambra Police Dept.....	2
Bell Gardens Police Dept.....	2
Los Angeles Sharriff Dept. Carson Div.....	2
Covina Police Dept.....	2
Huntington Beach Police Dept.....	2
Industry, City of, Police Dept.....	2
Los Angeles Police Dept. Crash Unit.....	2
LAPD Pacific Div.....	2
LAPD Parker Center.....	2
LAPD Rampart Div.....	2
LAPD 77th Div.....	2
Lakewood Shariff Dept.....	2
La Mirada Shariff Dept.....	2
Lynwood Shariff Dept.....	2
Moreno Valley (Riverside) Shariff Dept.....	2
Van Nuys Shariffs Dept. (LA Co.).....	2
Alhambra Fire Dept.....	1
Azusa Police Dept.....	1
Banning CHP.....	1
Bakersfield Police Dept.....	1
Barstow SBNO Shariff Dept.....	1
Bell Police Dept.....	1
Bellflower Police Dept.....	1
Burbank Police Dept.....	1
Calif. Dept. of Corrections.....	1
Ceres Police Dept.....	1
California Highway Patrol.....	1
Culver City.....	1
Dan. Freeman Security Guard.....	1
Downey Police Dept.....	1
Fontana Police Dept.....	1
Fountain Valley Police Dept.....	1
Gardena Police Dept.....	1

633 S. SHATTO PLACE #190
 LOS ANGELES, CA 90005
 (213) 387-3325

JANUARY 1990 STATISTICS CONTINUED

Glendale Police Dept.....1
 Glen Helen - SBNO Sheriffs.....1
 Griffith Park Rangers.....1
 Grover City Police Dpat.....1
 Hawthorne Police Dept.....1
 Hemet Police Dept.....1
 Inglewood Police Dept.....1
 Kern County Sheriffs.....1
 King Village Security.....1
 Los Angeles Airpost Div.....1
 Los Angeles County Jail.....1
 Los Angeles Police Dept. East.....1
 Los Angeles Police Dept. Newton Div.....1
 LAPD Drug Task Force.....1
 LAPD Watts Div.....1
 LAPD West Div.....1
 LAPD West Valley.....1
 LAPD Wilshire Div.....1
 La Habra Police Dept.....1
 La Verne Police Dept.....1
 Lomita Sheriffs Dept.....1
 Malibu Sheriffs Dept.....1
 Montebello Police Dept.....1
 Monterey Police Dept.....1
 Moreno Valley Police Dept.....1
 Ontario Police Dept.....1
 Orange Police Dept.....1
 Orange County Jail.....1
 Orange County Sheriffs.....1
 Orange Co. Spec. Force Patrol Div.....1
 Oxnard Police Dept.....1
 Pasadena Police Dept.....1
 Pt. Hueneme Police Dept.....1
 Pico Rivera Police Dept.....1
 Pico Rivera Sheriffs Dept.....1
 Redlands Police Dept.....1
 Redondo Beach Police Dept.....1
 Riverside Police Dept.....1
 Sacramento Police Dept.....1
 San Bernardino Police Dept.....1
 San Bernardino County Jail.....1
 San Bernardino CHP.....1
 San Diego Juvenile Div.....1
 San Dimas Sheriff Div (LA Co.).....1
 Santa Paula Police Dept.....1
 Temple City Sheriffs Dept. (LA Co.).....1
 Van Nuys Sheriffs Dept. (LA Co.).....1
 Ventura Sheriffs Dept.....1
 Wayside Honor Ranch.....1
 West Covina Police Dept.....1

POLICE MISCONDUCT LAWYER'S REFERRAL SERVICE
 633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 387-3325

FEBRUARY 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....133

SEX

MALE.....96
 FEMALE.....37

ETHNICITY

WHITE.....44
 LATINO.....42
 AFRICAN AMERICAN.....31
 ASIAN.....2
 AMERICAN INDIAN.....2
 OTHER/UNKNOWN.....12

TYPE OF MISCONDUCT

ASSAULT.....39
 GENERAL HARASSMENT.....12
 VERBAL ABUSE.....22
 FALSE ARREST.....15
 FALSE IMPRISONMENT.....5
 DAMAGE TO PROPERTY.....6
 HOUSE SEARCH.....9
 CUFFS TO TIGHT.....5
 FLASHLIGHT ASSAULT.....3
 BATON ASSAULT.....4
 DOG BIT.....2
 RACIAL REMARKS.....3
 PROPERTY STOLEN.....6
 SHOOTING.....8
 GENERAL NEGLIGENCE.....7
 CHOKE HOLD.....1
 KILLING.....1
 TASER ASSAULT.....1
 BAD WARRANT.....3
 SEXUAL REMARKS.....3
 LACERATIONS.....1
 REFUSAL TO GIVE PROPERTY RECEIPT.....2
 OFFICER LIED ON POLICE REPORT.....1
 BEATEN UNCONSCIOUS.....1
 FALSE ARREST.....3
 DENIED MEDICAL ATTENTION.....1
 NONSANITARY BLOOD EXTRACTION.....1

POLICE MISCONDUCT LAWYER'S REFERRAL SERVICE
 633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 387-3325

FEBRUARY 1990 INTAKE STATISTICS

BY DEPARTMENT NUMBER OF COMPLAINTS

Los Angeles County Sheriffs Department.....	5
East Los Angeles Shariffs Department.....	2
Long Beach Police Dept.....	4
San Bernardino County Sheriffs.....	3
Los Angeles Police Department (PD).....	4
Los Angele Police Dept. Hollywood Div.....	4
Norwalk Sheriffs Dept.....	1
Riverside Sheriffs Dept.....	3
Compton Police Department (PD).....	3
Lennox Sheriff Dept.....	2
LAPD Southwest Div.....	5
Santa Ana Police Dept.....	1
Santa Monica Police Dept.....	1
Alhambra Police Dept.....	1
Huntington Beach Police Dept.....	1
Industry, City of, Police Dept.....	1
LAPD Pacific Div.....	1
LAPD Parker Center.....	2
LAPD Rampart Div.....	1
LAPD 77th Div.....	3
Lynwood Shariff Dept.....	2
California Highway Patrol.....	1
Culver City.....	1
Downey Police Dept.....	1
Fountain Valley Police Dept.....	1
Gardena Police Dept.....	1
Glendale Police Dept.....	2
Inglewood Police Dept.....	5
Los Angeles County Jail.(Wayside).....	2
LAPD Drug Task Force/Narcotics Div.....	1
LAPD West Valley.....	1
LAPD Wilshire Div.....	2
Ontario Police Dept.....	1
Orange Police Dept.....	1
Pasadena Police Dept.....	4
Pico Rivera Sheriffs Dept.....	2
Riverside Police Dept.....	2
San Bernardino Police Dept.....	2
Temple City Sheriffs Dept.(LA Co.).....	3
Van Nuys Sheriffs Dept.(LA Co.).....	1
Ventura Sheriffs Dept.....	3
West Covina Police Dept.....	1
Anahiem PD.....	1
California State Los Angeles Police.....	1
California State Prison.....	2
Carson SD.....	1
Central Division LAPD.....	1
City of Industry SD.....	1

633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 387-3325

FEBRUARY 1990 STATISTICS CONTINUED

Costa Mesa PD.....	1
Foothill PD.....	1
Garden Grove PD.....	1
Glendora PD.....	1
Hawthorne SD.....	1
Hermosa Beach PD.....	1
Indio PD.....	1
Irvine PD.....	2
Lancaster SD.....	2
Lompoc PD.....	1
Maywood PD.....	1
Newport Beach PD.....	1
Newton PD.....	1
North East Div. LAPD.....	1
Palms Springs SD.....	1
Placentia PD.....	2
Realto PD.....	1
Rolands PD.....	1
RTD Police.....	1
San Gabriel PD.....	1
Seal Beach PD.....	1
Semi Valley PD.....	2
Signal Hill PD.....	1
South East Div. LAPD.....	1
UCLA Campus Police.....	1
Wayside SD.....	1
West Hollywood LAPD.....	1
Westminister PD.....	1
Yuma City, Arizona.....	1

POLICE MISCONDUCT LAWYER'S REFERRAL SERVICE
 623 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 415 593 1305

MARCH 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....175

SEX

MALE.....144
 FEMALE.....31

ETHNICITY

WHITE.....56
 LATINO.....41
 AFRICAN AMERICAN.....68
 ASIAN.....8
 AMERICAN INDIAN.....1
 OTHER/UNKNOWN.....1

TYPE OF MISCONDUCT

ASSAULT.....57
 GENERAL HARASSMENT.....36
 VERBAL ABUSE.....61
 FALSE ARREST.....28
 FALSE IMPRISONMENT.....12
 DAMAGE TO PROPERTY.....5
 HOUSE SEARCH.....10
 CUFFS TO TIGHT.....11
 FLASHLIGHT ASSAULT.....9
 BATON ASSAULT.....26
 DOG BIT.....4
 RACIAL REMARKS.....11
 PROPERTY STOLEN.....11
 SHOOTING.....4
 GENERAL NEGLIGENCE.....15
 CHOKE HOLD.....3
 HOG TIED.....2
 KILLING.....1
 TASER ASSAULT.....1
 BAD WARRANT.....7
 SEXUAL REMARKS.....1
 OFFICER LIED ON POLICE REPORT.....15
 BEATEN UNCONSCIOUS.....1
 DENIED MEDICAL ATTENTION.....7
 MACE ASSAULT.....3
 ASSAULT WHILE CUFFED.....1
 EMOTIONAL TRAUMA.....7

651 S. SHATTO PLACE #199
LOS ANGELES, CA 90005
(213) 387-3325

MARCH 1990 INTAKE STATISTICS

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
Los Angeles County Jail.....	9
Marino Valley PD.....	8
Firestone SD.....	4
Lakewood SD.....	4
LAPD Southwest Div.....	4
California Highway Patrol.....	3
Carson SD.....	3
Inglewood PD.....	3
Long Beach PD.....	3
San Bernardino County SD.....	3
Los Angeles Airport PD.....	3
LAPD Southeast Div.....	3
LAPD 77th Div.....	3
Santa Ana PD.....	3
Torrance PD.....	3
Buena Park PD.....	2
Huntington Beach PD.....	2
Indio (Riverside) SD.....	2
Los Angeles County SD.....	2
LAPD Hollywood Div.....	2
LAPD Van Nuys.....	2
LAPD Wilshire Div.....	2
LAPD.....	2
Pasadena PD.....	2
Ventura PD.....	2
Wayside SD.....	2
West Hollywood SD.....	2
West Covina PD.....	2
Norwalk SD.....	1
Anaheim PD.....	1
Arcadia PD.....	1
Beverly Hills PD.....	1
Burbank PD.....	1
California State Prison.....	1
Central Division LAPD.....	1
City of Industry SD.....	1
Clairmont PD.....	1
Coltin PD.....	1
Compton PD.....	1
Corona PD.....	1
Covina PD.....	1
Dept. of Justice Narcotics Bureau.....	1
East Los Angeles SD.....	1
El Segundo PD.....	1
Fullerton PD.....	1
Glendale PD.....	1
Hawthorne SD.....	1

633 GRATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 357 3325

MARCH 1990 INTAKE STATISTICS CONTINUED

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
La Habra PD.....	1
Lancaster SD.....	1
Laradio Detention Center.....	1
LAPD Central Div.....	1
LAPD Metro Crash Unit.....	1
LAPD Newton Div.....	1
LAPD North Hollywood.....	1
LAPD Pacific Div.....	1
LAPD West Los Angeles.....	1
Long Beach Superior Court.....	1
Lynwood SD.....	1
Los Angeles County Jail.(Wayside).....	1
Los Angeles Safty Police.....	1
LAPD West Valley.....	1
Manhattan Beach PD.....	1
Modesto PD.....	1
Newport Beach PD.....	1
Northridge/Devenshire PD.....	1
Ontario PD.....	1
Orange City Jail.....	1
Oxnard PD.....	1
Pomona Fire Dept.....	1
Pomona PD.....	1
Redondo Beach PD.....	1
Riverside PD.....	1
RTD Police.....	1
San Bernardino PD.....	1
San Clemente PD.....	1
San Gabriel PD.....	1
San Pedro PD.....	1
Semi Valley PD.....	1
Stockton PD.....	1
Van Nuys Court.....	1

APRIL 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....177

SEX

MALE.....141
FEMALE.....36

ETHNICITY

WHITE.....36
LATINO.....57
AFRICAN AMERICAN.....53
ASIAN.....1
AMERICAN INDIAN.....1
OTHER/UNKNOWN.....2

TYPE OF MISCONDUCT

ASSAULT.....70
GENERAL HARASSMENT.....21
VERBAL ABUSE.....49
FALSE ARREST.....36
FALSE IMPRISONMENT.....24
DAMAGE TO PROPERTY.....6
HOUSE SEARCH.....11
CUFFS TO TIGHT.....21
FLASHLIGHT ASSAULT.....4
BATON ASSAULT.....16
DOG BIT.....3
RACIAL REMARKS.....5
PROPERTY STOLEN.....10
SHOOTING.....1
GENERAL NEGLIGENCE.....10
CHOKER HOLD.....3
HOG TIED.....1
TASER ASSAULT.....3
BAD WARRANT.....4
SEXUAL REMARKS.....1
OFFICER LIED ON POLICE REPORT.....1
DENIED MEDICAL ATTENTION.....9
ASSAULT WHILE CUFFED.....10
EMOTIONAL TRAUMA.....1
ITEMS DESTROYED.....1
TAPPED PHONE.....2
HEART ATTACK RESULTING IN DEATH.....1

POLICE MISCELLANEOUS DIVISION
 633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 387-3325

APRIL 1990 INTAKE STATISTICS

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
Los Angeles County Jail.....	7
East Los Angeles SD.....	5
LAPD Van Nuys.....	5
San Bernardino County SD.....	5
West Covina PD.....	5
California Highway Patrol.....	4
Firestone SD.....	4
Los Angeles County SD.....	4
LAPD Hollywood Div.....	4
Lennox LACSD.....	4
Ontario PD.....	4
Santa Ana PD.....	4
LAPD Rampart Div.....	3
Pasadena PD.....	3
S. Yale PD.....	3
West Hollywood SD.....	3
Hawthorne SD.....	2
Inglewood PD.....	2
LAPD Southwest Div.....	2
Lakewood SD.....	2
Lavern PD.....	2
Long Beach PD.....	2
LAPD North Hollywood.....	2
LAPD West Los Angeles.....	2
LAPD Wilshire Div.....	2
Marina Del Rey LACSD.....	2
Northridge/Devenshire PD.....	2
Oxnard PD.....	2
Palms Springs PD.....	2
Pico Rivera LACSD.....	2
RTD Police.....	2
Santa Monica PD.....	2
Temple City LACSD.....	2
Ventura City Shariffs.....	2
Ventura City Jail.....	2
Walnut PD.....	2
Alhambra PD.....	1
Antelope Valley LACSD.....	1
Agusa, L.A. Co. Shariffs.....	1
Bevelry Hills PD.....	1
Cal. State Northridge Campus Police.....	1
Cal. State Prison -CRC.....	1
Cal. Youth Authority (Norwalk/Ontario).....	1
Cerritos LACSD.....	1
Clairmont PD.....	1
Coltin PD.....	1

POLICE MISDEMEANOR LAW ENFORCEMENT DIVISION
633 S. SHATTU PLACE #199
LOS ANGELES, CA 90005
(213) 347-3326

APRIL 1990 INTAKE STATISTICS CONTINUED

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
Culver City PD.....	1
Dept. of Justice Narcotics Bureau.(DEA).....	1
Downey PD.....	1
El Monte PD.....	1
Federal Narcotics Agents.....	1
Glen Helen (San Bernardino Co.).....	1
Glendale PD.....	1
Hilton Hotel Security.....	1
Immigration Naturalization Service.....	1
Lancaster SD.....	1
LAPD.....	1
LAPD 6th St. Div.....	1
LAPD 77th Div.....	1
LAPD Foothill.....	1
LAPD Hollenbach Div.....	1
LAPD Metro Crash Unit.....	1
LAPD Narcotics.....	1
LAPD Newton Div.....	1
LAPD Pacific Div.....	1
LAPD Parker Center.....	1
LAPD Southeast Div.....	1
La Crescenta Sheriffs.....	1
Lakewood PD.....	1
Loma Linda PD.....	1
Lynwood PD.....	1
Malibu LACSD.....	1
Marino Valley PD.....	1
Monrovia PD.....	1
Montebello PD.....	1
Monterey Park PD.....	1
National City PD.....	1
North Hollywood Jail.....	1
Orange Co. Jail.....	1
Orange Co. Sheriffs.....	1
Redondo Beach PD.....	1
Riverside PD.....	1
Riverside Sheriffs - Helmet.....	1
Riverside Sheriffs - Palm Springs.....	1
Sacramento PD.....	1
San Bernardino Animal Control.....	1
San Bernardino PD.....	1
San Gabriel PD.....	1
San Marino PD.....	1
San Ysidro.....	1
Santa Barbara Co. Sheriffs Dept.....	1
Santa Paula PD.....	1
Security, Welfare Office.....	1

LOS ANGELES, CA 90005
(213) 397-3325

APRIL 1990 INTAKE STATISTICS CONTINUED

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
Semi Valley PD.....	1
Tehama Co. Jail.....	1
US Marshall.....	1
Vernon PD.....	1
Walnut LACSD.....	1
West Tec. Sec. Guards.....	1

POLICE MISCONDUCT LIAISON & TRAINING DIVISION
 633 S. SMATTO PLACE #199
 LOS ANGELES, CA 90006
 (213) 307-3329

MAY 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....221

SEX

MALE.....168
 FEMALE.....53

ETHNICITY

WHITE.....67
 LATINO.....58
 AFRICAN AMERICAN.....91
 ASIAN.....3
 AMERICAN INDIAN.....1
 OTHER/UNKNOWN.....1

TYPE OF MISCONDUCT

ASSAULT.....70
 GENERAL HARASSMENT.....33
 VERBAL ABUSE.....42
 FALSE ARREST.....39
 FALSE IMPRISONMENT.....24
 DAMAGE TO PROPERTY.....17
 HOUSE SEARCH.....14
 CUFFS TO TIGHT.....14
 FLASHLIGHT ASSAULT.....4
 BATON ASSAULT.....19
 DOG BIT.....8
 RACIAL REMARKS.....12
 PROPERTY STOLEN.....14
 SHOOTING.....5
 GENERAL NEGLIGENCE.....24
 CHOKE HOLD.....7
 TASER ASSAULT.....2
 Killing.....2
 BAD WARRANT.....3
 SEXUAL REMARKS.....2
 OFFICER LIED ON POLICE REPORT.....3
 DENIED MEDICAL ATTENTION.....5
 ASSAULT WHILE CUPPED.....5
 EMOTIONAL TRAUMA.....2
 MACE ASSAULT.....3

633 S. SHATTO PLACE #190
LOS ANGELES, CA 90005
(213) 287-3225

MAY 1990 INTAKE STATISTICS

BY DEPARTMENT NUMBER OF COMPLAINTS

LAPD.....	20
Los Angeles County SD.....	14
Long Beach PD.....	9
San Bernardino County SD.....	8
Cal. State Prison -CRC.....	6
Huntington Beach PD.....	6
Los Angeles County Jail.....	6
Lynwood SD.....	6
San Louis County Jail.....	6
Santa Monica PD.....	6
Glendale PD.....	5
LAPD 77th Div.....	5
LAPD Hollywood Div.....	5
Orange Co. Sheriffs.....	5
Fullerton PD.....	4
LAPD Rampart Div.....	4
LAPD Van Nuys.....	4
Los Angeles County SD, Lennox.....	4
Norwalk PD.....	4
Riverside PD.....	4
Torrance PD.....	4
Ventura PD.....	4
CHP.....	3
Hawthorne SD.....	3
LAPD Wilshire Div.....	3
Pomona PD.....	3
Anaheim PD.....	2
Bell Gardens PD.....	2
Burbank PD.....	2
City of Industry.....	2
Culver City PD.....	2
Firestone SD.....	2
Inglewood PD.....	2
LAPD Southeast Div.....	2
LAPD Southwest Div.....	2
LAPD Central Div.....	2
LAPD Newton Div.....	2
Monterey Park PD.....	2
Ontario PD.....	2
Oxnard PD.....	2
San Pedro PD.....	2
Santa Ana PD.....	2
Temple City LACSD.....	2
USC Security.....	2

633 S SMATTO PLACE #190
 LOS ANGELES, CA 90005
 (213) 387-3329

MAY 1990 INTAKE STATISTICS CONTINUED

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
West Covina PD.....	2
Whittier PD.....	2
Bakersfield PD.....	1
Bell PD.....	1
Bevelry Hills PD.....	1
Calipatria PD.....	1
Compton PD.....	1
Covina PD.....	1
Cypress PD.....	1
Downey PD.....	1
East Los Angeles SD.....	1
El Segundo PD.....	1
Farmersville PD.....	1
Fontana SD.....	1
Fountain Valley.....	1
Gardena PD.....	1
Garden Grove PD.....	1
Kern County PD.....	1
Lancaster SD.....	1
LAPD Metro.....	1
LAPD North Hollywood.....	1
LAPD West Los Angeles.....	1
LAPD South Bureau Homicide.....	1
Marino Valley PD.....	1
Monrovia PD.....	1
Montebello PD.....	1
Newport Beach PD.....	1
Northridge/Devenshire PD.....	1
Paramount SD.....	1
Pasadena PD.....	1
PDS Investigator.....	1
Pico Rivera LACSD.....	1
San Bernardino County Jail.....	1
San Clements PD.....	1
San Jacinto.....	1
San Jose PD.....	1
Sybal Brand Jail.....	1
Taft PD.....	1

POLICE MISCONDUCT LAWYER'S REFERRAL SERVICE
 633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 387-3325

JULY 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....252

SEX

MALE.....192
 FEMALE.....60

ETHNICITY

WHITE.....72
 LATINO.....73
 AFRICAN AMERICAN.....101
 ASIAN.....2
 AMERICAN INDIAN.....1
 OTHER/UNKNOWN.....3

TYPE OF MISCONDUCT

ASSAULT.....60
 GENERAL HARASSMENT.....48
 VERBAL ABUSE.....55
 FALSE ARREST.....25
 FALSE IMPRISONMENT.....17
 DAMAGE TO PROPERTY.....15
 HOUSE SEARCH.....16
 CUFFS TO TIGHT.....7
 FLASHLIGHT ASSAULT.....7
 BATON ASSAULT.....27
 DOG BIT.....4
 RACIAL REMARKS.....11
 PROPERTY STOLEN.....10
 SHOOTING.....4
 GENERAL NEGLIGENCE.....41
 CHOKE HOLD.....9
 TASER ASSAULT.....1
 Killing.....1
 BAD WARRANT.....2
 SEXUAL REMARKS.....0
 OFFICER LIED ON POLICE REPORT.....1
 DENIED MEDICAL ATTENTION.....0
 ASSAULT WHILE CUFFED.....10
 EMOTIONAL TRAUMA.....0
 MACE ASSAULT.....0

JULY 1990 INTAKE STATISTICSBY DEPARTMENT NUMBER OF COMPLAINTSLAPD BY DIVISION

Div. unknown.....	2
Wilshire Div.....	4
Rampart.....	7
77th Div.....	6
Devonshire.....	1
Foothill.....	2
West Valley.....	1
Van Nuys.....	9
North Hollywood.....	0
West Los Angeles.....	4
Hollywood.....	7
Northeast.....	0
Central.....	3
Hollenbeck.....	3
Pacific.....	3
Southwest.....	8
Newton.....	4
Southeast.....	3
Harbor.....	2
Vice.....	1
Parker Center.....	2

LOS ANGELES COUNTY SHARIFF'S BY DEPARTMENT

Baldwin Park.....	1
Firststone.....	7
Lakewood.....	3
Lennox.....	4
Lomita.....	1
Lynwood.....	2
Malibu.....	1
Norwalk.....	3
Rico Rivera.....	1
Temple City.....	1
Walnut.....	3
West Hollywood.....	1
City of Industry.....	1

MISC. SHARIFF'S DEPARTMENTS

East Los Angeles4
 Ventura County3
 Riverside County4
 Orange County.....2
 Rancho Cucamonga.....1
 San Bernardino County.....2
 Montebello.....1
 Highland Park.....1
 West Covina.....2
 Montrose.....1

OTHER POLICE DEPARTMENTS

Huntington Beach.....4
 Torrance.....2
 Clairmont.....3
 Palm Springs.....1
 Hawthorne.....1
 Culver City.....2
 Inglewood.....3
 Pasadena.....4
 Compton.....3
 Perris.....1
 Riverside1
 Gardena.....1
 Pomona.....2
 San Bernardino.....3
 Ontario.....5
 South Pasadena.....1
 Santa Ana.....4
 Irvine.....1
 Santa Monica.....4
 Fontana.....2
 Rialto.....4
 Adelanto.....1
 New Port Beach.....1
 Beverly Hills.....2
 La Habra.....1
 Cyprus.....1
 Ventura.....1
 Covina.....1
 Mammoth Lake.....1
 Hesperia.....1
 Palm Desert.....1
 Maywood.....1
 Glendale.....1
 West Sacramento.....1
 San Jacinta.....1
 Bearmont.....1
 Downey.....2

Bell Garden.....1
 Bakersfield.....1
 Colton.....1
 Huntington Park.....1
 San Gabriel.....1
 El Monte.....2
 Oxnard.....1
 Fountain Valley.....1
 San Pedro.....1
 Walnut.....1

JAILS/PRISONS

San Louis Obispo Correctional.....1
 Calif. State Prison - Chuckawala.....2
 Calif. State Prison - Tahachapi.....3
 Central Jail.....7
 Orange County Jail.....1
 San Bernardino County Jail.....1

OTHER

UCLA Police.....1
 UC Irvine Police.....2
 State Justice Dept.-Narcotics Bureau.....1
 LAX Airport Police.....1
 U.S. Marshall.....1
 Hillside Boys Home, Pasadena.....1
 Federal Vureau of Investigation.....1
 L.A. County Public Social Services.....1
 Federal Agents.....1

633 S SHATTO PLACE #199
LOS ANGELES, CA 90008
(213) 387-3328

AUGUST 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS 260

SEX

MALE 198
FEMALE 62

ETHNICITY

WHITE 99
LATINO 77
AFRICAN AMERICAN 75
ASIAN 4
AMERICAN INDIAN 2
OTHER/UNKNOWN 3

TYPE OF MISCONDUCT

ASSAULT 88
GENERAL HARASSMENT 57
VERBAL ABUSE 51
FALSE ARREST 56
FALSE IMPRISONMENT 41
DAMAGE TO PROPERTY 11
HOUSE SEARCH 14
CUFFS TO TIGHT 20
FLASHLIGHT ASSAULT 4
BATON ASSAULT 19
DOG BIT 9
RACIAL REMARKS 5
PROPERTY STOLEN 12
SHOOTING 5
GENERAL NEGLIGENCE 47
CHOKE HOLD 5
TASER ASSAULT 0
Killing 2
BAD WARRANT 1
SEXUAL REMARKS 2
OFFICER LIED ON POLICE REPORT 6
DENIED MEDICAL ATTENTION 1
ASSAULT WHILE CUFFED 9
EMOTIONAL TRAUMA 33
FACE ASSAULT 2

AUGUST INTAKE STATISTICS

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
----------------------	-----------------------------

LAPD BY DIVISION

Wilshire Div	6
Rampart	4
77th Div	3
Devonshire	1
Foothill	4
West Valley	1
Van Nuys	6
North Hollywood	3
West Los Angeles	3
Hollywood	1
Northeast	2
Central	4
Hollenbeck	2
Pacific	2
Southwest	6
Newton	4
Southeast	4
Harbor	3
Parker Center	5
USC Campus Police	1

MISC. SHARIFF'S DEPARTMENTS (INCLUDING L.A. COUNTY)

Cerritos	1
Lakewood	3
Lancaster/Antelope Valley	2
Lennox	2
Lomita	1
Lynwood	2
Norwalk	4
Pico Rivera	1
San Dimas	1
Temple City	7
West Hollywood	2
Jail Staff	1
Orange County Sheriffs	7
Antelope Valley	1
East Los Angeles	2
Firestone SD	1
San Bernardino SD	8
Ventura County SD	2
Riverside County SD	3
Kern County Sheriffs	2
Orange County Marshall's Office	1
Malibu SD	1
Altadena SD	1

Safety Police L.A. County	1
Shelby	1
Baldwin Park	1
Firestone	7
Lakewood	3
Lennox	1
Lomita	1
Lynwood	2
Mailbu	1
Norwalk	3
Pico Rivera	1
Temple City	1
Walnut	3
West Hollywood	1
City of Industry	1
East Los Angeles	4
Ventura County	3
Riverside County	4
Orange County	2
Rancho Cucamonga	1
San Bernardino County	2
Montebello	1
Highland Park	1
West Covina	2
Montrose	1

OTHER POLICE DEPARTMENTS

Huntington Beach	4
Torrance	2
Clairmont	3
Palm Springs	1
Hawthorne	1
Culver City	2
Inglewood	3
Pasadena	4
Compton	3
Perris	1
Riverside	1
Gardena	1
Pomona	2
San Bernardino	3
Ontario	8
South Pasadena	1
Santa Ana	4
Irvine	1
Santa Monica	4
Fontana	2
Rialto	4
Adelanto	1
Newport Beach	1
Beverly Hills	2

La Habra	1
Cyprus	1
Ventura	1
Covina	1
Mamouth Lake	1
Hesperia	1
Palm Desert	1
Haywood	1
Glendale	1
West Sacramento	1
San Jacinta	1
Bearmont	1
Downey	2
Bell Garden	1
Bakersfield	1
Colton	1
Huntington Park	1
San Gabriel	1
El Monte	2
Oxnard	1
Fountain Valley	1
San Pedro	1
Walnut	1

JAILS/PRISONS

San Louis Obispo Correctional	1
Calif. State Prison - Chuckawala	2
Calif. State Prison - Tahachapi	3
Central Jail	7
Orange County Jail	1
San Bernardino County Jail	1

OTHER

UCLA Police	1
UC Irvine Police	2
State Justice Dept. - Narcotics Bueau	1
LAX Airport Police	1
U.S. Marshall	1
Hillside Boys Home, Pasadena	1
Federal Bureau of Investigation	1
L.A. County Public Social Services	1
Federal Agents	1

673 S. SMITH PLACE 1147
 LOS ANGELES, CA 90005
 (P. 3) 387-3325

SEPTEMBER 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS 208

SEX

MALE 161
 FEMALE 47

ETHNICITY

WHITE 53
 LATINO 61
 AFRICAN AMERICAN 87
 ASIAN 4
 AMERICAN INDIAN 0
 OTHER/UNKNOWN 0

TYPE OF MISCONDUCT

ASSAULT 76
 GENERAL HARASSMENT 24
 VERBAL ABUSE 24
 FALSE ARREST 36
 FALSE IMPRISONMENT 13
 DAMAGE TO PROPERTY 9
 HOUSE SEARCH 8
 CUFFS TO TIGHT 4
 FLASHLIGHT ASSAULT 1
 BATON ASSAULT 10
 DOG BIT 9
 RACIAL REMARKS 0
 PROPERTY STOLEN 9
 SHOOTING 7
 GENERAL NEGLIGENCE 4
 CHOKE HOLD 1
 TASER ASSAULT 1
 Killing 1
 BAD WARRANT 1
 SEXUAL REMARKS 4
 OFFICER LIED ON POLICE REPORT 5
 DENIED MEDICAL ATTENTION 6
 ASSAULT WHILE CUFFED 3
 EMOTIONAL TRAUMA 41
 MACE ASSAULT 1

SEPTEMBER INTAKE STATISTICS

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
----------------------	-----------------------------

LAPD BY DIVISION

Div. unknown.....	6
Wilshire Div.....	5
Rampart.....	3
77th Div.....	2
Devonshire.....	1
Foothill.....	2
West Valley.....	0
Van Nuys.....	4
North Hollywood.....	3
West Los Angeles.....	5
Hollywood.....	5
Northeast.....	0
Central.....	0
Hollenbeck.....	0
Pacific.....	6
Southwest.....	5
Newton.....	2
Southeast.....	1
Harbor.....	5
Vice.....	0
Parker Center.....	0

LOS ANGELES COUNTY SHARIFF'S BY DEPARTMENT

Baldwin Park	0
Carson.....	1
Diamond Bar.....	0
Industry.....	1
La Canada/Flintridge.....	0
Lakewood.....	1
Lawndale.....	0
Lennox.....	2
Lynwood.....	3
Metrorail/Blue Line.....	0
Norwalk.....	2
Paramount.....	0
Pico Rivera.....	2
Temple City.....	1
Walnut.....	2
West Hollywood.....	3
Firestone.....	6
Los Angeles County Jail.....	7

633 S. SHATTO PLACE #199
LOS ANGELES, CA 90005
(213) 387-3328

OCTOBER 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....334

SEX

MALE.....260
FEMALE.....74

ETHNICITY

WHITE.....111
LATINO.....90
AFRICAN AMERICAN.....111
ASIAN.....2
AMERICAN INDIAN.....0
OTHER/UNKNOWN.....5

TYPE OF MISCONDUCT

ASSAULT.....127
GENERAL HARASSMENT.....78
VERBAL ABUSE.....68
FALSE ARREST.....16
FALSE IMPRISONMENT.....11
DAMAGE TO PROPERTY.....21
HOUSE SEARCH.....14
CUFFS TO TIGHT.....10
FLASHLIGHT ASSAULT.....2
BATON ASSAULT.....14
DOG BIT.....11
RACIAL REMARKS.....2
PROPERTY STOLEN.....1
SHOOTING.....4
GENERAL NEGLIGENCE.....23
CHOKER HOLD.....4
TASER ASSAULT.....1
Killing.....5
BAD WARRANT.....0
SEXUAL REMARKS.....3
OFFICER LIED ON POLICE REPORT.....3
DENIED MEDICAL ATTENTION.....2
ASSAULT WHILE CUFFED.....1
EMOTIONAL TRAUMA.....57
MACE ASSAULT.....0

OCTOBER INTAKE STATISTICS

<u>BY DEPARTMENT</u>	<u>NUMBER OF COMPLAINTS</u>
----------------------	-----------------------------

LAPD BY DIVISION

Div. unknown.....	0
Wilshire Div.....	3
Rampart.....	7
77th Div.....	5
Devonshire.....	1
Foothill.....	2
West Valley.....	0
Van Nuys.....	3
North Hollywood.....	4
West Los Angeles.....	9
Hollywood.....	10
Northeast.....	0
Central.....	7
Hollenbeck.....	2
Pacific.....	3
Southwest.....	5
Newton.....	3
Southeast.....	4
Harbor.....	2
Academy.....	2
Parker Center.....	1

LOS ANGELES COUNTY SHARIFF'S BY DEPARTMENT

Carson.....	1
Diamond Bar.....	1
Industry.....	1
La Canada/Flintridge.....	3
Lakewood.....	1
Lawndale.....	1
Lennox.....	4
Lynwood.....	8
Metrorail/Blue Line.....	1
Norwalk.....	3
Paramount.....	2
Pico Rivera.....	1
Temple City.....	7
Walnut.....	1
West Hollywood.....	3
Firestone.....	7
Los Angeles County Jail.....	21

MISC. SHARIFF'S DEPARTMENTS

Stanton	1
Ventura County	2
Shasta County	1
Orange County Jail.....	3
Santa Barbara.....	1
San Bernardino County.....	9
Riverside.....	3

OTHER POLICE DEPARTMENTS

Huntington Beach.....	8
Torrance.....	2
Clairmont.....	1
Pala Springs.....	1
Hawthorne.....	3
Culver City.....	4
Inglewood.....	3
Pasadena.....	3
Compton.....	4
Whittier.....	3
Oceanside	1
Baldwin Park.....	1
Pomona.....	2
San Bernardino.....	2
Ontario.....	2
South Pasadena.....	1
Santa Ana.....	3
Irvine.....	2
Santa Monica.....	2
Fontana.....	2
Rialto.....	3
Montclair.....	1
Burbank.....	1
Beverly Hills.....	3
Morow Bay.....	1
Cyprus.....	1
Ventura.....	2
West Covina.....	1
Maywood.....	1
Hesperia.....	1
Westminister.....	2
Riverside.....	5
Glendale.....	5
California Highway Patrol.....	3
Brea.....	1
Mammoth Lake.....	1
Laquan Beach.....	1
South Gate.....	4
Redlands.....	1
Monrovia.....	2

Oxnard.....	1
Vallejo.....	1
Long Beach.....	1
Hermosa Beach.....	1
Colton.....	2
Navada State	1
Georgia State.....	1
San Morieno.....	1
Bell.....	1
Bell Gardens.....	2
Azusa.....	3
Lompoc.....	1
Arcadia.....	1
Pomona.....	1
Monterey Park.....	1
Corona.....	2
Anaheim.....	3
Glendora.....	2
Boarder Patrol.....	1
Upland.....	2
UCLA Campus Police.....	2
Buena Park.....	1
Redondo.....	2

JAILS/PRISONS

Soledad.....	1
Sybil Brand.....	3
Vacaville.....	1

POLICE MISCONDUCT LAWYER'S REFERRAL SERVICE
 633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 367-3325

NOVEMBER 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS 272

SEX

MALE 203
 FEMALE 69

ETHNICITY

WHITE 91
 LATINO 84
 AFRICAN AMERICAN 88
 ASIAN 1
 AMERICAN INDIAN 0
 OTHER/UNKNOWN 8

TYPE OF MISCONDUCT

ASSAULT 80
 GENERAL HARASSMENT 41
 VERBAL ABUSE 41
 FALSE ARREST 44
 FALSE IMPRISONMENT 15
 DAMAGE TO PROPERTY 9
 HOUSE SEARCH 20
 CUFFS TO TIGHT 10
 FLASHLIGHT ASSAULT 8
 BATON ASSAULT 16
 DOG BIT 5
 RACIAL REMARKS 6
 PROPERTY STOLEN 12
 SHOOTING 5
 GENERAL NEGLIGENCE 28
 CHOKE HOLD 10
 TASER ASSAULT 3
 Killing 7
 BAD WARRANT 0
 SEXUAL REMARKS 1
 OFFICER LIED ON POLICE REPORT 4
 DENIED MEDICAL ATTENTION 11
 ASSAULT WHILE CUFFED 9
 EMOTIONAL TRAUMA 34
 MACE ASSAULT 0

NOVEMBER INTAKE STATISTICS

BY DEPARTMENT **NUMBER OF COMPLAINTS**

LAPD BY DIVISION

Div. unknown.....	0
Wilshire Div.....	3
Rampart.....	2
77th Div.....	9
Devonshire.....	1
Foothill.....	1
West Valley.....	1
Van Nuys.....	2
North Hollywood.....	1
West Los Angeles.....	0
Hollywood.....	7
Northeast.....	0
Central.....	5
Hollenbeck.....	3
Pacific.....	3
Southwest.....	6
Newton.....	2
Southeast.....	6
Harbor.....	1
Vice.....	0
Parker Center.....	0

LOS ANGELES COUNTY SHARIFF'S BY DEPARTMENT

Baldwin Park	0
Carson.....	2
Diamond Bar.....	0
Industry.....	1
La Canada/Flintridge.....	0
Lakewood.....	0
Lewndale.....	0
Lennox.....	1
Lynwood.....	5
Metrorail/Blue Line.....	0
Norwalk.....	7
Paramount.....	0
Pico Rivera.....	0
Temple City.....	3
Walnut.....	2
West Hollywood.....	4
Firestone.....	4
Los Angeles County Jail.....	8

MISC. SHARIFF'S DEPARTMENTS

Stanton	1
Ventura County	2
Shasta County	1
Orange County Jail.....	3
Santa Barbara.....	1
San Bernardino County.....	9
Riverside.....	3

OTHER POLICE DEPARTMENTS

Huntington Beach.....	8
Torrance.....	2
Clairmont.....	1
Palm Springs.....	1
Hawthorne.....	3
Culver City.....	4
Inglewood.....	3
Pasadena.....	3
Compton.....	4
Whittier.....	3
Oceanside	1
Baldwin Park.....	1
Pomona.....	2
San Bernardino.....	2
Ontario.....	2
South Pasadena.....	1
Santa Ana.....	3
Irvine.....	18
Santa Monica.....	4
Fontana.....	2
Rialto.....	4
Adelanto.....	1
New Port Beach.....	1
Beverly Hills.....	2
La Habra.....	1
Cyprus.....	1
Ventura.....	1
Covina.....	1
Mammoth Lake.....	1
Hesperia.....	1
Palm Desert.....	1
Maywood.....	1
Glendale.....	1
West Sacramento.....	1
San Jacinta.....	1
Bearmont.....	1
Downey.....	2
Bell Garden.....	1
Bakersfield.....	1

Colton.....1
 Huntington Park.....1
 San Gabriel.....1
 El Monte.....2
 Oxnard.....1
 Fountain Valley.....1
 San Pedro.....1
 Walnut.....1

JAILS/PRISONS

San Louis Obispo Correctional.....1
 Calif. State Prison - Chuckawala.....2
 Calif. State Prison - Tahachapi.....3
 Central Jail.....7
 Orange County Jail.....1
 San Bernardino County Jail.....1

OTHER

UCLA Police.....1
 UC Irvine Police.....2
 State Justice Dept.-Narcotics Bureau.....1
 LAX Airport Police.....1
 U.S. Marshall.....1
 Hillside Boys Home, Pasadena.....1
 Federal Vureau of Investigation.....1
 L.A. County Public Social Services.....1
 Federal Agents.....1

633 S. SHATTO PLACE #199
 LOS ANGELES, CA 90005
 (213) 387-3326

DECEMBER 1990 STATISTICS

TOTAL NUMBER OF COMPLAINTS.....210

SEX

MALE.....00
 FEMALE.....00

ETHNICITY

WHITE.....000
 LATINO.....00
 AFRICAN AMERICAN.....000
 ASIAN.....0
 AMERICAN INDIAN.....0
 OTHER/UNKNOWN.....0

TYPE OF MISCONDUCT

ASSAULT.....000
 GENERAL HARASSMENT.....00
 VERBAL ABUSE.....00
 FALSE ARREST.....00
 FALSE IMPRISONMENT.....00
 DAMAGE TO PROPERTY.....00
 HOUSE SEARCH.....00
 CUFFS TO TIGHT.....00
 FLASHLIGHT ASSAULT.....0
 BATON ASSAULT.....00
 DOG BIT.....00
 RACIAL REMARKS.....0
 PROPERTY STOLEN.....0
 SHOOTING.....0
 GENERAL NEGLIGENCE.....00
 CHOKE HOLD.....0
 TASER ASSAULT.....0
 Killing.....0
 BAD WARRANT.....0
 SEXUAL REMARKS.....0
 OFFICER LIED ON POLICE REPORT.....0
 DENIED MEDICAL ATTENTION.....0
 ASSAULT WHILE CUFFED.....0
 EMOTIONAL TRAUMA.....00
 MACE ASSAULT.....0

POLICE HEADQUARTERS OFFICER'S REFERRAL SERVICE
 633 S. SHATTO PLACE #190
 LOS ANGELES, CA 90005
 (213) 387-3325

DECEMBER INTAKE STATISTICS

BY DEPARTMENT NUMBER OF COMPLAINTS

LAPD BY DIVISION

Div. unknown.....	5
Wilshire Div.....	0
Rampart.....	13
77th Div.....	13
Devonshire.....	0
Foothill.....	0
West Valley.....	0
Van Nuys.....	12
North Hollywood.....	1
West Los Angeles.....	2
Hollywood.....	14
Northeast.....	2
Central.....	0
Hollenbeck.....	0
Pacific.....	6
Southwest.....	5
Newton.....	4
Southeast.....	2
Harbor.....	0
CECATS.....	1
Crash Unit.....	1

Mr. EDWARDS. We now recognize Mr. Conyers.

Mr. CONYERS. Thank you.

Mr. Fyfe, Attorney Hoffman, please know that you have our deepest gratitude for not just your testimony here today, but the work you have done across the years. I know ACLU in Los Angeles has been on the case for a long time, and Jim Fyfe has been in and out of our subcommittees and activities on criminal justice and police abuse across the years, and we are very grateful for your presence here today.

And I want to emphasize how important I think your recommendations and comments are about this very difficult role we have in front of us. I think that it is important for us to recognize that we have made some breakthroughs. Without the Rodney King case, I couldn't have taken an ordinary abuse case, a police abuse case, over there and say we want to study thousands of cases for every case filed for the 6-year limitation period. This case so traumatized the Nation, and as a matter of fact is an international issue now, that there was a necessity for us to get at least the limited cooperation that we have now. So I think we should put that on the record, that were it not for that circumstance, it would be just another case where he was drunk, he was resisting arrest, and we'd say, "Who knows?" Do you not agree with me that we do have an opening here, a window of opportunity that did not exist?

Mr. FYFE. If I may address that—police organizations, I know from firsthand experience, are very conservative and are not prone to change unless they are influenced from the outside. When I look at my own police agency in New York City, it was changed by the revelations of the Knapp Commission, by the pressure of the New York Times and the powerful institutions in New York City. I think about the Metro Dade Police Department; it was changed by pressures from outside. I think about how the FBI was changed. It was changed from pressures from this House by and large, and I think that this is an opportunity for change in Los Angeles as well. It would be a shame to lose it.

Mr. HOFFMAN. I think it is not only Los Angeles. I think it is a glimmer of hope for Los Angeles now that we have this attention, but I think it really is important to focus on the role of the Justice Department and other reforms to be able to deal with this problems on a national basis.

Mr. CONYERS. As citizens and leaders, wouldn't it seem important to you that President Bush take this opportunity to speak for the first time on this very important subject? We could really get the tone set. After all, the Attorney General has made a limited press release. The Director of the FBI made a two-sentence statement after he met with us last week. But, this seems to be an opportunity. Can we frame that so that Governor Sununu and Counsel Boyden Grey over there can say, "We are reviewing the Edwards subcommittee and we think this is a good idea, Chief?"

Mr. HOFFMAN. I think that is absolutely essential, and I think one of the other things that is true of the Los Angeles situation is that much of what has happened, the sort of military approach and some of this Operation Hammer that I described, has been framed in terms of the war on crime and the war on drugs. I mean that is

the rhetoric that comes out. This is necessary, something that must be done. We have to engage in these operations.

I think that the rhetoric has come from the administration over the years and others, and so when the war on crime is mentioned, it's almost as though we can dispense with constitutional rights. It encourages dispensing with constitutional rights, and I think that the logical consequence of taking that attitude and not being careful to cherish constitutional rights when one is dealing with real problems of crime, the logical consequence of that is the video tape that people saw, in my view.

Mr. Fyfe. Mr. Conyers, on that subject, I think the whole notion of police as soldiers in a war is something that has to be changed. What we have asked the police to do is very simplistic and unrealistic. We've asked the police to deal with social conditions that are beyond their control. There is no way, no matter how aggressive the Los Angeles police are, or police in any other place, that they can deal with the social conditions that cause the crime and violence that have nothing to do with the police in Los Angeles.

But, what you are doing, in essence, is asking young men and women to go into police agencies and asking them to fight a war that they can't win, and for the best intended people, that's a very frustrating experience. As we learned when we ask soldiers to fight wars they can't win, occasionally you have atrocities, and that's what I think has happened here.

Mr. CONYERS. Why is the Department of Justice so reluctant, so timid, so hesitant? This is a great opportunity. We have just come back from Operation Desert Storm. We've done this great military feat. Here is a great chance for an administration to really come out here and move this country forward. What we feel is that we are pulling them instead of them seizing the moment to be meeting with people like yourselves and the organizations that we know work in this field.

