

# **Implementing the Massachusetts Civil Rights Act**

**A Report of the Massachusetts Advisory Committee  
to the U.S. Commission on Civil Rights**

**June 1983**

—A report of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights prepared for the information and consideration of the Commission. The report will be considered by the Commission and the Commission will make public its reaction. In the meantime, the recommendations in this report should not be attributed to the Commission, but only to the Massachusetts Advisory Committee.

## THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, age, handicap, religion, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

## THE STATE ADVISORY COMMITTEES

An Advisory Committee to the U.S. Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957, as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters which the Advisory Committee has studied; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

## ACKNOWLEDGEMENTS

The Massachusetts Advisory Committee wishes to thank the staff of the Commission's New England Regional Office for its help in the preparation of this document.

The report was the principal staff assignment of Larry Riedman. Legal review was conducted by Mary Lee Walsh. Clerical support was provided by Sylvia Cooper. The project was undertaken under the overall supervision of Jacob Schlitt, Director, New England Regional Office.

# **Implementing the Massachusetts Civil Rights Act**

**A Report of the Massachusetts Advisory Committee  
to the U.S. Commission on Civil Rights**

## **ATTRIBUTION:**

The findings and recommendations contained in this report are those of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and Congress.

## **RIGHT OF RESPONSE:**

Prior to the publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

MASSACHUSETTS ADVISORY COMMITTEE  
TO THE U.S. COMMISSION ON CIVIL RIGHTS

---

*Dr. Bradford E. Brown, Chairperson*  
*East Falmouth*

*Tracy Amalfitano*  
*Boston*

*Charles D. Baker*  
*Boston*

*Edward Dugger III*  
*Boston*

*Sixto Escobar*  
*Somerville*

*Ellen B. Feingold*  
*Newton*

*William J. Foley*  
*Worcester*

*Eugenia Fortes*  
*Hyannis*

*Dr. Argelia Hermet*  
*Springfield*

*Dorothy S. Jones*  
*Cambridge*

*Sandra L. Lynch*  
*Boston*

*Patricia A. Morse*  
*Roxbury*

*Paul Parks*  
*Boston*

*Russell Peters*  
*Mashpee*

*Daniel A. Phillips*  
*Boston*

*Glendora M. Putnam*  
*Boston*

*Irene Y. Wong*  
*Cambridge*

LETTER OF TRANSMITTAL

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

June 1983

MEMBERS OF THE COMMISSION

Clarence M. Pendleton, Jr., Chairman  
Mary Louise Smith, Vice Chairman  
Mary Frances Berry  
Blandina Cardenas Ramirez  
Jill S. Ruckelshaus  
Murray Saltzman

John Hope III, Acting Staff Director

Dear Commissioners:

Pursuant to its responsibility to inform the Commission about civil rights developments in Massachusetts, and about matters of mutual concern on which the Commission reports to the President and Congress, the Massachusetts Advisory Committee submits this report on the implementation of the Massachusetts Civil Rights Act.

The report chronicles prosecutorial use of the State civil rights law from its effective date of February 14, 1980, to the spring of 1983. This was a period during which many communities across the country faced escalating levels of racially and religiously motivated violence, vandalism, and intimidation. The Commission in its January 1983 statement, Intimidation and Violence: Racial and Religious Bigotry in America, summarized the struggles of some of these communities to shape legal mechanisms to combat such behavior. We hope that this profile of a central element of the Commonwealth's effort to address racially and religiously motivated crime will be a significant addition to the Commission's knowledge of this issue.

A comparison of the Massachusetts Civil Rights Act to measures taken by other jurisdictions supports the conclusion that Massachusetts among the States has taken a unique -- if not yet uniquely effective -- approach to combatting violations of civil rights. As the

Commission has reported, other States and municipalities have sought to proscribe or regulate specific activities -- operation of paramilitary camps, parades and rallies by hate groups, particular types of vandalism, wearing of masks or certain regalia. While Massachusetts too continues to consider such measures, the Commonwealth already is in the position of having acted to combat interference with people's enjoyment of their whole range of Federal and State statutory and constitutional rights. This approach echoes key Federal civil rights statutes. In fact, the Massachusetts Civil Rights Act incorporates many of the strongest features of Federal civil rights law while avoiding many of the defects the Commission has identified in Federal law.

Although the Massachusetts Civil Rights Act was infrequently utilized in its first year and a half, there are encouraging signs that prosecutors now are applying it with increasing frequency, confidence, and sophistication. However, understanding of its use and potential remains uneven, and we are hopeful that this report will to some degree alleviate this problem.

Perhaps most encouraging, the Advisory Committee has discovered no evidence of legal challenges to or popular reaction against the Act or any of its provisions. We believe that the Massachusetts Civil Rights Act has proved its value during the past three years, and that diligent application of the lessons learned in that time -- and expressed in this report's recommendations -- will ensure that the law fulfills its potential.

Respectfully,

BRADFORD E. BROWN, Ph.D., Chairperson  
Massachusetts Advisory Committee

## Preface

The city of Boston has been the focus of national attention for a decade for acts of racially motivated violence, and the occurrence of similar incidents has troubled many other Massachusetts communities. While persistent, widespread, virulent hostility toward blacks remains the keystone of bigotry in the Commonwealth, recent years have brought an increasing tempo of attacks on southeast Asian immigrants and the ascendance of Massachusetts to the position of fourth among the States in anti-Semitic acts.<sup>1</sup>

The persistence and frequency of these incidents might lead some observers to despair that the problem is intractable, but fortunately the outrage and concern of many of the Commonwealth's citizens and law enforcement authorities have been expressed in at least one noteworthy effort to bring new law enforcement mechanisms to bear on such crimes.