Mr. Fyfe. I can try to answer that. As Mr. Hoffman knows, and as Mr. Washington I'm sure knows, most of the people who are on the wrong end of this kind of force have done something to provoke the police. As Mr. Hoffman knows, it is very difficult to win a suit against the police because, unlike a medical malpractice case, you are not representing someone who is totally innocent. You are representing someone who has somehow provoked the police, who are a very sympathetic group, who can come into court and testify that they passed character examinations and that they put their lives on the line for their community, and they have not profited in any way by their actions here. So I think that if you elevate that to the macro level, you find the same kind of phenomenon. Most of the people who are aggrieved by the police have done something to offend the police, have done something that most voters can't identify with, who are among the disenfranchised. It's not a very popular cause.

Mr. EDWARDS. How are we going to win that war, Mr. Hoffman?

Mr. Fyfe. I think on the level of myself, I'd make myself available to testify against police in cases that I think are egregious and hit them between the eyes with large verdicts and get police to change.

I think on the level of the Federal Government, folks like yourself have to continue to apply pressure until that view changes. I daresay that if you went in to a jury or asked the public what they thought about people who had committed offenses suing the police, the knee-jerk response is a very negative one. What nerve that person has to sue the police. Chief Gates knows that. When he says Mr. King has a criminal record, that's a very appealing statement.

Mr. CONYERS. The courts' conservatism in civil rights matters, which we are trying to reverse with the Civil Rights Act of 1990 and now 1991, since the President's effective veto of the former, when we look in the area of these kinds of cases, the courts themselves have been very conservative and have read and interpreted these statutes, it seems to me, as narrowly as possible to further make this a difficult terrain. Not only were the statutes inadequate, but it seems that their interpretation didn't help out any, either.

Mr. HOFFMAN. That has been increasingly true. Certainly in the last decade the Supreme Court decisions have, in a general way at least, restricted the ability of victims of police abuse to recover and have restricted the circumstances in which you can recover. That adds to the natural difficulties of bringing these cases.

I think that actually underscores how bad the problem is because people still win. When you take into account how bad the caseload is and the natural difficulties of proving the case, having \$10 million worth of judgments against the city of Los Angeles in police cases in 1990 underscores how unbelievably bad the problem is, because we have won that many.

Mr. EDWARDS. How do they get these judgments if there's no pattern-and-practice provision?

Mr. HOFFMAN. What I referred to before was pattern-and-practice cases where you were trying to get prospective relief, to try to eliminate the practices in the future.

Mr. EDWARDS. Oh, I see.

Mr. HOFFMAN. The judgments come in the context of individual damage actions.

Mr. EDWARDS. But, well, these big judgments, we'll say \$1 or \$2 million, that's against the police department or against an individual officer?

Mr. HOFFMAN. It can be against both. One of the problems in the area, unfortunately, is that city winds up paying for it regardless. The officer never pays even if the judgment is against the officer. So the actual effectiveness of the award to deter individual officers is mitigated by the fact that the city picks up the bill anyway.

In fact, in one of the cases that Professor Fyfe mentioned, the *Lares v. Gates* case, where Chief Gates was hit with a very large punitive damage award himself, within days I think the city council said that it was going to pay the award. At that point, what's the point of having a punitive damage award to deter Chief Gates when the city administration turns around the next day and says, "Well, we'll pick up the tab"—regardless of how outrageous your statements were or what your conduct was.

Mr. FYFE. On that point, Mr. Chairman—and I'm not an attorney, but in my experience in these cases I have usually been advised by attorneys not to make any mention of who is likely to pay

the damage. What typically happens is that juries sit on those cases assuming that the verdict will be judgments against the individual police officer and those will knock him out of his home and hearth, when, in fact, they're not.

I testified in a case where a judge wrote that the officers in this case unconstitutionally dragged this man from his house, beat him, and shot him to death—and apparently shot him to death in violation of the State criminal statute on homicides. She awarded \$1,000 punitive damage against each of the officers. In all the cases I've testified or consulted in—and there are well over 100—that's the only one where a police officer has ever had to lay out anything out of his own pocket.

Mr. CONYERS. To what extent does the State prosecution of these cases allow the Federals to suggest that they operate as backup?

Mr. FIFE. We were discussing that in your absence. It's very, very difficult for a local prosecutor to bring a case. As you recall, Mr. Conyers, the *Eleanor Bumpers* case—you and I can probably disagree on that one. I don't think that the officer should have been indicted. The fact is that Mr. Merola who was then the district attorney in the Bronx, did indict him. Regardless of the merits of the case, Mr. Merola found himself with 8,000 police officers demonstrating outside his office the next day. So it's a very, very tough thing for a local prosecutor to bring these kinds of actions as well.

In Los Angeles, I was surprised when I went out there to see the relationship between the district attorney, a person who is now gone, and the police. In my experience in the East, the district attorney was the lead law enforcement officials. When he showed up at a crime scene, he was the boss and the police were subservient to him. That was not the case in Los Angeles, however. The Los Angeles officer involved, the shooting team, would keep the district attorney's people at arms' length and would let witnesses go out the back door of police stations while the district attorney's people sat in the front office.

The Rollout Program in Los Angeles was initiated to begin with because the police department was simply not notifying the district attorney that its officers had shot and killed people. He was finding out about these on the radio on his way to work. By the time he found out about them, all the leads in the cases were cold.

Mr. HOFFMAN. The district attorney's office in Los Angeles sends out memoranda about officer-involved shootings. We get them on a regular basis. Many other civil rights groups get them, too. Of course, they're all roughly the same. It's like they were spit out of the same computer; only the names have been changed. It almost always comes out this was a justified shooting. The terms are predictable. It's not viewed as a serious—that whole apparatus is not viewed as a serious attempt to look into those cases.

My understanding, through civil rights lawyers that have really looked into this even more closely than I, is that police commission guidelines that really require the police to cooperate with the district attorney are actually ignored, and that there are informal directives to the police officers that essentially supersede police commission guidelines where Los Angeles Police Department officers are instructed not to talk to the district attorney, so that they can

be coached by the Los Angeles Police Department officer-involved shooting team and not actually give their testimony until it's all figured out what it should be.

That's certainly what the allegations have been among the civil rights community, and no one looks to that system to bring up justified results.

Mr. CONYERS. Finally, what is your conception of the pattern-and-practice authority and how it would operate in this instance, in these police brutality cases?

Mr. HOFFMAN. I think that the city of Philadelphia case is probably a good example of where it should have been applied. I think in the city of Philadelphia case you had a situation where the Justice Department conducted an 8-month investigation of all the complaints in Philadelphia and they identified a whole series of patterns of abuse. They sought to bring an action where there could be equitable relief to deal with those abuses, to remedy them in some effective way. The courts found that the Justice Department didn't have that authority because Congress hadn't given it to them.

I think that if Congress gave the Justice Department the authority to bring those suits and to actually achieve remedies through the courts that would deal with whatever the patterns were that were found, that is what is needed.

Mr. EDWARDS. We could write a bill, which I think would come to this committee as long as it is connected with civil rights, that would be along the lines of the civil rights for institutionalized persons. Mr. Kastenmeier was the author of that.

Mr. CONYERS. Exactly.

Mr. EDWARDS. And we could.

Mr. CONYERS. A great idea.

Thank you so much.

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. I have a two-part unanimous consent request, if I may address it to the Chair first.

The first is that the Chair be empowered to instruct the staff to obtain a copy of the video tape from the Rodney King incident.

Mr. EDWARDS. The Chair will be instructed to ask the staff to do that.

Is there another tape, do you think? Is there in the laws of the city of Los Angeles a law requiring, when an arrest is made, that there is a sound recording made? Is that correct?

Mr. FYFE. As a matter of practice, police department radio transmissions and computer transmissions are recorded on a tape that is reused every 90 days or so. So all the radio transmissions and all the computer transmissions related to this should be readily available.

Mr. EDWARDS. I'm not referring to that. I'm referring to a practice in some police departments where somebody is picked up immediately, the button is pushed, and a recording is made of the event. Does that go on in Los Angeles?

Mr. FYFE. Not as far as I know, sir.

Mr. EDWARDS. It's a good idea, don't you think?

Mr. HOFFMAN. Not as far as I know, either. It would be a good idea.

Mr. EDWARDS. Sorry, Mr. Washington.

Mr. WASHINGTON. That's OK. The chairman was referring to an incident in Brownsville, again in Texas, where the police officers were captured on their surveillance equipment beating a guy in the police station, which resulted in a prosecution. It seems the only time the Justice Department feels constrained to prosecute is when we have a video tape. I understand there are some problems.

The other unanimous consent request, the other part of it, is, Would the Chair be amenable to at least considering broadening the request? The Chair will remember the original request of additional information, I believe put by Chairman Conyers, on additional data over the 6-year period was broadened to encompass, as I understand, for them to take a look at 1983 claims that may have been brought by private litigants.

It occurred to me during the course of that discussion and discussions that followed, Mr. Chairman—I don't know what results we would yield, but at least in my experience a significant portion of the cases that fall below the line, so to speak, in terms of those that end up getting prosecuted as a civil action, and the even smaller number that end up prosecuted as a criminal action, fall within the ambit of a general view of those, and the root basis, I would say, for 95 percent of them would be cases in which there's a charge of assault on the police officer. Would you agree with that?

Mr. HOFFMAN. I think a large number of them involve that charge.

Mr. WASHINGTON. For this reason, Mr. Chairman, I bring a guy in and you're the desk sergeant, and he's battered and bruised. He's going to start complaining. I'm going to have a defense available: I used such force as was necessary to resist him. Ergo, you end up filing a charge against a person to prove the fact that you didn't actually beat him up; you were defending yourself against his unlawful assault.

My question is—and the information is already available in NCIC in some respects—if we could broaden the inquiry, with the permission of the chairman, so that the information we receive back from the FBI will also include at least—not the specifics on each case, but the general category.

I think what you will find, when you look at that, is you will be able to draw a chart with the largest body being cases in which—I mean, I'm not suggesting that all charges of aggravated assault or assault on a police officer are illegitimate, but I'm suggesting that you will find the base there, and most often you will find that the charges that result in either civil charge or criminal charge against the police officer being one in which the original charge was assault, an allegation of assault by the citizen on that very same police officer.

You'll also find, Mr. Chairman, the pattern if the officer has been involved in misconduct in the past, he or she will have cases in which they have prosecuted cases of assault on individuals, which demonstrates, I think, in some respects a propensity toward violence when a face-to-face confrontation results. That is the reason for my request, to just have them bring over the NCIC information. Once you see it, I think you're going to be satisfied that further inquiry may be justified—the same 6-year period of the cases in which—and they already have that as one of the statistical

categories with the NCIC—where a charge of assault on police officers or other strains of that would be filed under various State laws.

Mr. EDWARDS. With Mr. Conyers' consent, we will do that.

Mr. CONYERS. I think it's a good idea.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Just one brief question on the huge verdicts: I don't know what it's like, but I remember when *Monroe v. Pape* was the law before *Monell v. New York* came along, there was a problem with getting what everyone considers—if a truckdriver runs over me out here crossing the street, Acme Corp. for whom that person is working, in the course and scope of employment, under theory of "let the master answer," or *respondet superior*, is the means by which you get from the employee to the employer. It seems like you ought to have better experience in California in the cases in which Professor Fyfe has been involved, and Mr. Hoffman has mentioned some, where the city actually responds.

The problem down in my area is that there is such a niggardly interpretation of *Monell* and the difficulty in getting the city and the police department held liable. The jury goes back and they come back with \$1 million verdict because they feel, based upon the egregious facts that they have heard, that that is what is justified. Nobody ever pays a dime of it. Nobody ever pays a dime of it.

My point was earlier, would you think about perhaps overcoming the problems? You remember in *Monroe v. Pape* the Supreme Court decided that, under 1983, the Congress would not include a city within the definition of a person. I believe there were some ways in which they kind of went around that in *Monell*. But, with the current trend of the Court, we could be back to a situation where only the police officer is liable. No matter what size of verdict is returned, you end up suing the city; you sue the police officer; you sue the police chief; you sue the person who actually perpetrated the egregious conduct. You end up with a judgment, usually a summary judgment for the city and the other officials, unless you can show a cause or connection between them. You end up with a judgment that means absolutely nothing. Then you don't have a deterrent either on the individual officer or on those in higher authority that we all agree are the people who really ought to be sending the message down to those officers. Do you think there is something we could do in that regard?

Mr. FYFE. I would say so. Again, I'm not an attorney. My observation of the interpretations of the liability of employers by judges has sometimes been weird. I remember testifying in a case where a judge bifurcated the case. He, in essence, held one proceeding to determine whether the police officer had violated the individual's civil rights and, if so, whether the violation was a result of the custom and practice of the police department. The judge decided that, while the officer may have acted wrongly, he was following the policy of the department. So, therefore, it would be unfair to come back with a judgment against him, and since there was no judgment against him, the city was off the hook as well.

The interpretation seems very weird. There should be some consistency, to this layperson's view.

Mr. HOFFMAN. Clearly, the way that *Monell* has been interpreted, particularly recently, makes it difficult for civil rights lawyers to get liability against the city. I think the concern is that it's going to be increasingly restrictively interpreted. Unless you really have an egregious set of facts, it's going to be hard to get municipal liability, and the problems that you have described are real.

May I make another suggestion or recommendation that just occurred to me out of the previous discussion? It's not quite related to this, but it relates to the 3,004 other cases. One of the things that struck me in Mr. Dunne's testimony about the backstop role of the Justice Department is that it seems to me that if you are the backstop, one of the things that you're going to have to look at pretty carefully is whether there is an adequate discipline system, whether there is adequate action by local prosecutors, so that you know that things are working out all right.

I think it would be interesting to know what the Justice Department found in those 3,004 cases and in the similar cases in this period about the adequacy—

Mr. EDWARDS. I think we definitely have to ask them that. We can't accept that as an answer unless we find out what percentage of those cases were dropped by the Justice Department because they were adequately taken care of by local authorities.

Mr. HOFFMAN. And it would be interesting to know what efforts they make to determine whether there is adequate discipline. For example, it would be very interesting and important, I think, for the Federal Government, for the Justice Department to keep statistics about the discipline of police officers on an overall basis to see whether there are patterns there, because there are patterns there. The patterns are that police officers don't get serious discipline for these kinds of situations.

If you look at that on a national basis, regional basis, that will assist the Justice Department in knowing when its backstop role is the most needed, when discipline is not meted out. Since the Justice Department keeps statistics about crime and all kinds of other things, this is a perfect thing for the Federal Government and the Justice Department to do to make sure we know whether the local systems need to be backed up by the Federal Government, as I think they'll find they will need to be backed up.

Mr. WASHINGTON. I don't know if we will be able to derive all this information from the information that the chairman has ordered be made available, but at least in Houston, the pattern went from—it basically is pervasive and it deals with any group that may find themselves in disfavor with the police. It starts out with blacks and it goes to Hispanics. In the sixties it went to young whites with long hair, so-called hippies. Finally, it got to women, and that's where it is now. There are a lot of women who are afraid to ride around in cars. One woman was chased 30 miles across Houston, ended up getting shot and killed, because she thought she was running from perpetrators. These were off-duty police officers who had gotten drunk, been out all night at a drinking spree.

I know hard cases make bad law. They ended up, because the officers didn't like something about maybe some gestures or something like this—she didn't know the guys were police officers. They

chased her across town, run her across the freeway, and killed her with a gun, off-duty police officers.

The point is, it can happen to anyone. Unless people really understand—I think if the citizens of this country realized that it's not just those other people, it's not just the criminals; we really need to talk about them, too. Even the criminal is entitled to be taken to jail, not beaten on the street like a dog. There's not a person in this room that, if they had seen someone with a stick out beating a dog, like those men were beating Rodney King, if they weren't police officers, who wouldn't have said or done something about it. There's not a person in this room that wouldn't have.

But, we allow police officers to get away with that kind of conduct. If it happens to Rodney King today, it will happen to some person out of their community tomorrow, and it doesn't make any difference what color you are, what socioeconomic group you come from. It's happened to the richest and the poorest people in Houston, and we don't want to be the example. Believe me, it can happen to anybody. We need to get that message across to all the people in this country.

Mr. CONYERS. Mr. Chairman, I'm reminded by the remarks of the gentleman from Texas that one of our witnesses had a portion in their prepared remarks about the video tape itself. Was that in Attorney Hoffman's—

Mr. EDWARDS. It was about—

Mr. CONYERS. In Jim Fyfe's—yes, right, it was Professor Fyfe that had that.

I was struck by later information that revealed that, first of all, there had been cars passing nearby on the highway that were slowing down to witness this. They would actually stop and look at it, and it didn't interfere with the police misconduct at all. In addition, there were people some several hundred yards away who were yelling, "Don't kill him," who realized that those were policemen administering this life-threatening beating. The whole notion of premeditation or this being some rogue cop incident gets totally refuted because there were plenty of witnesses, even without the video tape, many of whom would have probably never thought about coming forward. That, of course, speaks to the arrogance and viciousness and systemic misconduct that that act represented.

Mr. FYFE. I think on that point, Mr. Conyers, I'm not aware that anyone other than the person who took this video tape has come forward.

Mr. CONYERS. Nor am I.

Mr. FYFE. I think that may give some indication as to the real depth of this problem, because it takes an enormous amount of guts to go into a police station and report that you've just seen an officer beating someone up.

Mr. EDWARDS. Mr. Kopetski.

Mr. KOPETSKI. Thank you, Mr. Chairman.

I represent a police training facility for the State of Oregon, and it is one that is used for the State, mainly local police officers as well as correction facility personnel. It's a very fine institution. What happened in Los Angeles was not learned or taught in any police training facility.

What frightens me about this is that it seems endemic into that system there, especially the high tech computer processing system they have that goes to the automobiles and the comments made after the brutal incident, brutal, despicable incident by the police talking about it afterward and some of the references they made. These kinds of incidents shouldn't happen, you see, and this kind of system should never be developed in any police force in this country.

It seems to me that one of the problems is we don't have people watching that are detached on an ongoing, regular basis. I know I don't represent part of the city of Portland, but I can tell you that one of the biggest controversial issues was to have a citizens' review board independent from the police commissioner. They fought it. Gosh, they fought that, and it was just a huge storm.

It seems to me—and your comment that we're at the cross-roads—either localities had better straighten up and have a system where the politicians, elected politicians, can be answerable and held accountable for this system directly—that's part of it—but also that the localities have a citizens' review board independently appointed, or you're going to get the situations where the Federal Government, whether it's the FBI or somebody else, is stepping in and running these police departments in the United States. It seems to me that's the choice.

Now maybe you folks—you see what's going on in all the localities. What do you think is going to work best that's fair to the individual officer and fair to the citizen in this country?

Mr. FYFE. In my view, when I said I think this is a local problem, I don't think the Justice Department should have to be a backstop. This is an administrative matter. This is a matter for the citizens to demand that their police chief be held accountable and that he police in a democratic manner.

As a matter of fact, a police chief has day-to-day operational authority over a police agency. When there are demands for a civilian complaint review board, that is an indication that he is distrusted. It's my view that the guy who is best suited and best situated to review the conduct of officers is the person who sits in the police chief's chair. It's much more important that the process be open and objective and that we be able to look at reports later than it is who does it.

There are police chiefs in the country who will conduct thorough investigations of all complaints and then release the results of their investigations publicly, detailing everything they've found, detailing all their conclusions, and inviting the complainant or members of the public to comment further. "This is what we have found. Can you think of anything that we've missed? If so, please come and tell us."

When you have that kind of situation, which is the only appropriate kind of situation, there's no need for a civilian complaint review board.

Mr. CONYERS. Would the gentleman yield briefly to me?

Mr. KOPETSKI. Yes.

Mr. CONYERS. I don't know if we haven't moved into the world of theoretical, political government here, Professor Fyfe, because in the real world—and I think of Chicago; I think of Los Angeles, by

your own history; I think of Detroit—before the first black mayor was elected we had a police situation there, a stress unit, the Big Four. That was the law. As a matter of fact, the police chief ran against the mayor.

Now what you're doing, it sounds like you're consigning every locality to its fate. Some localities cannot get organized. Some localities cannot overcome by themselves. That's the whole idea of a Federal central government with these Federal powers. We've debated this, of course, down through American history.

But, without there being a Federal Bureau of Investigation and a U.S. Department of Justice, there are a lot of cities around Los Angeles, and maybe Los Angeles itself, that will stew in their own municipal juices for many, many years, and we will all agree with you in a class that a city that is tired of police brutality ought to get together and do it. We're just coming to the point of allowing everybody without regard to their race to vote in the United States of America. That's a rather recent political phenomenon. We're still working on it, as a matter of fact.

So, I'd like you to react to that.

Mr. FYFE. I agree with you, sir. If we're asking for what the ideal is, that's the ideal. That is the concept.

A citizens' review board is really an unsatisfactory bandaid in a lot of ways. In fact, people don't sit on the kind of review board that will look at complaints without being on the city payroll. To the outsider, there are city employees who say that they're independent of the police department but who are adjudicating other city employees. Much of the same criticism that I've heard about the U.S. Department of Justice, which is not paid out of the same treasury as an independent civilian complaint review board, can be leveled at them.

Another problem is that they don't have day-to-day operating authority over the police department. In spirit, at least, the Los Angeles Board of Police Commissioners serves as a civilian complaint review board. It reviews complaints lodged against police officers.

The summaries that that commission gets really are quite often very misleading, and the information that is fed to them is fed to them through the administration of the department, which is much more interested in not embarrassing the department than in having this bunch of civilians adjudicate those cases fairly.

Again, I agree with Mr. Conyers that we're far out of the ideal, but the ideal is a police chief who does his job and who is accountable.

Mr. HOFFMAN. I think one of the reasons that I've been stressing the Federal role is that these local solutions haven't worked; certainly in our community they haven't worked. I think that Professor Fyfe is exactly right in his analysis of the board of police commissioners, which in theory should operate in this way and be responsive to the political forces.

I think that the Federal role, if there is a serious Federal role, I think it also assists the local solutions. I think there's another entity with its own investigative capacity, which is one of the problems that the police commission has. It doesn't have any investigators; it doesn't even have a lawyer. It doesn't have anything, except five people who have busy lives of their own to try to cope with a

police department that's massive. It's obviously an impossible task. They can't really do a serious job of looking into these allegations.

The advantage that the Federal Government has, I think, is that it has an independent investigative arm, or at least what should be an independent investigative arm, that can actually do the work to challenge the police about what they say about an incident, for example. In the best of all worlds, the Federal role and the local role would be mutually supportive. You would get reform without the Federal Government actually having to exercise the ultimate power that it has.

Mr. KOPETSKI. And neither of you, therefore, think that there's enough detachment, if it's done by—if you're looking at a local jurisdiction, a city or county, that there can't be enough detachment from the State police?

Mr. FYFE. In my experience, in a lot of rural jurisdictions, for example, the State police will take over investigations of police shootings and critical police incidents. But, by and large, they don't do the kind of administrative civil rights investigation that I think we're interested in. The purpose of those investigations generally is to see whether any criminal liability exists on the part of the police officers involved.

My sense is that the State trooper in a rural State who gets called out to investigate his friend, Joe the local cop, the only other cop around for 80 miles, is very reluctant to do an investigation that is going to wind up in an indictment of Joe the local cop.

Mr. KOPETSKI. Well, I guess, Mr. Chairman, I need to think more about this whole issue area. It just seems that we shouldn't be responsive, reactive; that commissions set up model laws all the time, model practices for each State and locality to try to adopt. It seems that there ought, first, to be some sort of model structure of the police system for communities, a model set of review standards, whether it's some kind of an independent agency, before we have a tragedy and then, rightfully so, the Federal Government should step in.

Thank you.

Mr. FYFE. If I may—that's the limits of the liability, I believe. I have been through many cases where, for example, I asked the attorneys with whom I've worked to receive under discovery the last 5 years of citizens' complaints against officers of this department and have gone through them to see whether there's a custom and practice of whitewashing things. The same thing is true with shooting investigations, but those are after-the-fact resolutions. Hopefully, that kind of analysis, where it's effective, deters those kinds of sloppy investigations in the future, but it comes after the fact.

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. It just occurred to me, Mr. Chairman, years ago I was active in the American Bar Association. There's a section on individual rights and responsibilities. There were some white papers that they put out suggesting different models. I don't know if they ever got formally adopted because, frankly, I stopped getting actively involved in ABA stuff, but I believe I have them around.

There were some model programs put forward, sort of a combination of what the three gentlemen are talking about, that put for-

ward some ideas that would be useful in attempting to adopt some uniform standards on investigation of police conduct and also standards by which we govern police.

The problem is we have a very amorphous kind of standard that may be totally fine where you have a good police officer, a good chief, or something like that—and most of the officers are good—but that it varies from locale to locale. When you have a small area where this guy that he is going to investigate is going to be the same guy who has to back him up some other time, you can't very much blame him.

As I recall, the model fit different situations. I'll see if I can find it. If I do, I'll send a copy to both of you.

Mr. FYFE. Thank you, sir.

Mr. EDWARDS. I think that we should let these splendid witnesses—and you really have been terribly, wonderfully helpful. As a matter of fact, you gave us ideas for three statutes which I think would be very useful, in the first place, to amend 241 and 242 of title 18 so that it would be usable. They're very vague now.

No. 2, have a statute that would come to this committee for reporting. I have in mind the Department of Justice keeps these statistics anyway, and requiring the Department of Justice to add to the uniform crime report all of the disciplining, serious disciplining of police officers, or at least we'd define it.

Lastly—and this would come through this subcommittee also—a statute that perhaps would amend another statute that we already dealt with having to do with pattern or practice. So, those are three very, very useful, concrete things that the Federal Government could do right now. The Federal Government jurisdiction is a little muddy, and I think that's the reason that the Justice Department and the FBI feel that they can escape from too much responsibility.

When Bradford Reynolds had Mr. Dunne's job, he assured us that it was a top priority of the Department of Justice to enforce the law with regard to civil rights. Very clearly, you can't keep your staff at a 1980 level for 10 years and be too serious about these cases.

Unless there are questions from my colleagues or the minority counsel, I want to thank you very much. You're a remarkably valuable resource, both of you. The subcommittee and the full committee appreciate your assistance.

Mr. FYFE. Thank you.

Mr. HOFFMAN. Thank you.

Mr. EDWARDS. The subcommittee is adjourned.

[Whereupon, at 5:30 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

POLICE BRUTALITY

WEDNESDAY, APRIL 17, 1991

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m., in room 2287, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, John Conyers, Jr., Craig A. Washington, Michael J. Kopetski, Henry J. Hyde, and Howard Coble.

Also present: James X. Dempsey, assistant counsel; and Kathryn A. Hazeem, minority counsel.

Mr. EDWARDS. The subcommittee will come to order.

The gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I ask unanimous consent for the subcommittee to permit coverage of these hearings in full or in part by television broadcast, still photography, or radio broadcast in accordance with committee rule 5.

Mr. EDWARDS. Without objection, it is so ordered.

This morning the subcommittee continues its series of hearings on the question of police misconduct and the Federal response. Our focus here is twofold: To gain some understanding of the scope of the problem; and, second, to identify steps that can be taken at the local and Federal level to prevent and respond to police misconduct.

Many police officers and many police chiefs are doing a very good job trying to cope, both personally and institutionally, with the stress and the danger of law enforcement work. Several of our witnesses today will testify to some of the measures that have worked at the local level. But what can be done with a department that is out of step with sound police practices and refuses to change?

It may come as a surprise to many that the Federal Government presently has no authority to correct institutional patterns of police brutality. The Justice Department can sue a city or a county over its voting practices or its educational practices. It can sue public and private employers over patterns of employment discrimination. The Justice Department can even sue a jail or a prison that tolerates guards beating inmates. But it cannot sue a police department that tolerates officers beating citizens on the street.

Furthermore, in a sort of catch-22 situation, the courts have held that private citizens cannot sue for relief from a pattern of abuse

either, even if they have been the victims of abusive practices. Policies involving chokeholds, use of deadly force against fleeing suspects, random searches, and other policies and practices are largely insulated from view. We want to focus on these issues today.

We have a very qualified group of witnesses, and we look forward to their testimony.

I recognize the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you very much, Mr. Chairman. I, too, want to welcome each of the witnesses today as we continue our investigation into the use of unnecessary and excessive force by law enforcement authorities. The video of the Rodney King beating by officers of the Los Angeles Police Department focused the attention of the Nation on this most troubling issue: The abuse of authority by those entrusted to keep the peace.

There is another video that will be brought to the attention of the subcommittee today, and I hope it will give it due consideration in our examination of this issue. Among other scenes it graphically shows the use of an otherwise illegal weapon, a martial arts device known as a nunchuck, to fracture the arm of a nonresistant peaceful protester.

While I know that many of my colleagues do not share the sincerely held beliefs or approve of the methods of certain prolife protesters, we can surely agree, as we have in the King case, that it is not the job of the police to execute summary justice, intentionally inflicting unnecessary pain or breaking bones to teach someone a lesson.

I am not questioning the right of the police to cart away people, regardless of their beliefs, who are blocking sidewalks or otherwise disturbing the peace. I take issue with the bone-breaking and infliction of needless pain, the deliberate use of excessive force to accomplish otherwise legitimate law enforcement goals.

The issue here is not the political views of prolife protesters any more than it is the guilt or innocence of Rodney King. The issue here is the improper, and in both cases I might add sickening, use of excessive and unnecessary force by the Los Angeles Police Department to respond to these individuals.

As our witnesses will testify today, however, the problem is not just with the police officer in the street. Policies with regard to the apprehension of suspects and removal of nonviolent protesters are decided before the officer ever leaves the police station. There needs to be effective communication between the police departments and the communities they serve.

Adequate training on use of force, perhaps accreditation of police departments—these are the types of positive steps that can be taken to reduce these types of incidents that we will explore in greater detail this morning.

I look forward to hearing the testimony of each of the witnesses. And again, thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Hyde.

The gentleman from Oregon, Mr. Kopetski.

Mr. KOPETSKI. Thank you, Mr. Chair. I just had the opportunity to visit off the record with some of the law enforcement officials in my district back in Oregon, and I do have a police training facility in my district and I can tell you that the officers there, they are

mad about the Los Angeles situation and they are fearful that all police officers in this country will be branded with the same stroke, and fear that people will think in this country that all police officers are irresponsible and conduct illegal acts. We know that that is not the case.

And I am in search of sanctions, of Federal sanctions against such officers and systems, police systems as the one in Los Angeles. I had the opportunity, Mr. Chair, to visit the National Academy training facility in Quantico, VA, 1 week ago where local law enforcement officials are provided quality training, enhanced training by the Federal Government at that facility there. It is an honor to be in that program and to graduate from that program, and, Mr. Chairman, I think one of the sanctions that we could explore is that until the system in Los Angeles is changed that police officers from Los Angeles should not be allowed to participate in that highly regarded National Academy program.

Mr. EDWARDS. Thank you, Mr. Kopetski.

The gentleman from Texas, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

I have been thinking a lot about this matter since we last met and I wanted to convey to the members of the subcommittee the thoughts that I have. I presently have a bill being drafted. I realize that the passage of criminal statutes is not a panacea to all of the problems that we have in this country.

I apologize for being a little bit late getting here. I did hear the remarks of my friend, Mr. Kopetski.

I believe that the Congress should act and act forthrightly on this matter because it does great violence to the reputation of good police officers who feel constrained to, perhaps, pause or hesitate one moment or 1 second too long in the performance of their duty and start second-guessing themselves. We need to remove the bad apples from the barrel.

I am having a bill drafted, which I would invite the members of this subcommittee and other Members of Congress to cosign before its introduction, which would severely raise the penalty for violation of civil rights in the course and scope of employment. It would provide for the death penalty in the event that the citizen who is subjected to the misconduct dies—a death for a death. It would provide up to life imprisonment, to be determined by the Federal district judge, where a jury has found beyond a reasonable doubt that the defendant in that action, who would be a police officer, while in the course and scope of employment had committed an act of police brutality, provide a range of punishment of not less than 10 years, with a maximum of life imprisonment, depending on the severity of the injuries received by the individual.

It would prohibit the granting of probation in those cases, so that all such individuals will go to the penitentiary where they belong, and it would prohibit them being segregated from the general population once they get to prison.

Another idea that I am playing with is that we would withhold any LEAA funds or other Federal funds that go to States and localities until and unless those States had passed legislation which would be similar and which the Congress would define as what would be the minimum requisites it would be required to meet. Not

specifically as to the range of punishment, but specifically prohibiting probation.

I believe that if a police officer knows without question that if he is found guilty of violating a citizen's rights that a jury of the community will have an opportunity to decide upon whether they are guilty of the offense; and more importantly, if they are found guilty, that under no circumstances would they be provided probation. That they will get a chance to visit prison with people that they had previously incarcerated. I think that is the best deterrent of all for them engaging in that conduct. Because too many of them that are found guilty end up getting probation.

I am reticent to do this. I firmly don't believe in the death penalty as a punishment for crime. If we are going to have a death penalty where a citizen kills a police officer, then there is no reason to justify not having a death penalty where a police officer kills a citizen. If we are going to prohibit the granting of probation for drug offenders who violate our law, we ought to do the same for police officers who violate our law.

I will have copies, drafts of the bill available, I am told by legislative counsel, by the middle of next week. I will circulate it to members of this committee first and invite them to join with me in cosponsoring this legislation so we can make a strong affirmative statement to our good police officers that we back up the work that they are doing. We want to cull out and remove from our police departments those who would engage in this kind of conduct. And I would hope that as many of you as could see fit would join me in cosponsoring this legislation.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Washington.

Our first witness today is someone who has been of great value in his advice to the committee and his counsel for many years is deeply appreciated. This is Wade Henderson, who is director of the Washington Bureau of the NAACP.

We welcome you, Mr. Henderson. Please raise your right hand.

[Witness sworn.]

Mr. EDWARDS. You may proceed.

STATEMENT OF WADE HENDERSON, DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, WASHINGTON BUREAU

Mr. HENDERSON. Thank you, Mr. Chairman, members of the subcommittee. I appreciate the opportunity to present the views of the National Association for the Advancement of Colored People, the NAACP, on the complex problem of police brutality. I am Wade Henderson, the national legislative director of the NAACP.

The brutal beating of Rodney King by officers of the Los Angeles Police Department has brought much needed public focus to the problem of police brutality nationwide. The NAACP, as you know, has had a longstanding interest in the problem of police violence. For too long African-Americans and other racial minorities have been among the special targets of police abuse. Rather than being the beneficiaries of equal protection of the law, too often innocent

people, including many black youngsters, find themselves the victims of the abuse of authority.

Now, I would like to echo the comments of both Mr. Kopetski and Mr. Washington. The testimony that we will present this morning does not represent nor should it be construed as a general indictment of our law enforcement or police officers specifically. We do believe, however, that there are particular problems which our statement today will help to illuminate, and we believe in that regard that Federal action is needed.

Now, some police officers, for example, make plain their fear and contempt of black people while on patrol in black communities or when they observe African-Americans in predominately white areas of our cities and towns. This is usually done through simple harassment or verbal abuse directed at an individual because of the color of his skin, although the real reason may be masked by pretext. The NAACP case of *Murphy v. City of Reynoldsburg* illustrates this point.

Murphy is a civil case about racially motivated police misconduct in Reynoldsburg, OH. A special unit within the Reynoldsburg Police Department called itself the SNAT squad, and took it upon itself to harass blacks found passing through the town. It was later discovered that SNAT is an acronym for Special Nigger Arrest Team.

Blacks were followed for no reason until some minor infraction was found. They were then stopped, searched, and subjected to thorough computer checks for any outstanding traffic tickets, or other matters, from any jurisdiction covered by the computer. On some occasions, it appears that drugs were actually planted on the suspects during these manufactured searches. And presently, the NAACP is assisting in litigation on behalf of an individual on whom drugs were planted.

Another common complaint we hear is that white policemen, in particular, either because of racial fears or animosities or other factors difficult to explain, frequently overreact in a given circumstance. They use excessive force in situations which require deliberate, careful, and evenhanded policing. The result is often severe injury or death for the victims of this abuse.

The local NAACP branch in most communities is often called upon to investigate complaints by African-Americans of this excessive violence by police officers. In the course of our work, we have gathered disturbing evidence of patently illegal law enforcement practices, which, in the African-American community, have become an intrinsic part of our daily lives. The elimination of illegal police killings, for example, remains a top priority for the NAACP.

Now, in response to the subcommittee's investigation into the problem of police brutality, the NAACP Washington Bureau in conjunction with other departments within our national office has initiated an informal national survey of our branches in an effort to document the broad scope and depth of the problem. Our initial investigation has been limited to incidents no older than the last 5 years. The survey itself will continue for the next several months, and additional information will be made available to the subcommittee in the fall of 1991.

Our testimony today will offer examples of police violence which pervades the African-American community. We will make two basic points:

First, two of the reports we refer demonstrate that successful outcomes can be achieved when communities come together to respond to the problem of police violence in a positive manner. The cases of both Prince Georges County, MD, and Tampa, FL, illustrate this point. However, other examples of chronic police violence that we have received reveal an all too familiar pattern of coverup and denial. These instances are by far the more numerous examples of the police abuse cases that the NAACP receives.

The second point of our testimony therefore is that when affected communities lack the political will necessary to achieve meaningful reform a strong Federal hand is needed to ensure the equal protection of the law. The NAACP believes fervently that when public servants who are hired to protect people instead become their oppressors it is time for the country as a whole to demand corrective action.

We will also offer in this testimony recommendations for specific legislative initiatives that we think will help to address the problem.

I would like to talk about three cases and to try to outline—rather than read the testimony itself—what we believe to be particular problems.

The first is in the incident in the State of Maryland involving the death of Gregory Habib. It has been almost 2 years since Gregory Habib died during a struggle with the Prince Georges County police. The scuffle between four white police officers and Habib in Langley Park, MD, touched off a bitter controversy that exposed long-term, deep-rooted tensions between the police department and the county's growing black community.

Habib and his brother Martin, who suffered a broken jaw, were stopped for a traffic violation at about 3 p.m. on May 20, 1989. Police said the Habib brothers, who were unarmed at the time, approached the arresting officer in a menacing fashion and that he was forced to defend himself. Within seconds, a fight ensued and the arresting officer had radioed for help. A few minutes later, the incident, which played out before more than a dozen witnesses whose accounts varied, was over and Gregory Habib was dead.

Now, pockets of Prince Georges County exploded with reports of police brutality, and when the Maryland medical examiner determined that Gregory Habib, who weighed only 115 pounds, had died from what was described as "blunt force trauma" suffered during the fight with police, it was literally the equivalent of pouring gasoline on a fire.

Now, a county grand jury returned misdemeanor indictments against the arresting officer for his actions against Martin Habib, but found no wrong-doing at all in the death of Gregory Habib. In response to that finding, the county NAACP conducted its own fairly extensive survey of complaints of police brutality. The NAACP found that the number of police brutality complaints in Maryland that are deemed worthy of investigation by the FBI had increased by 28 percent in 1988 over the previous year, and thus

we believe it indicated a very serious problem with excessive police force.

In July 1989, County Executive Parris Glendening announced a 5-point plan he said was designed to prevent police brutality. One part of the plan created a "blue ribbon" commission on police and community relations to investigate police brutality complaints within the county. It was this kind of leadership that, we believe, helps to exemplify how some local communities might address similar problems.

The commission found that the most frequent complaint filed by Prince Georges County residents is the one that police use excessive force. In addition, the report found that intake systems for receipt of complaints from the victims of police abuse were actually structured in a way that literally discouraged the public confidence, discouraged people from actually coming forward. For example, all police departments in the State of Maryland are required by statute to have complaints of excessive force signed by the complainant and notarized. But in Prince Georges County none of the police departments had notaries public on duty, and so it literally required that a victim of police abuse file a complaint, take a statement, leave the police department, and return to file the complaint a second time. In many instances the entire process was too burdensome, too intimidating, and we found, and particularly among NAACP members, that the use of that complaint system was virtually nonexistent.

The commission of Prince Georges County, however, did issue fairly extensive recommendations which the county is in the process of implementing. I think it is too early to make a final call about how successful they have been in addressing the problem, but I do think it important to note that Alex Williams, who is the first elected African-American State attorney in Prince Georges County, did indicate that if there was one thing positive about the Habib incident it was that indeed it bring the issue to the public's attention, and there does now seem to be some attempt to address it.

The second incident that we have identified in the testimony involves Tampa, FL. I won't go through the incident there, but I will say that in the course of a 5-month period during 1987 five African-American males were killed by police officers in encounters similar to the ones we have described with Gregory Habib. Because of those incidents, and because in one instance it followed the arrest of celebrated New York Mets pitcher, Dwight Gooden, who was, in fact, also a victim of police abuse in Tampa, FL, the community was totally outraged. And again, we saw the same kind of response from Tampa that we had seen in Prince Georges County.

But I think it important to note that in both of those instances, and we certainly commend the positive response by county officials, they would not have occurred but for a particular incident of police abuse. That served as the catalyst. There ultimately became a crisis of confidence in the community such that it would have been impossible to govern effectively without some kind of organized response. Now, regrettably, in too many communities even where incidents like this occur we don't see the leadership.

The second point that I would make and that the Tampa incident helps to illustrate, I was reminded by a statement in the Kerner Commission report, which was cited by a local newspaper in Tampa when the original incidence first emerged. It noted that when the Kerner Commission released its final report in 1967 on the urban rebellions that had racked America's cities during that decade it said some very profound things, but one of the most significant points it made was that many of the riots of the 1960's, and of the 1970's and 1990's as well as we are now beginning to see, were often sparked by incidents of police abuse. That what you are seeing is pent-up frustration in the community, often involving insensitive law enforcement activity, police abuse of a significant degree. In some instances broader social problems, obviously, are also deeply involved. But one incident of police violence in many of these cities served as the catalyst to bring these issues to a head.

Unfortunately, there are too many other examples, however, where local communities do not respond in the same positive manner, and our statement today cites three examples, only two of which I will allude to.

One involves the first African-American mayor of Bolton, NC, who was killed last year in an incident of police violence in his home community. That incident is currently being investigated now, and we hope, indeed, that this subcommittee through its efforts and through the renewed investigation of Attorney General Thornburgh will begin to generate additional insight into what happened. What we think is especially tragic is that we believe the investigation which was conducted at the local level amounted to a virtual whitewash, and that the failure to pursue this matter vigorously continues to be a source of great difficulty.

Other examples are also cited in the testimony which help to illustrate problems that we believe are especially difficult, and one in particular emphasizes a case that I think, Mr. Washington, you are familiar with involving a murder in Houston which is cited in fairly great and, unfortunately, gruesome detail, where a young man of 24 years old was actually shot some eight or nine times by a local police officer in what amounted to a gross overreaction to concern about the police officer's safety. The facts, we believe, help to illustrate that.

I would like to summarize, in conclusion, and say the following: That while indeed we have been able, we think, through our own survey to demonstrate the breadth of the problem that goes well beyond the Rodney King incident, goes well beyond the confines of Los Angeles, and affects literally every community in America, the hearings that this subcommittee has undertaken will, indeed, help to shed light, and we hope will help to generate a Federal response.

We also believe that as you look closely to the statutory authority which presently exists for the Federal Government to pursue effective solutions in this area you will discover that there indeed are, unfortunately, limitations that we think are impediments in effective policing of these problems.

We noted in our testimony that Federal authority is derived from title 18, sections 241 and 242, of the Federal statutes, which do provide a statutory basis for Federal officials to pursue criminal violations of civil rights akin to what we have established here. It

is generally conceded, notwithstanding the fact that the Federal authorities, including the Attorney General, could do a great deal more than they have done. Notwithstanding that, the statutes are considered to be vague, they are considered to be poorly drafted, and in many instances they indeed are an impediment to effective use and to effective solutions.

Second, there is no statutory authority to pursue pattern and practice under Federal law in a meaningful way, and we believe that kind of statutory authority is clearly needed. In many instances when you go into a community similar to the ones that we have cited in our testimony we don't see merely one police abuse incident. What we see are a pattern, a history of police abuse incidents. And, in fact, in many instances these incidents actually increase over time because many of the perpetrators of the violence feel that they indeed have impunity to conduct these actions.

The Tampa incident that I alluded to earlier contains a statement by a black former policeman in Tampa who indicated the kind of insensitivity that he confronted, racial epithets and taunting, that was frequently made between police officers and the persons they were intended to police, all done in the face of black police officers who stand there and who, even if they raise comment, are frequently challenged and overruled. And that kind of impunity, that kind of abuse of power is in many instances ingrained over a long period of time and will only be effectively addressed if the Attorney General is given pattern and practice authority to address these incidents.

Now, there are five other recommendations that we make, and I will simply summarize them briefly, because one of them tracks a comment that, again, Mr. Washington made earlier.

First, the NAACP believes in addition to providing the kind of statutory authority we talked about that we should begin, and Congress should begin, to make disbursements of Federal funds to local law enforcement agencies contingent upon aggressive departmental policies prohibiting excessive force by local police officers.

Second, we believe that the local officers of the U.S. attorney should be given greater authority to initiate prosecutions of police misconduct, and currently there are limitations in that regard.

Third, we believe that a private right of action under 42 U.S.C. 1983 should be expanded to provide private rights for parties to address these issues when the Federal Government fails to act.

And last, we believe that the Federal Government does have both a responsibility, and indeed the wherewithal, to provide modest funding for supplemental training and technical assistance to police departments that seek help in trying to address these problems.

It should be noted that in the two incidents, or rather the two cities that I mentioned earlier that had actually taken affirmative initiatives, both Prince Georges County and Tampa, FL, they called in outside consultants. In this instance, the Police Foundation based here in Washington came in to advise them on how they could structure their programs more effectively, and those recommendations seem to be bearing fruit. We hope that other departments will be encouraged to move in this direction. But notwithstanding that, we believe the Federal Government must move to

act quickly and decisively, and the hearings you have begun today will help to reinforce that point.

Thank you for this opportunity to present the views of the NAACP.

Mr. EDWARDS. Thank you very much, Mr. Henderson.

[The prepared statement of Mr. Henderson follows:]

PREPARED STATEMENT OF WADE HENDERSON, DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, WASHINGTON BUREAU

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to present the views of the National Association for the Advancement of Colored People (NAACP) on the complex problem of police brutality. I am Wade Henderson, Director of the Washington Bureau of the NAACP.

The National Association for the Advancement of Colored People is the oldest and largest civil rights organization in the nation. The NAACP has over 500,000 members with over 2100 branches in the 50 states, the District of Columbia and abroad. The NAACP is committed to the empowerment and protection of African Americans under the Constitution through principles of equal justice under law for all persons in the United States.

Introduction

The brutal beating of Rodney King by officers of the Los Angeles Police Department has brought much needed public focus to the problem of police brutality nationwide. The NAACP has a longstanding interest in the problem of police violence -- the use of excessive and often deadly force, by police officers "under color of law." For too long, African Americans and other racial minorities have been among the special targets of police abuse. Rather than being the beneficiaries of the equal protection of the law, too often innocent black people -- including many of our youngsters -- find themselves the victims of the abuse of authority and law.

Some police officers, for example, make plain their fear or contempt of black people while on patrol in black communities or when they observe African Americans in the predominantly "white

areas" of our cities and towns. This is usually done through simple harassment or verbal abuse directed at an individual because of the color of his skin, although the real reason may be masked by a pretext.

The NAACP case of Murphy v. City of Reynoldsburg,¹ is an excellent example of this problem. Murphy is a civil case about racially motivated police misconduct in Reynoldsburg, Ohio. A special unit within the Reynoldsburg Police Department called itself the "S.N.A.T" squad, and took it upon itself to harass blacks found passing through town. It was later discovered that S.N.A.T. is an acronym for "Special Nigger Arrest Team."

Blacks were followed for no reason until some minor infraction was found. They were then stopped, searched and subjected to thorough computer checks for any outstanding traffic tickets, or other matters, from any jurisdiction covered by the computer. On some occasions, it appears that drugs were planted on the suspects during these manufactured searches. The NAACP is assisting in litigating the case on behalf of an individual on whom drugs were planted.

Another common complaint from many black people is that white policemen, in particular -- whether because of racial fears, animosities, or other factors -- frequently overreact in a given circumstance. They use excessive force in situations which

¹Common Pleas Court of Franklin County, OH; Civil Action No. 89-CV-12-9856.

require deliberate, careful and even-handed policing. The result is often severe injury or death for the victim of this abuse.

The local NAACP branch is often called upon to investigate complaints by African Americans of excessive violence by police officers. In the course of our work, we have gathered disturbing evidence of patently illegal law enforcement practices, which in the African American community, have become an intrinsic part of our daily lives. The elimination of illegal police killings against minority citizens remains, in particular, a priority of the NAACP.

In recent years, the NAACP has been especially active in confronting police violence in local communities across the nation. In 1983, for example, under a grant from the Department of Justice, the NAACP issued a public service guidebook on combating police brutality entitled, Police-Citizen Violence: An Organizing Guide for Community Leaders². The purpose of the guide is to assist in the education of local communities on steps they can take to confront the problem of police violence. In addition, the NAACP continues to document instances of police abuse nationwide.

In response to this Subcommittee's investigation into the problem of police brutality, the NAACP Washington Bureau, in conjunction with the national Legal Department, the Communications Department, and the Department of Branches and

²The Guide was prepared under a grant from the Office of Community Anti-Crime, Law Enforcement Assistance Administration, U.S. Department of Justice, Grant Number 80-TA-AX-0004.

Field Services, has initiated an informal, national survey of NAACP branches in an effort to document the broad scope of the problem. The initial investigation has been limited to incidents no older than the last five years. The survey itself, will continue for the next several months, and additional information will be made available to the Subcommittee in the fall 1991.

Our testimony today will offer examples of the police violence which pervades the African American community. We will make two basic points. First, two of the reports we have received demonstrate that successful outcomes can be achieved when communities come together to respond to the problem of police violence in a positive manner. Such outcomes have usually resulted from a single police abuse incident (following other similar incidents) which triggers a profound "crisis of confidence" within an affected community.

Regrettably, other examples of chronic police violence we have received reveal an all too familiar pattern of cover-up and denial. These instances are by far the more numerous examples of police abuse that we see within the NAACP.

The second point of our testimony is that when affected communities lack the political will necessary to achieve meaningful reform, a strong federal hand is needed to ensure equal protection of the law. The NAACP believes that when public servants who are hired to protect people instead become their oppressors, it is time for the country as a whole to demand corrective action. In that regard, the Rodney King incident is

one small part of a larger problem which cries out for enhanced federal remedies.

In addition, we will offer recommendations for specific legislative initiatives which may help to address the problem of police violence.

Maryland: The Death of Gregory Habib

It has been almost two years since Gregory Habib died during a struggle with the Prince Georges County police. The scuffle between four white police officers and Habib in Langley Park touched off a bitter controversy that exposed long-term and deep-rooted tensions between the police department and the county's growing black community.

Habib and his brother, Martin, who suffered a broken jaw, were stopped for a traffic violation about 3 p.m. on May 20, 1989. Police said that the Habib brothers, who were unarmed, approached the arresting officer, Cpl. Steven Kerpelman, in a "menacing fashion," and that he was forced to defend himself.

Within seconds, a fight was on and Kerpelman was radioing for help. A few minutes later, the incident, which played out before more than a dozen witnesses whose accounts varied, was over and Gregory Habib was dead.

Pockets of Prince Georges County exploded with reported incidents of police brutality after the Maryland medical examiner determined that Habib, a slight man who weighed 115 lbs., died of "blunt force trauma" suffered during a fight with the police. The finding of "blunt force trauma" -- words that suggested in

many people's minds a beating death -- was like gasoline to a fire.

A county grand jury returned misdemeanor indictments against Kerpelman for his actions in arresting Martin Habib, but found no wrongdoing in the death of Gregory Habib. The situation grew more tense when State's Attorney Alex Williams, the county's first black prosecutor, rejected findings of the county grand jury. He contended that the process had been tainted by possible perjury and obstruction of justice by members of the predominantly white police department.

In response to the death of Gregory Habib, the Prince Georges County Branch of the NAACP, conducted an extensive survey of complaints of police brutality. The NAACP found that the number of police brutality complaints in Maryland deemed worthy of investigation by the FBI increased by 28 percent in 1988 over the previous year indicating "serious problems" with excessive force³. The Maryland complaints investigated by the FBI "for prosecutive merit" increased from 16 in 1986 to 18 in 1987 to 25 in 1988 according to the NAACP report. The NAACP report used figures provided by the Department of Justice's Civil Rights Division.

In July 1989 County Executive Parris Glendening announced a five-point plan he said was designed to prevent police brutality. One part of the plan created a "blue ribbon" commission on police

³"Police Brutality Complaints Rise 28% in Maryland", The Washington Times, August 31, 1989.

and community relations to investigate police brutality complaints in the county.

During the course of its review of the Prince Georges County Police Department, the commission conducted a complete audit of internal affairs records for the years 1983-1988. The commission found that the most frequent complaint filed by Prince Georges County residents is that of the use of excessive force⁴. In addition, it should be noted that the commission expressed concern that levels of improper police procedure were reflected by elements other than official complaints. Many individuals who feel they are victimized by poor police procedure do not file complaints⁵.

In addition, the report found that the in-take system for receipt of complaints of excessive force "discourages public confidence." For example, all police departments in the state of Maryland, by statute, are required to have complaints of excessive force signed by the complainant and notarized. The PGCPD, however, does not offer no-cost notary service at the police district. The result is that the public becomes convinced that the process is not important to the department.

The commission issued a battery of recommendations that prompted a major reorganization of the police department. Supervisors were assigned around the clock at the busiest

⁴Blue Ribbon Commission on Public Safety and Community Relations: A Report to the County Executive, Prince Georges County, Maryland, February 1990, p.61.

⁵Ibid, p.62.

stations; hours of training, including racial and ethnic sensitivity courses, were added for officers.

Two black officers were promoted for the first time to the rank of major, and an unprecedented number of black officers were elevated to the rank of sergeant and above. "If there is anything positive that came out of the Habib incident, it is that it put all the tensions between the police and the community that have been simmering for years out in the open and forced people to deal with them," said Alex Williams⁶.

Florida -- Tampa Erupts

When the Kerner Commission released its final report in 1967 on the urban rebellions that had wracked America's cities during that decade, it said some very profound things about American society.

One of the significant points that it made was that most of the riots were sparked by an incident of police use of excessive force.

This use of unnecessary force is part of a recurring pattern that the black community can not tolerate any long and the rebellion begins.

The disorders in Tampa, Florida last week followed the classic pattern. A black man killed by a police choke hold.
...

As long as police forces deal with black people in a brutal and contemptuous manner these uprisings will occur. Just as the Kerner Commission cited a history of police misconduct as the usual cause of civil disorders, the current newspaper headlines say the same thing. ...

Unless police officials begin to regard the lives of black people in the same manner they regard others, this country

⁶"A Year After Habib's Death, Tensions Beginning to Ease," The Washington Post, May 20, 1990.

will have to learn to live with urban rebellions of increasing severity.⁷

Rock and bottle throwing incidents have begun again in the black community! The President of the Tampa Branch of the NAACP said the organization has made a move to call in the Department of Justice and the FBI to investigate the problem. The time was April 1987.

These actions were prompted after another black man died while in the custody of officers of the Tampa Police Department. In less than five months, five men died in Tampa police custody. While the officers involved in the incidents were white, four of the dead men were black and one was Cuban-born. NAACP President Henry Carley was reported to have said, "The black community is demanding that we do something besides meet and form task forces and we're going to respond in order to protect our people."⁸

These incidents followed a severe beating inflicted upon New York Mets pitcher Dwight Gooden by members of the Tampa Police Department in December 1986.

Following the disturbances, the Greater Tampa Chamber of Commerce established a biracial commission to study police practices, employment, housing and other issues. Subsequently, the commission hired the Police Foundation, a nonprofit research group headquartered in Washington, D.C., to review Tampa's police

⁷Editorial, National Edition, Baltimore Afro-American, reprinted in the Fla. Sentinel-Bulletin, March 3, 1987.

⁸"Fourth Black Man In Four Months Killed By Tampa Police," Fla. Sentinel-Bulletin, April 7, 1987.

practices. The Police Foundation's report paints a troubling portrait of relations between the black community and police in Florida's third largest city.⁹

The report suggests police officials failed to see a growing gap between the department and the black community that erupted after the February 1987 death of 23 year-old Melvin Hair, killed by a white officer responding to a report that Hair was threatening his family with a knife. Hair's death touched off two nights of violence in Tampa.

Race relations were a primary focus of the study. Twenty-five people -- city officials and blacks and whites who had observed officers interacting with the public -- were interviewed to gauge police-community relations.

- The most frequent complaint encountered among black members of the Tampa community was an apparent lack of discipline among all ranks of the Tampa Police Department. This view was repeatedly cited by members of the NAACP. The view among those interviewed was that the internal investigative processes used by the Tampa Police Department are ineffective, and designed to protect the-officer, not the citizen.

A second theme that ran through many interviews was that Tampa police officers seemed particularly intent on pure law enforcement, rather than on delivery of a city service to the black community. This manifested itself in several ways; the

⁹A Review of Administrative Processes of the Tampa Police Department, Police Foundation, November 18, 1987.

most eloquent was in a statement by a black professional who remarked:

The police [in Tampa] hurt themselves by being too willing to take enforcement action. The police here tend not to understand the environment in which they work. There's too much discretion, which leads to arrogance and abuse of power. Quite simply, there is an arrogance of power, and there has been for quite some time.¹⁰

A recurring complaint voiced by many NAACP members focused on police accountability. How is it that the police can investigate themselves in cases in which deadly force is used. Police detectives investigate all deaths or the significant use of force by officers and forward their findings to the State Attorney to determine whether any laws were violated.

Many of those interviewed alluded to a pervasive prejudice among the officers, supervisors, and management of the Tampa Police Department. Many recounted stories -- undoubtedly referred by black former police officers -- about sergeants at roll call reading general information such as "pick up a nigger female, age ..."¹¹ Others recounted bitter complaints from black former officers concerning the way they were treated by their white supervisors. Much of the general nature of these complaints was supported by whites who have had exposure to the Tampa Police Department:

Racial epithets are common[ly] used at [roll] calls, written in the bathrooms. If a white officer and black officer are together and the white officer uses nigger or boy, and [the black officer] reports that, it's always [ignored]. Nothing

¹⁰Ibid, p.37.

¹¹ibid, p.39.

is done to them [the white officer]. Consequently, they aren't going to change. If they can call somebody nigger right in front of a black officer and the black officer's word isn't heeded, then the attitude is not going to change.¹²

The Police Foundation report made 36 recommendations to the Tampa Police Department. As a general matter, the Police Foundation report was well-received. The NAACP President said he considered the report a "good sign that the department welcomed the review."

In February 1990 the Foundation conducted its first audit of the implementation of its recommendations to the Tampa Police Department. It reported a stunning turnaround.

Tampa's city administration and the police department acted on nearly all of the Foundation's original 36 recommendations, which ranged from the revision of training lessons to the development of community outreach programs. The result is that police officers are now better prepared to deal with volatile situations, especially in minority neighborhoods. Department actions include an increased emphasis on recruiting -- an retaining -- minority officers, a training agenda that stresses racial sensitivity, and an ongoing dialogue with citizens.

But for every success in combating police abuse such as those of Prince Georges County or Tampa, there are other communities that are seething with unrequited anger.

North Carolina -- The Murder of Mayor Sidney Bowen

¹²Idem.

For the past several years, the North Carolina State Conference of the NAACP has expressed grave concerns regarding the use of highly aggressive or deadly force by state law enforcement officers against African Americans. However, no single case has generated as much concern as the recent killing of Sidney Bowen, the first African American Mayor of Bolton, North Carolina.

On February 27, 1990 Mayor Bowen was killed in an unusual incident involving a State Highway Patrol Officer, A. E. Morris. Although the specific circumstances surrounding Mayor Bowen's death remain muddled, it appears that he was shot by Trooper Morris some four or five times with a 9mm semi-automatic weapon while he stood in his front yard. Trooper Morris had allegedly stopped Mayor Bowen for "crossing the center line" while driving and a struggle between the two had ensued.

The NAACP State Conference immediately dispatched its Executive Director to travel to Bolton to work with the NAACP Columbus County Branch to investigate Mayor Bowen's death.

A preliminary investigation by the State Highway Patrol, which was concluded on the day following the shooting, concluded that Trooper Morris' actions were "reasonable and prudent." Not surprisingly, the NAACP took strong exception to this hastily reached conclusion. Cries of "cover-up" and "whitewash" were heard throughout the black community.

On March 5, 1990, NAACP State Conference President, Kelly Alexander, Jr., issued a "call to action" for state and federal

law enforcement agencies: 1) that the FBI initiate an independent investigation of the circumstances surrounding Mayor Bowen's death and of possible violations of Bowen's civil rights by the actions of Morris; 2) that District Attorney Mike Easley seek an indictment against Morris for the death of Mayor Bowen; and 3) that Representative Charles Rose (D-NC; 7 Congressional District) monitor the case.

Subsequently, an investigation was conducted. According to local newspaper reports, interviews were conducted by the State Bureau of Investigation and the FBI with more than 160 individuals. Several witnesses issued conflicting statements about the series of events leading up to the shooting. In addition, grave allegations surfaced suggesting that Trooper Morris had a history of using excessive force.

Tensions in the Bolton community ran high. Working with Andy Anderson, then President of the NAACP's Columbus County Branch, and Bishop E. W. Jones, the new president, the NAACP's state director served as an advisor to Mayor Bowen's family, the Columbus County Branch and community leaders throughout the next few weeks in an effort to determine plausible courses of action. Community meetings, coordinated by the Bolton Ministerial Alliance, were held weekly.

Following a rarely used procedure, District Attorney Easley sent the Morris case to the county grand jury for a "presentment" (i.e., the grand jury is to decide if Trooper Morris should be accused of a crime) rather than for an indictment (i.e., the jury

is to decided if there is sufficient evidence to bring the accused to trial). On March 15, 1990 the grand jury went into special session, heard the case, and recommended that Morris not be indicted.

The next day, the district attorney held a press conference and released information regarding the case (e.g., the autopsy report, statements by witnesses, and the highway patrol's tape-log of the night in question). Although the NAACP had urged that Trooper Morris not be allowed to return to active duty pending the FBI's investigation, Morris was reinstated prior to its completion.

The NAACP met with William Webb, Assistant Secretary of Crime Control, to discuss the Bowen case; the community's concerns regarding the internal investigative process used when complaints of excessive force by highway patrol officers are received; the procedures for filing complaints, which actually discourage aggrieved persons from coming forward; and the training and supervision of officers. The NAACP reiterated its objection to Trooper Morris' return to active duty pending the completion of the federal probe, but the concern has gone unheeded.

Meanwhile, an investigation by the Department of Justice is still pending and a community waits in fear over who may be the next victim of police violence.

Texas -- A Propensity to Kill?

In early December of last year, a little noticed story appeared in the Houston Chronicle. It announced that the last of four grand juries that had investigated ex-policeman Scott Tschirhart's killing of Byron Gillum, a Houston security guard had disbanded¹³. Houston Fire Marshall Eddie Corral, who was grand jury foreman, said jurors who initially were curious about the controversial case eventually "lost interest".

The expiration of the grand jury's term marked a quiet end to a case that touched off a storm of public protest. Although for the Texas State Conference of the NAACP, the memory lingers on.

The facts of Gillum's death are as profoundly disturbing as they are bizarre. What is frightening about Byron Gillum's death is that it could have happened to anyone.

On November 15, 1989, Officer Tschirhart pulled over 24 year-old Byron Gillum near the main campus of the University of Houston. Officer Tschirhart said he became suspicious when Gillum slowed to 10 mph after spotting the officer's patrol car behind him. He stopped Gillum when he saw he was not wearing a seat-belt.

Tschirhart said Gillum "seemed very agitated" as he approached him. He said Gillum insinuated "I was stopping him just to harass him", by telling the officer that he should be

¹³"4th Tschirhart Panel Disbands", Houston Chronicle, December 9, 1990, p.C11.

chasing "real criminals"¹⁶. Byron Gillum waited in his car for 13 minutes while the officer checked for pending charges against him. When the dispatcher reported finding no warrants against Gillum, Tschirhart responded: "Please say you have something on Gillum ... Bad attitude."

Returning to Gillum's car, Tschirhart said that he spotted a pistol that he had not seen earlier, wedged between the car's bucket seats. Tschirhart said that he had twice ordered Gillum to get out and not touch the gun, but that Gillum had reached for the weapon.

Officer Tschirhart opened fire and continued firing as Byron Gillum lunged through the open window on the passenger's side of his car and attempted to flee for his life. Eight bullets from Tschirhart's 10mm automatic pistol struck Gillum -- four in the back!

Officer Tschirhart contended he merely followed his police training, which called for officers to shoot to kill to defend themselves, and to keep firing until the person posing the threat goes down. He said he feared that Byron Gillum might be armed, but in reality, Gillum was unarmed.

Byron Gillum was the third black person slain by Officer Tschirhart, who is white. Gillum's death inflamed relations between the black community and the Houston Police Department, since it followed on the heels of the controversial police

¹⁶"Tschirhart's Dismissal From Police Force Upheld", Houston Chronicle, November 28, 1990, p.A24.

slaying of another black citizen, Ida Lee Shaw Delaney. Ms. Delaney, 50, was shot to death on October 31, 1969 by Alex Gonzales, an off-duty police officer, in an incident on Houston's Southwest Freeway. Officer Gonzales was convicted of voluntary manslaughter and given a seven-year sentence.

Then-Police Chief Lee P. Brown fired Tschirhart, a police officer for 7 1/2 years, for violating the department's rule that prohibits shooting at a fleeing suspect unless the lives of officers or others are in danger. Tschirhart appealed his dismissal, and under state law, his case went to binding arbitration. Meanwhile, two Harris County grand juries returned "no-bill of indictment" against Officer Tschirhart, and a third decided to take no action after reviewing his case.

Arbitrator Charles J. Morris, a Southern Methodist University law professor, held that Officer Tschirhart's ineptitude led to the shooting death of Byron Gillum and upheld his dismissal. Tschirhart "should have had a better understanding" of why a young black man like Gillum, who thought he had done nothing wrong, would tell a white officer "he should be going after "real criminals"¹⁵.

Officer Tschirhart's "conduct in firing those last five shots was grossly irresponsible, even though he may have fired spontaneously, without conscious thought," wrote Professor Morris. "He was apparently obsessed with firing his weapon at

¹⁵Idem.

the suspect until he dropped. He obviously gave no thought to protecting the suspects life."

Ironically, Officer Tschirhart's involvement in three fatal shootings did not give him an exceptionally unusual record for using deadly force according to Don Smyth, Chief of the Civil Rights Division in the Harris County District Attorney's Office, who presented a statistical study of police shooting during the appeal of Officer Tschirhart's dismissal. A statistical analysis presented earlier by noted criminologist Lawrence W. Sherman showed that during the time Officer Tschirhart was in the HPD, he was the only officer involved in three fatal shootings. Sherman said Tschirhart displayed "a propensity to kill people."¹⁶

Prompted by the death of Byron Gillum and the comments of Lawrence Sherman, Smyth's study of all shootings by local law enforcement officers in the county covered the period from July 1979, when the Civil Rights Division was formed, and mid-August 1990. The study showed that during this period, a total of 26 officers were responsible for the injury or death of at least three persons. Three of the officers, like Scott Tschirhart, were involved in three fatal shootings, and one was involved in four such killings.

What these statistics may demonstrate is that a culture of violence and disregard for human life may permeate, not only the

¹⁶"Tschirhart Record Labeled Not Unusual/ Witness Testifies," Houston Chronicle, August 29, 1990, p.A21.

Houston Police Department, but also many other police departments which are not sufficiently sensitized to its responsibilities to protect all its citizenry.

Byron Gillum's family, members of the Ida Delaney/Byron Gillum Justice Committee, and the NAACP said the arbitrator's decision will not stop them from pressing for Scott Tschirhart's indictment or from continuing demands for a police-community review board. This incident warrants further federal investigation.

Last week, members of the Abilene, Texas branch of the NAACP joined with representatives of the League of United Latin American Citizens and other community groups in meetings here in Washington on the issue of police brutality. These concerned citizens came at their own expense to encourage members of both the House and Senate Judiciary Committees to conduct field hearings on the police violence issue in one or more affected communities in Texas. The visit was a deeply emotional experience for all those who participated. Mr. Chairman, your courtesy to the delegation, and your consideration of their request, was appreciated.

New York -- The Death of Alfred Sanders

On December 29, 1987, in Laurelton, Queens, Alfred Sanders, a thirty-nine (39) year-old black man, was killed in a fusillade of bullets fired by white police officers. There have been several similar police shootings against minority persons in New York in recent years. Accordingly, the Jamaica Branch of the

NAACP and the Laurelton Federation of Block Associations expressed grave concern about yet another shooting death.

Representatives of these organisations urged Governor Mario Cuomo to appoint a Special Prosecutor in the case of Alfred Sanders. Although he refused, the Governor directed his "Special Screening Committee" (for Special Prosecutor cases) to continue to monitor developments in the case. The grand jury looking into this matter under the direction of Queens District Attorney John Santucci produced no-bill of indictment. At the conclusion of the grand jury proceeding, Santucci remarked: "The grand jury obviously concluded that the police officers acted reasonably in defense of their own lives."

-- NAACP Investigation --

Dr. Benjamin L. Hooks, Chief Executive Officer of the NAACP, and Hazel Dukes, President of the National NAACP and President of the New York State Conference of NAACP Branches, immediately authorized the NAACP to conduct a parallel investigation of the Sanders shooting. In its initial stage, the NAACP investigation involved monitoring the grand jury proceedings and assisting the Jamaica Branch with its independent inquiry into the incident.

A meeting arranged by NAACP lawyers was held with District Attorney John Santucci and his prosecutors who investigated the shooting death. Mr. Santucci declined to release several reports and other evidence that had been presented to the grand jury;

however, there was an open and frank discussion about the facts in the Sanders case¹⁷.

-- Facts and Findings --

On December 29, 1987, Alfred Sanders attempted to see his son at the home of his former companion, Elease Watson, the mother of the child. According to a message over the police department's "911" line, Watson called the police at approximately 6:47 p.m. claiming that there was a "man outside with a gun." She called again a few minutes later with a similar message, adding, "I have a protective order."

According to police records, at 7:04 p.m., an anti-crime unit picked up the call and responded to the scene in a "marked" vehicle. At 7:10 p.m., the marked unit called for back-up, stating that there was "an erratic male on the scene reaching into his pocket." Witnesses pointed out later that Sanders had complied with the police officers' demand that he remove his hands from his pockets. According to witnesses, Sanders withdrew a wallet, which he threw onto the hood of the unmarked police car, and a folded piece of paper.

Police records indicate that at approximately 7:13 p.m., the second unit on the scene called for an Emergency Services Unit and demanded that a police sergeant be sent to the scene. Both

¹⁷In a letter dated February 3, 1988, Hazel Dukes asked John Santucci to disclose such evidence as the police reports, the medical examiner's report and the results of any scientific tests or other forensic evidence as fingerprints and the like.

the sergeant and the Emergency Service Unit were equipped with proper protective devices.

However, before these units arrived with the appropriate protective devices, Sanders had already been killed.

The shooting occurred at approximately 7:18 p.m., after Sanders have moved out beyond the gate surrounding Watson's residence, and while the officers were in the street. According to the District Attorney, the four officers on the scene had moved in sequence with Sanders' movements. All four officers had their guns drawn. Witnesses reported that Sanders yelled racial and taunting remarks at the officers.

The officers indicated that Sanders possessed a knife that he first held to himself. Moments later, he had allegedly pointed it towards the officers and lunged. The knife was described as a "007-type knife."

According to the District Attorney, six witnesses before the grand jury testified that they saw a knife; four others testified that there was no knife. One witness testified that he (or she) heard police say: "Put the knife down." A knife recovered by police officers and examined by lab technicians in the police department bore no fingerprints, fibers, or evidence that would identify the owner or corroborate their claim that the knife was in the possession of Sanders.

In total, eleven bullets were fired at Sanders by two of the officers. The other two officers declined to shoot. Sanders sustained ten bullet wounds in the location of his abdomen, chest

left arm, and left leg. His body fell to the middle of the street where he died.

There were numerous witnesses, neighbors of Elise Watson, and friends and relatives of Alfred Sanders. Some of these witnesses remembered that Sanders had been beaten badly by police officers in the summer of 1987. At that time, he had broken the windows of Watson's residence and had demanded to see his son. Later, Watson obtained a protective order. They viewed Sanders as sick but "non-threatening."

-- The Grand Jury --

The grand jury investigating the death of Alfred Sanders was presented with an unfocused case by the District Attorney's office. The grand jury received an open-ended charge, and was presented with the broad range of possible charges -- from Murder in the Second Degree to Manslaughter and Assault.

Evidence regarding the past racial misconduct of the officers who did the shooting was not presented to the grand jury. District Attorney Santucci stated that he urged his assistants to present this evidence, but was somehow overruled. It appears, however, that prosecutors intentionally failed to present to the grand jury evidence of the conduct of each officer in prior confrontations with black males to establish the officers state of mind in the Sanders shooting.

This highly relevant and probative evidence is of particular significance given the testimony that Sanders was shot after he directed racial rhetoric at the officers. Further, the

-prosecutors made no attempt to scrutinize the police officers' self-defense claim that Sanders lunged at them with a knife.

Finally, the grand jury did not consider or investigate a possible cover-up of improper conduct in light of the conflicting evidence that the knife allegedly found at the scene was indeed in Sanders' hand (i.e., the lack of any fingerprints, fibers or other physical proof). A worthy area of investigation which was not pursued at all involved the strong possibility that the knife allegedly found at the scene was "dropped" by the officers at the scene.

The lack of fingerprints on the knife is significant. The knife was recovered immediately prior to the possible destruction of any latent prints and its handle was composed of a smooth surface which could have registered latent fingerprints. Furthermore, Sanders' handling of the knife, as described by the District Attorney's office, would have assured the existence of latent prints.

Simply put, the NAACP continues to believe that prosecutors handling the grand jury investigation into the death of Alfred Sanders neither seriously considered nor diligently pursued indictments in this case. We continue to believe that further investigation is warranted.

Recommendations

The ongoing survey of NAACP branches demonstrates that the problem of police brutality is pervasive, deep-rooted and

alarming. The national problem of police brutality cries out for a federal response.

It has been reported that the Department of Justice has received almost 8,000 complaints of criminal civil rights violations by police officers each year in the past five year period. Regrettably, this represents but a fraction of the police abuse cases. For example, we know that in 1990 in Los Angeles alone, over 2,500 complaints of police abuse were recorded by the Police Misconduct Lawyer Referral Service. The fact that complaints to the Department of Justice have declined by 20 percent since 1981 does not square with the apparent rise in police abuse incidents nationally.

There is a paucity of thorough investigation by the Department of Justice in response to complaints of police abuse. Only a bare minimum number of cases is actually presented to the grand jury. For example, it has been suggested that as few as 50 of 3,000 case per year are presented to the grand jury, which represents approximately one-half of one percent. Further, there is a shortage of human and financial resources allocated to the difficult task of investigating and prosecuting criminal civil rights violations.

Attorney General Thornburgh's recent commitment to investigate all complaints of police brutality nationwide, in the last six years, is commendable. However, it has been suggested that old cases would not be reopened, which if correct, raises serious questions about the purpose of this new investigation.

However, in addition to the points already stated, there is a fundamental issue involving the scope of existing federal authority to address the problem of police brutality.

Admittedly, the Department of Justice has existing authority to certainly do more than they have done. For example, under 18 U.S.C. Sections 241 and 242, the Department has the power to file criminal civil rights charges against local police officers who willfully violate federally protected civil rights and/or who engage in conspiracies to violate these rights. However, it is generally accepted that these statutes are vague, poorly drafted, and actually make it difficult to bring successful federal civil rights prosecutions.

Moreover, the Department lacks the important authority to undertake "pattern and practice" lawsuits where the problem of police abuse is especially widespread in a community. Establishing the statutory authority needed to address this aspect of the problem should be a high priority.

In addition to enhanced statutory authority to prosecute civil rights violations, especially for the Department of Justice in the area of pattern and practice litigation, the NAACP supports the following additional recommendations:

- * making the disbursement of federal funds to local enforcement agencies contingent upon aggressive enforcement of departmental policies prohibiting excessive force by local police officers;
- * granting more authority to the local offices of the U.S. Attorney to initiate prosecutions in police misconduct cases.

* expanding remedies under 42 U.S.C. Section 1983 to make punitive damages available to victims of police abuse and to provide for injunctive relief to prevent egregious conduct by police officers in the future; this is particularly important where the police practice is known to cause death (e.g. the use of the choke-hold); and

* providing supplemental funding for training and technical assistance generally for local police units.

Conclusion

The NAACP remains committed to the principle of full equality before the law for all persons under the Constitution. Police brutality directed against African Americans and others is a violation of that fundamental principle. We look forward to working with this Subcommittee in pursuit of effective remedies to the problems we have discussed today.

Thank you for the opportunity to present our views.

Mr. EDWARDS. We will withhold questions while we hear from the next two witnesses. So, if the three of you will serve as a panel.

Our second witness is Drew Days, professor of law at Yale Law School, and former Assistant Attorney General in charge of the Civil Rights Division. Both Mr. Hyde and I had the pleasure of working with Mr. Days when he was the Assistant Attorney General in charge of civil rights, and we are very pleased to have him here again.

And then the third member who will testify before the questions begin is David L. Llewellyn. Mr. Llewellyn is president of the Western Center for Law and Religious Freedom of Sacramento, CA.

Will the two next witnesses please raise your right hand.

[Witnesses sworn.]

Mr. EDWARDS. Thank you. Professor Days, you may proceed. And, without objection, all of the statements, the full statements will be made a part of the record.

STATEMENT OF DREW S. DAYS III, PROFESSOR OF LAW, YALE LAW SCHOOL

Mr. DAYS. Thank you, Mr. Chairman. It is a pleasure to be back before this subcommittee where I spent a great deal of time when I was in the Justice Department. I am also happy to see the new additions on the subcommittee.

I want to thank you, Mr. Chairman, and the members, for inviting me to testify before you today in connection with your hearings on police brutality in America. I am certain that all of us recognize the important role that law enforcement agencies play in keeping our streets safe and our homes and businesses secure. However, the video-taped beating, on March 3, 1991, of Mr. Rodney King by officers of the Los Angeles Police Department provided undeniable evidence that in some jurisdictions persons who are sworn to uphold the law are among its major violators.

Of course, I experienced, along with millions of others, including President Bush, revulsion upon viewing the video tape, but I must admit to the subcommittee that I was frankly not surprised that a gross violation like the one captured on that video tape could occur in the United States in 1991, for my professional experiences both in private practice as well as my time in the Justice Department have led me to believe that police brutality, although it is not standard practice in the United States, occurs all too frequently in many communities in this country.

What I want to do is talk about two experiences that have brought me to that conclusion. The first was when I was on the staff of the NAACP Legal Defense Fund in New York. In that capacity I brought a number of actions against police departments seeking both equitable and monetary relief for police misconduct. What I found was that even though we brought successful damage actions against police departments for police brutality, although we weren't very successful in that respect, there appeared to be no change in the environment, no change in the context within which police officers worked. There seemed to be no discipline from the top. There seemed to be no criticism by police or city officials of officers who were found to have engaged in police misconduct.

As I think you, Mr. Washington, at the last hearing that was held here talked about the lack of a clear message. There never seemed to be a clear message sent out by those on the top to officers on the line that police misconduct and abuse would not be tolerated.

After we brought a number of suits along these lines we decided that we would seek equitable relief. We would try to get at what we felt were some of the institutional and structural problems in the operation of police departments, and we noted a correlation between incidents of police misconduct in departments and their failure to have any viable procedures for receiving, investigating, and acting upon citizen complaints of police misconduct. So we identified that as an objective that we would seek in our lawsuits.

I am happy to say that we were able to work out consent decrees in several cases and a settlement in one case that revised drastically the procedures that these police departments had for handling complaints, although hearing Mr. Henderson's testimony about Prince Georges County, I am not certain that in the 15 or so years since that agreement that things have really improved. But I do think that in some of the other communities there was leadership at the top and the procedures that were put in place actually did make a difference. But I would invite the subcommittee to look into those cases to find out whether my impression is accurate.

I am happy to say that we were able to work out these cases before the Supreme Court decided *Rizzo v. Goode*. I have described *Rizzo v. Goode*, and I know members of the subcommittee are familiar with the decision, but let me emphasize the devastating impact that *Rizzo v. Goode* had on the ability of private plaintiffs to get at what I regard as important structural and institutional problems in the operation of police departments.

Essentially what the Supreme Court said was, although there was evidence of significant police misconduct in the city of Philadelphia, there was not an adequate nexus between that type of conduct and the operation of the police department overall, the types of directives that people at the top gave to line officers. There was not a nexus between that and the misconduct. It is a very complicated decision, but I think that what it said to private plaintiffs was, "You'll have to go back to damage actions if you want to get any relief," and, as I said earlier, those damage actions tend not to alter the culture or subculture of police departments where there is a condoning or an acceptance of police misconduct.

During my tenure as Assistant Attorney General for Civil Rights in the Department of Justice I was responsible for overseeing our criminal enforcement program, that is, litigation and prosecutions under sections 241 and 242 of 18 U.S. Code. I had come to Washington thinking that if the private damage actions weren't a significant tool for dealing with structural problems perhaps the criminal procedure, the criminal prosecution would make a difference. I found first that although we got a number of complaints of police misconduct it was very hard to make those cases stick. First of all, there was the difficulty of substantiation in many cases. There were cases where, as I indicate in my testimony, reasonable doubt was built into the record; for example, which officer did it, who actually did the beating. And, unfortunately, one can't indict every-

body in a case like that. There has to be some indication of who is doing it. In fact, the Liberty City riots, if you remember, produced a problem exactly like that. There were a number of officers but it was not clear which officer delivered the deadly blow to the black man who was killed in that particular incident.

But, even in those cases where we had strong evidence, and where we had a right to actually obtain prosecution, we ran into jury nullification. Jurors simply would not convict police officers. And we had to deal with the fact that most of the victims of police misconduct are people who come from the wrong side of the tracks, if you will. They are racial minorities. They are members of groups who because of their sexual orientation tend not to have a great deal of credibility. They are poor people. They are people who, with criminal records, are not going to be believed when they get on the stand, even though they have been subjected to quite brutal treatment by police officers.

I thought that education might have some impact, and I really don't know the consequences of the many times that I went down to the National Police Academy at Quantico, VA, to be subjected to pretty hot challenges from, during the year, a thousand police officers from around the country. But what I tried to do was impress upon them their responsibilities to deal with police misconduct within their own departments and the extent to which the Federal Government would come in if they failed to do so.

All of these experiences ultimately brought me to the conclusion in my tenure in the Justice Department that another approach would have to be explored. That there had to be some way in which the Federal Government could fill the gap that was created by the *Rizzo* decision and by other decisions that seemed to interfere with the reform consequences of some of the litigation that was brought that should have produced reform in those departments. So what we did was try to develop an approach that would address this problem.

We first did something like what the Justice Department has committed itself to doing very recently in meetings with Mr. Conyers and other Members of the House; that is, do a survey of police misconduct cases around the country to try to identify communities where there appear to be particular problems. We did that in the late 1970's, and as a result of that investigation we identified the city of Philadelphia as being very high upon the list of those communities where we had complaints of police misconduct. We had private suits brought, we had allegations of racial discrimination in the hiring practices of the police department, and, of course, we had brought a number of criminal prosecutions, some successful, against officers who were members of the Philadelphia Police Department.

One of the things that shocked me, and maybe I was more naive then than I am now, but we were involved in a prosecution of several members of the homicide bureau in Philadelphia. The short story about their activities was that they had a practice of bringing in people who were suspects in murder cases and administering quite brutal punishment to them to get them to confess. There was one fellow, if I remember correctly, on the squad who would say to people, "If you don't talk I'll hit you so hard that your heart will

stop," and this fellow was involved in an investigation of an arson murder in Philadelphia. The police had been told by one person who was an eyewitness, or a supposed eyewitness in the case, that X did the murder, torched the house and that fire resulted in death.

Well, the fellow who was suspected of the arson was brought into the homicide squad office and very brutally beaten. He confessed. And it turned out that he confessed to a murder and an arson that he had no involvement in. He was convicted, and it was only after the conviction and after some further investigation and a confession by the person who actually did the crime that we uncovered the fact that the homicide squad had engaged in these types of practices.

They were convicted by a Federal jury in Philadelphia. Their conviction was upheld on appeal, and when police officials were asked what they were going to do about these officers, my recollection is one of them was actually promoted, and a comment from one of the officials was that these officers still were presumed innocent until the Supreme Court of the United States said so. So we hardly have an indication of a clear message coming out of that department, and we have people engaged in undeniably brutal practices which are so brutal that they cause an innocent man to confess to a murder that he didn't commit. And, to have police officers say that those officers still enjoy the presumption of innocence is a pretty shocking commentary.

What we did, after we had decided that we would focus on Philadelphia, was to conduct an 8-month investigation. It was a very intense investigation including the use of a special squad of FBI agents, data specialists, computer experts, to look into the allegations that we had uncovered. We concluded after that investigation that there were grounds to bring a lawsuit against the city of Philadelphia alleging a pattern and practice of police misconduct.

We filed the complaint and ran into very heavy going from the start with the district judge who sat on the case. Suffice it to say that the district judge concluded that the lawsuit could not be brought, at least a part of it could not be brought because the Attorney General did not have explicit authority from Congress to bring such a suit, and he saw no basis for concluding that there was an inherent power on the part of the Attorney General to bring such an action.

Let me be more specific about what we alleged in the lawsuit. We sued the city of Philadelphia and 20 of its officials. The suit alleged that the Philadelphia police officers engaged in various patterns of misconduct against civilians and that police and city officials had acted in ways that were designed to shield abusive officers from any serious disciplinary action, either internal or external.

We alleged that, for example, officers who were charged in lethal force incidents were actually put on the investigations of their own offenses. That is, when the department conducted the investigations the subjects of the investigations were involved in those investigations. Trials were lost. Officers were not made available for investigation. Subpoenas from local officials were rejected by police officials, and I can go on and on.

The video tape of Mr. King shocked the American people, I think, but it certainly is not the only video tape that I have seen of a police beating. In fact, in our investigation of the Philadelphia case we had a video tape of a black man being beaten up in the Philadelphia subway station. There are fixed television monitors within the subway station and those monitors picked up a black man being quite seriously roughed up by police officers.

One of the allegations of the complaint was that that video tape had been brought to the attention of the commissioner of police in Philadelphia shortly after it happened and it produced absolutely no reaction. The officers were never disciplined. No action was taken against them.

We also alleged in the complaint that there were acts of discrimination. That there were certain practices that had a discriminatory impact, in effect, upon the black and Hispanic communities in Philadelphia. Suffice it to say that with respect to that part of the complaint the judge held that our complaint was not specific enough; and even though this ruling by the judge came after we had answered interrogatories from the city and provided 800 pages of details with respect to time, place, identification of officer, and nature of the incident, the judge threw out our lawsuit.

That decision was upheld on appeal and a consideration en banc by the third circuit was denied. Whether we would have been successful in proving our case will never be known, but this was a situation where we think that we were not engaged in idle speculation. We had very strong evidence that there were problems in Philadelphia that deserved a response.

Now, one of the things that also creates a need it seems to me for a civil response from the Justice Department is that the Supreme Court has limited very seriously the extent to which private parties can get equitable relief, even where they have been the victims of brutality themselves. A case in point is the *City of Los Angeles v. Lyons*, where a man established to a court's satisfaction that he had been the victim of a chokehold without any justification and had been injured at the hands of Los Angeles police officers. He sought not only damages, he sought an injunction against the city of Los Angeles's using chokeholds under circumstances such as the one he was involved in. The Supreme Court's conclusion was that Mr. Lyons did not have standing—he did not have the capacity or the necessary palpable injury to seek that type of remedy.

So I think we face in the United States a situation where we really can't look to private parties to deal with patterns or practices of police misconduct effectively because the procedural barriers have been placed in the way of that by the Supreme Court.

Now, I have taken time this morning to talk about the Philadelphia litigation and I actually mentioned Philadelphia more times than, perhaps, I intended. Not because I have any desire to hold up the City of Brotherly Love for any special criticism. It may well be that successor administrations in Philadelphia, and there have been several, both in the mayor's office and the police department, have dealt with some of these problems. But I do so rather because I really believe, given these various experiences that I have had, that the best hope for dealing with the structural and institutional problems that I have described is not the individual damage action,

it is not the individual criminal prosecution, it is the civil pattern or practice lawsuit such as the one we attempted to bring against the city of Philadelphia.

What I think is necessary is Federal legislation that would establish as a matter of Federal law that the Attorney General has explicit authority to bring suit where he or she has reasonable cause to believe that State or local officials are depriving, pursuant to a pattern of police misconduct, persons in their jurisdictions of rights secured or protected by the Constitution or laws of the United States.

Now, as the members of this subcommittee know full well, Congress has seen fit on a number of occasions in the past to give the Attorney General pattern or practice authority where it appeared that that authority was necessary to ensure that individual rights were vindicated. It is certainly the case in title VI of the Civil Rights Act of 1960, having to do with voting and several other titles. But most notable is the Civil Rights of Institutionalized Persons Act of 1980, CRIPA—legislation that I am proud to say I was actively engaged in urging upon the Congress when I was in the Justice Department. It was a very much needed piece of legislation given the problems that we were having dealing with horrendous conditions in institutions where the mentally ill and mentally retarded were confined, as well as brutal and unacceptable treatment of prisoners. That law gives the Attorney General authority to sue on behalf of people in these institutions, and I think that the approach Congress adopted with respect to CRIPA could also be used to very good effect to provide pattern or practice authority to the Attorney General in police misconduct cases.

Now, let me make clear that, although I have devoted much of my testimony to how pattern and practice authority would grant the Attorney General a meaningful tool to deal with the type of problem that we were addressing in Philadelphia, it would also be extremely useful in situations like *Lyons* where, as I just indicated, private parties do not have standing to bring such litigation.

I think that if this new authority were granted to the Attorney General it would, in combination with private damage actions and Federal criminal prosecutions for police misconduct, represent a great step forward in Congress' efforts reaching back to the Reconstruction period to ensure that civilians are given effective Federal protection against official lawlessness like that to which Mr. Rodney King was subjected last month in Los Angeles. I hope very much that Congress will act promptly to provide the Attorney General with that authority.

That concludes my testimony, Mr. Chairman, and I would be happy to respond to any questions that the subcommittee members might have.

Mr. EDWARDS. Well, Thank you very much, Mr. Days, for really very helpful testimony.

[The prepared statement of Mr. Days follows.]

PREPARED STATEMENT OF DREW S. DAYS III, PROFESSOR OF LAW, YALE LAW SCHOOL

1

Mr. Chairman and Members of the Subcommittee, I want to thank you for inviting me to testify before you today in connection with your critically important assessment of the police brutality problem in America. I am certain that most of us recognize that law enforcement agencies play an indispensable role in keeping our streets safe and our homes and businesses secure. However, the videotaped beating on March 3, 1991 of Mr. Rodney King by officers of the Los Angeles Police Department provided undeniable evidence that in some jurisdictions persons sworn to uphold the law are among its major violators.

Of course, I experienced along with millions of others, including President Bush, revulsion upon viewing the videotape. But I must admit to the Subcommittee that I was not surprised that such a gross violation of civil rights could occur in the United States in 1991. For my professional experiences over the years have led me to conclude that police misconduct, while far from standard practice, is an all too frequent event in many communities across this country.

From 1969 to 1977, I served on the staff of the NAACP Legal Defense and

Educational Fund, Inc. In that capacity, I brought a number of federal actions against police departments seeking both equitable and monetary relief for police misconduct.

One of the cases I tried ultimately reached the Supreme Court and served as the occasion for the Court to declare unconstitutional the use of lethal force to apprehend unarmed fleeing felons.¹ And several other suits resulted in consent decrees or settlements in which police departments agreed to revise drastically their procedures for receiving, investigating and acting upon (in terms of imposing discipline upon offending officers) citizen complaints of police misconduct.

During my tenure as Assistant Attorney General for Civil Rights in the Department of Justice from early 1977 to late 1980, I was responsible for overseeing the Division's enforcement of federal criminal civil rights statutes² in cases of police misconduct. In discharging that responsibility I was intimately involved, and in certain cases was the final decision-maker, in every stage of the prosecutorial process from

¹ *Tennessee v. Garner*, 471 U.S.1 (1985).

² Principally 18 U.S.C. §§241 and 242 were involved.

investigation to conviction or acquittal at trial and to appellate proceedings thereafter where necessary. I worked very closely with United States Attorneys' offices around the country and with FBI Headquarters in the investigation and prosecution of these criminal cases. I also lectured several times a year at the National Policy Academy conducted by the FBI at its Quantico, Virginia training facility for state and local law enforcement on the federal government's enforcement responsibility with respect to police misconduct.

My experiences as a private attorney bringing civil cases had convinced me that even successful damage actions were unlikely to serve as effective brakes upon patterns of police misconduct in communities where line officers had reason to believe that their abusive behavior toward citizens would be condoned or ignored.³ Even in those instances where the so-called "bad cops" found liable for misconduct in federal court were removed from the force, the continuation of permissive attitudes at the top of the

³ Of course, at the time municipalities enjoyed total immunity under Section 1983 pursuant to Monroe v. Pape, 365 U.S. 167 (1961). Monell v. Department of Social Services, 436 U.S. 658 (1978) which held that municipalities could be held liable where misconduct was pursuant to a policy or custom, had not been decided. The Supreme Court has still not sorted out entirely what standards of proof should apply to varying Monell claims. See, for example, Canton v. Harris, 489 U.S. 378 (1989) (failure to train police adequately to be judged by "deliberate indifference" standard).

police department hierarchy made it quite likely that other officers would also engage in misconduct.

It was this awareness that caused us at the Legal Defense Fund to develop litigation that attempted to get at what appeared to us to be structural defects in the operation of some police departments that tended to foster acts of brutality and misconduct by their officers. We had observed that departments with poor records with respect to police misconduct were most often those that had no procedures for the lodging of citizen complaints, (or actively discouraged such complaints), did not investigate seriously these complaints and almost never, if ever, disciplined officers for misconduct, even in the most egregious cases.

As I mentioned earlier, we were able in suits alleging a nexus between this structural failures and the incidence of police misconduct to arrive at consent decrees or settlements (all unreported) with several police departments that resulted in, among other things, procedures that brought some integrity to the citizen complaint process. I would suggest that the Subcommittee might want to investigate the extent to which these

reforms, in Providence, Rhode Island,⁴ Macon, Georgia⁵ and Prince George's County, Maryland,⁶ have been successful, over the intervening sixteen to eighteen years, in reducing the incidence of police misconduct in those communities.

Pursuit of this form of litigation was substantially curtailed by the United States Supreme Court's 1976 decision in Rizzo v. Goode,⁷ however. There the Court held that lower federal courts had erred, on a number of constitutional and prudential grounds, in ordering the Philadelphia Police Department to develop a comprehensive program for dealing adequately with civilian complaints" of police misconduct. The trial court had ordered this remedy based upon what it found were not "rare, isolated instances" of police misconduct.⁸ Suffice it to say that, in Rizzo, the Court imposed a very heavy burden upon plaintiffs seeking to reform police departments' handling of citizen

⁴ Coalition of Black Leadership v. Doorley, No. 4523 (D.R.I. 1973) (Consent Decree)

⁵ Ridgeway v. Thompson, No. 2893 (M.D. GA 1974) (Consent Decree)

⁶ Boyd v. Kelly, No. 72-1278-4 (D.Md. 1975) (Settlement)

⁷ 423 U.S. 362 (1976).

⁸ *Id* at 369, quoting district court's opinion.

complaints.

Even though I had lost faith in the ability of the private civil lawsuit to deter patterns of police misconduct, I came to Washington in 1977 and my job in the Civil Rights Division with the expectation that federal criminal prosecutions of abusive police might be a more potent tool. I found to my disappointment that most complaints filed with the Division alleging police misconduct were difficult to substantiate, that many of those that presented evidence of civil rights violations had "reasonable doubt" built into their records and that those relatively few cases that should have resulted in indictments and convictions were often derailed by jury nullification. Some juries simply refused to convict police officers despite compelling evidence of culpability.⁹ Prosecutions were also impeded by the fact that police officers are rarely willing to testify against one another and that many victims of police misconduct were people who, because of their race, national origin, poverty, sexual orientation, or criminal records, often lacked

⁹ The Division was able to address at least some "miscarriages of justice" where inadequate state or local prosecutions had been brought. A revised dual prosecution policy allowed the bringing of second federal indictments. See, for example, United States v. Hayes, 589 F.2d 811 (5th Cir. 1979).

credibility in the eyes of predominantly white juries.

What I found truly shocking, however, was that police departments and municipal officials in more than a few instances seemed reluctant to dismiss or even discipline internally those officers found guilty of federal criminal violations¹⁰ Given the limits of private civil actions and federal prosecutions, we in the Justice Department concluded that the federal government should explore other legal theories that might address more directly the institutional and structural forces that seemed to tolerate, if not promote, acts of police lawlessness. The first step in that process was to conduct a review of the Division's records on police misconduct complaints and federal prosecutions, by jurisdiction, to determine whether there were localities with especially poor records in these respects. Out of that review, the City of Philadelphia ranked among those cities with the poorest records. It had also been the subject of a number of private civil lawsuits alleging police misconduct, such as Rizzo v. Goode, supra.

¹⁰ I seem to recall, for example, that Philadelphia police officials continued to regard seven police officers as enjoying a "presumption of innocence" even after they were convicted of brutally coercing an innocent person to confess to a charge of murder and had their convictions upheld on appeal. United States v. Ellis, 595 F.2d, 154 (3d Cir.), cert. denied, 444 U.S. 838 (1979).

Based upon this information, we decided to conduct an intensive investigation into the police misconduct situation in Philadelphia to determine whether there were grounds to believe that allegations in this respect had some foundation in truth. After spending eight months in this investigation, which involved among other things a special unit of FBI agents assigned by the Director to work with Civil Rights Division and United States Attorney's Office staff, the Justice Department filed a civil complaint in August, 1979 against the City of Philadelphia and twenty of its officials. The suit alleged that Philadelphia police officers engaged in various patterns of misconduct against civilians and that police and city officials had acted in ways that were designed to shield abusive officers from any serious disciplinary action, either internal or external. It asserted, moreover, that the latter practices were responsible for continuing violations of civil rights by line officers. We also alleged certain racially discriminatory police practices.

Although we were prepared to litigate fully, and thought we could prove, the allegations in our complaint, the case was never tried. The trial court held that those portions of the complaint alleging violations unrelated to racial discrimination had to be

dismissed because the Attorney General of the United States lacked standing to bring such claims. There was, said the Court, no statute that authorized civil suits of that nature and no basis for finding an implied right to sue. With respect to the discrimination claims, the district court held that the complaint must be dismissed because of the Government's failure to plead with sufficient specificity to provide the defendants with adequate notice of the allegations against them. It reached this conclusion despite our providing over 800 pages of specific information on dates, times, places, and participants in acts of misconduct in answers to defendants' interrogatories. These determinations were upheld on appeal and en banc consideration was denied¹¹. Whether we would have been successful in proving our case will never be known.

I have taken the time to tell this story about the Philadelphia litigation not because I have any desire to hold up the "City of Brotherly Love" for any special criticism today. For it may well be that the concerns we in the Department of Justice had about the operation of the Philadelphia police department have been addressed by successor

¹¹ United States v. City of Philadelphia, 644 F.2d 187 (3d Cir.1980)

mayors and police commissioners since the suit was brought in 1979. Rather I have done so because I continue to believe that the approach that we hoped to take in that case continues to be the best hope -- not individual damage actions¹² and not individual criminal prosecutions -- for getting at those situations where institutional and structural arrangements provide encouragement, if not outright incentives, for police officers inclined to violate their oath to do so with impunity. What is needed to make this approach viable in light of the Philadelphia decision is federal legislation giving the Attorney General explicit authority to bring suit where he or she has reasonable cause to believe that state or local officials are depriving, pursuant to a pattern of police misconduct, persons in their jurisdictions of rights secured or protected by the Constitution or laws of the United States.

Congress has seen fit to grant the Attorney General such "pattern or practice" authority in a number of statutes where it was thought necessary for the vindication of

¹² Indeed, the Supreme Court has made it almost impossible for victims of certain abusive practices to obtain equitable, in addition to monetary, relief. In City of Los Angeles v. Lyons, 461 U.S. 95 (1983), it held that the plaintiff, who had been subjected, without cause, to a police "chokehold" did not have standing to seek an injunction against the practice, for example.

civil rights.¹³ Most notable, however, is the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA)¹⁴ That law gives the Attorney General authority to sue on behalf of persons confined in a variety of institutions, from prisons to nursing homes, to remedy unconstitutional or (with the exception of prisons) illegal conditions. The approach Congress adopted with respect to CRIPA could also be used, I would suggest, to provide "pattern or practice" authority to the Attorney General in police misconduct cases.

Let me make clear that, although I have devoted much of my testimony to discussing how "pattern or practice" authority would grant the Attorney General a meaningful tool to address the type of problem we thought existed in Philadelphia in 1979, such authority would probably be most useful in cases like Lyons where private parties cannot now obtain equitable relief. In any event, this new authority, when combined with private damage actions and federal criminal prosecutions for police

¹³ See for example, Title VI of the Civil Rights Act of 1960 (voting); Titles II and VII of the Civil Rights Act of 1964 (public accommodations and employment), Title VII of the Civil Rights Act of 1968 (housing) Section 518 (c) (3) of the Crime Control Act of 1973 1968 (housing), Section 518 (c) (3) of the Crime Control Act of 1973 and Section 122 (c) of the State and Local Fiscal Assistance Act of 1972 (discrimination in programs receiving federal assistance).

¹⁴42 U.S.C.A. §§ 1997 et seq.

misconduct,¹⁵ would represent a great step forward in the Congress' efforts, reaching back to the Reconstruction Period, to ensure that civilians are given effective federal protection against official lawlessness like that directed at Mr. Rodney King last month. I hope that it will act to provide the Attorney General with this authority in the very near future.

This concludes my testimony, Mr. Chairman. I would be pleased to respond at this time to any questions that you or the other members of the Subcommittee might have.

¹⁵ I would like to note that many of the observations and suggestions I make here today were part of my extensive testimony before the United States Commission on Civil Rights. The Commission's study growing out of its series of hearings on police misconduct, Who is Guarding the Guardians, was published in October, 1981.

Mr. EDWARDS. The third witness to testify today before we have questions is Mr. David L. Llewellyn, who is president of the Western Center for Law and Religious Freedom of Sacramento, CA.

Welcome, Mr. Llewellyn, and you may proceed.

STATEMENT OF DAVID L. LLEWELLYN, PRESIDENT, WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM, SACRAMENTO, CA

Mr. LLEWELLYN. Thank you, Mr. Chairman, and members of the committee.

Law enforcement officers in general deserve to be held in high regard. But we have all become all too familiar with some police officers abusing their authority and physically assaulting people in the course of their arrests. The video tape of the March 3d Los Angeles Police Department debacle is only the most prominent recent example.

The members of this subcommittee and the American people in general need to know, however, that the use of excessive force and violence in the course of arrest is not always aberrant behavior of some undisciplined officers, and it is not only directed against racial or other minorities. Attorneys for the Western Center for Law and Religious Freedom have represented defendants in hundreds of right-to-life sit-in demonstrations prosecutions in several States, including over 500 cases in the Los Angeles area involving people arrested by the Los Angeles Police Department.

The Los Angeles Police Department's official policy and practices authorize the infliction of excruciating pain and resultant injury on passive, nonthreatening civil rights protesters, particularly right-to-life demonstrators. In Los Angeles, hundreds of passive and nonthreatening sit-in demonstrators blocking the entrance to abortion clinics have been arrested by the use of brutal pain compliance techniques, including nunchucks or nunchakus, a martial arts weapon which the Los Angeles Police Department has used only against right-to-life demonstrators and not other civil rights protesters or criminal suspects in general.

Nunchucks consist of two rods of metal or wood connected by a length of rope or wire, and are so dangerous that it is a felony under California law merely to possess one. The description of this pain as excruciating is not my term. It is the term used by the Los Angeles Police Department sergeant whose responsibility it is to enforce the use of nunchucks in arrests.

The police twist the nunchucks wire around the arm or wrist of a passive demonstrator like a tourniquet and torque it down. These pain compliance techniques and the nunchucks have produced broken bones, permanent nerve and ligament damage, a miscarriage, and innumerable injuries necessitating surgery and other medical attention and requiring months to heal.

One of two Western Center for Law and Religious Freedom cases arising out of these Los Angeles Police Department arrests is *John v. City of Los Angeles*. I am presenting to this subcommittee a video tape showing brutal infliction of unnecessary pain and injury in the arrest of right-to-life civil rights demonstrators by the Los Angeles Police Department using nunchucks in 1989 and in 1990. I

am also submitting a copy of the transcript of the deposition testimony of Police Chief Daryl Gates taken in the *John* case.

[The transcript excerpt is reproduced in the appendix.]

Mr. LLEWELLYN. Chief Gates was shown the first series of videotaped excerpts consisting of 18 instances of the use of nunchucks by Los Angeles Police Department officers in effecting arrests, showing people writhing in agony, and one man's arm breaking with an audible snap. Chief Gates' testimony was that he saw no violation of official Los Angeles Police Department policy.

The Los Angeles Police Department supervisory officers at the scene also testified in their depositions that despite the visible agony and undeniable pain being inflicted upon passive and nonthreatening demonstrators, and despite the resultant injuries, the conduct of police officers did not violate Los Angeles Police Department policy.

Unlike the Rodney King video tape, the Los Angeles Police Department made this video tape themselves. It shows officers and supervisors standing by and watching while the same cruel use of nunchucks and other pain-inducing tactics are repeated. There is no evidence of proper procedures being followed by some officers and improper procedures by others. All use the nunchucks in the same tourniquet torquing manner with the same agonizing results.

Rather than denying that the pain and injury are authorized by Los Angeles Police Department policy, the Los Angeles Police Department emphasizes that its officers receive extensive pain compliance training, monthly refresher retraining, plus additional special training on the use of nunchucks, and we conclude that the evidence shows that the Los Angeles Police Department inflicts pain and injury on nonresisting people, not always as a matter of aberrant behavior, but also as official police policy.

The pain compliance policy and practice of the Los Angeles Police Department was declared by the trial court in the preliminary injunction hearing in the *John* case to be "whatever force is necessary to overcome resistance." The force necessary to overcome resistance standard, I suggest, was a standard of the Inquisition. But a policy that fails to require the termination of force and pain when they produce injury, that policy is an authorization for torture.

The Los Angeles Police Department policy cannot tell officers how much pain and force will be necessary to obtain compliance, and their policy of ever-increasing pain until compliance is achieved with no upward limits virtually mandates the resultant injuries. The pain produced by nunchucks is so intense as to be counterproductive. Many demonstrators have reported that the pain was so severe they lost the ability either to comply or to communicate their desire to comply. The force and pain effectively disabled the demonstrators due to reduced blood circulation, nerve interference, nausea, muscle failure, loss of feeling, focusing of the mind and body in the areas of this excruciating pain, shock, fear of further injury, surges in blood flow and nerve activity due to pressure and release, and even loss of consciousness.

Pain compliance techniques, particularly the use of nunchucks, give the appearance to the public that the police are not merely arresting demonstrators, but are punishing them. A Los Angeles

Police Department captain in a sworn declaration in the *John* case justified the use of nunchucks by stating: "Some demonstrators appear as a young child, welcoming punishment for past transgressions." Before June 1989 when nunchucks were introduced by the Los Angeles Police Department, police had managed to arrest demonstrators safely and effectively for the past 70 years and more without institutionalized brutality. In the lunch counter sit-ins and other related civil rights demonstrations in the late fifties and sixties the police used excessive force in the forms of water cannons, billy clubs, and police dogs, and the Nation has condemned this brutality. In the huge sit-in demonstrations at the University of California at Berkeley the police carried the demonstrators away without brutality. The only difference now is that the issue is not racial equality, academic freedom or freedom of speech, but the right to life.

The problem has become a Federal matter only because in the *City of Los Angeles v. Lyons* case the U.S. Supreme Court ruled that a victim of police brutality lacks legal standing to bring a lawsuit seeking injunctive relief unless he can show that he is likely to be a target of police misconduct again in the future. The holding in *Lyons* is a problem even in our present action to enjoin the use of nunchucks by the Los Angeles Police Department, even though the case is a class action and the evidence shows that not only members of the class but also individually named plaintiffs intend to continue their right-to-life demonstrations in Los Angeles and thus will be subject to repeated risk of excessive force. But, in arguing this case before the Ninth Circuit Court of Appeals, the panel did question whether or not even a class action, or such a class of plaintiffs has standing to pursue injunctive relief.

A remedy for Congress to consider short of mandating Federal oversight of local police practices would be to enact legislation providing for a private right of action for injunctive relief against specific forms of excessive force such as the use of nunchucks in arresting people who are passive and nonthreatening and against ongoing patterns and practices of police misconduct without the necessity of showing individual likelihood of future victimization of the plaintiff.

In conclusion, if a department of animal control used pain-inducing techniques on dogs or coyotes like those used by the Los Angeles Police Department when other means were available, they would be universally excoriated as inhumane. The Los Angeles Police Department authorizes inhumane treatment of human beings because of their belief and demonstration against abortion and belief in the sanctity of life.

Let them be arrested. Let them be carted off to jail. But do not permit them to be put in the hands of police officers who have been taught that it is acceptable to break their bodies in order to break their wills.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. Llewellyn.

[The prepared statement of Mr. Llewellyn follows:]



**WESTERN CENTER FOR LAW
AND RELIGIOUS FREEDOM**

INTERSTATE OFFICE AND
WCLRF NORTHERN CALIFORNIA
1211 H STREET, SUITE A
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: (916) 447-4111
FAX: (916) 447-5191

DAVID L. LLEWELLYN, JR.
PRESIDENT AND SPECIAL COUNSEL

MICHAEL D. INFELD
GENERAL COUNSEL

REGIONAL OFFICES:

WCLRF SOUTHERN CALIFORNIA
3855 EAST LA PALMA, SUITE 124
ANAHEIM, CALIFORNIA 92807
TELEPHONE: (714) 630-8366
FAX: (714) 630-8466

SAMUEL B. CASY
SINCE COUNSEL

JANET M. LARLE
SPECIAL COUNSEL

WCLRF WESTERN WASHINGTON
3700 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 682-0565
FAX: (206) 625-1052

WILLIAM H. ELLIS
CORPORATE COUNSEL AND
SPECIAL COUNSEL

WCLRF EASTERN WASHINGTON
WEST 1402 BROADWAY AVENUE
SPOKANE, WASHINGTON 99201
TELEPHONE: (509) 325-5850
FAX: (509) 326-7503

GREGORY CASY
SPECIAL COUNSEL

**STATEMENT OF DAVID L. LLEWELLYN, JR.
PRESIDENT AND SPECIAL COUNSEL
THE WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM**

**BEFORE THE HOUSE SUB-COMMITTEE
ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE HOUSE COMMITTEE ON THE JUDICIARY**

APRIL 17, 1991

The Western Center for Law and Religious Freedom, a public interest law firm based in Sacramento, California, is a civil rights legal defense organization dedicated to the fundamental principles of constitutional government and God-given inalienable rights upon which America is founded.

The Western Center for Law and Religious Freedom works to defend the right to life, parental and family rights, religious liberty, and related civil rights of individuals, churches and private organizations, and pursues constitutional constraints and moral standards in government and public institutions.

The Western Center for Law and Religious Freedom provides legal support, without charge, for activist organizations, concerned citizens and lawyers throughout the nation, particularly in the Western states, to stand for "Liberty and Justice under God."

David L. Llewellyn, Jr., earned his law degree (J.D.) from the U.C.L.A. School of Law; an advanced degree (the diplome) in international human rights law from the International Institute of Human Rights in Strasbourg, France; an M.A. in English literature from the University of Tennessee at Knoxville; a B.A. from William Jennings Bryan College; and has studied at Dallas Theological Seminary. Mr. Llewellyn has practiced law in California since 1976 and now serves as President of the Western Center for Law and Religious Freedom and participates in its civil rights litigation.

STATEMENT OF DAVID L. LLEWELLYN, JR.

PRESIDENT AND SPECIAL COUNSEL
THE WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM

BEFORE THE HOUSE SUB-COMMITTEE
ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE HOUSE COMMITTEE ON THE JUDICIARY

APRIL 17, 1991

MR. CHAIRMAN AND MEMBERS OF THE SUB-COMMITTEE ON CIVIL AND
CONSTITUTIONAL RIGHTS:

A PRINCIPAL FUNCTION OF THE FEDERAL GOVERNMENT IS TO PREVENT
ABUSE OF POWER BY STATE AND LOCAL AUTHORITIES. THE USE OF
EXCESSIVE FORCE AND BRUTAL "PAIN COMPLIANCE TECHNIQUES" BY LOCAL
POLICE, ESPECIALLY THE LOS ANGELES POLICE DEPARTMENT, JUSTIFIES THE
CONSIDERATION BY THIS SUB-COMMITTEE OF FEDERAL LEGISLATION TO
PREVENT SUCH POLICE MISCONDUCT.

A. LAPD POLICY AND PRACTICE OF "PAIN COMPLIANCE
TECHNIQUES" AND THE USE OF "NUNCHUCKS"

ATTORNEYS FOR THE WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM
HAVE REPRESENTED DEFENDANTS IN HUNDREDS OF RIGHT-TO-LIFE SIT-IN
DEMONSTRATION PROSECUTIONS IN SEVERAL STATES, INCLUDING OVER 500

CASES IN THE LOS ANGELES AREA INVOLVING PEOPLE ARRESTED BY THE LOS ANGELES POLICE DEPARTMENT.

MY PRIMARY PURPOSE FOR APPEARING BEFORE YOU IS TO PRESENT FOR YOUR CONSIDERATION THE IMPLICATIONS OF THE FACT THAT THE LOS ANGELES POLICE DEPARTMENT HAS AN OFFICIAL POLICY AND PRACTICE RELATING TO THE USE OF "PAIN COMPLIANCE TECHNIQUES" WHICH AUTHORIZE THE INFLICTION OF "EXCRUCIATING PAIN" AND INJURY ON PASSIVE, NON-THREATENING CIVIL RIGHTS PROTESTORS, PARTICULARLY RIGHT-TO-LIFE DEMONSTRATORS.

IN LOS ANGELES, HUNDREDS OF SIMILARLY PASSIVE AND NON-THREATENING SIT-IN DEMONSTRATORS BLOCKING THE ENTRANCE TO ABORTION CLINICS HAVE BEEN ARRESTED BY USE OF BRUTAL "PAIN COMPLIANCE TECHNIQUES," INCLUDING "NUNCHUCKS" [NUNCHAKUS], A MARTIAL ARTS-WEAPON WHICH THE LAPD HAS USED ONLY AGAINST RIGHT-TO-LIFE DEMONSTRATORS AND NOT OTHER CIVIL RIGHTS PROTESTORS OR CRIMINAL SUSPECTS IN GENERAL.

NUNCHUCKS CONSIST OF TWO RODS OF METAL OR WOOD CONNECTED BY A LENGTH OF WIRE OR ROPE. NUNCHUCKS ARE SO DANGEROUS THAT MERE POSSESSION OF ONE IS A FELONY UNDER CALIFORNIA LAW.

LAPD OFFICERS USE NUNCHUCKS FOR THE PURPOSE OF PRODUCING "EXCRUCIATING PAIN." THE DESCRIPTION OF THE PAIN AS "EXCRUCIATING" IS THE TERM THE LAPD SERGEANT RESPONSIBLE FOR SUPERVISING THE USE OF NUNCHUCKS AGAINST RIGHT-TO-LIFE DEMONSTRATORS USED IN HIS SWORN DECLARATION.

THE POLICE TWIST THE NUNCHUCKS WIRE AROUND THE ARM OR WRIST OF A PASSIVE DEMONSTRATOR AND TORQUE DOWN HARD. IN THE COURSE OF

PRODUCING THE EXCRUCIATING PAIN THAT THE POLICE SEEK, THEIR NUNCHUCKS AND PAIN COMPLIANCE TECHNIQUES ALSO HAVE PRODUCED BROKEN BONES, PERMANENT NERVE AND LIGAMENT DAMAGE, A MISCARRIAGE, AND INNUMERABLE INJURIES REQUIRING SURGERY AND OTHER MEDICAL ATTENTION AND REQUIRING MONTHS TO HEAL.

ONE OF TWO WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM CASES ARISING OUT OF THESE LAPD ARRESTS IS JOHN V. CITY OF LOS ANGELES. IN JANUARY OF THIS YEAR I ARGUED THE APPEAL OF THE DENIAL OF A PRELIMINARY INJUNCTION IN THE JOHN CASE BEFORE THE NINTH CIRCUIT COURT OF APPEALS, AND THE MATTER IS PENDING DECISION. THE TRIAL OF THE CASE IS SET FOR MAY 21 IN FEDERAL DISTRICT COURT IN LOS ANGELES.

THE TRIAL COURT INITIALLY DENIED A PRELIMINARY INJUNCTION AGAINST THE LAPD BECAUSE THE COURT BELIEVED THAT THE POLICE ACTIONS WERE VIOLATIONS OF LAPD POLICY BY INDIVIDUAL OFFICERS. THIS RULING IS UNDERSTANDABLE, COMING BEFORE ANY DISCOVERY HAD BEEN TAKEN IN THE LITIGATION AND AFTER NUNCHUCKS HAD BEEN USED FOR THE FIRST TIME. THE EVIDENCE SO OBVIOUSLY SHOWS VIOLATIONS OF THE 4TH AMENDMENT PROHIBITION AGAINST UNREASONABLE SEIZURE THAT THE TRIAL COURT COULD NOT IMAGINE ANYONE TRYING TO DEFEND IT AS A MATTER OF OFFICIALLY AUTHORIZED POLICY.

DISCOVERY IN THE CASE, HOWEVER, HAS ESTABLISHED THAT THE PAIN AND INJURY INFLICTED WERE IN FACT AUTHORIZED BY OFFICIAL LAPD POLICY, PRACTICE AND TRAINING.

I AM PRESENTING TO THIS SUB-COMMITTEE A VIDEOTAPE SHOWING FOUR SERIES OF EXCERPTS OF EVENTS DURING ARRESTS OF RIGHT-TO-LIFE CIVIL

RIGHTS DEMONSTRATORS. (1) 18 EXCERPTS FROM LAPD ARRESTS ON MARCH 25 AND JUNE 10, 1989, WHICH ARE THE SUBJECT OF THE JOHN LITIGATION.¹ (2) THE ARRESTS OF A PRIEST AND A BRAIN SURGEON DURING RIGHT-TO-LIFE DEMONSTRATIONS IN LOS ANGELES ON APRIL 14, 1990, ALSO USING NUNCHUCKS. (3) A SEVEN MINUTE VIDEO OF THE MARCH AND JUNE 1989 LOS ANGELES DEMONSTRATIONS PREPARED BY "OPERATION RESCUE." (4) THE USE OF MACE AGAINST RIGHT-TO-LIFE DEMONSTRATORS ON JULY 1, 1989, IN SACRAMENTO.

I AM ALSO SUBMITTING COPIES OF THE TRANSCRIPT OF THE DEPOSITION TESTIMONY OF POLICE CHIEF DARYL GATES. AT HIS DEPOSITION, CHIEF GATES WAS SHOWN THE FIRST SERIES OF VIDEOTAPED EXCERPTS, CONSISTING OF 18 INSTANCES OF THE USE OF NUNCHUCKS BY LAPD OFFICERS IN EFFECTING ARRESTS OF RIGHT-TO-LIFE DEMONSTRATORS, DISPLAYING PEOPLE WRITHING IN AGONY AND ONE MAN'S ARM BREAKING WITH AN AUDIBLE SNAP. CHIEF GATES' TESTIMONY WAS THAT HE SAW NO VIOLATION OF OFFICIAL LAPD POLICY. EVEN WITH REGARD TO THE BREAKING OF THE DEMONSTRATOR'S ARM, CHIEF GATES TESTIFIED: "OBVIOUSLY THERE'S A PLAY TO EMOTION THERE, BUT, NO [VIOLATION OF LAPD POLICY]."

THE LAPD SUPERVISORY OFFICERS AT THE SCENE ALSO TESTIFIED IN THEIR DEPOSITIONS THAT DESPITE THE VISIBLE AGONY AND UNDENIABLE PAIN BEING INFLICTED UPON THESE PASSIVE, NON-THREATENING DEMONSTRATORS, AND DESPITE THE RESULTANT INJURIES, THE CONDUCT OF THE POLICE OFFICERS DID NOT VIOLATE LAPD POLICY.

¹Except Number 11, which was randomly inserted by the LAPD.

THE EVIDENCE IS UNDENIABLE THAT THE BRUTALITY SHOWN AGAINST RIGHT-TO-LIFE CIVIL RIGHTS DEMONSTRATORS ON THE VIDEOTAPE IS OFFICIALLY AUTHORIZED. UNLIKE THE RODNEY KING VIDEOTAPE, THE LAPD MADE THIS VIDEOTAPE THEMSELVES. IT SHOWS OFFICERS AND SUPERVISORS STANDING BY AND WATCHING WHILE THE SAME CRUEL USE OF NUNCHUCKS AND OTHER PAIN-INDUCING TACTICS ARE REPEATED OVER AND OVER. EVEN WHEN ONE MAN'S ARM IS SEEN AND HEARD BREAKING, THE PROCEDURE DOES NOT CHANGE. THERE IS NO EVIDENCE OF PROPER PROCEDURES BEING FOLLOWED BY SOME OFFICERS AND IMPROPER PROCEDURES BY OTHERS. ALL USE THE NUNCHUCKS IN THE SAME TOURNIQUET TORQUING MANNER WITH THE SAME AGONIZING RESULTS. RATHER THAN DENYING THAT THE PAIN AND INJURY ARE AUTHORIZED BY LAPD POLICY, THE LAPD EMPHASIZES THAT ITS OFFICERS RECEIVE EXTENSIVE PAIN COMPLIANCE TRAINING, MONTHLY REFRESHER TRAINING, PLUS AN ADDITIONAL 24 HOURS OF TRAINING ON THE ORCUTT POLICE NUNCHUCKS.

WE CONCLUDE FROM THIS EVIDENCE THAT IN THE LOS ANGELES POLICE DEPARTMENT, INFLECTING PAIN AND INJURY ON NON-RESISTING PEOPLE IS NOT ALWAYS ABERRANT BEHAVIOR. IT IS ALSO OFFICIAL POLICE POLICY.

B. APPROPRIATENESS OF LEGISLATIVE ACTION AGAINST BRUTAL "PAIN COMPLIANCE TECHNIQUES," ESPECIALLY NUNCHUCKS

POLICE USE OF BRUTAL "PAIN COMPLIANCE TECHNIQUES," PARTICULARLY THE USE OF NUNCHUCKS, AGAINST PASSIVE, NON-THREATENING CIVIL RIGHTS DEMONSTRATORS SHOULD BE PROHIBITED BY LAW.

1. INTENTIONALLY INFLECTING PAIN WHEN IT IS NOT NECESSARY TO

EFFECT ARREST IS EXCESSIVE FORCE AND UNREASONABLE SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT. PAIN PROPERLY MAY BE AN UNINTENDED OR INCIDENTAL EVENT IN A LAWFUL ARREST, BUT A POLICY LIKE THAT OF THE LAPD WHICH AUTHORIZES UNNECESSARY, INTENTIONAL INFLICTION OF PAIN SHOULD BE UNLAWFUL.

2. "PAIN COMPLIANCE TECHNIQUES" PROVIDE POLICE WITH STANDARDLESS DISCRETION TO HURT OR INJURE PEOPLE. POLICE POLICIES THAT PERMIT THE USE OF WEAPONS SUCH AS NUNCHUCKS ON PASSIVE, NON-THREATENING DEMONSTRATORS ARE OVERBROAD AND UNCONSTITUTIONALLY VAGUE. THEY ARE AN OPEN INVITATION FOR THE USE OF EXCESSIVE FORCE.

LABELING THE INTENTIONAL INFLICTION OF FORCE TO INDUCE PAIN AS "PAIN COMPLIANCE" IS DANGEROUSLY MISLEADING.

a. "COMPLIANCE" MERELY DESCRIBES THE GOAL FOR USE OF FORCE TO INFLICT PAIN. IT PROVIDES NO STANDARDS TO REGULATE THE DEGREE OF FORCE OR PAIN. "PAIN COMPLIANCE" IS AN ARBITRARY AND SUBJECTIVE PROCESS THAT VIOLATES THE "OBJECTIVE REASONABLENESS TEST" FOR THE USE OF FORCE IN EFFECTING ARREST UNDER THE U. S. SUPREME COURT DECISION IN GRAHAM V. CONNOR. EVEN THOUGH A POLICE OFFICER SUBJECTIVELY MAY BE MOTIVATED TO INFLICT PAIN ONLY FOR THE PURPOSE OF INDUCING COMPLIANCE, THE LAW LOOKS OBJECTIVELY AT THE ACTIONS USED TO INFLICT THE PAIN AND THE CIRCUMSTANCES OF THE ARREST. UNDER GRAHAM V. CONNOR THE LAW LOOKS AT FOUR FACTORS. (1) THE SEVERITY OF THE CRIME -- IN THE CASE OF CIVIL RIGHTS SIT-IN DEMONSTRATORS IT IS SIMPLE TRESPASSING. (2) THE THREAT OF SAFETY OF OFFICERS AND OTHERS -- THE CLASS OF PLAINTIFFS IN THE JOHN CASE CONSTITUTES NO THREAT WHATSOEVER. (3) ACTIVELY RESISTING ARREST --

THE RIGHT-TO-LIFE PLAINTIFFS IN JOHN WERE PASSIVE AND NON-RESISTING. (4) ATTEMPTING TO EVADE ARREST BY FLIGHT -- CLEARLY NOT APPLICABLE.

b. THE "PAIN COMPLIANCE" POLICY AND PRACTICE OF THE LAPD WAS DECLARED BY THE TRIAL COURT AT THE PRELIMINARY INJUNCTION HEARING TO BE: "WHATEVER FORCE IS NECESSARY TO OVERCOME RESISTANCE." THIS STANDARD, IF NOT FOUND TO BE UNCONSTITUTIONAL BY THE COURTS, MUST BE MADE UNLAWFUL BY THE LEGISLATURE. THE "FORCE NECESSARY TO OVERCOME RESISTANCE" WAS THE STANDARD OF THE INQUISITION. WHEN A POLICY FAILS TO REQUIRE THE TERMINATION OF FORCE AND PAIN WHEN THEY PRODUCE INJURY WITHOUT COMPLIANCE, THAT POLICY IS AN AUTHORIZATION FOR TORTURE.

IF A DEMONSTRATOR IS WILLING TO ENDURE FORCE AND PAIN PAST THE POINT OF INJURY, DOES THAT JUSTIFY THE POLICE INFLECTING SUCH PAIN AND INJURY? THE LAPD POLICY CANNOT TELL POLICE OFFICERS HOW MUCH FORCE AND PAIN WILL BE NECESSARY TO OBTAIN COMPLIANCE. THE POLICY IS EVER-INCREASING FORCE AND PAIN UNTIL COMPLIANCE IS ACHIEVED. THE POLICY PROVIDES NO UPWARD LIMITS ON THE PAIN TO BE INDUCED.

POLICE OFFICERS DO NOT KNOW WHEN OR EVEN WHETHER THEIR INFLECTION OF FORCE AND PAIN WILL RESULT IN COMPLIANCE OR IN INJURY. THE POLICY DOES NOT REQUIRE THE TERMINATION OF FORCE EVEN AFTER INJURY HAS OCCURRED.

PEOPLE'S ABILITY TO ENDURE PHYSICAL FORCE AND TO TOLERATE PAIN VARIES WIDELY. THE USE OF NUNCHUCKS AND OTHER PAIN COMPLIANCE TECHNIQUES CAUSES SOME PEOPLE TO COMPLY BUT MANY PEOPLE TO BREAK. THE POLICE DO NOT KNOW HOW MUCH PAIN IT WILL TAKE TO BREAK THE WILL

OF A PASSIVE DEMONSTRATOR. THE POLICE DO NOT KNOW WHETHER ANY AMOUNT OF PAIN WILL BE SUFFICIENT.

EVEN A CONSCIENTIOUS POLICE OFFICER CANNOT KNOW IN ADVANCE WHO WILL COMPLY BEFORE BREAKING. EVEN A CONSCIENTIOUS POLICE OFFICER CANNOT KNOW HOW MUCH PAIN ACTUALLY IS BEING INFLICTED. EVEN A CONSCIENTIOUS POLICE OFFICER CANNOT KNOW WHEN SUCH PAIN COMPLIANCE TECHNIQUES WILL PRODUCE TEMPORARY OR PERMANENT INJURY.

BUT AN UNSCRUPULOUS POLICE OFFICER CAN INDUCE PAIN TO TEACH PEOPLE A LESSON, PAIN TO INTIMIDATE AND SILENCE CIVIL RIGHTS PROTESTS, PAIN TO VENT PASSION OR PREJUDICE, PAIN TO PUNISH. AN UNSCRUPULOUS OFFICER COULD EVEN INDUCE PAIN FOR THE SAKE OF PAIN.

UNDER THE CURRENT LAPD POLICY THAT FAILS TO ACKNOWLEDGE ANY DEGREE OF PAIN AS EXCESSIVE, EVEN PAIN PRODUCED BY FORCE BEYOND THE POINT OF INJURY, THERE IS NO LIMIT ON THE PAIN OR INJURY THAT AN LAPD OFFICER MAY PRODUCE WITHOUT VIOLATING DEPARTMENT POLICIES AND PROCEDURES. IN SHORT, THERE ARE NO OBJECTIVE LIMITS IN THE LAPD "PAIN COMPLIANCE TECHNIQUES" AND, AS SUCH, THEY REPRESENT RULE BY THE FORCE OF WEAPONS RATHER THAN THE FORCE OF LAW.

c. THE PAIN INDUCED BY THE USE OF NUNCHUCKS CAN BE SO INTENSE THAT IT IS COUNTER-PRODUCTIVE. MANY DEMONSTRATORS HAVE REPORTED THAT THE PAIN WAS SO SEVERE THAT THEY LOST THE ABILITY EITHER TO COMPLY OR TO COMMUNICATE THEIR DESIRE TO COMPLY. THE FORCE AND PAIN EFFECTIVELY DISABLE THE DEMONSTRATORS DUE TO REDUCED BLOOD CIRCULATION, NERVE INTERFERENCE, NAUSEA, MUSCLE FAILURE, LOSS OF FEELING, TOTAL FOCUSING OF THE MIND AND BODY ON THE AREAS OF EXCRUCIATING PAIN, SHOCK, FEAR OF FURTHER INJURY, SURGES IN BLOOD

FLOW AND NERVE ACTIVITY DUE TO PRESSURE AND RELEASE, EVEN LOSS OF CONSCIOUSNESS. SOME DEMONSTRATORS COULD NOT CONTROL THEIR MUSCLES. SOME COULD NOT STAND. SOME COULD NOT SPEAK. SOME COULD NOT EVEN THINK. THE PAIN SO OVERWHELMED THEM THAT COMPLIANCE WITH THE DEMANDS OF THE POLICE BECAME IMPOSSIBLE. SOME DEMONSTRATORS REPORTED THAT THEY BECAME WILLING TO COMPLY, TO DO ANYTHING TO STOP THE PAIN, BUT THAT THEY WERE PHYSICALLY DISABLED FROM COMPLIANCE BY THE PAIN ITSELF.

ON THE OTHER HAND, SOME DEMONSTRATORS WOULD NOT COMPLY DESPITE THE PAIN, AND THUS THE PAIN PRODUCED NO EFFECT EXCEPT TORTURE.

DEVICES INTENDED BY THE POLICE TO INFLICT "EXCRUCIATING PAIN" OUGHT TO BE UNLAWFUL. INFLICTING EXCRUCIATING PAIN ON A CONVICTED FELON WOULD CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT. CERTAINLY THE LAW OUGHT TO PREVENT THE INFLICTION OF SUCH PAIN ON PEOPLE MERELY BEING ARRESTED FOR TRESPASS.

d. THE LAPD CONTENTS THAT THEY MUST BALANCE THE RIGHTS OF THE PUBLIC AND THE BUSINESSES BEING BLOCKED AGAINST THE PAIN BEING INFLICTED ON THE DEMONSTRATORS. BUT THIS IS AN ILLUSORY ARGUMENT. THE RIGHTS OF THE PUBLIC AND THE BUSINESSES WILL BE VINDICATED IN ANY EVENT. THE DEMONSTRATORS WILL BE REMOVED. THE ONLY ISSUE IS WHETHER THEY WILL BE REMOVED WITH OR WITHOUT BRUTAL FORCE AND "PAIN COMPLIANCE."

THE LAPD ALSO ASSERTS THAT THE USE OF NUNCHUCKS MAKES ARRESTS EASIER FOR THE POLICE BECAUSE THEY NEED FEWER OFFICERS AND THEY DO NOT HAVE TO CARRY PASSIVE DEMONSTRATORS. IN ACTUALITY, HOWEVER, THE VIDEOTAPES SHOW AT LEAST TWO OFFICERS ACCOMPANYING EACH

ARRESTEE, WHETHER THE ARRESTEE IS WALKING VOLUNTARILY OR BEING LIFTED AND CARRIED BY OFFICERS SQUEEZING NUNCHUCKS. CERTAINLY TO SOME DEGREE THE THREAT AND ACTUALITY OF EXCRUCIATING PAIN INFLICTED BY THE POLICE INCREASES THE PROBABILITY OF VOLUNTARY COMPLIANCE IN SOME PEOPLE. BUT EXCRUCIATING PAIN AND RISK OF INJURY CANNOT BE JUSTIFIED SIMPLY TO MAKE THE JOB OF THE POLICE EASIER.

BEFORE JUNE 1989, WHEN NUNCHUCKS WERE INTRODUCED BY THE LAPD, POLICE HAD MANAGED TO ARREST DEMONSTRATORS SAFELY AND EFFECTIVELY FOR THE PAST 70 YEARS OR MORE WITHOUT INSTITUTIONALIZED BRUTALITY. MOREOVER, THE RIGHT-TO-LIFE DEMONSTRATORS AGAINST WHOM THE LAPD HAS USED NUNCHUCKS ARE AMONG THE MOST DOCILE PEOPLE WHO WILL EVER BE ARRESTED. NUNCHUCKS AND BARBAROUS "PAIN COMPLIANCE" TACTICS CANNOT BE JUSTIFIED.

IN THE LUNCH COUNTER SIT-INS AND SIMILAR CIVIL RIGHTS DEMONSTRATIONS BEGINNING IN 1957 AND CONTINUING THROUGH THE EARLY 1960'S IN THE SOUTH, POLICE USED EXCESSIVE FORCE IN THE FORM OF WATER CANNONS, BILLY CLUBS AND POLICE DOGS, AND THE NATION CONDEMNED THEIR BRUTALITY. IN THE HUGE SIT-IN DEMONSTRATIONS AT THE UNIVERSITY OF CALIFORNIA AT BERKELEY IN 1966, THE POLICE CARRIED THE DEMONSTRATORS AWAY, WITHOUT BRUTALITY. THE ONLY DIFFERENCE NOW IS THAT THE ISSUE IS NOT RACIAL EQUALITY, ACADEMIC FREEDOM, OR FREEDOM OF SPEECH, BUT THE RIGHT TO LIFE.

ONE REASON THAT SOME RIGHT-TO-LIFE DEMONSTRATORS REMAIN PASSIVE AND MOTIONLESS WHEN APPROACHED BY POLICE IN THEIR SIT-IN DEMONSTRATIONS IS TO SYMBOLIZE THE PASSIVE HELPLESSNESS OF UNBORN CHILDREN IN ABORTIONS. THEIR VERY PASSIVITY IS A FORM OF SYMBOLIC

SPEECH.

THE LESSONS FROM PAST GENERATIONS OF CIVIL RIGHTS ACTIVISM MUST NOT BE FORGOTTEN TODAY NOR DENIED TO DEMONSTRATORS BECAUSE OF THE IDEOLOGY OF THEIR CAUSE.

e. PAIN COMPLIANCE TECHNIQUES, PARTICULARLY THE USE OF NUNCHUCKS, GIVE THE APPEARANCE TO THE PUBLIC THAT THE POLICE ARE NOT MERELY ARRESTING DEMONSTRATORS BUT ARE PUNISHING THEM. AN LAPD CAPTAIN, IN A SWORN DECLARATION IN THE JOHN CASE, JUSTIFIED THE USE OF NUNCHUCKS BY STATING THAT: "SOME [DEMONSTRATORS] APPEAR AS A YOUNG CHILD WELCOMING PUNISHMENT FOR PAST TRANSGRESSIONS." (EMPHASIS ADDED.)

IN PRACTICE, THE LAPD USE OF PAIN DOES APPEAR TO BE A FORM OF EXTRA-JUDICIAL PUNISHMENT. IF WE WANT TO USE PAIN AS PUNISHMENT; IF, FOR EXAMPLE, WE WANT TO REINTRODUCE PUBLIC WHIPPING AS A PUNISHMENT FOR CRIME AND TO SENTENCE CIVIL RIGHTS DEMONSTRATORS TO 39 LASHES IN THE PUBLIC SQUARE; LET US DO SO BY LAWS ADOPTED BY LEGISLATURES AND LET US INFLICT THESE PUNISHMENTS ON PEOPLE AFTER THEY ARE CONVICTED OF THEIR CRIMES. BUT AT LEAST LET US ADVOCATE PAIN AS PUNISHMENT HONESTLY, WITHOUT THE PRESENT HYPOCRISY OF AVERTING OUR GAZE AND SHRUGGING WHEN WE HEAR OF POLICE INFLICTING PAIN INTENTIONALLY IN THE COURSE OF AN OTHERWISE PEACEFUL ARREST.

FEDERAL LAW SHOULD PROHIBIT LAW ENFORCEMENT OFFICERS FROM USING "PAIN COMPLIANCE" TECHNIQUES AGAINST PEOPLE WHOSE CONDUCT IS PASSIVE AND NON-THREATENING.

C. STANDING

THE PROBLEM OF LEGAL STANDING TO BRING A CAUSE OF ACTION FOR INJUNCTIVE RELIEF AGAINST ABUSIVE POLICE PRACTICES DESERVES CONGRESSIONAL ATTENTION. IN CITY OF LOS ANGELES V. LYONS THE SUPREME COURT RULED THAT A VICTIM OF POLICE BRUTALITY LACKS LEGAL STANDING TO BRING A LAWSUIT SEEKING INJUNCTIVE RELIEF UNLESS HE CAN SHOW THAT HE IS LIKELY TO BE A TARGET OF POLICE MISCONDUCT AGAIN IN THE FUTURE. THE HOLDING IN LYONS CONCERNED THE PANEL OF JUDGES IN OUR JOHN APPEAL EVEN THOUGH THE CASE IS A CLASS ACTION AND THE EVIDENCE SHOWS THAT NOT ONLY MEMBERS OF THE CLASS BUT ALSO INDIVIDUAL NAMED PLAINTIFFS INTEND TO CONTINUE THEIR RIGHT-TO-LIFE DEMONSTRATIONS IN LOS ANGELES AND THUS WILL BE SUBJECT TO REPEATED RISK OF EXCESSIVE FORCE.

A REMEDY FOR CONGRESS TO CONSIDER SHORT OF MANDATING FEDERAL OVERSIGHT OF LOCAL POLICE PRACTICES WOULD BE TO CIRCUMVENT THE LYONS PROBLEM BY ENACTING LEGISLATION PROVIDING FOR A PRIVATE RIGHT OF ACTION FOR INJUNCTIVE RELIEF, (1) AGAINST SPECIFIC FORMS OF EXCESSIVE FORCE (SUCH AS THE USE OF NUNCHUCKS IN ARRESTING PEOPLE WHO ARE PASSIVE AND NON-THREATENING), AND (2) AGAINST ONGOING PATTERNS AND PRACTICES OF POLICE MISCONDUCT, WITHOUT THE NECESSITY OF SHOWING INDIVIDUAL LIKELIHOOD OF FUTURE VICTIMIZATION OF THE PLAINTIFF.

CONCLUSION

IF A DEPARTMENT OF ANIMAL CONTROL USED PAIN-INDUCING TECHNIQUES ON DOGS OR COYOTES LIKE THOSE USED BY THE LAPD, WHEN OTHER MEANS WERE AVAILABLE, THEY WOULD BE UNIVERSALLY EXCORIATED AS

INHUMANE.

THE LOS ANGELES POLICE DEPARTMENT POLICY AUTHORIZES INHUMANE TREATMENT OF HUMAN BEINGS, AND NOT EVEN CRIMINALS BUT THE MOST CONSCIENTIOUS AND NON-THREATENING CLASS OF PEOPLE IMAGINABLE, PEOPLE WHO HAVE PUT THEIR BODIES ON THE LINE BECAUSE OF THEIR BELIEF IN THE SANCTITY OF LIFE.

LET THEM BE ARRESTED. LET THEM BE CARTED OFF TO JAIL. BUT DO NOT LET THEM BE PUT INTO THE HANDS OF POLICE OFFICERS WHO HAVE BEEN TAUGHT THAT IT IS ACCEPTABLE TO BREAK THEIR BODIES IN ORDER TO BREAK THEIR WILLS.

-- 30 --

Mr. EDWARDS. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you very much, Mr. Chairman. I apologize for my brief appearance today, but the Government Operations Committee is holding hearings and I am caught between these two very important responsibilities.

I, first of all, wanted to welcome Drew Days and Wade Henderson and our final witness in the first panel, but also to congratulate you for holding these hearings on the nationwide scope of police violence and to consider a remedy that has been mentioned in the testimony of Professor Days. I have introduced H.R. 1821, the Police Misconduct Civil Relief Act, because we need to grant the Attorney General of the United States authority to seek civil relief in the Federal courts to combat patterns and practices of police misconduct.

The Attorney General has that systematic remedy in employment, education, housing, voter rights cases, but, as the Philadelphia case some years ago established, and I think Drew Days remembers it in his governmental tenure, we were not able to use a pattern or practice because we haven't given that in the Federal body of law, and that is what this does. Attorney General Thornburgh mentioned that to me when we met, that he does not have that power. I hope that we could consider that in the course of these very, very important hearings.

Again, I want to send my greetings to these witnesses, and feel that this one case in Los Angeles has highlighted what we have to face as a nation. I have never seen the outrage and shock and horror that the American people poured out when they saw this unknown recording that caught police, these few police in this very violent act. And, it seems to me that we have an opportunity out of this tragedy to really take an important step forward in police abuse cases everywhere.

We are looking at all of these kinds of remedies and this is one of them that I would urge your consideration of, and I thank you very much.

Mr. EDWARDS. Thank you very much, Mr. Conyers.

And, incidentally, Mr. Llewellyn, your exhibits will be made a part of the record. We are compiling one film that will be comprised of all of the videos that have been delivered to the subcommittee including the Los Angeles case of Mr. King, and yours will also be made a part of this film that will be available for the public and for the edification of the members of the subcommittee.

The gentleman from Illinois, Mr. Hyde.

We will be operating, pursuant to House rules, under the 5-minute rule.

Mr. HYDE. Thank you, Mr. Chairman.

Mr. Days, you are advocating legislation to give the Attorney General pattern and practice authority to bring suits where there is cause to believe there has been a pattern of police misconduct. I am wondering if you advocated similar legislation while you were Assistant Attorney General for Civil Rights. And, if you did, what happened?

Mr. DAYS. Mr. Hyde, as I indicated in my earlier testimony, I was involved in urging Congress to enact CRIPA to give pattern and practice authority to the Attorney General to deal with condi-

tions of confinement. Perhaps, we would have been wiser to come to the Congress and seek that type of authorization before we filed the Philadelphia suit, but we felt that we had good arguments to justify the Attorney General's going into a situation like that without explicit authority. And I won't bore you with all of the citations over the years to those cases in which the Supreme Court had held that the Attorney General could bring suit without precise authority where the interests of the United States were at issue. And so we brought the lawsuit.

The lawsuit was resolved just before I left office, compliments of the American electorate, and so there was no opportunity to go back and seek congressional action.

Mr. HYDE. It is, really, an outgrowth of the failure of that suit to produce the result which you thought reasonably would result.

Mr. DAYS. Let me emphasize, Mr. Hyde, that what we wanted and what I had hoped to persuade the third circuit judges of was an opportunity to try our case in a court of law. It was not a situation where the Army was coming into Philadelphia to take over the city. We were putting our case before independent Federal judges and asking for a decision. And, if those judges said, "We find no pattern or practice of misconduct in Philadelphia," that would be the end of the matter.

But I think what we did was characterized as something short of Sherman's march to the sea in bringing that litigation, and that was not our intent.

Mr. HYDE. I see.

Mr. Llewellyn, I am wondering why the Justice Department didn't react to the evidence of police brutality, the use of pain compliance techniques. Did you ask the Justice Department to give you some assistance? And what was their rationale for not doing so?

Mr. LLEWELLYN. We have made the issue of pain compliance quite clear. We have not made a formal request from the Justice Department. We had hoped, by our own private sector enforcement, since I am a member of a public interest law firm and we favor resolving things at the local level as much as possible, we would prefer simply to get private enforcement authority to set aside the *Lyons* doctrine and allow us freedom to prosecute these cases and tailor the enforcement at the local level as much as possible. So we haven't pursued a Federal remedy at this point.

Incidentally, the chairman mentioned compiling a joint video tape. I want to comment that the fourth incident on the video tape, which I did not previously mention, was a macing incident in the city of Sacramento, which we also are pursuing remedies there. But there the police department at least did condemn the practice. It is a damages action to see that this doesn't occur. But we prefer this kind of private enforcement for the most part.

Mr. HYDE. Now, what are some of the pain compliance techniques? You have talked about nunchucks, where they take these two wooden handles with a chain or a wire in the middle, they wrap it around an arm or a wrist and they torque it as hard as they can. I would imagine that would get some compliance pretty quickly. What other pain compliance techniques are there that they use?

Mr. LLEWELLYN. Well, actually, it doesn't always get compliance and that is one of the problems. Because you can't tell how hard to torque before you are going to injure someone seriously, and where there are some people who just will not comply, won't realize how quickly they are going to be injured. It is a very, very dangerous practice.

But the video tape will show in addition to that people face down on the ground, handcuffed, officer's knee in the back holding them down while another officer is also trying to lift them up from the nose, for example, a technique which the Los Angeles Police Department says is only to distract people's attention toward their nose and face in order to get their hands free. These are people totally subdued and on the ground.

Mr. HYDE. Now, wait a minute. Someone is on the ground with their hands handcuffed behind them?

Mr. LLEWELLYN. Yes. And officers around. And the person is making no apparent effort to move except to respond to try to get away from the pressure.

Mr. HYDE. And the officer has a knee in the back.

Mr. LLEWELLYN. That is correct.

Mr. HYDE. And another officer is trying to pick the person up by the nose?

Mr. LLEWELLYN. Well, yes. He is pulling the head back by the nose, and there is no evident reason for this. And there are similar kinds of things.

Mr. HYDE. You can hardly get up if someone has got a knee in your back.

Mr. LLEWELLYN. It is obviously impossible for the person to rise.

Mr. HYDE. What other pain compliance techniques?

Mr. LLEWELLYN. The chief difficulty is that the Los Angeles Police Department has justified it, saying, "Well, if we use pain compliance, we use fewer officers. We don't have to carry them," and that sort of thing. But, if you look at the video tapes, what actually happens is that these nunchucks are placed on people's arms and they are lifted by the nunchucks, so that the weight of the person is added to the torquing effect of the officer's grasp and it causes, you know, people—you can see, they can hardly react if they wanted to. They appear to be limp, and they are limp. Some of them limp not because they don't want to walk, but because they cannot walk.

Mr. HYDE. Now, what are these archcriminals doing that require this torture? What laws are they violating?

Mr. LLEWELLYN. Well, they are trespassers. They are intentionally, as many other people in many areas—antinuclear, animal rights protesters, they are sit-in demonstrators. The only thing that is distinctive about them is that they are entirely passive. The class of people we represent in the *John* case specifically is defined as people who put up no resistance whatsoever—

Mr. HYDE. They just go limp.

Mr. LLEWELLYN [continuing]. Except remain passive.

Mr. HYDE. They go limp.

Mr. LLEWELLYN. They go limp, and they do that because this is a form of symbolic speech in which they want to represent the passive helplessness of an unborn child before abortion.

Mr. HYDE. Do you know of any other groups, demonstrators, animal rights people, environmentalists, antinuclear demonstrators, that are treated with pain compliance techniques?

Mr. LLEWELLYN. Well, low-level pain compliance techniques are not unusual; wrist locks, fingerholds, and things like that, and they are used in many cases. But the nunchucks and this extreme, to use their own words, excruciating pain technique, no, there is no instances, other instances by the Los Angeles Police Department and none other that I know of.

Mr. HYDE. It is pretty dangerous out there, I suppose, to demonstrate for the right to life then in California

Mr. LLEWELLYN. Well, it has had, as you might suppose, an intimidating effect on many people. It is astounding that it hasn't had an intimidating effect on everyone. However, some people find that they should return.

And this is part and parcel of a pattern in other areas. This is not particularly the subject matter of this committee at this moment, but there also are problems with excessive sentencing of right-to-life protesters. For Example, there is a famous Hollywood antinuclear person who has been arrested 18 times and his maximum sentence was 3 hours of community service; whereas, we have right-to-life protesters who have been arrested a single time for the same kind of conduct and have been sentenced to 5 months in jail. This is a pattern of excessive reaction to people because of their right-to-life stand, in my judgment.

Mr. HYDE. Thank you. I have no more questions.

Mr. EDWARDS. The gentleman from Texas

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mr. Llewellyn, I must confess to you that until Mr. Hyde brought the matter of the right-to-life protesters to my attention, I was unaware of this, and I want you to be certain that, speaking for myself and I think for many other people, this is altogether distasteful, and I find no basis in law or in reason and in the Constitution to make a distinction, and it is dangerous I think for one to attempt to do so.

There is no distinction to be made between the treatment of those individuals, in my judgment, and because of the cause that they espouse, no matter how one feels about the cause. There is one clear message; and that is, that police use excessive force against one group and other groups stand idly by and let it happen, then the next time it will be another group and then another group and then another group.

I apologize for myself that I wasn't more aware of what was happening in Los Angeles, but I abhor that as much as I do any other form of police misconduct. And whatever remedy we attempt to fashion, I assure you, sir, will include protection for people without regard to what cause they espouse and what their political persuasion or nonpolitical persuasion may be.

Let me ask you several questions. One thing you mentioned several times, and I realize, of course, as you lawyer, you did it because it fit the particular facts of the situation that you were enunciating before the committee. But I think we should be careful not to limit our focus on "passive, nonthreatening behavior" because

that suggests that if it is nonpassive or that it is nonthreatening in the eye of the police officer that it is all right.

I think we have a standard already—I thought we had one. That a police officer was entitled to use such force as was necessary to overcome resistance, which, obviously, means that if there is no resistance then there is no force to be allowed. If there is minimal resistance on the part of the person who is being arrested, then the officer should be able to meet that resistance and overcome it.

But here you have the classic example of the far extremes: Absolutely passive behavior on one end and absolutely violent behavior on the other by the police officers. But I think in fashioning a remedy we should, if I may use the term, attempt to calibrate, so that we speak definitively. If that be the will of the Congress, that we speak definitely, so that we make it clear that police officers certainly have the right to defend themselves, as they always did; they have the right to use deadly force where they are threatened with deadly force; and starting with deadly force and coming down.

We want to make it clear that the complaint that you make has nothing to do with legitimate law enforcement, the enforcement that we expect of our law enforcement officers. We certainly don't condone nor would give them the right, it seems to me, to go and use nunchucks or anything like that on people whose only crime is that they are trespassing.

We don't pay police officers to be judge, jury, and executioner, do we?

Mr. LEWELLYN. No, sir, we obviously do not.

Mr. WASHINGTON. Are you comfortable with the standard which obtains in many jurisdictions that a police officer is entitled to use such force as is necessary to overcome the resistance?

Mr. LEWELLYN. So long as "resistance" is properly defined.

Mr. WASHINGTON. Yes.

Mr. LEWELLYN. And the element of the nature of force is properly defined. There are two problems. One is that it really takes very little force to create excruciating pain.

Mr. WASHINGTON. Yes.

Mr. LEWELLYN. So force needs to be defined in terms of its effects, not in terms of the effort necessary, which is a confusing thing in the minds of officers unless it is clarified for them.

Mr. WASHINGTON. Good point.

Mr. LEWELLYN. And second, what does it mean to resist? If you are merely passive and you are totally under the control of the police officers, it is our position that you are under arrest.

Mr. WASHINGTON. Yes.

Mr. LEWELLYN. The only question now is how to transport you to someplace where the police officers would rather have you be.

Mr. WASHINGTON. That is right.

Mr. LEWELLYN. And that the arrest has already been effected.

It is the position of the Los Angeles Police Department, as I understand it, that you are not under arrest unless you are compliant and doing what they say, including standing, walking, and moving to these vehicles. So they think that necessary force includes force not merely to physically move you, put you onto a cart or a gurney or something, or drag you, or carry you, or whatever, but whatever it takes to make you comply.

Mr. WASHINGTON. That would be very dangerous. Because then you could not avoid, in that hypothesis, which I think we both disagree—with which we both disagree, if you carry that to its illogical, if you will, conclusion, that would mean that offering no resistance at all would in the minds of the police officers be such resistance that would allow them to use excruciating pain as a means of overcoming this “nonexistent” resistance.

Mr. LLEWELLYN. It is a Gandhi-like idea. Mere noncompliance should not be considered active resistance.

Mr. WASHINGTON. It is not resistance.

Mr. LLEWELLYN. In *Graham v. Connor*, which is the Supreme Court case dealing with what is the objective reasonableness test in use of force under the fourth amendment, the standard there is active resistance, and passive resistance does not come into that category. So under the *Graham v. Connor* test, this would seem to be a classic case.

My reason for emphasizing the language of “passive, nonthreatening” protesters is simply to create the terminus and say this is the extreme case. Whereas, it may be a long time process to determine the calibration, to use your language, of all of the instances that might be appropriate, at least we could start with this and outlaw this clearly and get by the current judicial obstacles which make private enforcement against this kind of activity difficult, and then work backward toward the more questionable areas.

Mr. WASHINGTON. If I could just ask one brief question of all three of you, since you are lawyers, in closing, before my time expires.

What would you think of the notion of curing the standing problem that you raise, Mr. Llewellyn? And I think a collateral question that I think the other two gentlemen, Mr. Henderson and Mr. Days, raised. If the Congress in its wisdom were to create—on the question of the private Attorney General’s theory of right of action, and since the central problem in that is standing, on the one hand, and on the other hand, the ability to bring a pattern and practice claim, if the Congress were to create a rebuttal presumption that if these things occur, and within certain broad parameters that if you find over the course of a period of time, for instance, that there was no policy or a policy which allowed the kind of conduct that you complain of, and that then you would, with several things over a course of time set in some broad parameters, you create a rebuttal presumption that that conduct would be, one, sufficient to give rise to a standing claim, and on the other hand, would make a justifiable issue at least of the pattern and practice so you could get to the trier of fact. Then, of course, the city or the jurisdiction could come forward with specific incidents of what they had attempted. In other words, shift the burden of proof to them by creating a rebuttal presumption and requiring them to come forward.

What do you think about that idea? Any of you. All of you.

Mr. LLEWELLYN. I personally don’t—I like rebuttal presumptions, for the most part. I don’t know that, as a private civil rights litigator and more familiar with developing law in the courts than in the legislature, my immediate reaction is I would like to get the chance to develop the law through the courts on a case-by-case, you

know, more specifically oriented basis before I try to create a more generalized standard legislatively.

Mr. WASHINGTON. I think the problem you may have is *Monroe v. Pape* and *Monell* leave a lot of room for determining what is the standard that is to be expected.

Mr. LEWELLYN. That is true.

Mr. HENDERSON. We would certainly, speaking on behalf of the NAACP, support the idea. I think it addresses two things that we have concern about: One is the standing issue, and we have all talked about that; but two is it helps to provide particularized standards against which you measure the official conduct of law enforcement officials. Presently we don't have that, and that is the missing ingredient.

All of the cases we discussed in our testimony focused not on the infliction of excruciating pain, although that it is obviously a particular problem and we have many cases in our files that reflect that problem. We talked about police killings. Every one of the cases we talked about involve people who had been killed by police officers in the line of what police argued were carrying out their official duties. One of the common threads which seemed to link both the Los Angeles Police Department incident, Mr. Llewellyn's testimony, and other experiences that we revealed, including the incident in Houston, is that the law officer who was involved suggested that his actions were consistent with departmental policy; that in fact he was merely carrying out a legitimate application of the policy.

And, indeed, the grand juries that investigated his individual circumstance believed that in fact that is what he did. The official standard by which that kind of behavior is measured indeed needs to come under scrutiny, and I think your proposal for shifting the burden is one that would help to do that.

Mr. DAYS. I have two comments. One, I think that making it possible for private parties to bring pattern and practice lawsuits would make a lot of sense, but it is not inconsistent with also giving the Attorney General pattern or practice. I think the Congress has recognized almost from the beginning that there is a symbiotic relationship between private litigation and public litigation in the civil rights field, and they reinforce one another. So I think they could work in tandem.

Insofar as the standing issue is concerned, this is not the place to write a statute, obviously, or draft a statute, but it seems to me that Congress has on a number of occasions identified injury that might be different from the type of injury that the Court would recognize absent a statutory determination by Congress. So I think it is open to Congress in certain areas to describe the situation, describe the problem, and identify based upon Congress' investigation those who are likely to be injured by certain types of conduct that violates the statute. And it seems to me that that might go a very long way in meeting some of the standing problems that the Supreme Court has found under the laws that presently exist.

Mr. WASHINGTON. If I may be heard, just very briefly in closing, Mr. Chairman. Don't you think that the Congress has the authority through the commerce clause, if we tied it to, for instance, the use of nunchucks, which obviously travel in interstate commerce,

or flashlights or pistols or things like that, that gives us the necessary hook to be able to come forward with legislation?

Mr. DAYS. Well, the commerce clause. But you also have the 14th amendment, section 5. So, yes, I think you have more than enough edge of authority to do that.

Just to give you an example of the point I was making, though, in a case in the seventies, the *Trafficante* case under the Fair Housing Act, the question was whether white tenants of a housing project had standing to challenge discriminatory practices against blacks, and the Supreme Court said that absent the Fair Housing Act it might have problems seeing an injury to the white tenants. But given the objectives that Congress had set out in the Fair Housing Act, they would be found to have standing, because the right of interracial association was an objective that Congress had in mind when it enacted the statute. I think that type of analysis might work very well in the context of giving expanded private authority to deal with a policeman's conduct.

Mr. WASHINGTON. I would like to thank all of the witnesses, and thank the chairman for yielding me this time.

Mr. EDWARDS. Thank you, Mr. Washington.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Mr. Chairman, I apologize for my belated arrival. I had a textile caucus meeting and it lasted almost an hour.

Gentlemen, it is good to have you all here. Because of my late arrival, I have no specific questions. I simply will reiterate what I have said previously at these hearings regarding police brutality. It is my belief that these matters are best resolved internally at the local level. Now, of course, if that fails, then perhaps another notch up.

I don't mean to imply or suggest that there is anything inappropriate about the Congress being involved. Indeed, it is appropriate. But it would be my wish that these matters could be resolved internally at a local level, and I suspect you all probably would not disagree with that.

The *King* case, as you all know, has attracted not just national attention, but international attention. It is too bad it takes this to get attention. But I think open lines of communication, exchange of information between various community agencies and the police departments, et cetera, is the best approach.

I just wanted to reiterate that, Mr. Chairman. I am delighted to be here, and I appreciate you all participating with us today.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Coble.

I believe that we will be in touch with you again as expert witnesses in the drafting of this legislation. But there is a vote on the floor now. I believe that we will complete this panel today, with many thanks from the subcommittee, and then after the very brief recess for a vote on the floor of the House, we will come back for the next panel.

Thank you all very much.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

The next panel will begin with Jerry Williams, chief of police in Aurora, CO, and president of the Police Executive Research Forum. Chief Williams has been a police officer for over 20 years and has been chief of police in Aurora for the past 5 years. He is here representing PERF, the organization of urban chiefs of police and one of the most important voices for enlightened policing in America.

I will introduce the other member of the panel when he is about to testify.

Will both of you gentlemen please raise your right hand—

[Witnesses sworn.]

Mr. EDWARDS. Thank you very much.

Mr. Williams, you may proceed.

**STATEMENT OF GERALD L. WILLIAMS, CHIEF OF POLICE,
AURORA POLICE DEPARTMENT, AURORA, CO, AND PRESIDENT,
POLICE EXECUTIVE RESEARCH FORUM**

Mr. WILLIAMS. Thank you, Mr. Chairman. Thank you for inviting me to appear before this committee to discuss improper police use of force. I commend the committee for recognizing the pressing need for bringing the issues surrounding police brutality to national attention through hearings such as this. Only through vigorous study and open debate will the problem of police brutality be adequately addressed.

I would like to begin by introducing the executive director of the Police Executive Research Forum, who is here with me today, a former police chief himself, Darrel Stephens, who is sitting behind me.

Mr. Edwards. We welcome you, Mr. Stephens.

Mr. Williams. The beating of Rodney King by police officers in Los Angeles has focused the attention of this Nation on the issue of the use of force by all police officers. I believe the overwhelming majority of police officers in America are dedicated men and women who strive to uphold the ideals of the Constitution as they go about their daily tasks.

The Police Executive Research Forum is an organization of progressive police chiefs serving more than 30 percent of the Nation's population. As the president of PERF, let me assure you that we are committed to a professional level of policing with an emphasis on fairness, humanity, and integrity.

All too often in recent years, when incidents such as the video taping of the King tragic beating have occurred, they have spawned immediate efforts to spin control to deal with the damage image of the organization or the entity. We at PERF take a different view. We believe the King incident should be examined carefully. It should serve as a catalyst for self-examination for every city, large or small, every police or sheriff's department, and moreover, for every man and woman who carries a badge. We must ask ourselves hard questions: Are we fair? Are all of our citizens well served? Do we uphold the oaths we have taken to protect and serve?

Unfortunately, in the past many efforts at improving policing have been characterized by quick fix solutions that amount to throwing dollars at problems with minimal success. My hope is

that the horrible beating of Rodney King will not spawn such efforts, but rather identify this as an opportunity for government, police agencies, community groups, and citizens to confront the issues facing policing in America in the 1990's. Together we can evaluate our agencies and the communities they serve. Together we will find the problems, or rather challenges, to meet. Together we can work toward solutions. Not quick-fix, band-aid solutions, but lasting systemwide changes that will improve the quality of life in our country.

What I would like to do now is just briefly expand on some of those issues that we think are relevant and needed to be addressed and looked at across the country. The first one of those is a philosophy and a specific tactic that really falls within the realm of community policing that is existing in more progressive police departments all across the country. A major component of community policing is what at PERF we refer to as problem-oriented policing.

PERF has long endorsed a style of policing called problem-oriented policing. This is a team approach in which the community and their police work together to carefully analyze problems and to develop and implement solutions tailored to those specific problems. This approach brings the police officer physically closer to the community. This bond that is then created not only improves policing, it minimizes the necessity for the use of force by the police.

Law enforcement accreditation. Leaders in our profession and our communities have identified the need for values and sound policies in police departments that can be integrated into every police activity by every member of the police department. Many police departments have good rational policies for the use of force. In fact, those departments seeking accreditation from the National Commission on Law Enforcement Accreditation have such policies. PERF and three other national law enforcement organizations created the Commission on Law Enforcement Accreditation and today over 175 police departments from all across the country, and sheriffs departments, have, in fact, become accredited. I would challenge the committee to return to your districts and inquire in your areas which law enforcement agencies have, in fact, gone through the accreditation and to challenge those who have not to examine the values of this national movement.

The issue of leadership, listening, sympathizing, defining, articulating, and directing. The role of the top police executive is key to identifying and accomplishing the goals of the police agency as expected by the community. Police executives today must ensure standards of conduct are articulated both internally and externally. The community must know what behavior the chief expects of officers. The community must believe their police executive will enforce the standards that he or she has set.

The area of citizen complaints. Law enforcement exists to protect the values of society as demanded by the Constitution. Citizens must have faith that an officer will investigate a complaint made against another officer in a fair and impartial manner. A model policy regarding the handling of citizen complaints was developed by PERF in 1981 and has been widely distributed to police departments throughout the country. Specific guidelines were set forth for the treatment of all parties involved in the complaint process,

including the citizen and the officer or officers involved. The system for complaints that is developed must be easily understood and accessible by all citizens.

The issue has come up before and will undoubtedly come up again of citizen review boards. I believe this issue is better addressed by the local level, where the needs of each individual community are best assessed. The demand for civilian review boards is symbolic of the fear our citizens possess. The public fears violence from the criminal element, but many also fear the very people who are bound to protect them from the violence.

The area of research. There must be continuous, quality research and a national data collection effort if we are truly to understand the extent and the severity of the police-related problems facing our communities. We must focus on research and studies that will provide genuine insight and alternatives on issues such as police use of force, relations between the police and the community, police race relations, recruitment, selection and training of officers; and myriad other factors that contribute to a quality police practice.

The issue of race. There must be a frank discussion of racial issues internally and externally as they relate to our police departments all across the country. We must confront in a much more direct way than many of us have in the past the issues of racism in our organizations and how it affects our interactions with individual citizens and the greater community. We need to establish an environment in our police organizations in which both male and female officers of all races and ethnic groups can talk about these issues in an open and honest way.

The drug war. And if I may quote directly, as stated by our executive director, Darrel Stephens, recently:

"I wonder, I cannot help but wonder what influence the so-called drug war and the violence associated with it has had on the way police officers conduct themselves on the streets. Many of our police agencies have switched to semiautomatic firearms over the past 4 or 5 years in an effort to try and match the firepower of drug dealers. In most cases, this change has come about with little or no debate in the community. Ten years ago, I doubt that this type of change would have taken place without considerable public comment. In the name of the drug war, we have engaged in sweeps that have resulted in mass arrests in some of our urban areas. I have heard and read several stories about how citizens on the streets have applauded these actions. I have to wonder whether some police officers have misinterpreted this applause to mean it's OK to treat criminals any way you want to as long as they take the criminals off the street. Have the messages that have been sent to our officers in fighting the drug war been consistent and clear? In our justifiable concern of the increase in drug abuse, crime and violence, the noise generated by the 'get tough' rhetoric of our politicians and the applause from the community have become deafening. Have we failed to hear other important messages coming from the community? Where is their applause now?"

The issue of training. How a law enforcement agency approaches training and the type of training provided must be carefully examined to ensure it is reflective of the agency's values. Training must

focus on developing a thinking police officer who is able to analyze situations and respond in an appropriate manner based on those values. Officers should receive training in the merits and the use of negotiations as a primary tool in response to confrontation. When an officer can negotiate a solution, he or she is less likely to utilize force as an immediate response to a crisis. Officers who employ communication and negotiation skills, rather than force, as a first resort are credited with reducing initial levels of tension during contacts. Expertise in this area of negotiation is not a natural talent; it should be a significant part of the police training curriculum. Police departments should establish and articulate a preference for the use of negotiation skills rather than force in appropriate circumstances.

In conclusion, there is no simple answer to the problems raised in the Los Angeles incident, but there are steps that can be taken to minimize the chances that it will happen again. The values, policies, and philosophy of a police department must be carefully articulated by the police executive and supported by the elected officials and community leaders. Then a mechanism must be put in place to get the message to every member of the department. Conduct that deviates from these values and policies must be dealt with immediately. The public must be encouraged to complain when appropriate, and must assume its role in ensuring quality policing. Those officers who continue to uphold the high ideals of their agency and community should be rewarded and recognized.

The need to send a clear message to police officers cannot be overstated. The war on drugs and the arms race we have waged with drug dealers reinforces the Rambo-like image of police officers. It is an image that professional departments discourage. The attitude that all is fair in war has exacerbated the misconception that police are an occupying army that should do whatever is necessary to apprehend criminals. This rhetoric has got to stop. Police are not fighting a war. They are working to protect our public and enforce our laws in an evenhanded, professional manner. They are working to build communities. Yes, they must resort to force when confronted with a dangerous situation, but that force must be justified and reasonable.

Without the support of our communities, the police cannot hope to be effective. Without the support of the police, our communities cannot hope to be safe. By bringing police and community leaders together, encouraging research and debate, supporting law enforcement accreditation, revising the rhetoric that subtly affects our actions, and fostering strong national leadership, those of us at PERF—the Police Executive Research Forum—hope to build a structure within the police that can protect and serve all the citizens.

Thank you very much for your time and asking me to be here today.

Mr. EDWARDS. Well, thank you very much, Mr. Williams.

That is a very good statement, especially your comments about the war on drugs.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF GERALD L. WILLIAMS, CHIEF OF POLICE, AURORA POLICE DEPARTMENT, AURORA, CO, AND PRESIDENT, POLICE EXECUTIVE RESEARCH FORUM

Thank you for inviting me to appear before this committee to discuss improper police use of force. I commend the committee for recognizing the pressing need for bringing the issues surrounding police brutality to national attention through hearings such as this. Only through vigorous study and open debate will the problem of police brutality be adequately addressed.

The beating of Rodney King by police officers in Los Angeles has focused the attention of this nation on the issue of the use of force by all police officers. I believe the overwhelming majority of police officers in America are dedicated men and women who strive to uphold the ideals of the Constitution. They do not abuse the authority granted them, including the authority to use force. They realize the actions of any officer — good or bad — reflects on each and every one of them. They were among the first to condemn the type of actions we witnessed against Rodney King.

The Police Executive Research Forum (PERF) is an organization of progressive police executives serving over 30 percent of the nation's population. As the President of PERF let me assure you we are committed to a professional level of policing with an emphasis on fairness, humanity and integrity.

All too often in recent years, incidents such as the videotape of the King beating have spawned enormous efforts at "spin control." There are those who will say that this incident has damaged the "image" of the police, and that steps must be taken immediately to repair that image. PERF takes a different view. We believe the King incident should be examined carefully; it should serve as a catalyst for self examination for every city, large or small, every police or sheriff's department, and moreover for every man and woman who carries a badge. We must ask ourselves hard questions — are we fair? Are all our citizens well-served? Do we uphold the oaths we have taken to protect and to serve?

I believe the issues surrounding police use of force are many and complex. While there are no simple solutions, there are several steps which can, and must, be taken to minimize any chance of this type of breach of public trust from recurring.

Unfortunately in the past, many efforts at improving policing have been characterized by quick-fix solutions that amount to throwing dollars at problems with minimal success. My hope is that the horrible beating of Rodney King will not spawn such efforts, but rather will serve as an opportunity for government, police agencies, community groups and citizens to confront issues facing policing in America in the 90's. *Together* we can evaluate our agencies and the communities they serve. *Together* we will find problems, or rather challenges, to be met. *Together* we can work toward solutions, not quick-fix, band-aid solutions, but lasting system-wide changes that will improve the quality of life in our country. I would like to share with you some of the issues we must collectively confront.

PROBLEM-ORIENTED POLICING

PERF has long endorsed a style of policing we call "Problem-Oriented Policing." This is a team approach in which the community and their police work together to carefully analyze problems and to develop and implement solutions tailored to those problems. This approach brings the police officer physically closer to the community. Working together to solve problems allows a strong bond to develop between the police and the community. This bond not only improves police effectiveness, it minimizes the necessity for the use of force by the police.

ACCREDITATION

Leaders in our profession and our communities have identified the need for values and sound policies in police departments that can be integrated into every police activity by every member of the police agency. Many police departments have good rational policies on use of force. In fact, those departments seeking accreditation from the Commission on Accreditation for Law Enforcement Agencies are required to have such policies. PERF and three other national law enforcement organizations created the Commission for Accreditation of Law Enforcement Agencies (CALEA) to develop standards that address almost every aspect of police functions regarding administration, management and operations. Over 175 agencies have achieved accreditation status in the six years since CALEA's inception. I would challenge each of you to return to your home districts and inquire which of your law enforcement agencies is involved in the law enforcement accreditation process. And to go one step further, to encourage those not involved to examine the values of this national movement. Accreditation may not be a panacea for problems regarding police use of force, but it is a positive first step in the right direction.

LEADERSHIP

Listening, synthesizing, defining, articulating, directing: the role of the top police executive is key in identifying and accomplishing the goals of the police agency as expected by the community. Police executives must establish personal credibility with *all* segments of the community in order to be effective. Police executives must ensure standards of conduct are articulated both internally and externally. The community must know what behavior the Chief expects of officers. The community must believe their police executive will enforce the standards he or she has set. Police executives must articulate policy and procedure at the administrative and operational levels, being cognizant to address the police culture as well as the various community cultures.

CITIZEN COMPLAINTS

Law enforcement exists to protect the values of society as demanded by the Constitution. In order to be effective, the police must enjoy a good working relationship with their communities, predicated on feelings of mutual trust and understanding. To further these efforts, citizens must have faith an officer will investigate a complaint made against another officer in a fair and impartial manner. A model policy regarding the handling of citizen complaints was developed by PERF in 1981 and has been widely distributed to police departments throughout the country. Specific guidelines were set forth for the treatment of all parties involved in the complaint process, including the citizen and the officer or officers involved. The community as well as the officer should know and understand what constitutes unacceptable conduct and above all, the community must have a reasonable understanding of the procedures for investigating and adjudicating cases of police misconduct. The system for complaints must be easily understood by and accessible to all citizens.

There has been a renewed interest in civilian review boards to sit in judgment of police officials accused of improper actions. I believe this issue is better addressed on the local level, where the needs of each individual community are best assessed. The demand for civilian review boards is symbolic of the fear our citizens possess. The public fears violence from the criminal element, but many also fear the very people who are bound to protect them from that violence.

RESEARCH

There must be continuous, quality research and a national data collection effort if we are to truly understand the extent and severity of the police related problems facing our communities. In the past, in an effort to find the quick-fix, we have been too willing to simply throw money at the problem. We have funded too many short-sighted studies and programs. We must focus on research and studies that will provide genuine insight and alternatives on issues such as police use of force; relations between the police and the community; police race relations; recruitment, selection and training of officers; and myriad other factors that contribute to a quality police practice.

RACE

It may seem to some that the ethnic diversity that created the unique culture of America is today tearing her apart. The police are no exception. There must be a frank discussion of racial issues internally and externally, as they relate to our police departments. We must confront in a much more direct way than many of us have in the past the issues of racism in our organizations and how it affects our interactions with individual citizens and the greater community. We need to establish an environment in which both male and female officers of all races and ethnic groups can talk about these issues in an open and honest way.

DRUG WAR

As stated recently by the Executive Director of PERF, Darrel Stephens, "I cannot help but wonder what influence the so-called 'drug-war,' and the violence associated with it, has had on the way police officers conduct themselves on the streets. Many of our police agencies have switched to semi-automatic firearms over the past four or five years in an effort to try to match the firepower of drug dealers. In most cases, this change has come about with little or no debate in the community. Ten years ago, I doubt that this type of change would have taken place without considerable public comment. In the name of the 'drug war' we have engaged in sweeps that have resulted in mass arrests in some of our urban areas. I have heard and read several stories about how citizens on the streets have applauded these actions. I have to wonder whether some police officers have misinterpreted this applause to mean it's okay to treat criminals any way the police want to — as long as they take criminals off the street. Have the messages that have been sent to our officers in fighting the 'drug war' been consistent and clear? In our justifiable concern of the increases in drug abuse, crime and violence, the noise

generated by the 'get tough' rhetoric of our politicians and the applause from the community have become deafening. Have we failed to hear other important messages coming from the community? Where is their applause now?"

TRAINING

How a law enforcement agency approaches training and the type of training provided must be carefully examined to insure it is reflective of the agency's values. Training must focus on developing a thinking police officer who is able to analyze situations and respond in an appropriate manner based on those values. Officers should receive training in the merits of and the use of negotiation as a primary tool in response to confrontation. When an officer can negotiate a solution he or she is less likely to utilize force as an immediate response to a crisis. Officers who employ communication and negotiation skills, rather than force, as a first resort are credited with reducing initial levels of tension during contacts. Expertise in the art of negotiation is not a natural talent. It should be a significant part of the training curriculum. Police departments should establish and articulate a preference for the use of negotiation skills rather than force in appropriate circumstances.

CONCLUSION

There is no simple answer to the problems raised by the LA incident, but there are steps that can be taken to minimize the chances that it will happen again. The values, policies and philosophy of a department must be carefully articulated by the police executive and supported by elected officials and community leaders. Then, a mechanism must be put in place to get the message to every member of the police department. Conduct that deviates from these values and policies must be dealt with immediately. The public must be encouraged to complain when appropriate and must assume its role in ensuring quality policing. Those officers who continue to uphold the high ideals of their agency and community should be rewarded and recognized.

The need to send a clear message to police officers cannot be overstated. Again the rhetoric that surrounds drug enforcement efforts exemplifies the mixed message we send our police. The "war on drugs" and the "arms race" we have waged with drug dealers reinforces the Rambo-like image of police officers. It is an image that professional departments discourage. The attitude that all is fair in war has exacerbated the misconception that police are an occupying army that should do whatever is necessary to apprehend criminals. This rhetoric has got to

stop. Police are not fighting a war. They are working to protect our public and enforce our laws in an even-handed, professional manner. They are working to build communities. Yes, they must resort to force when confronted with a dangerous situation, but that force must be justified and reasonable.

Some good will come of this tragic incident. For we now have the opportunity to reflect on the circumstances which led to this situation, and to move forward to a new era of improved policing in America. It is because of my commitment to professionalism in American policing and to strengthening the bonds between the community and their police that I am speaking to you today. Without the support of our communities, the police cannot hope to be effective. Without the support of the police, our communities cannot hope to be safe. By bringing police and community leaders together, encouraging research and debate, supporting law enforcement accreditation, revising the rhetoric that subtly affects our actions, and fostering strong national leadership, those of us at the Police Executive Research Forum hope to build a structure within which the police can protect and serve all citizens.

Mr. EDWARDS. Our next witness, Ronald E. Hampton, has worked for 18 years in law enforcement. He is a community relations officer for the District of Columbia Metropolitan Police Department and lectures and consults widely on techniques of crime prevention and community relations. Officer Hampton is director of National Affairs for the National Black Police Association. He has testified before the subcommittee before, and we have always benefited from his insight and expertise.

We welcome you, Mr. Hampton, and you may proceed.

**STATEMENT OF RONALD E. HAMPTON, EXECUTIVE DIRECTOR,
NATIONAL BLACK POLICE ASSOCIATION, WASHINGTON, DC**

Mr. HAMPTON. Thank you, Mr. Edwards. I would like to echo my support for PERF and Chief Edwards. As a professional law enforcement officer myself, one I would like to think that I am, I support those things that PERF supports, and I think that they ought to be implemented and processed as policy across the country.

Thank you, Mr. Chairman, and members of the committee, for this opportunity to submit testimony on this most important issue. At this time in our country, when our neighborhoods are confronting the very serious problems of crime, violence, and the drug crisis, the relationship between the community and the police and community confidence in our police departments is at an all-time low. This lack of trust is not new, nor are its origins in the community.

The recent vicious, brutal beating of Rodney King by the Los Angeles Police Department officers that was video taped and later televised was proof that the problem is real. The National Black Police Association, our many members, and the community residents they work for have complained for years that they, the residents, were disrespected, disregarded, and physically and verbally abused, but they are the ones who uniquely call the police the most.

Our national headquarters in Washington, DC, has been flooded with letters and calls from concerned citizens in reference to the Los Angeles incident and many others from around the country. I would also like to submit for the record information and copies of articles of police abuse from around the country, and I have that information here.

Let me take a moment to express some concerns that we have over the recent attempt by police officers, officials, and police unions to excuse this inexcusable act by the Los Angeles police officers as a result of poor training and the stress that occurs in our profession. In my almost 20 years of police service, I do not know of any police academy or on-the-job training or in-service training that remotely suggests that an officer should or can behave in that manner. And when it comes to the stress of the job, there is some, but nothing to the extent that would have produced or allowed what we saw with Mr. King to occur. Even if there is a considerable amount of stress and absolutely no training whatsoever, there is still no reason for that incident to have occurred.

Which takes us to the question of leadership of the Los Angeles Police Department. The National Black Police Association has

called for the resignation of Chief Daryl Gates. Chief Gates is responsible for setting the moral tone of the police department. The buck stops and starts with the chief. It is apparent that the environment in the Los Angeles Police Department does allow brutality to be proactive and racism condoned.

Where do we go from here? First, we have to dig down deep and remove the individuals, policies and practices, formal and informal, that would allow a Rodney King or any other such incident to happen. Second, the police chief and the police department have to be held accountable to the community it serves. Situations like the one in Los Angeles can be avoided and have to be avoided in the future. Third, the community and its elected representatives should share in the search and the selection of the future chiefs of the Los Angeles Police Department or any police department. Fourth, the Department of Justice's attempt to monitor, investigate and prosecute incidents of police misconduct has to be more than the backstop theory. Police departments have clearly demonstrated their inability to clean their house impartially. Federal law enforcement must include closer reviews of the patterns and policy practices that condone the culture of violence. New legislation may be in order to address this neglected area.

And, in conclusion, let me remind you that anyone of us could have been in Mr. King's situation. Unfortunately, some of us are more likely to be victims than others based on the color of our skin or our economic status. We believe in the National Black Police Association that the most effective way to confront police abuse and brutality is at the time our colleagues are committing the act against citizens. We further believe in on-the-spot disarming and arresting of officers involved.

And let me clear that up because it sounds rather rough. But what we believe is in the way that we police. If I were to happen on the scene of an incident where a brutal beating of a citizen was taking place, I would be called on to arrest, handcuff, and place the citizen in a car, take the individual to the police station, process them for court, and go to court with the individual. Nothing about a grand jury. If I witness that incident, then I can make the arrest on the scene. But somehow or another police officers are allowed to brutally beat people while other police officers stand idly by and participate in this and nothing is done about it. We just believe that we have to confront that on the spot. We know from past experiences that this does work to reduce police violence.

Something must be done. You can send a strong message to this administration, who believes Daryl Gates to be a hero, that we will not tolerate a police state or war at home. What we need are police executives and police departments to build and encourage closer relationships between police and citizens. Only the use and development of the resources we have in each other can we address this crisis in our community.

I urge the committee to consider legislative reform now to address the problem of police abuse in our communities.

Thank you very much for the opportunity to be before you today.

Mr. EDWARDS. Thank you very much, Mr. Hampton.

[The prepared statement of Mr. Hampton follows.]

PREPARED STATEMENT OF RONALD E. HAMPTON, EXECUTIVE DIRECTOR, NATIONAL
BLACK POLICE ASSOCIATION, WASHINGTON, DC

Thank you Mr. Chairman and members of the committee for this opportunity to submit testimony on this most important issue. At this time in our country, when our neighborhoods are confronting the very serious problems of crime, violence and the drug crisis, the relationship between the community and the police and community confidence in our police departments is at an all time low. This lack of trust is not new, nor is its origins in the community.

The recent vicious, brutal beating of Rodney King by Los Angeles Police Department officers that was videotaped and later televised was proof that the problem is real. The National Black Police Association, our many members and the community residents they work for have complained for years that they (residents) were disrespected, disregarded, physically and verbally abused, but they are the ones who uniquely call the police the most.

Our national headquarters in Washington, DC has been flooded with letters and calls from concerned citizens in reference to the Los Angeles incident and many others from around the country. I also would like to submit, for the record, information and copies of articles of police incidents of abuse.

Let me take a few moments to express some concerns we have over the recent attempt by police officers, officials, and police unions to excuse this inexcusable act by the Los Angeles police officers as a result of poor training and stress that occurs in our profession. In my almost twenty years of police service, I do not

know of any academy training, on the job training or in-service training that remotely suggests an officer should or can behave in that manner. And when it comes to the stress of the job, there is some, but nothing to the extent that would have produced or allowed what we saw with Mr. King to occur. Even if there was a considerable amount of stress and absolutely no training whatsoever, there is still no reason for this incident to have occurred.

Which takes us to the question of leadership for the Los Angeles Police Department. The National Black Police Association has called for the resignation of Chief Daryl F. Gates. Chief Gates is responsible for setting the moral tone of the department. The buck starts and stops with the Chief. It is apparent that the environment in the Los Angeles Police Department does allow brutality to be pro-active and racism condoned.

Where do we go from here? First, you should dig down deep and remove those individuals, policies and practices (formal and informal) that would allow a Rodney King or any other incident such as his to happen. Second, the Police Chief and the Police Department has to be held accountable to the community it serves. Situations like the one in Los Angeles have to be avoided in the future. Thirdly, the community and its elected representatives should share in the search and selection of the future Chief for

Los Angeles Police Department. Fourth, the Department of Justice's attempt to monitor, investigate and prosecute incidents of police misconduct has to be more than the "back-stop" theory. Police departments have clearly demonstrated their inability to clean their house impartially. Federal law enforcement must include closer reviews of the patterns and policy practices that condone the culture of violence. New legislation may be in order to address this neglected area.

In conclusion, let me remind you that anyone of us could have been in Mr. Rodney King's situation. Unfortunately, some of us are more likely to be victims than others based on the color of our skin or our economic status. We believe at the National Black Police Association that the most effective way to confront police abuse and brutality is at the time our colleagues are committing the act against citizens. We further believe in on the spot disarming and arresting of the officers involved.

We know from past experience that this does work to reduce police violence. Something must be done. You can send a strong message to this administration, who believes Daryl F. Gates to be a "hero", that we will not tolerate a police state of war at home. What we need are police executives and departments to build and encourage closer relationships between police and citizens. Only by the use and development of the resources we have in each other can we address the crisis in our communities.

I urge the committee to consider legislative reform now to address the problem of police abuse in our communities. Thank you.

Mr. EDWARDS. The gentleman from Texas, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman. I just have one line of inquiry for both Mr. Williams and Mr. Hampton.

The thought came to me in the midst of your testimony, and I have yet, then, to do any research on the subject, but at least down my way in Texas, for all intents and purposes you start with the proposition that police officers are generally considered to be police officers 24 hours a day, whether they are on duty or off duty. In fact, that is the rationale, under Texas law at least, for police officers being excused from the normal requirement of not being able to carry a weapon on or about their person when not in the active duty of being assigned to police work.

There is also the generally accepted notion, as I say, at least in Texas, and my inquiry is whether your experiences have found this to be in a broader sense, that a police officer as part of his or her oath is generally charged with the responsibility of enforcing the law and ferreting out crime. To that end, a police officer is expected to make an arrest where a crime is committed in their presence; that is, they don't have to wait and be only responsive to situations where a citizen observes an offense, the person in the commission, or a perpetrator in the commission of an offense, and police are called out. If a police officer is in a grocery store and they see an individual in the midst of committing what appears to them to be an armed robbery or robbery by firearms, or whatever it is called in that jurisdiction, I daresay I know of no place where a police officer would not be justified in taking what action was necessary, with or without a weapon, to prevent the commission of an offense that occurs in their presence.

If that generally accepted notion then is a predicate, my question is, it seems to me, going back to what Mr. Hampton said about the policy of arresting the officer and taking the person down, disarming them and taking them to jail, why wouldn't it be perfectly all right if a police officer has the authority and, in fact, the duty under their oath to prevent a citizen from committing an offense that occurs in their presence, felony or misdemeanor, why would that not be true of a police officer who observes a police officer committing an offense in his or her presence?

Mr. HAMPTON. Well, the only thing that I would think of is that one of the things that happens within the system is the strong informal process that takes place, the we against them, meaning that police is a closed society and we have to stick with one another to protect ourselves, so we don't do those kind of things openly out in the public. There are regulations within most police departments that bind police officers to reporting their peers if they are involved or commit actions of misconduct.

So I am saying that even that particular policy is in keeping with what you suggest. And the only reason I think that it doesn't happen is because there are the internal pressures of not reporting your partner, neither being a whistleblower, somehow or another being a part of the process of what they called in Los Angeles the magic pen, where you fill out the report and suggest that for some unearthly reason this person struck you without any provocation or anything, so somehow or another your response was appropri-

ate. It feeds the cycle that continues to address, or allude to police being a closed society so they don't do it.

But I would think that in the past some of those instances have occurred in police departments and it has brought to the light the situations that occur on the street as it relates to misconduct or misbehavior of police officers.

Mr. WASHINGTON. Mr. Williams.

Mr. WILLIAMS. I would think that Mr. Hampton's comments are accurate, and I would concur with his comments with regard to this secrecy, the desire on individuals within policing to support one another to the degree that illegalities have in the past gone unnoticed or unreported because of that. I think that is changing. Quite frankly, the accreditation process, I believe, provides for specific directives that deal with the issue of reporting illegalities. I know in my department currently, which is an accredited police department, that we have specific directives that require the immediate reporting of illegalities viewed by officers of our department of other officers.

So one of the answers, I believe, to that is the form of progressive policing that exists in the directives in the accreditation process. I firmly believe that that is part of the answer—the accreditation process. If it works in hospitals, if it works in our educational system, it ought to work in our police departments across the country.

Mr. WASHINGTON. It seems to me, if I may follow, kind of joining the answers of both of you, that what we need to do, and it is I am certain an oversimplification of a very complex problem, but the same loyalty and brotherhood that draws police persons together unfortunately in the past to cover up misdeeds ought to be the loyalty and brotherhood for the sake of protecting the good police officers because their reputation is the one that is sullied.

Anytime a police officer does something in the name of police work and demeans the good efforts of all these good hardworking people who put their lives on the line every day, they put a mark forever in many instances upon the respect that must come from the community, it seems to me. Because there is an inextricable bond between the community and the police department in which they have mutual trust and respect for each other. Otherwise, we would need one policeman for every citizen, and we don't have that.

In order to have a society in which we have police working together with the community, it seems to me that that brotherhood ought to work against the officer who steals hubcaps or steals gasoline and puts it in his car, or carries an extra pistol, or who watches his brother-in-law break in some place of business, or whatever the misdeed is.

It seems to me that ought to come from the highest deed to the lowest deed, and it certainly ought to include those who wear our badge and wear our gun and in our name, in our name become judge, jury, and executioner.

And maybe the point you touched upon, Mr. Williams, with respect to starting at the Academy and the accreditation process will get us there. It seems to me that that is certainly a step in the right direction. But it seems like most police associations that I am

familiar with have a code of conduct. It may not be a national code. It may be for their association. But, if we could permeate these various associations with the notion that the way to enhance and rebuild, much as what the lawyers had to do.

You know, lawyers were considered below used car salesmen at one time in public esteem, and the legal community had to clean itself up. It had to work with ideas like grievance procedures to make sure that there was a feeling in the public eye that when a complaint was made against a lawyer that it would be treated fairly even though there was an internal procedure.

And it seems to me that if we start moving in that direction with respect to law enforcement through organizations like those that you all represent and others that you influence and have daily dealings with, that collectively, without passing a whole bunch of laws dealing with one subject or another, because I know that, you know, laws are made to be enforced by people who are willing to abide by the law. If a person is not willing to abide by the law, then all we are doing is providing an opportunity where we can catch them, and when we catch them, do something with them on the theory that that punishment serves as an example to others. I am not sure how well that works, but at least we get that person out of law enforcement and off the street.

But, if you have any thoughts in the future—I am sure my time is up because I have talked a great deal—if you would communicate with me thoughts on ways that we in the Congress in an inobtrusive way can be of assistance to you, because the work you are doing is really where the rubber meets the road. It is going to have to come from law enforcement, for law enforcement, by law enforcement, and it can't be dictated to by the Congress.

I appreciate your testimony, and I thank the chairman for giving me this time.

Mr. EDWARDS. Thank you, Mr. Washington.

The gentleman from Oregon, Mr. Kopetski.

Mr. KOPETSKI. Thank you, Mr. Chair.

Mr. Williams, I have a police training facility in my district, and I met with people involved with that, off the record. They are angry because of the Los Angeles situation and believe strongly that something should be done. And that is very frustrating to me because I am not sure what I can do. And I sit here and I have thought about this over the last few days, and it seems to me that the Federal Government shouldn't be providing extra money to Los Angeles at this point in terms of their police services and training because I don't think it is doing any good. Because I think their system, they have systemic problems and they have a leadership problem at the top, in my estimation, as well; and you are not going to really fix the problem inside until you get rid of the leader, number one, and change the system and the atmosphere that these officers are entering.

Now that is pretty harsh, I understand, and I want you to respond to that. But I am intrigued by this accreditation process. That, perhaps, what we ought to do, what we can do at the Federal level is provide incentives for accreditation, and that is, you get to apply for Federal, extra Federal funds, drug enforcement moneys, your officers get the privilege of going to the National Academy

down in Quantico if you are accredited and if you maintain that accreditation. I mean, it is just outrageous that the NCAA can sanction and put colleges in this Nation on probation for 5 years, but we at the Federal level can't put police departments such as Los Angeles on probation for 5 years for these kinds of activities.

But I think you provide the way that we can. It is not mandatory accreditation, you know, you don't have to sign up. But if you do, you get some benefits. And when you sign up and you run afoul, we are going to punish you. We are going to punish you by withdrawing your privileges.

It is harsh. But I think that you hear about Philadelphia and you hear about Los Angeles and these other places in the country, and what we are doing in the court system through civil rights actions, it ain't working. So we have got to try a new approach.

Mr. WILLIAMS. Accreditation is a part of the answer, I believe. It is an excellent program that, as I said earlier, if it is good enough for our hospitals and our educational institutions throughout the country, it ought to be good enough for our police institutions throughout the country.

However, that is only part of the answer. The philosophy, the values of an organization that emanate from the leader are so incredibly important. The issue of race and breaking down barriers, and having candid, open, frank conversations with all ethnic groups in our communities are so important, so that the police become part of the community instead of apart from the community is also incredibly important.

Mr. KOPETSKI. Well, I guess, you know, then it is sort of like the fellow from Japan who was head of the airlines there when they had the airline crash. He was embarrassed that they had the crash, these people died, and so he resigned. That is what should happen down in Los Angeles. The guy ought to be embarrassed and he ought to resign. That this happened in his force because it was a failure on his part, you see.

I want you to respond to that. What do you think of that?

Mr. WILLIAMS. Well, in my judgment, as in any organization the leader, the person that is the head of the organization sets the tone, establishes the philosophy, perpetuates the philosophy, is responsible for the values that guide and direct that organization, is responsible for the focus of the organization. I believe, and I think most of my colleagues in PERF believe that the philosophy of policing, this legalistic style of policing that is the predominate style of policing in America today must change. We need to have a community policing, problem-oriented style of policing where we look at solving problems instead of solving symptoms to problems, which is what we generally do.

Mr. KOPETSKI. Mr. Hampton, I want your response as well.

Mr. HAMPTON. If I may respond, I am not a chief but involved in working for the people in my community, of which immediately there are about 65,000 people in my precinct, and then I work for all of the citizens of the metropolitan area. I think the key thing is, and if I could echo on what Jerry said, is that, number one, you have to think what you are doing is wrong. Daryl Gates and the Los Angeles Police Department, and a lot of other police depart-

ments in this country that are on the opposite side of the coin that Jerry is talking about, don't think that they are wrong.

It goes to the issue also of the war on drugs. If you look at it as if it is a war, then somehow or another you only want to put together a military response. It doesn't somehow or another hold the other institutions in society responsible for the other components that lead or give way to an environment where America has a drug problem.

If you look at it from a militaristic approach, American doesn't have a drug problem. It is a military problem, so we are going to send all the military after the problem. So then the police respond in a military way. Then, consequently, Daryl Gates and those who support that sort of approach and strategy don't think that they are wrong, so they have nothing to apologize for.

And they have lost touch and reality with what is going on in their communities, and they continue to do that.

So I would say, number one, you would have to understand that he doesn't accept that he is wrong. And until he reaches that point, and I think the way he reaches that point is that ultimately the community has to rise up and knock him down and let him know that he serves the community in Los Angeles and he sets the tone for it. Furthermore, is that he makes our job as police professionals, and those like Jerry Williams and Darrel Stephens' job even more difficult because they continue to hold the old line, the traditional response, policing that hasn't done anything about addressing the problems of America.

Mr. KOPETSKI. But you see, Mr. Hampton, if there was an appeal to an accreditation board for the city of Los Angeles Police Department, and he had to go before them and to justify his actions, and the sanction is that city would lose money, then you get people's attention real fast in that city.

Mr. HAMPTON. I would totally agree with that.

Mr. KOPETSKI. Whether it is drug gang money, whether it is law enforcement training funds, all of it across the board.

Mr. HAMPTON. And I think the kind of pressure that the Congress can bring to bear in that environment would be enhancement to being accredited. One of the things that accreditation brings about is a value and a moral system that addresses the way you do things, not the end result. Because if you develop a strategy to do things right, the end result is right. And that is not the way traditional policing is designed today.

Mr. WILLIAMS. If I may just follow that up?

Mr. KOPETSKI. Yes.

Mr. WILLIAMS. I just happen to also be the current chairman of the National Commission on Law Enforcement Accreditation. One of the basic tenets of the accreditation process when it was developed was that the process itself is a voluntary process, and I would not want to think and I don't believe—

Mr. KOPETSKI. Is Los Angeles accredited today?

Mr. WILLIAMS. Los Angeles is not accredited.

Mr. KOPETSKI. Good. That gives you great credibility, let me tell you.

Mr. WILLIAMS. Of the 170 some departments that are accredited, the vast majority of them are in other parts of the country other

than California. I believe there are only three departments currently in California that are accredited.

But the process is a voluntary process, and I would hate to see anything done by Congress that would have an impact on the voluntary process from the standpoint of—we want people to become involved because they want to become involved in the process of accreditation.

Mr. KOPETSKI. Well, that would be very nice. But see, Los Angeles doesn't want to step up to the plate. They are not even entering the ball park. They must be afraid. I don't know what their reason is. I am sure they could give me a nice litany of reasons why they don't want to, but apparently they are afraid to do it is the bottom line. And somehow we have got to bring them to task. Because we are going to spend a lot of money in this Congress and future Congresses in trying to upgrade law enforcement in the city of Los Angeles, and I think it is a great tragedy to send Federal taxpayers' dollars from my district down there when I know they could use it a lot better, to a lot better purpose in my district than how they are spending it down in Los Angeles.

Mr. Chairman, thank you very much.

Mr. EDWARDS. Thank you, Mr. Kopetski.

It is poignant to think that if there hadn't been a camera there in Los Angeles that today we might not have known about what happened, we would not know that we have this problem in the United States to such a large degree. I might add that because of the incident in Los Angeles, because it was photographed, the subcommittee has received a lot of information and a lot of complaints. People travel for thousands of miles to come and talk to us about their own communities.

So what we are talking about is a code of silence. If it is not photographed, it never surfaces. Nobody knows about it. In the absence of the camera person, what are we going to do about the code of silence?

Mr. WILLIAMS. I believe that is changing. Slowly. I believe, however, that it is changing. Through organizations such as the Police Executive Research Forum and other organizations, the enlightened police administrator today is changing the philosophy of the organization and the values. The value that the code of silence was appropriate is changing.

It is not going to happen overnight, and I can't tell you that that doesn't exist to some degree in most police agencies. I can't tell you that it doesn't exist to some degree in my own agency. But I believe in the bottom of my soul that that is changing, at least in the majority of police departments who have established a philosophy that is in tune with our complex culture today and driven by values and a philosophy that is getting away from this legalistic style of policing.

Mr. EDWARDS. Do you know what some individual police officers in Los Angeles are saying? They started to say it last night and it was heard on public radio this morning. That because of the Rodney King investigation, because of the video tape and all that is going on with regard to punishment and so forth, that crime has increased in Los Angeles by 3 percent and all of their arrests are much more difficult now, especially in the minority community, be-

cause the people being arrested are so much more difficult to arrest as a result of the Rodney King episode.

Now this is paradoxical to me. Do you have any explanation why this should be reported in this way, either of you?

Mr. WILLIAMS. At this point I wouldn't, Mr. Chairman. I am interested in that and would want to pursue that from the standpoint of finding out more about the specifics of both the allegation and the comments to be able to comment appropriately about that. I feel uncomfortable in saying more than that at this point.

Mr. HAMPTON. Let me respond, and maybe take a parallel situation. I know in my police department in particular, and my district, say when an officer is shot, and even if the individual who shot the police officer is arrested, for some reason or another for about a month the police are angry, and they are angry at citizens. And their anger is manifested in their behavior as it relates to the treatment of the people that they have to arrest, even though the people that they arrest after the shooting and arrest took place had nothing to do with the primary arrest of the person who shot the police.

Somehow or another everything that happens after that for the 30- or 40-day period is a manifestation of the original act, and the police almost think that they have to somehow or another go back and get something that was lost as a result of the shooting, when the person who shot the police officer shot the police officer because of that immediate incident and didn't have anything to do with any of the things that happened after that.

And again, it goes to the values, the philosophy by which the police department operates, and that is why you have to do something other than, and I don't suggest that removing the chief is the answer, although that is where you start, and then you have to begin to dig deep to deal with the formal-informal policies and practices and other things, and you have to begin to set an example.

But I would suggest that that is one of the things that is happening in Los Angeles. Without being able to respond and not be there directly to the incident as a police officer who is out there, I mean, I have seen it happen a number of times. I have seen it happen just based on a police officer having a very rough time with a citizen, so from that point on for about 10 or 15 days every citizen he arrests somehow or another has to pay for the rough time that he took from the citizen he arrested 15 days ago. And that is the kind of person we don't need in law enforcement, but somehow or another that kind of person is the person that we see most of the time and that has the greatest influence on the new person that is coming through and just finished the training Academy.

That would be my response. Unfortunately, I see that happen an awful lot.

Mr. EDWARDS. Well, we have found that some of the police agencies, Federal and State and local, will say that we are not a racist organization, that we don't have racism, and yet it is there and they don't understand that it is there. They will say the same thing about treatment of women, sexism. That, you know, we treat the women fine. Talk to the women and they will say, "Oh, no, they don't. It is horrible here."

So how does PERF educate the departments? What do you recommend to get rid of racial epithets? Do you think the chief of police ought to outlaw racial epithets in the vocabulary of the police officers?

Mr. WILLIAMS. Yes, I do.

Mr. EDWARDS. I do too. It ought to be a matter for discipline.

Mr. WILLIAMS. I agree with that. And, Mr. Chairman, with regard to what PERF is doing about it, I think the first step, and it is something that has not gone on very much in the past, at least in my experiences in policing in the last 23 years, and that is the first step is we have got to sit down and talk openly and candidly about how we feel and how others feel, and develop dialogs both internally within our organizations and with the community. We are not going to solve any of these racially motivated problems until we develop initially the ability to sit down and talk with one another about it. I think that is incredibly important, and it has not occurred very often in the past.

Mr. EDWARDS. Thank you. I have no more questions.

Does Mr. Washington have a question?

Mr. WASHINGTON. I don't have a question. I just have an observation for the record.

I know we all intended to include it in our remarks, but I would just like to say for the record that when we speak of racism and racially charged incidents we also mean those in which a black police officer may perpetrate an offense upon a white citizen. I know we all intended that, but too often it comes across as though we are focusing in on the instances in which it just happens that a white police officer perpetrates a deed of misconduct upon a black citizen. But, in my view, it is no difference whether it is a black officer doing it to a black citizen, a white officer doing it to a white citizen, a Hispanic officer to a Hispanic citizen, or any combination thereof.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you. Ms. Hazeem.

Ms. HAZEEM. Thank you, Mr. Chairman.

Chief Williams, I think that the members of the subcommittee, I know Mr. Hyde would appreciate it if you would give us information that you have on how the accreditation works and what police departments are currently accredited and seeking accreditation, if that would be possible.

Mr. WILLIAMS. We can provide that for you. Yes.

Ms. HAZEEM. And I also would like to know, is the District of Columbia Police Department accredited by PERF?

Mr. HAMPTON. No, it is not.

Ms. HAZEEM. Maybe you can work something out there.

Mr. WILLIAMS. We would like to.

Mr. HAMPTON. Yes.

Mr. EDWARDS. Are you working on it?

Mr. HAMPTON. I have had conversations with our chief about it. He seems to be moving toward that and he is not indifferent to the accreditation process. He is involved in the process of bringing about a new set of values and philosophy of policing, cleaning the police department out and moving out those people who don't

agree and go along with a new progressive form of proactive policing, community policing; that is, problem-solving policing.

But I think he hasn't quite made up his mind about accreditation. But I know he is aware of it, and he has talked to me about it too.

Mr. EDWARDS. Well, when I was arrested at a demonstration by the police department they were very gentle and they put the cuffs on me very gently. One of the officers as they took me to jail stopped and bought me a hamburger.

Mr. HAMPTON. I think Chief Williams would agree that the more contemporary police departments nowadays find value in working along with those who would stage demonstrations because it just makes sense to have a smooth demonstration. And most of the time the issue is not policing, the issue is whatever it is that they are demonstrating against.

Mr. EDWARDS. Well, thank you. If there is no more questions, we thank the witnesses for fine testimony that will be very helpful to the subcommittee.

[Whereupon, at 12:39 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARINGS



U.S. Department of Justice

Community Relations Service

Office of the Director

Washington, D.C. 20530

Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
U.S. House of Representatives
2307 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

During the March 20, 1991, Committee Hearing questions were asked about the extent of the Community Relations Service's (CRS') involvement in responding to recent excessive use of force against Rodney King by members of the Los Angeles Police Department (LAPD). I would like to take this opportunity to provide the following information on our activities in Los Angeles, and to correct any impression that we have not been active regarding this incident.

In addition to this information, we are also including background information on the general approach and casework trends of CRS in responding to racial conflict resulting from perceived or actual excessive use of force by the police.

If you have any questions or need additional information about this matter, please let me know. I can be reached at 301-492-5929. I look forward to seeing you soon at CRS' Authorization Hearing.

Sincerely,

Grace Flores Hughes
Grace Flores Hughes
Director

Enclosure

cc: Congressman Henry Hyde

I. CRS CASE WORK IN LOS ANGELES

During the period October 1, 1984, through February 28, 1991, CRS has addressed 28 community-wide racial conflicts involving allegations of excessive use of force by law enforcement agencies in Los Angeles. As a result of CRS' assistance in these conflicts, the immediate concerns were resolved and tensions lessened.

A. CRS Conciliation Efforts After the March 3, 1991 Incident

The most recent incident involving racial conflict, resulting from the beating of a Black male by officers of the Los Angeles Police Department on March 3, 1991, was reported through the CRS alert process by the CRS San Francisco Office soon after it occurred and an Assessment was begun on March 6, 1991. During the Assessment, Regional Director Julian Klugman and Senior Conciliation Specialist Vermont McKinney conducted a series of interviews and attended meetings with a broad spectrum of community leaders and local, state and federal officials to determine the level and extent of racial tension in the city, the issues in dispute among the parties, positions being taken by the parties and to devise proposals for the resolution of the conflicts. Among those interviewed or met with during the Assessment were:

Community Leaders

- 1) Jose De Sosa, Calif. State President of the National Association of the Advancement of Colored People (NAACP)
- 2) Joe Duff, Los Angeles Branch President, NAACP
- 3) Tony Stewart, Altadena Branch President, NAACP
- 4) Jarone Johnson, Regional Director, NAACP

City and Police Officials

- 1) William Elkins, Special Assistant to the Mayor, Los Angeles
- 2) Robert Vernon, Assistant Chief, LAPD
- 3) Bernard Parks, Deputy Chief, Central Bureau, LAPD
- 4) Jerry Conners, Commander, LAPD
- 5) Raymond Johnson, Chief, Inglewood PD and Representative of the LA County Chiefs Association

State Officials

- 1) Diane Watson, State Senator convened a community forum on March 9, 1991, attended by Conciliator McKinney and approximately 300 Black community leaders and elected officials.

Federal Officials

- 1) Greg Mercier, Supervisory Special Agent, FBI Los Angeles
- 2) Carlos Aguirre, Special Agent, FBI, Los Angeles
- 3) Lourdes Baird, U.S. Attorney

As the Assessment continued, CRS provided technical assistance in conducting and policing peaceful demonstrations to the NAACP and the LAPD. Demonstrations by the NAACP against the police department began on March 9, 1991, and have continued throughout the city with no incidents or arrests.

B. Future Actions Proposed for Los Angeles

The major objective of the CRS conciliation efforts will be to resolve the conflicts over as many of the issues as possible in debate. These efforts will include:

- 1) Facilitating on-going dialogues between the minority leadership and police officials;
- 2) Providing technical assistance to the NAACP on the establishment and implementation of an independent civilian review process for police actions; and
- 3) Convening of a two day meeting, during April, in Los Angeles, of law enforcement officials, minority leadership, and elected officials from throughout Los Angeles County. During the meeting, CRS will work to develop agreements between all of the parties involved on ways to proceed together to improve police/community relations in Los Angeles. These parties will include the Mayor's Office, the Los Angeles County Chiefs Association, the California Peace Officers Association, and the LAPD. Efforts are currently underway to obtain commitments from minority groups to participate. As of this date, due to sensitivities of the issues, several of the parties are requesting that no media attention be brought to their ongoing discussions.

**II. CRS EXCESSIVE USE OF FORCE
CASEWORK - NATION-WIDE****a. BACKGROUND**

Any incident involving the use of force by police against a minority individual establishes the potential for the incident to escalate to the level of community-wide conflict and violence. This paper draws upon the Community Relations Service's (CRS')

experience in attempting to answer the question of why some incidents escalate to community-wide conflict, and from that derives methods that may prevent such escalation and the attendant potential for violence.

Based on CRS' experience over the past quarter century, minority community reactions to use of force by police may occur when the level of force applied is perceived as being more than what is necessary for the given purpose. The following are examples of incidents which have enormous potential for escalating to the level of community-wide violent reaction to the use of force by police: (1) the victim dies as a result of police treatment while in custody or while handcuffed; (2) the victim is well-known or a hero in the minority community; or (3) the victim is mentally ill or otherwise disabled. The community complaint is against a perceived absence of police professionalism and a lack of fairness. There is a critically important constant at work here, and that constant is the deep belief that the lack of fairness is the result of endemic racism.

Given that the above situations are explosive at best, it is also critically important that a thoughtful initial and continued response be given by the local law enforcement and public officials. The public response of police and other officials can intensify community reaction if that response feeds into the perceived lack of fairness. When the initial investigation is done by an internal unit of the police department, or when the officer(s) has a historic pattern of involvement in use of force incidents and no interim action has been taken, such as removing him/her from street duty, there is a built-in structural question regarding potential conflict of interest. It is an undeniable fact that public statements by officials after excessive use of force incidents can dramatically diminish, or increase, the community perception of fairness and hope for official responsiveness.

Another factor contributing to community-wide unrest is the relationship of one incident to past incidents. The official response to the incident, from police investigation through potential criminal or civil, local or federal, litigation, generally focuses on only that incident and the parties involved in that specific incident. Services provided by CRS in response to excessive use of force incidents are targeted to the broader conflict and the long-term relationship between the police department and the community it serves.

CRS assistance is an art form, not a science, and as such is quite complicated, regarding sensitivities on both sides, timing and intervention techniques. CRS meets with all parties to the conflict, assesses their concerns and interests, and provides assistance as they identify and implement actions to resolve the

current conflict and prevent future incidents. CRS can act as the catalyst for calm by diffusing the situations. If the minority community is involved in demonstrations or civil violence, CRS first helps community leaders and police develop and deploy crisis intervention teams and rumor control mechanisms. Once the immediate crisis has been addressed, CRS helps the parties explore activities that may be undertaken to build better police-community relations, reduce the potential for future excessive use of force incidents, and improve the response mechanisms should another incident occur. The following are examples of the assistance that CRS has provided and coordinated relative to the resolution of racial or ethnic conflict. CRS has provided:

- 1) Training on legal, professional, and social topics such as municipal liability, civil rights, crowd control, use of force continuum, communications and interaction skills, cultural awareness and diversity;
- 2) Assessments of police policy and practices, surveys of police compared to community perceptions, and assessments of racial tensions;
- 3) Technical Assistance by sharing models from similar sized departments and procedures developed for addressing the disabled and mentally ill populations; and
- 4) Conciliation/Mediation resulting in agreements that call for modifications, such as civilian review boards, police-community task forces or advisory boards, human relations commissions, mutual aid pacts between departments (campus-city, tribal-city, as well as city-city and county-city), revisions of hiring, promotion, and assignment policies, and a county-wide complaint process to serve a group of small departments.

CRS can also provide similar assistance to police departments and communities who are interested in taking actions to prevent racial conflict that may result from excessive use of force incidents.

Along with such well known cases as the GreekFest/Labor Day Riots in Virginia Beach and the Officer Lozano trial/riots in Miami, other noted situations where the Community Relations Service has had a direct impact on lessening racial tension include:

- 1) Dwight Gooden - Tampa, Florida Police Case: In December, 1986, after the stopping of a car driven by Dwight Gooden and his reported beating by police officers, CRS initiated several meetings with the mayor, police officers, and black community leaders, recommending training programs for police that included racial

sensitivity, cross cultural awareness, and crowd control in a manner that did not incite racial confrontation. Also as a result of CRS intervention, a crisis intervention team was established and trained, a tension measuring mechanism was put in place and a human relations commission was established.

Tampa Mayor Sandy Freedman and Public Safety Director Robert L. Smith, as well as leaders in the minority community, publicly expressed satisfaction with CRS assistance in this case. CRS believes it speaks well for the long-lasting effects of CRS work that Mayor Freedman and Chief Smith have institutionalized the crisis intervention team and a variety of other recommended changes in the city's police department operations that resulted from the agreements conciliated by CRS. These changes continue in operation to this date.

- 2) Christmas 1987 Beating of a Black Man by Sabine County, Texas Sheriff's Deputies: On Christmas Day, 1987, a Black man was beaten in the Sabine County Jail by two Sabine County, Texas Sheriff's deputies and the Hemphill, Texas Police Chief. In the following months, CRS a) assisted city officials in formulating the department's first ever operational policies; b) provided a seminar on civil rights/civil liability for regional city/county officials and police departments; and c) helped the new NAACP chapter and White community leaders in structuring a bi-racial community group that subsequently worked on improving race relations.

Hemphill City and Sabine County officials welcomed CRS assistance and expressed appreciation for the extent to which CRS intervention reduced the racial turmoil that their jurisdictions were experiencing for the first time in recent history.

- 3) Teaneck, New Jersey Riots: In April, 1990, after a Black youth was fatally shot by a White officer from the Teaneck Police Department, a riot ensued as a result of the heightened racial tensions. As a result of CRS intervention, lines of communication were established among leaders of local Black groups and the police and city officials, leading to decreased tension. New police practices have been established and additional police training has been requested to avoid future racial conflicts.

The New Jersey State Attorney General, who had also requested CRS assistance in this case, expressed appreciation for CRS intervention and has, as a result, called for CRS help in a number of incidents since.

**b. ALERTS OF RACIAL CONFLICT RESULTING FROM
EXCESSIVE USE OF FORCE RECORDED BY CRS**

**Nation-wide
FY 1988-FY 1990**

For the period FY 1988-FY 1990, CRS' recorded alerts indicate an increasing trend in the number of incidents of racial and ethnic community conflict involving excessive use of force.

In its alerts system, CRS records incidents of community conflict arising out of discriminatory practices based on race, color, and national origin. The number of such alerts that involved excessive use of force totaled 165 nation-wide in FY 1990, compared to the 166 such alerts recorded in FY 1989. However, the number of alerts recorded in FY 1990 represents a 37.5% increase over the FY 1988 level of 120. As of March 15, 1991, CRS had recorded 64 incidents of excessive use of force. (Note: These figures represent alerts only, not cases conducted by CRS. In FY 1988, CRS recorded 120 alerts, conducted 118 assessments, and worked on 74 cases involving excessive use of force. In FY 1989, CRS recorded 166 alerts, conducted 102 assessments, and worked on 56 cases involving excessive use of force. In FY 1990 CRS recorded 165 alerts, conducted 139 assessments, and worked on 89 cases involving excessive use of force.)

It should be noted that a disproportionate number of alerted incidents of excessive use of force occur in a few regions. Together, Regions IX (San Francisco), VI (Dallas), and VII (Kansas City) accounted for 42.4% of all such incidents recorded by CRS in FY 1990, with 25, 23, and 22 such incidents, respectively.

It is notable that California had the highest number of alerts of any state in the Country with 20 in FY 1990. This level was unchanged from FY 1989, and 25% higher than the FY 1988 level. The second highest number of alerts recorded in any state during FY 1990 occurred in Texas; the third highest number occurred in New York and Missouri.

The sharpest growth in the number of alerts recorded occurred in Region V (Chicago), where the number increased from 4 in FY 1988 to 19 in FY 1990. Within this region, it is notable that in FY 1988, no alerts were recorded in Michigan, Illinois, or Wisconsin. Yet, in FY 1990, the alerts recorded in each of these states were 6, 5, and 4, respectively.

**Analysis of Racial Involvement in
Excessive Use of Force Alerts**

According to CRS' records, the majority of people involved in incidents of excessive use of force are Black and Hispanic.

The number of alerts of excessive use of force in which race of the disputant was identified as Black increased from 71 in FY 1988, to 111 in FY 1989, and then declined nominally to 109 in FY 1990. However, alerts where Blacks were involved increased from 50.4% in FY 1988, to 53.3% in FY 1989, and to 55.9% in FY 1990.

The number of alerts in which ethnicity of the disputant was identified as Hispanic increased from 34 in FY 1988, to 38 in FY 1989, and 39 in FY 1990. Alerts involving Hispanics decreased from 24.1% in FY 1988, to 18.3% in FY 1989, but increased to 20.0% in FY 1990.

The number of alerts in which ethnicity of the disputant was identified as Native American decreased from 6 in FY 1988, to 5 in FY 1989, but increased sharply to 11 in FY 1990. Most of these alerts occurred in Region VI (Dallas). The number of incidents in which ethnicity of the disputant was identified as Asian increased from 3 in FY 1988, to 4 in FY 1989, and held constant in FY 1990. Most of these alerts occurred in Region V (Chicago).



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 22, 1991

Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Dear Mr. Chairman:

Please find enclosed answers to the questions you forwarded for the consideration of Assistant Attorney General John Dunne on April 15, 1991.

We hope the information is of assistance to the Subcommittee.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Lee Rawls".

W. Lee Rawls
Assistant Attorney General

Enclosures

FOLLOW UP QUESTIONS
TO MARCH 20, 1991 TESTIMONY

1. The Justice Department's "backstop" concept depends on there being an effective internal affairs system at the local level. How do you determine if a police department's internal review system is effective?

- What system do you have for tracking the disposition of complaints of police brutality received by the Department?

The Civil Rights Division does not have the authority or the resources to review every local police department's internal affairs system. The Civil Rights Division obtains and reviews copies of internal affairs reports when they are obtained as part of the FBI's investigation of a particular incident. The information in these reports is considered, along with the other available evidence, in evaluating whether federal prosecution of the particular incident is warranted, in light of whatever local administrative or prosecution action may already have been taken.

The Criminal Section maintains a computerized docket system which is used to track the approximate 8,000 complaints that are reported annually from the date they are received through final resolution. The system notes whether FBI investigations are instituted and/or a response sent to the complainant, and what other action may be taken -- i.e. whether the matter is closed without prosecution, taken to grand jury and charges filed. The system is updated over the course of an individual investigation

to track all incoming and outgoing letters, memoranda and reports, until the matter is finally closed.

2. Do you have a system for identifying trends in police practices and tactics that generate excessive force complaints?

-- Has there been an increase in complaints about stun guns?

-- Has there been an increase in complaints regarding pain holds?

The Civil Rights Division does not have a system for identifying trends in police practices and tactics. Thus we can not provide an answer about whether there has been an increase in complaints about stun guns. We can advise that since 1989 there have been numerous complaints made by Operation Rescue demonstrators throughout the country about pain compliance techniques used by police against them. Prior to 1989, we received few, if any, complaints about pain compliance measures.

3. What procedures do you have for notifying victims of the handling of their complaints?

-- Are victims (complainants) informed of the status of their complaints and, if so, how frequently?

-- Are victims (complainants) informed of the disposition of the complaint? Are subjects informed?

Approximately 8,000 complaints or inquiries are received by the Criminal Section of the Division each year. Approximately 3,000 of these are ultimately investigated by the FBI. With regard to those matters investigated by the FBI that involve

complaints of official misconduct, the Division has implemented a notification policy. Pursuant to this policy, victims, subjects and heads of the involved law enforcement agency are notified when an investigation has been closed without federal prosecutive action. These letters are prepared in the Civil Rights Division and since 1984, the Division has mailed approximately 38,000 of these letters. The Division also responds to specific inquiries from victims about the status of their complaints prior to disposition. However, the only systematic notification process is the one described above that operates upon closure of an official misconduct investigation.

4. Should local police agencies that receive federal assistance be required to incorporate in their training programs certain minimum elements on the use of force?

The Civil Rights Division does not evaluate police practices, except to identify and prosecute conduct that violates federal law. We are not informed about the content of current training programs and we cannot make recommendations about their content.

It should be noted that the Justice Department currently provides training to local law enforcement agencies in training sessions held at the FBI's National Academy in Quantico, Virginia. Both FBI and Civil Rights Division personnel participate in this training. Local law enforcement officers attending the National Academy acquire some understanding of what

behavior is considered a potential violation of the federal criminal civil rights laws pertaining to official misconduct.

5. What is the Civil Rights Division doing about alleged acts of brutality and misconduct by the U.S. Border Patrol and local police near the Mexican/U.S. border? Is there any kind of policy with respect to the investigation of such abuses?

In 1987, the Civil Rights Division and the Immigration and Naturalization Service instituted procedures that provide for the immediate referral and expeditious review of incidents along our borders that involve allegations of excessive or unnecessary use of force by Border Patrol or other federal law enforcement agents. When a complaint of abuse is made against a Border Patrol agent, it is immediately sent by telefax to the Criminal Section of the Division where it is assigned to an attorney for review. The attorney will either request a criminal investigation by the Federal Bureau of Investigation or will decline criminal prosecution and refer the matter to the Office of the Inspector General which will in turn refer the matter to INS for appropriate administrative action. If a criminal investigation of the incident is requested, the progress of that investigation is reviewed carefully and efforts are made to expedite it.

Since 1982, 14 cases have been filed involving the abuse of Mexican nationals by state and federal law enforcement agents. Of these 14 cases, 13 have resulted in convictions. Several slavery and involuntary servitude cases have also been prosecuted

where Mexican nationals were the victims. It should be further noted that the Civil Rights Division and the Department of State communicate regularly in an effort to keep the Mexican government informed of action being taken in matters involving Mexican nationals and U.S. law enforcement officers.

6. In answering why the Civil Rights Division staff hasn't grown in recent years, you testified that implementing the Hate Crime Statistics Act has involved more DOJ personnel. Are you robbing Peter to pay Paul? And how does DOJ plan to use hate crimes statistics for civil rights enforcement?

The Hate Crime Statistics Act, which requires the FBI to collect statistics for five years about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, is a new and potentially invaluable tool to assist federal, state and local governments in the eradication of hate crimes. Local authorities are responsible for reporting these incidents to the FBI. The quality and the ultimate usefulness of the statistical information collected will depend upon individual officers' willingness and ability to identify and to collect the appropriate information.

In this regard, the FBI has been conducting training sessions in different regions of the country which have been well attended by individual state training officers. The FBI is now planning to have additional training programs for law enforcement agencies in each of 315 municipalities or counties of 100,000 persons or more. As more hate crimes are reported and in fact

identified as motivated by bias, there is the potential for a substantial increase in the number of investigations conducted by the FBI for subsequent review by the Civil Rights Division for prosecution. However, collection of the data just began in January of this year so it is too early to know with any certainty how many new complaints may be generated by implementation of the reporting provisions of the Act.

To date, implementation of the Act has primarily utilized the resources of the FBI. However, once the information is available, the Criminal Section of the Civil Rights Division will review it on a regular basis to see how the numbers compare to the number of hate crime incidents that have been reported to us and that have been investigated by the FBI. If there is a significant disparity, the Civil Rights Division will work with the FBI field offices to develop measures to ensure a more effective reporting to federal authorities of those hate crimes where there may be federal jurisdiction. We will also see that the data collected is shared with other Department of Justice entities, such as the Community Relations Service, so they can target their liaison and mediation efforts in those communities that appear to have a particular problem.

7. How many U.S. Attorney's offices have civil rights units?
How many AUSA's are assigned to civil rights units?

At least two U.S. Attorney's offices -- the Southern District of New York and the Southern District of Texas -- have established civil rights units consisting of at least one

Assistant U.S. Attorney. In addition, in many U.S. Attorney's offices there are Assistant U.S. Attorneys specially designated to handle civil rights cases. We do not, however, keep statistics on the number of Assistants assigned to civil rights units or who are specially designated.

8. What is the continuing validity of the policy that requires prior headquarters approval of civil-rights prosecutions?

The Civil Rights Division and U.S. Attorneys have concurrent jurisdiction to handle criminal civil rights matters; these prosecutions can be handled jointly as well as separately. U.S. Attorneys have the authority to pursue cases on their own and they do so. However, the Civil Rights Division provides a national perspective and uniform standards for enforcement of statutes that are not always clear in application. U.S. Attorneys can proceed with a grand jury investigation of any incident after notifying the Division of their intent to do so. The only cases which require the authorization of the Civil Rights Division are Section 241 conspiracy cases, Section 242 cases resulting in death, and violations of 18 U.S.C. Section 245 [interference with federally protected rights] which by statute require certification by the Attorney General or Deputy Attorney General.

9. How many civil rights cases did the Department decline to prosecute, where the U.S. Attorney had recommended prosecution for 1985 - 1990?

The Division does not keep statistics on such cases, nor does it keep statistics on the number of cases where the Division sought to proceed over objections of the local U.S. Attorney. Such instances are uncommon, however and, as a general matter, after the grand jury has considered all the evidence, both offices tend to agree on the final prosecutive action.

10. Please provide a brief description of all civil rights indictments and their disposition, 1985 - 1990.

The attached list denotes all federal criminal civil rights prosecutions that were brought nationwide for fiscal years 1985-90 (October, 1984 through September, 1990). The name of the case, the district and date of the filing, the nature of the case and the statutes violated, and the outcome are shown for each case.

CRIMINAL SECTION
CASES FILED -- FY 1985

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF PAGES.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Brockway	10/4/84, Indictment	1	E.D. Tx.	242	Law Enforcement, Assault	1 conviction
U.S. v. Huff, et al.	10/30/84, Indictment	5	E.D. Tx.	241, 242, 2	Law Enforcement, Assault	3 pleas 2 convictions
U.S. v. Douglas, et al.	10/30/84, Indictment	2	E.D. Tx.	241, 242, 2	Law Enforcement, Assault	2 pleas
U.S. v. White, et al.	10/31/84, Indictment	4	E.D. Tx.	241, 2, 3631	Racial Violence, Witness Intimidation	2 pleas 2 convictions
U.S. v. Bronson	12/12/84, Indictment	1	E.D. Fla.	242	Law Enforcement, Assault	1 conviction
U.S. v. Labrea, et al.	12/12/84, Indictment	5	D. P.R.	241, 242, 2	Law Enforcement, Death	5 convictions
U.S. v. McCoy	12/17/84, Information	2	E.D. Va.	402, 2000(h)	Racial Violence, public accommodations	1 plea 1 pretrial dismissal
U.S. v. Catanese, et al.	1/23/85, Indictment	2	S.D. Fla.	242, 113, 1801, 1803	Law Enforcement, Assault, corrections	1 plea 1 pretrial dismissal
U.S. v. Gore	1/22/85, Indictment	1	E.D. Ark.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Worthy	1/22/85, Indictment	1	M.D. Ala.	242	Law Enforcement, Assault	1 conviction
U.S. v. Worthy and Holland	1/22/85, Indictment	2	M.D. Ala.	242, 2	Law Enforcement, Assault	2 acquittals
U.S. v. Hamby, et al.	1/29/85, Indictment	2	M.D. Tx.	1341, 2, 242, 241	Law Enforcement, Assault	1 acquittal 1 conviction

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF REPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Baden	2/15/85, Indictment	2	E.D. La.	242	Law Enforcement, Assault	2 acquittals
U.S. v. Garner, et al.	2/20/85, Information	3	N.D. Ala.	241, 842(h)	Racial Violence	3 pleas
U.S. v. Matlock, et al.	2/21/85, Indictment	3	E.D. Tx.	241, 242, 2	Law Enforcement, Shooting	3 acquittals
U.S. v. Murphy	2/27/85, Indictment	1	E.D. Tx.	242, 1512	Law Enforcement, Shooting	1 plea
U.S. v. Patterson, et al.	3/26/85, Indictment	2	S.D. Tx.	242	Law Enforcement, Shooting, False Charges	2 convictions
U.S. v. Cribbs, et al.	3/28/85, Indictment	3	W.D. Tx.	241, 242	Law Enforcement, Assault	3 pleas
U.S. v. Dearmon	4/19/85, Indictment	1	S.D. Ms.	242	Law Enforcement, Assault	1 plea
U.S. v. Walker	4/25/85, Indictment	4	E.D. La.	242, 1512	Law Enforcement, Assault, False Arrest	4 convictions
U.S. v. Bronk	5/1/85, Indictment	5	W.D. Wis.	371, 2, 245(b)(2)(E)	Racial Violence	5 acquittals
U.S. v. Felix-Cruz	5/1/85, Information	1	D. P.R.	3	Law Enforcement, Shooting	1 plea
U.S. v. Fernandez-Delgado	5/1/85, Information	1	D. P.R.	242	Law Enforcement, Shooting	1 plea
U.S. v. Novark	5/21/85, Indictment	1	S.D. Tx.	242	Law Enforcement, Coerced Confession	1 acquittal
U.S. v. Taylor	5/22/85, Indictment	1	W.D. La.	1001	False Statements	1 conviction
U.S. v. Coleman, et al.	5/29/85, Indictment	3	E.D. Pa.	241, 1503, 2	Witness Intimidation	1 conviction 2 hung juries

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DNFTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Fraley	6/5/85, Information	1	M.D. Ala.	242	Law Enforcement, Assault	1 plea
U.S. v. Lee and Russell	6/17/85, Indictment	2	S.D. Ind.	245(b)(4)(A), 245(b)(2)(F)	Racial Violence	1 conviction 1 acquittal
U.S. v. Fornic	6/20/85, Indictment	1	N.D. Ill.	844, 3631, 5861	Racial Violence	1 plea
U.S. v. Peppers, et al.	6/20/85, Indictment	5	N.D. Ill.	241, 242, 1512	Law Enforcement, Assault	4 convictions 1 acquittal
U.S. v. Raines	6/20/85, Indictment	1	N.D. Ill.	242	Law Enforcement, Shooting	1 acquittal
U.S. v. Lopez, et al.	6/25/85, Indictment	3	D.P.R.	242, 3	Law Enforcement, Shooting	2 convictions 1 plea
U.S. v. Gonzalez	6/25/85, Information	1	D.P.R.	4	Law Enforcement, Shooting	1 plea
U.S. v. Stoner	7/10/85, Information	1	M.D. Ala.	245(b)(5)	Racial Violence, Cross Burning	1 plea
U.S. v. John Doe (juvenile)	7/12/85, Information	1	W.D. N.C.	5032, 241, 3631	Racial Violence, Cross Burning	1 conviction
U.S. v. Rector	7/15/85, Information	1	W.D. N.C.	241	Racial Violence, Cross Burning	1 plea
U.S. v. Lawson, et al.	7/15/85, Indictment	6	S.D. Tx.	241, 242	Law Enforcement, Assault	6 convictions
U.S. v. Jackson	7/16/85, Indictment	1	E.D. Tx.	241, 242, 844 1510	Law Enforcement, Assault	1 plea
U.S. v. Hackney and Seal	7/16/85, Indictment	2	S.D. Tx.	242	Law Enforcement, Assault	2 acquittals
U.S. v. Ragland, et al.	7/23/85, Indictment	2	N.D. Ala.	2, 242	Law Enforcement, Assault	1 conviction 1 acquittal

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF REFS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
*U.S. v. Sassoon and Sassoon	7/23/85, Information	2	C.D. Ca.	1324(a)(1)	Involuntary Servitude	2 pleas
U.S. v. Messerlian, et al.	7/25/85, Indictment	4	D. N.J.	242, 371, 1503 1623	Law Enforcement, Assault Death Resulting	2 convictions 2 acquittals
*U.S. v. Judah	7/25/85, Information	1	C.D. Ca.	1324(a)(1)	Involuntary Servitude	1 plea
*U.S. v. Aslan	7/30/85, Information	1	C.D. Ca.	1325, 2	Involuntary Servitude	1 plea
U.S. v. Kimes and Kimes	8/8/85, Indictment	2	D. Nv.	371, 1584 1324(a)(2)	Involuntary Servitude	1 plea 1 conviction
U.S. v. Eidson	8/19/85, Information	1	W.D. N.C.	3631	Racial Violence, Cross Burning	1 plea
U.S. v. Reisinger, et al.	8/22/85, Indictment	3	W.D. Pa.	1201, 1584	Involuntary Servitude	3 convictions
U.S. v. Suits, et al.	9/23/85, Indictment	9	W.D. N.C.	241, 1623, 2 3631(b)(1)	Racial Violence, Cross Burnings Shootings	6 pleas 3 charged in Sarp, et al.

* Arose from U.S. v. MURPHY, et al.

CRIMINAL SECTION
CASES FILED -- FY 1986

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF CRIME.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Swanson	10/1/85, Indictment	1	W.D. Mo.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Cooke, et al.	10/8/85, Indictment	7	M.D. Ala.	242, 1623	Law Enforcement, Assault	7 acquittals
U.S. v. Mackiewicz	11/7/85, Indictment	1	E.D. La.	242, 1512	Law Enforcement, Assault	1 acquittal
U.S. v. Scalia	11/7/85, Indictment	1	E.D. La.	242	Law Enforcement, Assault	Pre-trial diversion
U.S. v. Saisan	11/7/85, Indictment	1	E.D. La.	242	Law Enforcement, Assault	Pre-trial diversion
U.S. v. Procter, et al.	11/8/85, Indictment	3	D. Md.	241, 1512, 1519, 924(e)	Witness Intimidation, Death	3 convictions
U.S. v. Gutschow	11/15/85, Indictment	1	D. Neb.	242	Law Enforcement, Assault	1 acquittal
U.S. v. McCafferty	11/19/86, Indictment	1	W.D. Pa.	241, 1201, 1584	Involuntary Servitude, Kidnapping	1 acquittal
U.S. v. Lewis, et al.	11/25/85, Indictment	6	W.D. Mich.	241, 1584	Involuntary Servitude Death	7 convictions 1 plea
U.S. v. Gilbert	11/27/85, Information	1	D. Idaho	3631(e)	Racial Violence, Housing	1 conviction
U.S. v. Pansardi-Alvarez, et al.	11/27/85, Indictment 2/14/86, Superseding	7	D. P.R.	241, 1513 924(e)	Witness Intimidation, Death	7 pleas

CASE NAME	DATE	NO. OF DEPTS.	DISTRICT	STATUTE	TYPE	DISPOSITION
U.S. v. Gilbert	12/11/85, Indictment	1*	D. Idaho	3631(b)	Racial Violence, Housing	1 conviction
U.S. v. Ellis	12/19/85, Indictment	1	W.D. Mo.	242	Law Enforcement, Assault	1 conviction
U.S. v. Johnson	1/6/86, Indictment	1	S.D. N.Y.	242, 7, 113	Law Enforcement, Sexual Assault	1 acquittal
U.S. v. Karp, et al.	1/7/86, Indictment	12**	W.D. S.C.	241, 371, 1623 3631(b)(1)	Racial Violence, KKK Cross Burnings	4 pleas 6 convictions 2 acquittals
U.S. v. Lopez-Ardine, et al.	1/16/86, Indictment	3	D. P.R.	241, 242	Law Enforcement, Death	3 convictions
U.S. v. Denny	1/22/86, Indictment	1	D. Ar.	242, 113(c), 1153	Law Enforcement, Assault	1 conviction
U.S. v. Kimes & Kimes	1/23/86, Superseding Indictment	2	D. Nevada	751(a), 3, 371, 1584, 8 USC 1324(a)(2)	Involuntary Servitude	1 conviction
U.S. v. Iyer, et al.	1/30/86, Indictment	3	E.D.Tx.	241, 242	Dept. of Mental Health, Assault	5 convictions
U.S. v. Stewart, et al.	2/6/86, Indictment	3	E.D. Penn.	241, 844(F)	Housing Intimidation	2 pleas 1 conviction
U.S. v. Juvenile Male	2/6/86, Information	1	E.D. Penn.	5031 to violate 241 and 844(F)	Housing Intimidation	1 conviction
U.S. v. O'Connor	2/20/86, Indictment	1	S.D. Ill.	242	Law Enforcement, Assault	1 acquittal

* Defendant Gilbert was also charged on 11/27/85 by information.

** Includes 3 defendants who were initially charged in 9/85 and dismissed in 12/85.

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF REPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Wallace, et al.	4/25/86, Indictment	13	S.D. Tx.	241, 242,	Law Enforcement, Assault	5 pleas 2 dismissals 6 pretrial diversion
U.S. v. Byrd	4/25/86, Indictment	1	S.D. Tx.	1623	Law Enforcement, Perjury	1 conviction
U.S. v. Jarvis, et al.	4/30/86, Indictment	3	S.D. Cal.	242, 371, 1001, 1341	Law Enforcement, Assault	3 dismissals
U.S. v. Haskins	5/7/86, Indictment	1	U.S. Ohio.	242	Law Enforcement, Assault	1 acquittal
U.S. v. White	5/16/86, Information	1	H.D. Miss.	242	Wiretapping	1 plea
U.S. v. Quarles	5/16/86, Information	1	H.D. Miss.	242	Wiretapping	1 plea
U.S. v. Mansari	5/27/86, Indictment	1	H.D. Ill.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Hinton, et al.	5/28/86, Indictment	6	H.D. N.C.	241, 242, 371, 1520, 1623	Law Enforcement, Assault	4 pleas 2 convictions
U.S. v. Lewis	5/29/86, Information	1	H.D. N.C.	245(b)(2)(C)	Racial Violence, KKK,	1 plea Cross Burning
U.S. v. Haas & Haas	5/29/86, Indictment	2	S.D. Cal.	2631, 371, 1622, 1512, 1513, 1503, 3	Housing Intimidation	2 pleas
U.S. v. Estrada, et al.	6/12/86, Indictment 7/14/87, Superseding	9	S.D. Fla.	242	Law Enforcement, Death, drugs	1 conviction 7 pleas 1 fugitive
U.S. v. McGill	6/30/86, Indictment	1	D. R.I.	242	Law Enforcement, Death	1 conviction

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF</u> <u>DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Flowers	7/10/86, Indictment	1	N.D. Ohio	242	Law Enforcement, Death	1 acquittal
U.S. v. Cohee-Vasquez	7/23/86, Indictment	3	M.D. La.	241, 371	Witness Intimidation, Death	3 fugitives
U.S. v. Mowhinney	8/1/86, Information	1	E.D. Tenn.	242	Law Enforcement, Assault	1 plea
U.S. v. Lamb	8/5/86, Information	1	N.D. Ill.	242	Official Misconduct	1 plea Consumer Service
Dept.						
U.S. v. Kadleck	8/5/86, Information	1	N.D. Ill.	242	Official Misconduct Consumer Service Dept.	1 plea
U.S. v. Kilanewski	8/5/86, Information	1	N.D. Ill.	242	Official Misconduct Consumer Service Dept.	1 plea
U.S. v. Lannen	8/5/86, Information	1	N.D. Ill.	242, 1951	Official Misconduct Consumer Service Dept.	1 plea
U.S. v. Paul	8/5/86, Information	1	N.D. Ill.	242	Official Misconduct Consumer Service Dept.	1 plea
U.S. v. Abraham	8/5/86, Information	1	N.D. Ill.	242	Official Misconduct Consumer Service Dept.	1 plea
U.S. v. Szeneblowski	8/5/86, Information	1	N.D. Ill.	242	Official Misconduct Consumer Service Dept.	1 plea
U.S. v. Rosendahl	8/19/86, Indictment	1	W.D. Mo.	3631, 924(e)	Housing Intimidation	1 plea
U.S. v. Monterey	9/18/86, Indictment	1	E.D. La.	242	Law Enforcement, Assault	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF REPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Connell	9/18/86, Indictment	1	D. R.I.	242	Law Enforcement, Assault	1 conviction
U.S. v. Montalbano	9/23/86, Information	1	N.D. Ill.	242, 26 USC 7203	Official Misconduct Consumer Service Dept.	1 plea
U.S. v. Butler	9/24/86, Indictment	1	N.D. Miss.	242	Law Enforcement, Assault	1 conviction

CRIMINAL SECTION
CASES FILED -- FY 1987

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Lopez & Manrest	10/2/86, Indictment	2	S.D. Fla.	241, 242, 371	Law Enforcement, Shooting	2 acquittals
U.S. v. Luke	10/6/86, Indictment	1	W.D. Oh.	3631	Housing Intimidation	1 plea
U.S. v. Duncan, et al.	10/8/86, Indictment	4	S.D. Fla.	241, 242, 1623(a), 401(3)	Law Enforcement	4 pending
U.S. v. Short	10/21/86, Indictment	1	E.D. N.C.	1623	Racial Violence, Perjury	1 conviction
U.S. v. McLain	11/7/86, Information	1	W.D. Ok.	241, 242, 371	Law Enforcement, Assault	1 plea
U.S. v. Crary, et al.	11/7/86, Information	3	W.D. Ok.	242, 371	Law Enforcement, Assault	3 pleas
U.S. v. Johnson	11/10/86, Information	1	W.D. Ok.	242, 371	Law Enforcement, Assault	1 plea
U.S. v. Overbeck	11/10/86, Information	1	W.D. Ok.	922(h)(1)	Law Enforcement, Assault	1 plea
U.S. v. Cave, et al.	11/14/86, Indictment	3	W.D. Tx.	241, 242, 1341 1512	Law Enforcement, Sexual Acts	1 conviction 2 acquittals
U.S. v. Wicker	11/20/86, Indictment	2	S.D. In.	242, 1623	Law Enforcement, Assault	2 pleas
U.S. v. Keenan	12/9/86, Indictment	1	D. Md.	241, 3631	Housing Intimidation	1 acquittal
U.S. v. Dunn & Bealer	12/12/86, Indictment	2	E.D. La.	242	Law Enforcement, Assault	2 convictions
U.S. v. Dale	12/18/86, Indictment	1	E.D. N.C.	242, 113(f)	Law Enforcement, Death	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Miller, et al.	1/7/87, Indictment	3	E.D. N.C.	371, 5861(d) 5861(f)	Racial Violence, KKK Firearms	2 convictions 2 pleas 1 acquittal
U.S. v. Clements	1/21/87, Indictment	1	D. R.I.	1623	Law Enforcement, Perjury	1 plea
U.S. v. Buchanan	1/30/87, Indictment	1	N.D. Ala.	242	Law Enforcement, Assault	1 plea
U.S. v. Wallace, et al.	1/30/87, Indictment *	11	S.D. Tx.	241, 242, 1001, 1623	Law Enforcement, Assault	5 pleas 2 dismissals 6 pretrial diversion
U.S. v. Duran & Vigil	2/6/87, Indictment	2	D. N.M.	245(b)(2)(F)	Racial Violence	2 convictions
U.S. v. Romero	2/12/87, Information	1	W.D. La.	242	Law Enforcement, Assault	1 plea
U.S. v. Tilleli	2/19/87, Indictment	1	S.D. N.Y.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Foster	2/20/87, Indictment	1	S.D. Ga.	242	Law Enforcement, Assault	1 conviction
U.S. v. Powell	3/11/87, Indictment	1	N.D. Ala.	242	Law Enforcement, Sexual Assault	1 acquittal
U.S. v. Faulkner, et al.	3/12/87, Information	6	W.D. Ky	371, 242	Law Enforcement, Assault	1 plea 5 pretrial diversion
U.S. v. Dasher	3/13/87, Indictment	1	S.D. Ga.	245(b)(2)(F), 924(c), 1001	Racial Violence	1 plea
U.S. v. Hogan	3/16/87, Information	1	N.D. Ill.	242	Consumer Service Dept., Official Misconduct	1 plea

* A previous indictment was returned on April 25, 1986, in this case. However, the indictment was dismissed when the United States discovered that the grand jury had returned the indictment two weeks beyond their expiration date making the indictment invalid. (The 11 defendants charged and the indictment were previously counted in FY86.)

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Kuta	3/20/87, Information	1	N.D. Ill.	242, 26 U.S.C. 7206	Consumer Service Dept., Official Misconduct	1 plea
U.S. v. Butler	3/23/87, Information	1	N.D. Ill.	242, 1341	Consumer Service Dept., Official Misconduct	1 plea
U.S. v. Birkner	3/23/87, Information	1	N.D. Ill.	242	Consumer Service Dept., Official Misconduct	1 plea
U.S. v. Brown	3/23/87, Information	1	N.D. Ill.	242	Consumer Service Dept., Official Misconduct	1 plea
U.S. v. Dorband	3/25/87, Information	1	N.D. Ill.	242, 1341	Consumer Service Dept., Official Misconduct	1 plea
U.S. v. Donell & Testerman	3/26/87, Indictment	2	N.D. W.Va.	242, 1001	Law Enforcement, Assault	2 acquittals
U.S. v. Limehouse	3/26/87, Indictment	1	D. S.C.	245	Racial Violence	1 acquittal
U.S. v. Margoscia	3/27/87, Information	1	N.D. Ill.	242, 1341	Consumer Service Dept., Official Misconduct	1 plea
U.S. v. Colbert, et al.	4/14/87, Indictment	3	N.D. Ga.	371 113(d), 1623	Law Enforcement, Assault	3 acquittals
U.S. v. Lane, et al.	4/24/87, Indictment	4	D. Co.	245(b)(2)(C)	Racial Violence Aryan Nations	2 convictions 2 acquittals
U.S. v. Maravilla & Domingues	5/13/87, Indictment	2	D. P.R.	242, 1951(a), 2314, 2315, 1503, 1001, 1623	Customs Agents, Death	2 convictions
U.S. v. Sheets	5/17/87, Information	1	E.D. N.C.	3146(a)	Racial Violence, Failure to Appear as Material Witness	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Burris & Rogers	5/26/87, Indictment	2	N.D. N.C.	241, e 3631	Housing Intimidation	2 pleas
U.S. v. Rhinehardt	5/26/87, Information	1	N.D. N.C.	3631	Housing Intimidation	1 plea
U.S. v. Montgomery	5/29/87, Indictment	1	W.D. Va.	245(b)(1)(B), 113(e)	Racial Violence	1 plea
U.S. v. Jackson	5/29/87, Indictment	1	E.D. N.C.	3146(a)	Racial Violence, Failure to Appear for Trial	1 conviction
U.S. v. Bochter	6/4/87, Indictment	1	W.D. Pa.	241, 3631	Housing Intimidation	1 conviction
U.S. v. Jordan, et al.	6/8/87, Indictment	5	N.D. Ill.	241, 242, 924(c)	Law Enforcement, Assault	4 acquittals 1 dismissal
U.S. v. Declair	6/17/87, Indictment	1	E.D. Kty.	242	Law Enforcement, Assault	1 conviction
U.S. v. Apperaen & Gordon	6/24/87, Indictment	2	N.D. Ca.	242	Law Enforcement, Assault	1 acquittal 1 plea
U.S. v. Goudreau	6/25/87, Indictment	1	D. N.D.	2412, 1152, 113(4)	Law Enforcement, Assault	1 acquittal
U.S. v. Knutson	7/2/87, Indictment	1	S.D. N.Y.	242, 1623	Law Enforcement, Assault	1 acquittal
U.S. v. John Does (juveniles)	7/20/87, Information	2	W.D. Pa.	5032, 3631	Housing Intimidation	2 pleas
U.S. v. Guglielmo	7/23/87, Indictment	1	E.D. N.Y.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Patterson	7/31/87, Indictment	1	N.D. Ala.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Murphy	8/27/87, Indictment	1	D. Mass.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Curtis	9/2/87, Indictment	1	N.D. Ca.	242	Law Enforcement, Assault	1 acquittal

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEFTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Flores & Coca	9/2/87, Indictment	2	D. N.M.	241, 924(c), 3631	Housing Intimidation	1 acquittal 1 plea
U.S. v. McGuire	9/2/87, Information	1	E.D. N.Y.	242	Law Enforcement, ATF, Assault	1 plea
U.S. v. Luskett & Roberts	9/11/87, Indictment	2	S.D. Miss.	241, 242	Law Enforcement, Assault	2 acquittals
U.S. v. Mauldin & Medlin	9/23/87, Indictment	2	N.D. Ga.	241, 3631	Housing Intimidation	2 pleas
U.S. v. John Does (juveniles)	9/24/87, Information	3 *	N.D. Ga.	241, 3631	Housing Intimidation	2 pleas
U.S. v. Wheeler, et al.	9/24/87, Indictment	6	N.D. Ala.	241, 242	Law Enforcement, Assault	3 pleas 3 convictions
U.S. v. LaRosa, et al.	9/25/87, Indictment	5	E.D. La.	242	Law Enforcement, Assault	3 pleas

* One defendant in this information was also charged in an indictment, therefore, only two defendants were counted as defendants charged.

CRIMINAL SECTION
CASES FILED - FY1988

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Fowler	10/20/87, Indictment	1	W.D. Tenn.	242	Law Enforcement, Sexual Assaults	1 plea
U.S. v. Thompson	10/20/87, Indictment	1	W.D. Ky.	3631	Housing Interference	1 conviction
U.S. v. McClendon	10/29/87, Indictment	1	E.D. La.	242	Law Enforcement, Assault	1 plea
U.S. v. Miller	10/30/87, Information	1	M.D. Fla.	371	Racial Violence	1 plea
U.S. v. Foskey	11/5/87, Indictment	1	E.D. Ga.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Martinez	11/6/87, Indictment	1	S.D. Cal.	242	Law Enforcement, Assault	1 plea
U.S. v. Pringle, et al.	11/13/87, Indictment	3	M.D. Fla.	371, 245(b)(2)(F)	Racial Violence	1 conviction 1 acquittal 1 dismissal
U.S. v. Lyons	11/24/87, Indictment	1	E.D. Va.	113 (4)	Law Enforcement, Assault	1 acquittal
U.S. v. Myers & Neal	12/4/87, Indictment	2	W.D. Ind.	241, 3631, 844(b)(1)	Housing Intimidation	2 convictions
U.S. v. Pares & Hernandez	12/29/87, Indictment	2	S.D. Tx.	242, 924(e)	Law Enforcement, Assault	2 pleas
U.S. v. Miller	1/4/88, Indictment*	1	E.D. N.C.	42 U.S.C. 5861, 5871	Racial Violence, Explosives	1 plea
U.S. v. Hall	1/5/88, Information	1	D. Md.	242	Law Enforcement, Assault	1 plea
U.S. v. Bedia	1/12/88, Information	1	W.D. Ill.	242	Official Misconduct Consumer Service Dept.	1 plea

* Indictment actually returned in September 1987 but not counted in prior fiscal year. Defendant pled guilty on 1/4/88.

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF PAGES</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Lavery	1/21/88, Indictment	1	N.D. Ohio	1001	Housing Interference False Statements	1 conviction
U.S. v. Hawkins, et al.	1/28/88, Indictment	8	D. Md.	241, 242	Law Enforcement, Assault	6 convictions 2 acquittals
U.S. v. Lyle	2/16/88, Indictment	1	N.D. Ill.	242	Law Enforcement, Assault	1 conviction
U.S. v. Priest & Priest	3/17/88, Indictment	2	E.D. Va.	241, 21 U.S.C. 846, 18 U.S.C. 843(b)	Law Enforcement, False Arrest/Drugs	2 pleas
U.S. v. Dillon	3/23/88, Indictment	1	D. R.I.	242	Law Enforcement, Assault	1 plea
U.S. v. Wells	4/7/88, Information	1	N.D. Miss.	876	Racial Violence, Mailing Threatening Communications	1 plea
U.S. v. Schoefer	4/14/88, Indictment	1	S.D. Cal.	242	Law Enforcement, Assault Border Patrol	1 acquittal
U.S. v. Gogel, et al.	4/20/88, Indictment	3	S.D. Ind.	371, 245(b)(2)(B)	Racial Violence Cross Burning	3 pleas
U.S. v. Vaden, et al.	5/4/88, Indictment	3	E.D. Tx.	241, 242	Law Enforcement, Assault	2 pleas 1 conviction
U.S. v. Spivek	5/12/88, Indictment	1	N.D. Ill.	241, 3631	Housing Interference	1 plea
U.S. v. Quinn	5/19/88, Indictment	1	D. Kansas	242	Law Enforcement	1 plea
U.S. v. Rosiere	5/19/88, Indictment	1	E.D. La.	242	Law Enforcement, Shooting, Death	1 acquittal
U.S. v. McDermott & Iannaccone	5/23/88, Indictment	2	S.D. N.Y.	241	Law Enforcement, False Arrests	2 convictions

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Phillips and Mison	6/1/88, Indictment	2	S.D. Tx.	242	Law Enforcement, Assault	1 plea 1 acquittal
U.S. v. Kruk	6/9/88, Information	1	N.D. Ind.	3	Housing Interference	1 plea
U.S. v. Tornado	6/16/88, Indictment	1	M.D. Ga.	242	Law Enforcement, Assault	1 plea
U.S. v. Singletary & Hirstius	6/23/88, Indictment	2	E.D. La.	242	Law Enforcement, Assault	2 convictions
U.S. v. Behnenberger, et al.	6/27/88, Indictment	3	D. Mass.	242, 371, 1623, 3	Law Enforcement, Assault	1 acquittal 2 dismissals
U.S. v. McMahon	7/14/88, Indictment	1	W.D. Pa.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Schatzle	7/14/88, Indictment	1	S.D. N.Y.	242	Secret Service, Assault	1 conviction
U.S. v. Huffman & Huffman	7/19/88, Indictment	2	D. Minn.	371, 1324(a)(3)	Harboring an Illegal Alien	2 pleas
U.S. v. Weaver	8/3/88, Indictment	1	E.D. Mo.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Scott	8/15/88, Information	1	N.D. Ind.	3631	Housing Interference	1 plea
U.S. v. Keaton, et al.	8/17/88, Indictment	4	S.D. W.Va.	241, 242, 371, 1512(b)(3)	Law Enforcement, Assault	4 convictions
U.S. v. Wicks	9/9/88, Information	1	E.D. Tenn.	241, 242	Law Enforcement, Assault	1 plea
U.S. v. Williams & Moore	9/13/88, Indictment	2	N.D. Ala.	241, 242	Law Enforcement, Assault	2 convictions
U.S. v. Foss & Thomas	9/14/88, Indictment	2	N.D. Ind.	241, 371, 1623	Housing Interference, Perjury	2 convictions
U.S. v. Roemer	9/15/88, Information	1	E.D. Pa.	113(e)	Veterans Administration, Assault	1 plea
U.S. v. Merryman & Chilcote	9/22/88, Indictment	2	D. Md.	241, 3631	Housing Interference	2 pleas
U.S. v. Arroyo	9/30/88, Indictment	1	D. P.R.	242, 924(c)	Law Enforcement, Assault Shooting	1 conviction

CRIMINAL SECTION
CASES FILED - FY1989

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Treadway	10/5/88, Indictment	1	E.D. Tenn.	241, 242, 924(c)	Racial Violence, Law Enforcement	1 acquittal
U.S. v. Decker	10/17/88, Indictment	1	W.D. Ky.	3631(b)(1)	Housing Interference	1 plea
U.S. v. Schwartz, et al.	10/20/88, Indictment	3	S.D. Ill.	241, 844(b)(1), 3631a	Housing Interference, Cross Burning	3 pleas
U.S. v. Skillman	10/25/88, Indictment	1	C.D. Cal.	241, 844(b)(1), 3631	Housing Interference, Cross Burning	1 conviction
U.S. v. Smith, et al.	11/9/88, Indictment	4	M.D. Fla.	241, 844(b)(1), 3631	Housing Interference, Cross Burning	4 pleas
U.S. v. Hull	11/15/88, Information	1	M.D. Fla.	3631	Housing Interference, Cross Burning	1 plea
U.S. v. Velasquez	11/15/88, Information	1	D. P.R.	242	Law Enforcement, Shooting	1 plea
U.S. v. Soto	11/15/88, Information	1	D. P.R.	242	Law Enforcement, Shooting	1 plea
U.S. v. Cotay	11/15/88, Information	1	D. P.R.	3	Law Enforcement, Shooting	1 plea
U.S. v. Bennett & Bennett	12/1/88, Indictment	2	D. N.J.	241, 245(b)(1)(B) 1001, 3631	Housing Interference	2 pleas
U.S. v. McIntyre	12/2/88, Information	1	S.D. Ill.	371 [3631]	Housing Interference Cross Burning	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Salyer	12/9/88, Indictment	1	E.D. Mich.	241, 3631, 844(h)(1)	Housing Interference, Cross Burning	1 plea
U.S. v. Fichler	12/8/88, Information	1	E.D. Mich.	241	Housing Interference, Cross Burning	1 plea
U.S. v. Beach, et al.	12/9/88, Indictment	3	N.D. Ga.	241, 242	Law Enforcement, Assault	3 convictions
U.S. v. Stewart, et al.	1/12/89, Indictment	3	N.D. Ga.	242	Law Enforcement, Assault	3 acquittals
U.S. v. Flores	1/13/89, Information	1	D. N.M.	241	Racial Violence	1 plea
U.S. v. Smitherman	2/3/89, Indictment	1	N.D. Ga.	242, 1512, 21 U.S.C. 846	Law Enforcement, Assault	1 plea
U.S. v. Currie	2/7/89, Indictment	1	N.D. Ohio	242	Law Enforcement, Assault	1 conviction
U.S. v. Miller	2/24/89, Indictment	1	S.D. Ala.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Ortis	2/28/89, Information	1	D. N.M.	371	Racial Violence, Housing Interference	1 plea
U.S. v. Tefoya	2/28/89, Information	1	D. N.M.	371	Racial Violence, Housing Interference	1 plea
U.S. v. Clayton	2/28/89, Information	1	D. N.M.	241	Racial Violence, Housing Interference	1 plea
U.S. v. Tersero	3/9/89, Information	1	W.D. Tex.	242	Law Enforcement	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Johnson	3/9/89, Indictment	1	N.D. Ohio	242	Law Enforcement, Shooting	1 acquittal
U.S. v. Trujillo	3/15/89, Information	1	D. N.M.	3631	Racial Violence, Housing Interference	1 plea
U.S. v. Helms and Hinson	4/5/89, Indictment	2	U.D. N.C.	241, 3631(b)(1)	Racial Violence, KKK Housing Interference	2 pleas
U.S. v. O'Neal	4/7/89, Indictment	1	D. N.J.	242, 1623, 1001	Failure to Keep From Harm, Perjury	1 conviction
U.S. v. Stewart	4/17/89, Information	1	S.D. Ill.	242	Law Enforcement, Assault	1 plea
U.S. v. Brown	4/27/89, Information	1	S.D. Tex.	242	Law Enforcement, Assault	1 plea
U.S. v. Padilla	5/11/89, Indictment	1	D. N.M.	241, 3631, 1623	Housing Interference	1 plea
U.S. v. Manuel	5/4/89, Information	1	E.D. La.	242	Law Enforcement, Assault	1 plea
U.S. v. Galvan	6/6/89, Indictment	1	S.D. Cal.	242	Law Enforcement, Assault	1 acquittal
U.S. v. Karlovic	6/8/89, Information	1	S.D. Ohio	242	Law Enforcement, Assault	1 plea
U.S. v. Griffin, et al.	6/15/89, Indictment	3	N.D. Fla.	241, 3631, 844(h)(1)	Housing Interference Cross Burning	3 pleas
U.S. v. Combs & Riddle	6/23/89, Indictment	2	E.D. Va.	241, 3631, 844(h)(1)	Housing Interference Cross Burning	2 pleas
U.S. v. Santon	6/30/89, Information	1	N.D. Ala.	371	Housing Interference	1 plea
U.S. v. Welch	7/6/89, Indictment	1	N.D. Ga.	241, 3631, 844(h)(1)	Housing Interference	1 plea
U.S. v. Deal	7/7/89, Information	1	N.D. Ga.	241	Housing Interference	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. John Doe	7/11/89, Information	1	H.D. Fla.	371	Housing Interference Cross Burning	1 plea
U.S. v. Morin	7/12/89, Indictment	3	D. Vt.	241, 3631	Housing Interference	3 pleas
U.S. v. Flowers & Cannon	7/24/89, Information	2	H.D. Tex.	245(b)(2)(B)	Racial Violence, Skinheads	2 pleas
U.S. v. Four Juveniles	7/24/89, Information	4	H.D. Tex.	5031	Racial Violence, Skinheads	4 pleas
U.S. v. Wood	7/26/89, Indictment	1	H.D. Tex.	1074	Racial Violence, Skinheads	1 plea
U.S. v. Seagle	8/14/89, Information	1	H.D. Alabama	371	Housing Interference	1 plea
U.S. v. Reighn	8/14/89, Information	1	D. N.J.	3631(b)(1)	Housing Interference	1 plea
U.S. v. Ferris	8/21/89, Indictment	1	H.D. Ohio	3631(a), 844(1)	Housing Interference	1 plea
U.S. v. Check	8/24/89, Indictment	1	C.D. Ill.	241, 3631(b)(1), 844(b)(1)	Housing Interference Cross Burning	1 plea
U.S. v. Callant	8/24/89, Information	1	C.D. Ill.	241	Housing Interference Cross Burning	1 plea
U.S. v. Morales	8/24/89, Information	1	S.D. Texas	242	Law Enforcement Sexual Assault	1 plea
U.S. v. Schlesier	8/30/89, Information	1	E.D. Ark.	3631	Housing Interference	1 plea
U.S. v. Simpkins	9/7/89, Information	1	H.D. Ga.	241	Housing Interference	1 plea
U.S. v. Worthy	9/7/89, Information	1	H.D. Ga.	241	Housing Interference	1 plea
U.S. v. John Doe (Juvenile)	9/7/89, Information	1	H.D. Texas	5031	Racial Violence, Skinheads	1 plea
U.S. v. Hylton	9/7/89, Information	1	H.D. Texas	245(b)(2)(B)	Racial Violence, Skinheads	1 plea
U.S. v. Millelander	9/7/89, Information	1	H.D. Texas	245(b)(2)(B)	Racial Violence, Skinheads	1 plea
U.S. v. Thornton	9/7/89, Information	1	H.D. Texas	3631	Racial Violence, Skinheads	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF PAGES</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. John Doe (Juvenile)	9/21/89, Information	1	D. Md.	241, 3631(a), 844 (b)(1)	Housing Interference Cross Burning	1 pretrial dismissal
U.S. v. Singer & Gresser	9/21/89, Indictment	2	N.D. Ohio	241, 3631(a), 844(b)(1)	Housing Interference Cross Burning	2 convictions
U.S. v. John Doe (Juvenile)	9/28/89, Information	1	N.D. Texas	3631	Racial Violence, Skinheads	1 plea
U.S. v. Tarrant, et al.	9/28/89, Indictment	3	N.D. Texas	241, 924(a)	Racial Violence, Skinheads	3 convictions

CRIMINAL SECTION
CASES FILED - FY1990

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF REFTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Bramlett, et al.	10/3/89, Indictment	4	N.D. Ala.	241, 3631(a), 924(c) 844(b)(1)	Housing Interference	4 pleas
U.S. v. Camecho, et al.	10/4/89, Indictment	6	S.D. Fla.	241, 242	Law Enforcement, Death	6 acquittals
U.S. v. Currie	10/5/89, Information	1	W.D. Wis.	241, 5861(d)	Racial Violence, Indians	1 plea
U.S. v. Coughlin	10/5/89, Indictment	1	W.D. Wis.	5861(d), 5871	Racial Violence, Indians	1 plea
U.S. v. Seto	10/5/89, Information	1	S.D. Tex.	242	Law Enforcement, Assault	1 plea
U.S. v. Kachadurian	10/10/89, Information	1	N.D. Fla.	242	Law Enforcement, Assault	1 plea
U.S. v. Ramirez	10/11/89, Information	1	S.D. Tex.	242	Law Enforcement, Agriculture Sexual Assault	1 plea
U.S. v. John Doe (Juvenile)	11/2/89, Information	1	C.D. Ill.	241, 3631, 844(b)(1)	Housing Interference	1 conviction
U.S. v. Jahr and Lee	11/8/89, Indictment	2	D. Minn.	241, 3631(a) 844(b)(1)	Housing Interference	1 plea 1 conviction
U.S. v. Neek	11/8/89, Information	1.	E.D. Ark.	242	Law Enforcement, Assault	1 plea
U.S. v. Foster	12/5/89, Indictment	1	D. N.J.	241, 3631(a), 844(b)(1)	Housing Interference Cross Burning	1 plea
U.S. v. Simon	12/5/89, Indictment	1	S.D. Fla.	241, 242, 924(c)	Law Enforcement, Death	1 conviction
U.S. v. John Doe (Juvenile)	12/13/89, Information	1	N.D. Tex.	5031 (371)	Racial Violence, Skinheads	1 plea
U.S. v. Burns & Estes	1/9/90, Indictment	2	D. Md.	241, 3631(a), 844(b), 844(1), 26 U.S.C. 5861(d), 5861(f), 5861(c)	Housing Interference	2 pleas

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF CHRGES.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Key & Keller	2/8/90, Indictment	2	W.D. Ky.	241, 3631	Housing Interference	2 pleas
U.S. v. Nieves & Cortes	2/14/90, Indictment	2	D. P.R.	242	Law Enforcement, Assault Death	2 convictions
U.S. v. Presley, et al.	2/15/90, Indictment	3	S.D. Ala.	241, 3631(b)(1)	Housing Interference, KKK	3 pleas
U.S. v. Turner	2/15/90, Information	1	S.D. Ala.	3631(b)(1)	Housing Interference, KKK	1 plea
U.S. v. Robinson	2/22/90, Indictment	1	W.D. Ark.	241, 242	Law Enforcement, Assault	1 conviction
U.S. v. Salome	3/14/90, Information	1	E.D. Va.	242, 1001	Law Enforcement, IRS, Assault	1 plea
U.S. v. Singer	3/21/90, Indictment	1	N.D. Ohio	1512	Witness Intimidation Racial Violence	1 plea
U.S. v. Hester & Kissinger	4/24/90, Indictment	2	D. Md.	241, 3631(a), 844(b), 844(1), 26 U.S.C. 3861(d), 3861(f), 3861(c), 1623	Housing Interference	2 convictions
U.S. v. Boulden	4/24/90, Information	1	D. Md.	241	Housing Interference	1 plea
U.S. v. Beyland, et al.	4/25/90, Indictment	3	W.D. Tenn.	242	Law Enforcement, Assault, Death	1 conviction 2 acquittals
U.S. v. John Doe (Juvenile)	4/25/90, Information	1	N.D. Tenn.	5031 (371, 1513)	Witness Intimidation Racial Violence, Skinheads	1 plea
U.S. v. Tarpley & Penn	5/11/90, Indictment	2	N.D. Tex.	241, 242	Law Enforcement, Assault	1 conviction 1 acquittal
U.S. v. Bunch	5/23/90, Indictment	1	W.D. Ky.	242	Law Enforcement, Assault	Pending
U.S. v. Garden	5/25/90, Information	1	N.D. Cal.	241	Law Enforcement, Assault	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Crogg	5/30/90, Information	1	D. V.I.	242	Law Enforcement, Sexual Assault	1 plea
U.S. v. Contreras	5/31/90, Indictment	1	S.D. Tex.	371, 1512(a)(1)(C), 924(e)(, 242	Law Enforcement, Assault Witness Intimidation	1 conviction
U.S. v. Ives, et al.	5/31/90, Indictment	8	C.D. Cal.	241, 371, 1584 1581, 1583	Involuntary Servitude	Pending
U.S. v. Valdes	6/1/90, Information	1	S.D. Tex.	371 (to violate 1512(b)(1)(c)	Witness Intimidation Law Enforcement	1 plea
U.S. v. Tribble	6/8/90, Indictment	1	S.D. Fla.	3631(c)	Housing Interference	1 conviction
U.S. v. Pendergest	6/8/90, Information	1	W.D. Kty.	241, 3631	Housing Interference	1 plea
U.S. v. John Doe (juvenile)	6/8/90, Information	1	W.D. Kty.	371, 3631	Housing Interference	1 plea
U.S. v. McInnis	6/13/90, Indictment	1	C.D. Cal.	3631, 924(c)	Housing Interference	1 conviction
U.S. v. Crain	6/13/90, Indictment	1	E.D. Va.	241, 3631, 844(h)	Housing Interference	1 plea
U.S. v. Scorp	6/22/90, Indictment	1	D. N.J.	241, 1584	Involuntary Servitude	1 pretrial dismissal
U.S. v. Husband	6/27/90, Information	1	W.D. Kty.	241, 3631	Housing Interference	1 plea
U.S. v. Eotherly	7/23/90, Information	1	M.D. Tenn.	241, 1512(b)(3)	Witness Tampering Racial Violence, Skinheads	1 plea
U.S. v. Seed	7/24/90, Indictment	1	M.D. Ga.	242, 1001	Law Enforcement, Assault False Statements	1 plea
U.S. v. Bevel, et al.	7/25/90, Indictment	3	M.D. Tenn.	371, 1512(b)(3)	Witness Tampering Racial Violence, Skinheads	3 pleas
U.S. v. Holbrook	7/26/90, Information	1	W.D. N.C.	241	Housing Interference	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEFTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. Hart	7/27/90, Information	1	E.D. La.	242, 1621	Law Enforcement, False Evidence, Perjury	1 plea
U.S. v. Barba & Baker	8/7/90, Indictment	2	E.D. Wis.	241, 3631	Housing Interference	1 conviction 1 plea
U.S. v. John Doe (Juvenile)	8/17/90, Information	1	D. N.J.	5032 (1001)	False Statements Housing Interference	1 plea
U.S. v. Williamson	8/22/90, Information	1	N.D. Cal.	241	Law Enforcement, Assault	1 plea
U.S. v. Ushman	8/22/90, Information	1	C.D. Ill.	1623	Housing Interference, Perjury	1 plea
U.S. v. Broussard, et al.	8/24/90, Indictment	6	N.D. Cal.	241, 242	Law Enforcement, Assault	4 convictions 2 pending
U.S. v. Foote	8/28/90, Indictment	1	D. Ariz.	2244, 2241, 2242, 2243	Law Enforcement, Sexual Abuse	Pending
U.S. v. John Doe (Juvenile)	8/29/90, Information	1	N.D. Tenn.	5031 (241)	Racial Violence, Skinheads	1 plea
U.S. v. Myers	9/6/90, Indictment	1	N.D. Ga.	242	Law Enforcement, Assault	1 conviction
U.S. v. Leehr	9/7/90, Information	1	E.D. Wis.	371 to violate 3631	Housing Interference	1 plea
U.S. v. Hoader	9/7/90, Information	1	N.D. Okla.	241	Racial Violence, Skinheads	1 plea
U.S. v. Comes	9/10/90, Information	1	N.D. Okla.	245	Racial Violence, Skinheads	1 plea
U.S. v. Pasarella	9/10/90, Information	1	N.D. Okla.	245	Racial Violence, Skinheads	1 plea
U.S. v. Green	9/12/90, Information	1	N.D. Okla.	241	Racial Violence, Skinheads	1 plea
U.S. v. John Doe (Juvenile)	9/14/90, Information	1	N.D. Okla.	5031 (241)	Racial Violence, Skinheads	1 plea
U.S. v. John Doe (Juvenile)	9/18/90, Information	1	N.D. Okla.	5031 (241)	Racial Violence, Skinheads	1 plea

<u>CASE NAME</u>	<u>DATE</u>	<u>NO. OF DEPTS.</u>	<u>DISTRICT</u>	<u>STATUTE</u>	<u>TYPE</u>	<u>DISPOSITION</u>
U.S. v. John Doe (Juvenile)	9/19/90, Information	1	N.D. Okla.	5031 (241)	Racial Violence, Skinheads	1 plea
U.S. v. John Doe (Juvenile)	9/19/90, Information	1	N.D. Okla.	5031 (241)	Racial Violence, Skinheads	1 plea
U.S. v. Danke, et al.	9/26/90, Indictment	3	S.D. Cal.	241, 371, 1343, 1029	Racial Violence, Wire Fraud	3 pleas
U.S. v. Gary Danke	9/26/90, Information	1	S.D. Cal.	371 to violate 245	Racial Violence	1 plea
U.S. v. Byrd	9/26/90, Information	1	S.D. Cal.	371 to violate 245	Racial Violence	1 plea
U.S. v. Bettie	9/28/90, Information	1	N.D. Ohio	242	Law Enforcement, Assault	1 acquittal

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

STANLEY R. JOHN, et al.,
Plaintiffs,
vs.
THE CITY OF LOS ANGELES, et al.,
Defendants.

Case No. CV 8-4766 AWT
VOLUME I

**CERTIFIED
COPY**

DEPOSITION OF
CHIEF DARYL GATES



Date & Time: Wednesday, November 21, 1990; 9:15 a.m.

Place: 150 North Los Angeles Street
Los Angeles, California

Reporter: Jennifer A. Hines, CSR/RPR
Certificate Number 6029

South Bay Court Reporters
CERTIFIED SHORTHAND REPORTERS
3655 TORRANCE BLVD., SUITE 470
TORRANCE, CALIFORNIA
(213) 543-0343

1 Deposition of CHIEF DARYL GATES, VOLUME I, a
2 defendant herein, called by the plaintiffs, before
3 JENNIFER A. HINES, Certified Shorthand Reporter, with
4 principal office in the County of Los Angeles, commencing
5 at 9:15 a.m., Wednesday, November 21, 1990, at
6 Los Angeles, California, pursuant to NOTICE.

7
8 * * *

9 APPEARANCES OF COUNSEL:

10 FOR THE PLAINTIFFS:

11 WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM
12 BY: MICHAEL D. IMFELD, ESQ.
13 1211 H Street
14 Suite A
15 Sacramento, California 95814
16 916-447-4111

17 - and -

18 MARK LASSITER & ASSOCIATES
19 BY: MARK LASSITER, ESQ.
20 3655 Torrance Boulevard
21 Suite 303
22 Torrance, California 90503
23 213-540-6544
24 (Not present)

25 FOR THE DEFENDANTS:

 JAMES K. HAHN, City Attorney
 BY: JACK L. BROWN, Assistant City Attorney
 200 North Main Street
 1800 City Hall East
 Los Angeles, California 90012
 213-485-6494

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

I N D E X

EXAMINATION	PAGE
BY MR. INFELD	4

EXHIBITS

<u>Plaintiff's</u>	<u>Description</u>	<u>Marked</u>
1-A	Copy of photograph	7
1-B	Copy of photograph	7
1-C	Copy of photograph	7
2	Video tape	48

INFORMATION REQUESTED

(None)

QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER

(None)

1 CHIEF DARYL GATES,
2 a defendant herein, called by the plaintiffs, and having
3 been first duly sworn by the reporter, was examined and
4 testified as follows:

5

6

EXAMINATION

7

8

BY MR. IMFELD:

9

Q Could you state your full name for the
10 record, please.

11

A Daryl, D-a-r-y-l, P. Gates.

12

13

Q And is it appropriate to address you as
13 Chief Gates?

14

A Yes. That's my first name.

15

16

Q So you -- well, I'll just go over it briefly.
16 I assume you've had your deposition taken on
17 numerous occasions before, but just for the record, I'll
18 be asking questions and you'll be giving answers and your
19 attorney may be having some comments. All of this will be
20 taken down and made up into a typewritten booklet, and
21 you'll have a chance to review it after it's been
22 transcribed.

17

18

19

20

21

22

23

24

25

If you should make any changes in the
transcript or if there is a trial in this matter and
you're called as a witness at trial, anything that is

1 gurney.

2 Q Did you attend any of the Operation Rescue
3 demonstrations in person?

4 A I attended the -- I believe the first one,
5 yes.

6 Q That was in March of 1989?

7 A I believe so.

8 Q Then I gather from that that you did not
9 attend any of the demonstrations where the Orcutt police
10 control device was used?

11 A No, I did not.

12 Q I have prepared a tape, and the Police
13 Department had produced in discovery a number of tapes.
14 And I have prepared a tape that has segments on it of the
15 various tapes from the Police Department. It has 18
16 numbered instances in it. And what I would like to do is
17 go through those one at a time, let you have an
18 opportunity to review it and ask you a couple questions
19 about it and then go on to the next one.

20 I'm trying to find in here -- I have a piece
21 of yellow paper that tells which part of the tape it came
22 from.

23 Numbers 1 through 5 on this tape are from
24 Exhibit 6 to the deposition of James Cole or to the
25 declaration of James Cole that was submitted by the

1 City of Los Angeles, and they're from the June 10, 1989,
2 demonstration.

3 Numbers 6 through 11 are from Exhibit C to
4 the declaration of Officer Michael Housman, and they were
5 the City's Opposition for Request for Protective
6 Restraining Order.

7 And numbers 12 through 18 are from the
8 March 25 demonstration. And they were from tapes that
9 were produced by the Police Department. I have them set
10 up over here (indicating).

11 MS. REPORTER: Do you want me to record them?

12 MR. IMPELD: No.

13 (Whereupon, a discussion was held off the record.)

14 BY MR. IMPELD:

15 Q Rather than go through them all at once and
16 get them confused, I'll just ask you about that one first.

17 (Viewing film clip 1.)

18 BY MR. IMPELD:

19 Q With regard to that tape, was -- this is
20 Paula Santiago's.

21 (Whereupon, a discussion was held off the record.)

22 BY MR. IMPELD:

23 Q With regard to that part of the tape, was the
24 use of the nunchakus used properly?

25 A I am not an expert in their use and I think

1 it would be impossible and inappropriate for me to
2 speculate on whether or not that was used in a way that
3 they are designed to be used.

4 Q Let me ask the question a different way,
5 then.

6 Based on your experience and training, did
7 you see anything in that film clip that you know to be an
8 improper use of nunchakus?

9 A There, again, I would be speculating. I
10 know -- and having the device applied to myself -- that it
11 was wrapped around my arm in a fashion. I don't know
12 quite how that is done.

13 MR. BROWN: Are you assuming -- let me just clarify
14 it and maybe make it easier for the Chief.

15 Are you assuming certain things and the fact
16 that the persons were properly subject to arrest?

17 MR. IMFELD: No.

18 MR. BROWN: I don't know what you're assuming.

19 My concern, Mike, is we saw about three
20 seconds of an individual down on the ground and nunchakus
21 being applied to the arms, and that's all we saw. We
22 didn't see anything preceding that. We don't know why it
23 was that the officers made the decision. At least it
24 wasn't clear from the picture as to why they made the
25 decision to apply them.

1 And then you're asking the Chief whether,
2 irrespective of that lack of background surrounding the
3 arrest, whether the arrest is appropriate. And I think
4 maybe you would want to thresh it out some to ask that
5 question.

6 MR. IMFELD: That wasn't really what I intended to
7 ask him.

8 I intended to ask him just on the basis of
9 what he saw there if -- and I'm not asking him to say
10 definitively whether there might have been something wrong
11 with the use of nunchakus, but whether he saw, if
12 anything, in his own opinion based on his experience, was
13 improper. I'm not asking him to assume whether or not
14 they had good cause to apply nunchakus based on the
15 person's prior actions. I'm just asking him, in the way
16 that they were used to arrest the person, is he aware of
17 any improper use of the device.

18 MR. BROWN: Are you saying improper with respect to
19 how the police train their officers to apply the
20 nunchakus?

21 MR. IMFELD: Yes. The basic Los Angeles Police
22 Department policy on use of force. If he observed any
23 violation in film clip 1.

24 MR. BROWN: Well, if I'm not mistaken, it goes
25 beyond merely the use of force. You're talking about use

1 of force, but you're also talking about, as we've
2 explained to you, there's training that the officers go
3 into. So even though, for instance, the use of force
4 might be appropriate, the particular way in which the
5 nunchaku was applied might not comply with Department
6 policy. And those are two separate issues.

7 MR. IMFELD: I gather that the Chief is saying that
8 he isn't the world's foremost expert on the use of
9 nunchakus. But all I am asking is, in looking at that
10 tape clip, do you see anything where you say, "Hey, that
11 was done wrong, and we shouldn't do it that way in the
12 future"?

13 THE WITNESS: Once again, I'm not an expert, and
14 looking at that tape, I would not be able to say yes or no
15 whether or not it was applied correctly. As I mentioned
16 before, I watched demonstrations with the use of this
17 device. I had it applied to me. I have not tried to use
18 it myself, so it would be, I think, impossible for me to
19 say that it was applied properly or not. I would make
20 that assumption because our officers were well-trained in
21 the use of the device.

22 BY MR. IMFELD:

23 Q Okay. Let me ask a more simple question.

24 Do you see any violation of Los Angeles
25 Police Department policy in that film clip?

1 A I think then you get into the whole
2 use-of-force policy.

3 If you were telling me that the stage was set
4 appropriately to reach that point where the device was
5 used and that our use-of-force policy, which is an
6 escalation of force, was met, then I would have to say
7 okay, we've reached the point where that device is
8 appropriate to use. And I would say it looks all right.

9 Q Okay. Let me ask you about clip 2.

10 (Viewing film clip 2.)

11 BY MR. IMFELD:

12 Q Okay. With regard to number 2 on the film,
13 recognising that you haven't seen what came before that in
14 the demonstration, did you see anything in that film clip
15 which you know to be a violation of Los Angeles Police
16 Department policy?

17 A What I saw in the film clip was almost
18 unconscionable to have good people do that to any kind of
19 a situation. That's on the record. To put a police
20 officer in that kind of a position is horrible. To put
21 anyone in that kind of a position is horrible.

22 I did not see anything. As a matter of fact,
23 it looked to me that the officers were using a great deal
24 of care in trying to get that individual -- to control
25 that individual.

1 Q All right. Let's go to number 3.

2 (Viewing film clip number 3.)

3 BY MR. IMFELD:

4 Q All right. With respect to film clip 3,
5 basically the same question.

6 A No.

7 (Viewing film clip 4.)

8 BY MR. IMFELD:

9 Q With respect to film clip 4, did you see
10 anything in that film clip that was in violation of Police
11 Department policy?

12 A No.

13 Q Number 5, Michael Housman.

14 (Viewing film clip 5.)

15 BY MR. IMFELD:

16 Q Having seen film clip 5, did you see anything
17 in that film clip that was a violation of Los Angeles
18 Police Department policy?

19 A Obviously there's a play to emotion there,
20 but, no.

21 Q We'll go on to film clip 6.

22 (Viewing film clip 6.)

23 BY MR. IMFELD:

24 Q With regard to film clip 6, did you see
25 anything there that was a violation?

1 A Was that 6 or 7?

2 MR. BROWN: That was 6.

3 THE WITNESS: No.

4 BY MR. INFELD:

5 Q And we'll show 7.

6 (Viewing film clip 7.)

7 BY MR. INFELD:

8 Q Having seen film clip 7, did you see anything
9 in film clip 7 which was a violation of Los Angeles Police
10 Department policy?

11 A Viewing that clip there was very little I
12 could see, but, no, I did not see anything.

13 (Viewing film clip 8.)

14 BY MR. INFELD:

15 Q With regard to film clip 8, did you see
16 anything in there that was a violation of Los Angeles
17 Police Department policy?

18 A No.

19 (Viewing film clip 9.)

20 BY MR. INFELD:

21 Q Having seen film clip 9, did you see anything
22 in film clip 9 that was a violation of Police Department
23 policy?

24 A No.

25 (Viewing film clip 10.)

1 BY MR. IMFELD:

2 Q With regard to film clip 10, did you see
3 anything in that clip that was a violation of Los Angeles
4 Police Department policy?

5 A No.

6 (Viewing film clip 11.)

7 BY MR. IMFELD:

8 Q Film clip 11, do you know what that was?

9 A I have no idea.

10 Q Have you ever seen that before?

11 A No.

12 (Viewing film clip 12.)

13 BY MR. IMFELD:

14 Q Looking at film clip 12, did you see anything
15 in there that was a violation of Los Angeles Police
16 Department policy?

17 A No. And I think that's a very fine example
18 of why the federal judge that you quoted doesn't know what
19 the heck the federal judge is talking about in terms of
20 resistance. And you can quote me to the federal judge.

21 (Viewing film clip 13.)

22 BY MR. IMFELD:

23 Q All right. With reference to film clip 13
24 that we just saw, did you see any violation of
25 Los Angeles Police Department policy?

1 A No.

2 (Viewing film clip 14.)

3 BY MR. IMFELD:

4 Q With regard to film clip 14, did you see any
5 violation of Los Angeles Police Department policy?

6 A No.

7 (Viewing film clip 15.)

8 BY MR. IMFELD:

9 Q With regard to film clip 15, did you see any
10 violation of Los Angeles Police Department policy?

11 A No.

12 (Viewing film clip 16.)

13 BY MR. IMFELD:

14 Q With regard to film clip 16, did you see any
15 violation of Los Angeles Police Department policy?

16 A No.

17 (Viewing film clip 17.)

18 BY MR. IMFELD:

19 Q With regard to film clip 17, did you see any
20 violation of Los Angeles Police Department policy?

21 A No.

22 (Viewing film clip 18.)

23 BY MR. IMFELD:

24 Q With regard to film clip 18, did you see any
25 violation of Los Angeles Police Department policy?

35

1 A No.

2 Q Okay. That's the end of the film clips.

3 In each of the segments shown on the film, at
4 least two officers, and in some cases three or four
5 officers, were required to move the arrestee from the
6 place of arrest to the police vehicle.

7 Was that your observation also?

8 A Yes.

9 Q If we're talking about a situation where
10 we're going to roll the demonstrator onto some type of a
11 rolling device and roll them to the police vehicle, do you
12 know of any reason why that would require more police
13 officers than the methods of arrest shown in the tape that
14 we just played?

15 A Once again, I think it would be impossible to
16 state that, depending on the terrain involved -- and I
17 don't think there's enough in the picture to tell me
18 that -- I would think -- once again, I'm not an expert in
19 moving people -- but I would think it would take at least
20 four people on the gurney, three at least at the minimum,
21 probably four, given that degree of resistance that I saw
22 there.

23 Q Right. What if there had been an agreement
24 that if the gurney system was used, there would be no
25 resistance?

SWARTZ & REED

LAWYERS

1816 JEFFERSON PLACE, N. W.
 WASHINGTON, D. C. 20036
 (202) 428-0428
 FAX (202) 428-0109

DEAN E. SWARTZ
 MEMBER D. C., VA., PA. AND OH. BAR
 BARRY S. REED, M. D.
 MEMBER D. C. AND PA. BAR
 ELIZABETH ALICE KARASIK
 MEMBER D. C. BAR
 JEANNE BARR CAREY, R. N.
 MEMBER D. C., VA., MD. AND MA. BAR

May 15, 1991

The Honorable Don Edwards
 Chairman, Subcommittee on Civil
 and Constitutional Rights
 808 House Annex No. 1
 Washington, D.C. 20515

Dear Representative Edwards,

I am writing to you about a case which our firm recently concluded. On April 2, 1991, we were able to achieve a \$220,000 settlement of a civil rights action brought in federal court in Raleigh, N.C., arising out of the death of his son, James Edward Swann, Jr., at the hands of police officers in Goldsboro, North Carolina. The lawsuit was brought against the City of Goldsboro, Goldsboro Police Chief James P. Morgan, and Officers James F. Green, Jr., and Glenn E. Barnes by Mr. Swann's father, James E. Swann, Sr. [*Swann v. The City of Goldsboro, North Carolina, et al.*, Civil Action No. 90-59-CIV-5-D (E.D.N.C., Raleigh Division)] We were ably assisted in the case by S. Reginald Kenan, Esq., of Warsaw, N.C.

James Edward Swann, Jr., was a twenty-seven year old District of Columbia resident who died on February 1, 1989, while in the custody of the Goldsboro North Carolina Police Department. An autopsy performed by Dr. Deborah L. Radiach, Associate Chief Medical Examiner for the State of North Carolina, concluded that Mr. Swann died from "anoxia [lack of oxygen] due to compression of neck" and termed the death a "homicide."

Although a North Carolina State grand jury refused to indict the police officers involved in Mr. Swann's death, our investigation into his case has substantiated initial concerns of the community that Mr. Swann was choked to death by police officers, and that the conduct of these officers and the Goldsboro Police Department as a whole represented a serious departure from proper and accepted law enforcement practices.

Hon. Don Edwards
May 15, 1991
Page 2

The events leading to Edward Swann's death began at approximately 10:00 p.m. on February 1, 1989, when police officers encountered a group of black males in the Green Acres/Seymour Johnson Homes housing projects in Goldsboro, N.C. Because Mr. Swann had walked out ahead of the group, he was singled out by Captain Jasper Warrick as being "suspicious." Captain Warrick ordered Mr. Swann to "Halt" and when Mr. Swann began to run, he was chased down and tackled by Corporal James F. Green, Jr. (who is now Chief of Police, Rolesville, N.C.) Sergeant Glenn E. Barnes (who has been promoted to the rank of Captain since the incident) testified at his deposition that he assisted Corporal Green during the ensuing struggle, placing his knee on Mr. Swann's neck and hitting Mr. Swann across the kidney area with a police baton. Corporal Green testified at his deposition that he squeezed Mr. Swann around the throat with his hand, squeezed Mr. Swann's throat a second time to subdue him, and squeezed Mr. Swann's neck until he "relaxed." Corporal Green also "picked up his penis" with his right hand while he "grabbed his testicles and squeezed them" with his left hand. Eyewitnesses told the N.C. State Bureau of Investigation that Mr. Swann cried out for help and told the police that he couldn't breathe and "you don't need to do this." One bystander tried to help Mr. Swann, but when an officer pulled out his gun, the attempt to help Mr. Swann was abandoned. Witnesses described Mr. Swann as appearing to be dead or unconscious as he was dragged to the police car.

Mr. Swann was driven to the Magistrate's office by Sergeant Barnes and another officer who, upon arriving there, could not determine whether Mr. Swann's heart was beating. They called for an ambulance. When the rescue squad arrived at the scene, they found Mr. Swann dead on the floor of the police car. When asked at his deposition why he did not perform CPR on Mr. Swann, one officer testified: "I have no idea how to do it."

Investigation by our firm revealed that in the year prior to Mr. Swann's death the same officers involved in Mr. Swann's arrest had been involved in several arrests during which suspects were subjected to excessive and/or deadly force, including blows to the head and neck with flashlights, use of a "choke hold," and the placing of knees on the head or neck. In none of these instances was the officer involved subjected to any counseling, reprimand, or disciplinary action.

Hon. Don Edwards
May 15, 1991
Page 3

Several highly qualified experts in law enforcement training and administration gave deposition testimony indicating that Mr. Swann's death resulted directly from the officers' use of excessive and unreasonable force and failure to provide appropriate emergency medical assistance and that the Goldsboro Police Department has an inadequate program for training and supervising its police officers. After reviewing the sworn testimony of the officers involved and a review of more than two dozen instances of use of force involving Goldsboro police, Professor James Fyfe of the American University School of Justice, Law and Society, in Washington, D.C., described the City's police training and supervision as "grossly inadequate." He stated: "There were several use of force forms filed in which the force used was clearly inappropriate, and the Police Department apparently had no procedure for investigating those things, and took no corrective action." He summarized the situation in Goldsboro when he testified that "Corporal Jimmy Green . . . was out there busting heads and acting inappropriately, and [the Police Department] never did anything to correct that." Professor Fyfe concluded: "...there was a gang, small cohort of officers who felt they were licensed to do as they felt."

The experts further testified that the minimum standards for police training require that, in a police department such as Goldsboro's, all officers should be trained to recognize the need for medical assistance and how to perform CPR. Since 1978 North Carolina has required that all new police be trained in CPR, but the the City of Goldsboro provides no in-service or refresher training to its police officers to recognize medical emergencies nor to provide basic emergency assistance such as CPR. Indeed, acting the police department's training coordinator Robert Noah testified at his deposition: "I don't see that we have any responsibility to recognize medical needs." Goldsboro Police Chief J.P. Morgan testified at his deposition that the department has only four or five of its more than eighty (80) who have been re-certified in CPR since their completion of basic training. When the City did offer CPR training to employees city-wide, only two police officers signed up for the course.

While the police officers' conduct toward Mr. Swann cannot be justified, it can be easily understood in light of the lack of training and supervision Goldsboro provided. Another of Mr. Swann's experts, Robert di Grazia, former Police Commissioner of Boston and Superintendent of Police for St. Louis County, testified that "[the City of Goldsboro has an] official policy of not investigating . . . incidents [of deadly force]" which shows "deliberate indifference" to the rights of citizens.

Hon. Don Edwards
May 15, 1991
Page 4

If any lesson is to be learned from Mr. Swann's unnecessary and untimely death, it is that police officers must be trained and supervised rigorously and held to professional standards; failure to do so results in unacceptable practices which needlessly endanger the public.

Sincerely,


Dean E. Swartz

PARK SQUARE ADVOCATES, INC.Post Office Box 218
Boston, MA 02118Telephone: 617-426-1350
FAX: 617-426-3594

GLAD

Gay & Lesbian Advocates & Defenders

May 30, 1991

Subcommittee on Civil & Constitutional Rights
806 House Office Building, Annex 1
Washington, D.C. 20515

Dear Committee Members:

I am writing to you to offer testimony about the victimization and harassment of gay men and lesbians by the police. Gay and Lesbian Advocates and Defenders (GLAD) is a public interest legal organization working to defend the rights of lesbians and gay men in New England. We often get calls about harassment, including police brutality. Below are brief descriptions of two incidents of police abuse of gay men currently being handled by this office.

On May 20, 1990, Joseph Trovato was pulled over by a Boston Police Officer for a routine traffic matter. An officer asked him to perform field sobriety tests, which he did successfully. As he was reciting the alphabet, the officer yelled "faggot" and threatened to hit Mr. Trovato. He then grabbed Mr. Trovato's wrists, twisted him around, and threw him hard, face-first against the hood of the cruiser. Not having committed an illegal act, Mr. Trovato was reluctant to enter the cruiser. The officer struck Mr. Trovato on the neck and continued to strike him even after he said he would get in the cruiser. Mr. Trovato ultimately took a breath test which he passed. Even after he passed a breath test, he was held at the police station. On his way out of the police station, when Mr. Trovato asked the officer involved for his badge number, the officer screamed, "Go suck on a

Mr. Trovato was never charged with a crime or even cited for a traffic violation. A copy of the complaint filed with the Boston Human Rights Commission is attached. Although an

Subcommittee on Civil & Constitutional Rights
 May 30, 1991
 Page 2

Internal Affairs complaint was filed, to date no substantive action has been taken.

In a separate incident on February 7, 1991, Peter Kelley observed a Boston police officer leaning into a truck yelling at the two male passengers, "faggot" and "Don't you know that's how you get AIDS?" When Mr. Kelley approached the scene, the officer told him to "get the ~~back~~ out of here". When he did not move, the officer grabbed him by the coat and shoved him. When Mr. Kelley regained his balance and started towards the cruiser to write down the license plate number, the officer hit him in the face several times although Mr. Kelley offered no resistance. He was then dragged into the cruiser and told he was under arrest for disorderly conduct. He was never read his rights. He was held overnight, then released the next morning with no charges brought against him.

Two weeks later, after the incident had been reported in the gay press, Mr. Kelley was notified that the officer had revived the disorderly conduct charge, claiming that it was Mr. Kelley who had harassed the two men in the parked car. On April 22 those charges were withdrawn. An internal affairs complaint was filed, but we expect no substantive action to be taken.

These are just two examples of police brutality against gay men and lesbians. They illustrate both the violence directed at gay men and lesbians by some police officers and the failure of the system to offer an effective means for victims to pursue their complaints against the police. Although many officers do their jobs responsibly, we believe that this kind of harassment and victimization of lesbians and gay men by police officers is widespread. The problem is systemic and requires a systemic response.

Very truly yours,

Mary L. Bonauto
 Mary L. Bonauto
 Staff Attorney

Enc.

cc: National Gay & Lesbian Task Force

PARK SQUARE ADVOCATES, INC.Post Office Box 218
Boston, MA 02112Telephone: 617-426-1300
FAX: 617-426-3594

GLAD

Gay & Lesbian Advocates & Defenders

April 1, 1991

Gerald Malone, Esq.
Chief District Court Prosecutor
District Attorney's Office
New Courthouse
Sixth Floor
Boston, MA 02108

Re: Commonwealth's Appeal of Denial of Application for
Criminal Complaint Against Peter Kelley
CC No. 11106700
Date of Arrest: February 7, 1991

Dear Mr. Malone:

Please be advised that this office represents Peter Kelley. In light of our telephone conversation of March 20, 1991, please consider this a formal request for your investigation into the above-referenced case.

In brief, in the early morning of February 7, 1991, while walking on Merrimac Street, Mr. Kelley observed a Boston Police Officer leaning into a parked vehicle yelling "Faggots, don't you know that's how you get AIDS."

As a member of several gay activist groups and as someone who meets monthly with the Command Staff at the Boston Police Department, Mr. Kelley approached the vehicle to observe the situation. He stood next to the vehicle and said nothing. The Officer, John Klokman, glared at him and told him "get the out of here." When he did not move, Officer Klokman approached Mr. Kelley, grabbed him by his coat, dragged him several steps and shoved him, saying, "don't you know you should do what I tell you to do."

Although Mr. Kelley was frightened, he regained his balance and approached the cruiser to write down its number. Officer Klokman observed him, strode over to Mr. Kelley saying, "All right. That's it. You should have left when I told you." and punched Mr. Kelley in the mouth. A second blow hit Mr. Kelley in the jaw. Although he started to fall, the Officer picked up Mr. Kelley and hit him again. Mr. Kelley offered absolutely no resistance.

Mr. Gerald Malone
April 1, 1991
Page Two

The Officer grabbed Mr. Kelley and put him in the cruiser. The occupants of the vehicle which Officer Klokman first attended were ignored while Officer Klokman beat Mr. Kelley. Mr. Kelley was arrested without a warrant for disorderly conduct. See Incident Report, attached. He was booked at Area A, kept overnight and taken to the BMC the next morning. He was released from the holding cell with no charges brought against him. He then went to a physician and photographer to document his injuries.

As an activist on anti-gay violence, Mr. Kelley went to the gay press about what happened to him. Articles appeared in Bay Windows and Gay Community News approximately two weeks after the incident. In one of the articles, Mr. Kelley stated he was considering filing a civil suit against the police officer.

On Friday, February 22, 1991, the same week that the articles appeared and two weeks after the arrest, Mr. Kelley was at one of his regular meetings with the Police Command Staff. One of the Superintendents raised the issue with Mr. Kelley who declined to discuss it.

The next Monday, February 25, 1991, a letter went out from the Boston Municipal Court advising Mr. Kelley that the "Commonwealth" was appealing the Clerk magistrate's decision to deny the application for a complaint. Attached.

Subsequently, I learned from several sources, including the Clerk Magistrate, Mr. Bartlett, that the application had been denied at the request of Sgt. Kelly, the night supervisor, for legal insufficiencies. Apparently, the Officer claimed Mr. Kelley had harassed two men in a parked vehicle who were having sex. Although the officer's story changes with the re-telling, he told Sgt. Kelly that Peter Kelley had rocked the car. The incident report states he "taunted" the vehicle occupants.

I am requesting an investigation for several reasons. One, the application is inadequate as a matter of law and was appropriately denied by Mr. Bartlett. Second, the appeal is retaliatory for Mr. Kelley's speaking to the press and appears calculated to intimidate him from exercising other rights he may have, whether or not he decides to pursue them. In any event, "[t]he complaint procedure in arrest cases is not to be used to affect questions of civil liability." Complaint Standards, 2:04 Third, I would hate to see your office become involved in such a dubious prosecution as is unfolding in this case, particularly in light of the facts I have set out.

Mr. Gerald Malone
April 1, 1991
Page Three

Mr. Kelley is considering filing criminal charges against Officer Klokman. However, I would be happy to speak with you about how to resolve these matters short of litigation.

We are set for hearing in front of a judge on April 22, 1991. I look forward to speaking with you before then about how your office wishes to resolve this matter.

Very truly yours,

Mary L. Bonauto

Mary L. Bonauto
Staff Attorney

cc: Mr. Peter Kelley

(For Commission Use Only)
CROSS-FILED WITH
MCAD _____ EEOC _____
Other _____

No. _____/_____/____

CITY OF BOSTON
Human Rights Commission
CHARGE OF DISCRIMINATION/HARASSMENT/CIVIL RIGHTS VIOLATION

Name (Complainant) Joseph Trovato Home Telephone No. (Include Area Code) 617-321-5833
Street Address 52 Porter St. City Halden State MA Zip Code _____

NAMED BELOW IS THE INDIVIDUAL, EMPLOYER, EMPLOYMENT AGENCY, LABOR ORGANIZATION, APPRENTICESHIP COMMITTEE, EDUCATIONAL FACILITY, FINANCIAL INSTITUTION, PUBLIC SERVICE PROVIDER (i.e., a government agency or private organization providing services to the general public whether for a charge of fee or not) WHO UNLAWFULLY HARASSED OR DISCRIMINATED AGAINST VIOLATED MY CIVIL RIGHTS.
Notes: If more than one list below or on back

Name (Respondent) Boston Police Department Telephone No. (Include Area Code) 617-247-4500
Street Address 154 Berkeley St. City Boston State MA Zip Code _____

Name (Respondent) Officer Matthew Kerwin Telephone No. (Include Area Code) _____
Street Address same as above City _____ State _____ Zip Code _____

DISCRIMINATION OR HARASSMENT WAS BASED ON:

- Race Color Sex Religion National Origin Ancestry Age Sexual Orientation
 Prior Psychiatric Treatment Source of Income Ex-Offender/Military/Marital/Parental Status Disability
OTHER CIVIL RIGHTS VIOLATION: _____ (Specify) (Circle As Applicable)

DATE MOST RECENT OR CONTINUING DISCRIMINATION, HARASSMENT, OR CIVIL RIGHTS VIOLATION TOOK PLACE (Month, Day, and Year)
May 20, 1990 Notes: Complaints of unlawful Discrimination, Harassment, or other Civil Rights Violation must be filed within 180 Days of their occurrence or the Last Day of an alleged Continuing Discrimination, Harassment, or other Civil Rights Violation.

THE PARTICULARS (Use Back If Necessary):

see attached complaint

This Complaint will be filed with the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission if it relates to discrimination under their jurisdiction.

I will advise the agencies if I change my telephone number, and I will fully cooperate with them in the processing of my charge in accordance with their procedures.

Joseph Trovato

Joseph Trovato

I swear or affirm that I have read the above Charge and that it is true to the best of my knowledge and belief.

Joseph Trovato
SIGNATURE OF COMPLAINANT

SWORN AND SHOWN BEFORE ME ON
this 20th DAY OF July, 1990

Matthew Kerwin

COMPLAINT:
JOSEPH TROVATO VS. BOSTON POLICE DEPARTMENT
AND OFFICER MATTHEW KERVIN

1. I am a gay man.

2. On Saturday night May 19 between 3:00 and 3:30 a.m. (i.e., the early morning of May 20), I was driving my Hyundai car with two passengers in the South End on Kilmarnock Street. A Boston Police cruiser approached me from behind with its sirens and lights on and pulled me over to the side of the road.

3. Upon information and belief, the officers were Matthew Kerwin and Daniel Coleman.

4. Officer Kerwin approached me on the driver's side of the car. I asked him why I had been stopped. He said I went through a red light, which I dispute. In any event, upon his request, I produced my license and registration. He returned to his vehicle.

5. Shortly thereafter, in a highly agitated state, Officer Kerwin returned to my car and ordered me to get out. I did so. He asked what I had had to drink. I told him I had one or two drinks at around 11:30 p.m. or midnight but had not been drinking for several hours.

6. Officer Kerwin performed field sobriety tests on me. First he asked me to touch my nose. I did so. Then he asked me to walk heel to toe on a crack in the pavement. I did so. Next, while standing within a foot of me, he asked me to recite the alphabet.

7. When I reached the letter "e", Officer Kerwin appeared incensed. He pulled his left hand up and back to his shoulder. His hand was closed into a fist. His right hand was near my chest. He yelled "faggot" at me and threatened to hit me.

8. Instead of hitting me, he then grabbed both of my wrists, wrenched one of my arms behind my back, twisting me so that I was now facing the hood of the cruiser. He threw me hard against the hood of the cruiser face first and handcuffed me.

9. I protested and told Officer Kerwin I was not drunk. I also told him I wanted to take a breath test.

10. He then forced me to walk toward the cruiser. I was reluctant to get into the cruiser because I had done nothing wrong. Officer Kervin hit me in the neck, after which I said I would get into the cruiser. Nevertheless, Officer Kervin continued to hit me in the back of the head and neck.

11. We waited in the cruiser for about forty minutes for a tow truck. The officers refused to let me get my wallet out of my car or to shut its windows.

12. Again, I repeated my requests to take a breath test. I was told I could take one when I arrived at the station. I asked the officers to loosen the handcuffs because both of my wrists were bleeding. They refused.

13. Also while waiting in the cruiser, Officer Kervin acted in a menacing manner toward me. Among other things, he taunted me saying, "You'll never last in a cell." He also told me I would have to go to court and would lose my license to drive.

14. We eventually arrived at the Area D Station. Another officer performed an intake procedure. I was made to take off my sneakers and jewelry. I was then handcuffed to the wall.

15. After about a half hour of being handcuffed to the wall, two other officers approached me. They loosened my handcuffs and put my sneakers back on me. Then they transported me to Government Center in a paddywagon.

16. After brief conversation with the officers, I was made to sit and wait for another half hour before the breath test was administered. Officer Coleman, among others, was present.

17. When I completed the test, they all looked nervous. They did not tell me I had passed, but I overheard as much.

18. I waited another ten to twenty minutes--still in handcuffs--for the officers to finish with me. Instead, they transported me back to Area D in the paddywagon.

19. When I arrived back at Area D, I was again handcuffed to the wall for twenty to thirty minutes. Officer Kervin was there. I heard him say to the officer who was in charge, "Can't we get him for anything else?"

20. After twenty to thirty minutes of being handcuffed to the wall, I was taken out of handcuffs. Officer Kervin returned my jewelry, but not my license or registration. I

asked him for a copy of my test results and police report. He told me he could not give them to me.

21. I then asked Officer Kerwin where I could find my car. I waited several minutes for an answer as he walked around in the station. I then asked him again. Still he did not answer. Finally, another officer came over to me, told me how to get my car and called a cab for me.

22. While on my way out the door to meet the cab, I asked Officer Kerwin if I still had to go to court. He said no. I said something to the effect that I wanted his badge number.

23. Officer Kerwin then started screaming at me, "Go suck on a I quickly exited. However, I could still hear him yelling at me and other officers yelling at him to shut up.

24. As a result of the unnecessary arrest and towing of my car, I incurred expense and aggravation in re-securing its possession. When I returned to the police station the next day to obtain my license and registration, the police returned only my registration.

25. I believe Officer Kerwin's conduct toward me from the time I was pulled over through the time I walked out of Area D was unlawful, unprofessional, violated my civil rights and was based on my sexual orientation as a gay man.

Signed under the pains and penalties of perjury this ~~29th~~ day of ~~June~~, 1990.

2nd July

Joseph Trovato III
Joseph Trovato

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

Joseph Trovato, being duly sworn, deposes and says: that he is the Complainant herein; that he has read the Complaint and knows the contents of it; that the allegations are of his own knowledge except as to matters upon information and belief and he believes those matters to be true.

Joseph Trovato
Notary Public
J. St. A. of the Plm
My Commission Expires:

4.2.93

LAW OFFICES OF
MARCO E. LOPEZ
 ATTORNEY AT LAW
 HOLL CENTER SAN DIEGO
 801 WEST BROADWAY, SUITE 830
 SAN DIEGO, CALIFORNIA 92101
 TELEPHONE (619) 238-0338
 FACSIMILE (619) 238-0337

MAR 25 1991

Jim

TELECOPIER (202) 225-9460

March 19, 1991

United States Congressman
 Hon. Don Edwards
 Washington, D.C.

Re: **1991 Incidents of Police Brutality Committed Against Mexican Nationals in or about Los Angeles, California.**

Congressman Edwards:

In keeping with your conversation with Dolores Huerta, I am providing information regarding two incidents of police brutality wherein officers used unjustified and excessive force against Mexican Nationals. One case involved a deputy from the Los Angeles County Sheriffs Department, the other members of the City of Los Angeles Police Department.

PEDRO CASTAÑEDA

On January 1, 1991, 28 year old Pedro Castañeda was visiting his sister Maria at her home in El Monte, California. At midnight, he celebrated the new year by firing a .22 caliber pistol in the air, thereby attracting the attention of Los Angeles County Deputy Sheriff Brian Kazmierski. Several witnesses reported that Pedro Castañeda was handing the pistol to a friend when shots rang out from behind a concrete wall. Deputy Kazmierski fired six shots, five of which struck Castañeda about the neck, back, and right hip. Deputy Kazmierski never announced his presence and at no time did Pedro Castañeda provoke or aim the pistol at the deputy.

Brian Kazmierski's history with the Los Angeles County Sheriffs Department strongly suggest that his conduct on January 1, 1991 may have been racially motivated. In December 1989, a County of Los Angeles Civil Service Commission upheld the firing of Deputy Kazmierski from the Sheriffs Department. Kazmierski was discharged for burning a cross in front of black inmates at a Los Angeles County jail sometime between December 1987 and January 1988. The Civil Service Commission, in a highly suspicious and

unusual action, inexplicably ordered a new hearing. Rather than go through another hearing to uphold their disciplinary action, the Sheriffs Department dropped all charges against Kazmierski. Four months prior to the killing of Pedro Castañeda, Los Angeles County Sheriff Sherman Block reinstated Deputy Kazmierski with back pay, claiming that the charges stemming from the racial incident at the jail could not be sustained on rehearing.

Pedro Castañeda was born in Jalisco, Mexico and had studied to be a veterinarian. At the time of his death he was employed as a factory worker and is survived by his 18 year widow Catalina Castañeda and a three month-old son.

On March 13, 1991, the Los Angeles County Board of Supervisors denied any liability for the death of Pedro Castañeda.

NICOLÁS CONTRERAS

In the early morning hours of January 1, 1991, 26 year old Nicolás Contreras had finished celebrating the new year by firing a small caliber weapon in the air in a East Los Angeles neighborhood, when officers of the Los Angeles Police Department fired several shotgun blasts, instantly killing Nicolás.

Witnesses report that officers positioned themselves at the end of Contreras' driveway. As Nicolás Contreras entered his home, shotgun blasts broke out. The front security-screen door is pierced with over forty shotgun-pellet holes. At the time of the shooting, Mr. Contreras, though in possession of the pistol at his side, never threatened the officers. The officers never announced their presence, nor did they request that Contreras step away from his residence.

I am sure that these are just a few of many incidents of police brutality involving the Los Angeles County Sheriff's Department and the City of Los Angeles Police Department. For your information, I am also enclosing a summary of a few cases involving abuses by the United States Border Patrol. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely

Marco E. Lopez
Attorney At Law

VICTOR MANDUJANO

On September 8, 1990 17 year-old Victor Adrian Mandujano was killed by an unknown Border Patrol agent at point blank range with a .357 magnum revolver. Victor was attempting to cross the border with his 23 year-old brother at the San Ysidro Port of Entry when the agent, not in uniform, chased them back to the border fence. Although Victor's older brother made it over the fence, the agent pulled Victor off the fence and shot him in the chest without provocation. The agent then waived his chrome revolver threateningly at nearby witnesses. Neither Victor nor his brother were armed and at no time did they threaten the unknown agent.

EVELYN CASTANEDA & FRANCISCO RUIZ

On March 28, 1989 Evelyn Castaneda was assaulted by U.S. Border Patrol Agent Walter Davenport as she crossed the U.S./Mexican border to purchase clothing for her children at a San Ysidro K-Mart. Ms. Castaneda was seven months pregnant. Her husband Francisco Ruiz stood on the Mexican side where he planned to wait for her return. As Evelyn Castaneda crossed into the United States, her path was cut off by agent Davenport's vehicle. Agent Davenport exited his vehicle and grabbed Ms. Castaneda by the hair, forcing her to the ground.

Upon observing this, Francisco Ruiz Chavez ran to their location and pleaded with the agent not to strike his wife and that she was pregnant. Agent Davenport then placed his foot on Ms. Castaneda's throat and stomach. Francisco Ruiz raised his arm several times yelling at the agent not to injure his wife. In response, agent Davenport unholstered his service revolver and shot Francisco Ruiz twice, once in the abdomen and once in the buttock as Francisco Ruiz was running away from agent Davenport.

SABINO SILVA CHAVEZ AND JOSE MARTIN LOPEZ

On January 4, 1989 at approximately 10:30 P.M. Sabino Silva Chavez and Jose Martin Lopez were shot and killed by Border Patrol agents participating in a joint task force (known as the Border Crime Prevention Unit) with the San Diego Police Department. Disguising themselves as Mexican Nationals, the task force ambushed Sabino Silva Chavez and Jose Martin Lopez as they crossed the U.S./Mexican Border. Claiming that Chavez and Lopez had attempted to rob them, Border Patrol Agents Michael Moran and John Roberts shot Sabino Silva Chavez and Jose Martin Lopez.

Evidence in this case indicates that Chavez and Lopez were shot in the back, possibly while handcuffed. Lopez' died from a shotgun blast to the back of the head, fired from a distance of approximately ten feet.

SABINA ROCHA

On September 12, 1990 Sabina Rocha was sexually assaulted by an unknown Border Patrol agent in Northern San Diego County (Encinitas, California). Upon apprehending Miss Rocha, the agent inquired as to the location of her residence, whereupon Miss Rocha took the agent to the location where she was staying. Accusing her of possessing drugs and of being a prostitute, the agent forced Miss Rocha to disrobe and began to fondle her breast and digitally penetrated her for approximately five minutes. She was never arrested or charged with any offense. As a result of this episode, Miss Rocha has sustained severe mental and emotional trauma.

BRIAN WOLFE

On December 10, 1989 Brian Wolfe was stopped by two unknown Border Patrol agents about 8:30 P.M. in the middle of a narrow rural road in northern San Diego County, near Fallbrook, California. Mr. Wolfe advised the agents that he would pull to the side of the road as soon as it was safe to do so and proceeded to drive to a turn-out about a mile away. As Mr. Wolfe got out of his vehicle and approached the agents, he was struck in the back with a baton and knocked to the ground, wherein one of the agents continued hitting Mr. Wolfe with a baton and flashlight. Accusing him of being a smuggler, the agents handcuffed Mr. Wolfe and placed him in the rear of their vehicle. When he requested that they radio a station supervisor, he was advised that the radio was inoperative.

They then drove with him in the back of the vehicle until they flagged down a California Highway Patrolman, telling the patrolman that Mr. Wolfe should be arrested for drunk driving. The Patrolman conducted a field sobriety test and determined that Mr. Wolfe was not under the influence of any alcohol or drugs. The agents then drove Mr. Wolfe back to his vehicle and released him.

When Mr. Wolfe requested the names of the two individuals so that he could file a claim under the Federal Torts Claims Act, he was advised by the Border Patrol to file a request under the Freedom of Information Act. To date, Mr. Wolfe suffers from severe medical complications to his back and left shoulder.

METRO

CA 111105
1-11-91

Los Angeles Times

Mexico Consulate Speaks Out

■ **Diplomacy:** The L.A. office becomes more vigorous in defending nationals in the U.S. Two shooting deaths involving law enforcement bring unusually strong protests.

By TRACY WILKINSON
TIMES STAFF WRITER

The doors of the Mexican Consulate near MacArthur Park had barely opened when the brothers of Nicolas Contreras appeared, saying that they sought justice. Days before, Contreras had been shot to death by Los Angeles police officers who said the Mexican national had threatened them with a gun he was firing to welcome the new year.

That explanation did not satisfy Contreras' brothers. But instead of protesting quietly, they asked the consulate for help.

The consulate was quick to respond. In a rare departure from protocol, Consul General Jose Angel Pescador Osuna sent Los Angeles Police Chief Daryl F. Gates a formal letter of protest, expressing "indignation" and demanding an investigation into the shooting.

It was the second time in less than a week that Mexican government officials had confronted Los Angeles law enforcement. Another Mexican citizen, Pedro Castaneda Contreras, had been killed on New Year's under similar

letter of complaint went to Sheriff Sherman Block.

The unusual protests are part of what Mexican officials say is a campaign to attract attention to the plight of Mexican nationals in the United States. Spurred by pressure at home to protect Mexicans abroad, the consulate in Los Angeles says that it will take a more active role in monitoring and publicizing cases of alleged police abuse or other violence against Mexican nationals.

"What we are talking about is violation of human rights," said Martin Torres, consulate press attache. "It has to be fixed. It has to be changed [and] it should be known that we are working to stop these kinds of incidents [which] are beginning to repeat themselves."

The campaign appears to be an offshoot of similar efforts in the San Diego area aimed at stemming a rising tide of violence along the U.S.-Mexico border. Such efforts received a boost last November when the presidents of Mexico and the United States met in Monterrey, Mexico, and agreed to take steps to stop border violence.

Torres conceded that the border, where five Mexicans have been killed by U.S. law enforcement agents in the last year, has a greater problem than the Los Angeles area, and he added that relations between the Mexican Consulate and local law enforcement are generally good. But by making an issue of the Contreras and Castaneda cases, he said, the consulate hopes to prevent more incidents and remind authorities that consular officials are watching.

Since taking over the consulate early last year, Pescador has promoted the more aggressive stance as part of his



AL 5238 / Los Angeles Times

Consul General Jose Angel Pescador Osuna, seated,

MEXICO: Consulate Speaks Out

Continued from B1
government's foreign policy. In addition to protesting violence, he and other officials have attended local trials of several Mexican nationals, including Ruben Zuno Arce, convicted in the torture-murder of U.S. drug agent Enrique Camarena, and of three San Bernardino County sheriff's deputies accused in a lawsuit of beating five Mexican citizens in Victorville.

The consulate is also encouraging Mexican citizens with similar complaints against police to come forward.

Los Angeles police and sheriff's officials deny that Mexican nationals are singled out for abusive treatment, and say that the shootings of Contreras and Castaneda were already under investigation without any prompting from the Mexican government. So far, they said, investigators have not turned up evidence of wrongdoing.

"I think it was a matter of jumping before you think," Sgt. Edward Sznaper, head of the Los Angeles County Sheriff's Department's international liaison unit, said of the consular protest.

Lt. William Hall, who heads the Los Angeles Police Department unit that investigates officer-involved shootings, said the consulate's action took him by surprise.

"We've shot a lot of Mexican nationals over the years and it was unusual to get a letter," Hall said. "I don't attach a lot of significance to it. I don't think there is any basis to it, but if they (Mexican officials) have other information, we want to keep an open mind and avail ourselves of it."

To that end, police investigators met with Pescador and other consulate officials Wednesday.

With publicity swirling around shootings or beatings in which Mexican nationals are victims, the Mexican government—dismayed by sharp criticism from several U.S.-based human rights organizations—may be hoping for an image-enhancing political plus: shifting the focus from human rights violations in Mexico to similar alleged abuses in the United States.

"It is a way to say it doesn't only happen in Mexico," Torres said. "... It is a way to say we are concerned about human rights here (in the United States) too." Contreras and Castaneda had been killed after they were discovered shooting guns into the air to



Pedro Gonzalez



Nicolas Contreras

ported the police description of events.

In the other case attracting consular attention, Castaneda and two companions were saluting the New Year shortly after midnight by firing a revolver into the air. According to sheriff's spokesmen, a deputy was dispatched to investigate reports of gunfire, saw the three men and ordered Castaneda, 28, to drop the gun.

The deputy said he saw Castaneda turn toward him, pointing the gun. The deputy fired five times. Castaneda died at the scene.

One of Castaneda's companions, Luis Alberto Velasco, told consulate officials and The Times that Castaneda had already dropped the gun when the deputy opened fire. Authorities deny that. The case remains under investigation.

Sznaper said the Mexican Consulate, in protesting the shootings, acted hastily and with little foundation.

"Every story has at least two sides," Sznaper said. "To go to the family and get their side, and then go with it like it's the gospel truth, is ludicrous."

Torres countered, however, that

In the Contreras case, Los Angeles police say they fired four shotgun rounds into Contreras when he pointed a gun at them. Contreras, a 26-year-old wire factory worker, had been shooting his gun into the night sky as he stood on the front stoop of his South-Central home, according to police and his family.

Besides Contreras and the two officers who confronted him, his parents and one sibling were also present. A neighbor and a cousin of Contreras who were in the house at the time said they saw the police fire the shotgun shells and that the police saw they clearly pointed themselves and ordered Contreras to drop the weapon.

Regardless of what an official investigation determines, the Contreras family is still reeling from the shooting.

William Torres, Los Angeles Police Department spokesman, said Contreras, 31, said in Spanish that he wanted information at the consulate, a newly refurbished building on 6th Street next to MacArthur Park. "My brother was not a murderer. They did not have to do this to him."

Hall said evidence and interviews with the officers and people from the neighborhood have sub-

LAW OFFICES OF
LAURENCE B. LABOVITZ

WILSHIRE CENTRE
3055 WILSHIRE BOULEVARD, SUITE 900
LOS ANGELES, CALIFORNIA 90010
TEL: (213) 487-9199
FAX: (213) 380-2601

November 9, 1990

Hon. Pete Schabarum, Chairman
Los Angeles County Board of Supervisors
Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisor:

I am enclosing for your information and immediate action the following news articles concerning the reinstatement of the White "Cross-Burners" to their positions as Deputy Sheriffs in the Los Angeles County Sheriff's Department.

The announcement of such reinstatement both nauseates and disgusts all reasonable and fair-minded people. The County of Los Angeles spent a good deal of money in the lengthy Civil Service Commission Hearings held in December 1989, before the Honorable Huey Shepard, Los Angeles Superior Court Judge (Retired). I have attached an excerpted copy of his 47-page opinion, and draw your attention to his specific comments on page 46. He indicated

" . . . the Hearing Officer finds that the discipline imposed by the Department is appropriate under the overall circumstances of this case. The significance of such incident to the community at large is of such gravity that for the Department not to act would be an indication of the Department condoning such acts. Law enforcement officers must be free from any evidence of bias and the conduct of the appellants brought discredit upon themselves, their Department and endangered inmates and sworn personnel." (Emphasis added)

He concluded that the "discipline imposed . . . is appropriate under the overall circumstances of this case."

Los Angeles County Board of Supervisors
November 9, 1990
Page Two

Thereafter, as soon as the publicity had died down, the Los Angeles Civil Service Commission, in a highly unusual action reeking of bureaucratic bigotry and corruption, inexplicably ordered a new hearing for unspecified reasons for these White miscreants. Rather than go through another hearing procedure to uphold their disciplinary action, the Department decided to drop all charges against the White "Cross-Burners" and allow them to be reinstated with back pay!!!

Subsequently, in a news article also attached, Sheriff Sherman Block again has sought to blatantly lie and mislead the public in this matter. His statements as to unavailability of witnesses are totally preposterous, in that even if witnesses were not available, the prior five volumes of transcripts from the original proceedings which were under oath and subject to cross-examination, would be easily admissible in any new proceeding.

Further, these wrongful actions by both the Sheriff's Department and the totally disreputable Los Angeles County Civil Service Commission, blatantly condone racial hatred, overt bigotry, brutality, and any misconduct which is routinely done by White uniformed personnel in a Sheriff's Department that is rife with corruption, arrogance and just plain incompetence.

You may rest assured that the retention of these uniformed White "Cross-Burners" only underscores the fact that the Sheriff's Department and Sheriff Sherman Block, Undersheriff Robert Edmonds, and Assistant Sheriff Jerry Harper fully ratify and condone such activity---as well as utilizes a dual standard of discipline---and little excuse can be made in the future for any liability claims which arise as a result of misconduct by these uniformed personnel against the public.

Los Angeles County Board of Supervisors
November 9, 1990
Page Three

I can further assure each and every one of you that all of these matters will be fully explored in the forthcoming trial in the United States District Court and that there will be no further cover-up permitted of the corrupt and inept administrative policies and procedures in the Los Angeles County Sheriff's Department, including the matter of such cross-burning activities by White Deputies, which resulted in racial discrimination against Eugene Harris and the destruction of his professional career in law enforcement.

Yours very truly,



LAURENCE B. LABOVITZ
Attorney at Law

LBL nlb

Enclosures

cc:

U.S. Attorney Lourdes Baird
District Attorney Ira Reiner
Hon. Huey P. Shepard (Ret.)
Gene Pomeroy, Executive Officer
Clyde Johnson, President
Black Employees Association
Patrick Patterson, Esquire
NAACP Legal Defense Fund
George Denny, III, Esquire

SATURDAY, OCTOBER 27, 1990

Daily News

LEAVING THE ANGELES AND NEIGHBORING VALLEYS

Sheriff's Dept. reinstates 2 in cross burning

By David Parrish
Daily News Staff Writer

Two white Los Angeles County sheriff's deputies fired more than a year ago for burning a cross in front of black inmates in the Men's Central Jail were reinstated quietly as deputies last month and given partial back pay, officials said Friday.

Under a settlement reached with the Sheriff's Department, Brian E. Kazmierski and Richard D. Bolks were reinstated as deputies in September and paid some of the money they would have earned if they had not been fired in July 1989, said Richard Shinee, the attorney who represented the two deputies.

Kazmierski is assigned to the Temple City sheriff's station and Boltz is working again inside a county jail, this time in East Los Angeles, said Lt. Russ Collins, a Sheriff's Department spokesman.

Related story:

Money-skimming charges force dismissal of drug case. Page 6

An internal-affairs investigation concluded the cross had been burned by the two deputies sometime between December 1987 and January 1988 when the pair were assigned to the Central Jail.

Civil rights groups condemned the reinstatement of the two deputies and the Sheriff's Department.

"It's just another example of racism that exists within the Sheriff's Department," said Ramona Ripston, executive director of the American Civil Liberties Union of Southern California.

Jose de Sosa, president of the state chapters of the National Association for the Advancement of Colored People, said it was "ab-

See SHERIFF / Back Pg.

Deputies in cross burning reinstated

SHERIFF / From Page 1

calling" that the deputies were reinstated. "This sends a negative signal."

Sosa said he planned to write a letter of protest to Sheriff Sherman Block.

Kazmierksi and Bolks were in the middle of a lengthy civil service appeal of their dismissals when the Sheriff's Department agreed in September to settle the case by reinstating the two fired deputies, Shinee said.

A civil service hearing on the matter was scheduled to start this month.

"Given the circumstances at the time of the incident we took the appropriate action based on the evidence available," Collins said. "Several factors have pre-

cluded the department from sustaining the case. One of which involves the amount of time that has elapsed since the incident took place."

Collins said state personnel laws prevented him from discussing details of the case.

Shinee said his clients were reinstated because they were not guilty of any wrongdoing.

"There was no cross burning," Shinee said. "They (the deputies) were engaged in some horseplay, but that in no way was related to racial slurs."

The cross-burning story was made up by inmates who wanted to smear the reputations of the two deputies, Shinee said.

Kazmierksi and Bolks were fired from the Sheriff's Department in July 1989 following an

internal affairs investigation that concluded the two deputies had burned a cross made of "paper product" sometime between December 1987 and January 1988.

The sheriff's investigation stated the cross burning took place in a special module of the jail where tough gang members were locked up.

"As the inmates watched, you lit a match and held it in front of an aerosol can," sheriff's officials wrote in a 1989 letter to Kazmierksi.

"As the spray from the aerosol can came in contact with the flames from the match it set the spray on fire giving a blowtorch effect. The flames then set the cross on fire."

The deputies appealed their dismissals to the county Civil Service Commission.

After a lengthy and highly publicized hearing in late 1989, civil service hearing officer Huey P. Shepard — a former Superior Court judge — ruled that a "preponderance of the evidence" showed the deputies had burned a cross and that the Sheriff's Department was justified in firing them.

Shepard wrote in his report that his findings were not just based on statements made by gang members.

"As a result of the investigation by the Sheriff's Department, (Bolks and Kazmierksi) admitted that a cross was fashioned out of tape and had been placed on the window (of the control room)," Shepard wrote in his findings.

"During the course of the hearing both (deputies) denied that

this was ignited with the flamethrower. This is inconsistent with statements which they made during the course of the investigation and inconsistent with statements of inmates," Shepard wrote.

"The statement is also inconsistent with the testimony of a witness, (Deputy) Frank Plass, who indicates that he observed a sticky residue on the window which had the appearance of a cross," Shepard wrote.

Kazmierksi and Bolks appealed the ruling, and on a 3-2 vote last May the Civil Service Commission granted the deputies a new hearing conducted by a hearing officer other than Shepard, records show.

But before that new hearing took place the settlement was reached.

DOJ Civil Rights Investigations for the
Central District of California - 1982 - present
(statistics provided to the Subcommittee by DOJ, 3/19/91)

720 investigations, of which:

72 involved Los Angeles Police Department

186 involved Los Angeles County Sheriff's Dept.

Of the 720 investigations, 4 resulted in indictments, of which:

3 cases resulted in convictions (1 involved the U.S.
Border Patrol; 1 involved both Los Angeles Police
Department and Los Angeles County; and for the third
we have no information)

1 case is still pending

Therefore, between 1982 and the present, the Justice Department has obtained convictions in one (possibly two) cases involving officers of the LAPD or LA County Sheriff's Department. Yet, according to press reports, during just part of that time, 1987-1989, the LA County Sheriff's department lost or settled 56 civil lawsuits involving the use of excessive force, paying out \$8.5 million in damages (LA Times), and the LAPD between 1987-1990 paid out \$18.8 million in damages for police brutality cases (NY Times).

DOJ Staffing Levels - 1981 - 1992

	Positions for Civil Rights Prosecutions	Total DOJ Positions
1981	40	55,746
1982	37	54,387
1983	37	54,808
1984	40	56,097
1985	45	61,826
1986	45	63,322
1987	45	69,913
1988	45	70,850
1989	45	74,546
1990	45	74,006
1991	44	80,747
1992*	44	86,509

Staffing Level Growth

1981-1992	10%	55%
1985-1992	-2%	40%

* President's budget request.

SUMMARY OF SIGNIFICANT CIVIL RIGHTS PROSECUTIONS
OF POLICE BRUTALITY CASES (1982-1989)

The following summary is drawn from the annual Department of Justice budget requests.

1989

Five narcotics officers in Puerto Rico pled guilty to shooting at a young couple while the officers were drunk.

Two sheriff's deputies in Georgia were convicted of allowing a civilian to beat up a person in the deputies' presence.

A police officer in Ohio punched a woman in the mouth and filed false charges against her; the officer was convicted.

Four West Virginia police officers were convicted of beating up a handcuffed arrestee.

1988

A Kansas sheriff pled guilty to endangering an ill prisoner's life by moving the prisoner, against medical recommendation, for a court appearance.

A Secret Service agent was indicted for beating a pedestrian while the agent was detailed to a presidential candidate's motorcade.

A grand jury investigated the police shooting of a San Antonio police officer who had allegedly gone on a vigilante spree.

1987

A county sheriff was successfully prosecuted for beating two burglary suspects and then hiring a hit man to kill them.

A grand jury investigated police conduct of the eviction of MOVE members from a Philadelphia rowhouse, during which 11 people were killed.

1986

A New Jersey state trooper was convicted of mortally beating a shackled prisoner with a flashlight.

Five police officers in Puerto Rico were convicted of unlawful acts leading to the death of two victims; two other officers pled guilty in the cases.

1985

Two Tennessee police officers were incarcerated for beating and sexually assaulting two arrestees charged with traffic offenses.

Ten police officers in Puerto Rico were successfully prosecuted for perjury regarding their roles in the murder of two political activists.

1984

A Massachusetts police sergeant was convicted of throwing a victim into the ocean, where the victim drowned.

A Texas police chief pled guilty to mortally shooting a victim.

A Honolulu police officer was convicted of taking a handcuffed victim to an isolated area and making the victim catch toads with his mouth from a water-filled ditch.

Another Honolulu police officer was convicted of taking an arrestee to an isolated area and then beating him.

1983

Three New Orleans police officers were convicted of placing a suffocating bag over the victim's head and then beating him with a city phone directory.

A West Virginia county sheriff was convicted of mortally beating a handcuffed arrestee with a flashlight.

A Texas county sheriff was convicted of attempting to coerce confessions by repeated false arrests of suspects; in the same case, another county sheriff pled guilty to beating one of the arrestees.

1982

Two Texas police officers pled guilty in brutality cases.

A third Texas police officer was convicted of having an American citizen kidnapped and sent to Mexico, where the citizen was wanted for murder.

○