On November 16, 1979, the Massachusetts Legislature passed the Massachusetts Civil Rights Act, chapter 801 of the Acts of 1979.<sup>2</sup> The measure was signed by Governor Edward J. King, and went into effect on February 14, 1980. The Massachusetts Advisory Committee to the U.S. Commission on Civil Rights was among those who welcomed and applauded this development,<sup>3</sup> and believes it is timely now to review the utilization of the State Civil Rights Act during the past three years.

This analysis has been completed in the months since the U.S. Commission on Civil Rights issued its statement, Intimidation and Violence: Racial and Religious Bigotry in America.<sup>4</sup> That statement summarized a two-year study of the responses to these social pathologies by State and local governments across the country. The distinctive features of the Massachusetts Civil Rights Act in comparison to measures enacted elsewhere and at the Federal level form one of the themes of this report.

Chapter I provides background on the general nature of civil rights laws and on the social climate in the Commonwealth during the period in which the Massachusetts Civil Rights Act was passed. Chapter II presents the elements of the State Civil Rights Act and noteworthy points of comparison to Federal criminal civil rights statutes. Chapters III and IV describe the use of the civil rights law by the State Attorney General and district attorneys, respectively. Chapters V and VI offer conclusions and recommendations.

The Massachusetts Advisory Committee intends that this report add to the Commission's knowledge of the initiatives underway to combat racially and religiously motivated intimidation and violence, and provide the people of Massachusetts a greater understanding of the performance and potential of the Massachusetts Civil Rights Act.

---

### Notes to Preface

1. Anti-Defamation League of B'nai B'rith, "1982 Audit of Anti-Semitic Incidents" (1983).
2. 1979 Mass. Acts 801 (codified at MASS. GEN. LAWS ANN. ch. 12, s. 11H-I, ch. 265, s. 37 (West Supp. 1982-1983)).
3. Bradford E. Brown, Chair, Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, letter to Edward J. King, Governor of Massachusetts, Nov. 27, 1979 (hereafter cited as Brown Letter to Governor King).
4. U.S. Commission on Civil Rights, Intimidation and Violence: Racial and Religious Bigotry in America (January 1983).



## CONTENTS

### Preface

I.	Background. . . . .	1
II.	Provisions of the Massachusetts Civil Rights Act. . . . .	5
III.	Prosecutions by the Massachusetts Attorney General. . . . .	17
IV.	Prosecutions by District Attorneys. . . . .	23
	Berkshire County	
	Cape & Islands District	
	Essex County	
	Hampden County	
	Middlesex County	
	Norfolk County	
	Northwestern District	
	Plymouth County	
	Suffolk County	
	Worcester County	
V.	Conclusion. . . . .	32
VI.	Recommendations. . . . .	37
	Appendix: The Massachusetts Civil Rights Act	



## I. BACKGROUND

The Massachusetts Civil Rights Act makes it illegal for a person to interfere with another's exercise of his or her statutory and constitutional rights. In this goal and in several of its provisions, the State law draws on Federal criminal and civil statutes, many dating to the post-Civil War era. (Points of comparison and contrast between the Commonwealth's law and Federal laws are presented in Chapter II.)

The protections offered by the Massachusetts Civil Rights Act, and by most Reconstruction and modern Federal civil rights statutes, apply to all racial and other groups in society. Typically, such laws do not refer only to the rights of "blacks," "minorities," or some other social group, but to those of "persons" or "citizens."<sup>1</sup> Where race is mentioned, it is not to establish a separate set of rights or protections for a particular group, but to specify racial discrimination as a prohibited motive for interfering with the enjoyment of rights<sup>2</sup> or to make clear that the right protected is "the same right as enjoyed by white citizens."<sup>3</sup> The race-neutrality of civil rights laws is illustrated by their common use to prosecute cases of police misconduct in which both the victim and the accused officer are white.<sup>4</sup>

Despite their race-neutrality, civil rights laws have become strongly associated with efforts to protect the rights of blacks and other minority groups, given the reality that prejudice against nonwhites is perhaps the most common motive for one American to interfere with another's exercise of such rights as voting, obtaining housing, or holding a job.

Considering the perpetrator's intent acknowledges that there is a qualitative distinction between crimes in which the perpetrator and victim happen to be of different races and those in which the perpetrator chooses the victim because the victim is of a different race. Although there are all manner of "inter-racial" crimes (crimes in which the parties are of different races), those that are "racially motivated" have an added dimension -- they not only harm the victim but intimidate or threaten all members of the victim's group. For example, firebombing the home of a black family that integrates a particular street not only is an outrageous assault on that family's housing rights, but also warns all blacks that it would be dangerous for them to move to that street, and thus interferes with their right to occupy housing. The same dynamic operates regarding any action to intimidate a particular group, such as anti-Semitic acts. Civil rights laws, even when they do not explicitly mention racial, ethnic, religious, or other such groups, address this dynamic between motivation and interference with rights.

It is generally acknowledged that Federal civil rights laws have served as a crucial tool in securing for blacks in the South safe exercise of such basic rights as voting. Through the Federal civil rights laws, threats and actions aimed at intimidating or preventing blacks from exercising federally protected rights became Federal offenses. Federal civil rights laws also have been employed to protect the rights of other racial and ethnic minorities and to combat anti-Semitic acts.

Well aware of the historic effectiveness of these Federal laws, many civil rights groups in the Commonwealth viewed the enactment of a comparable law in Massachusetts as an important element of the effort to combat racially motivated crime. Racially motivated violence had occurred through the 1970s against blacks exercising their rights to use public transportation and public thoroughfares, to occupy housing, to attend public schools, to patronize restaurants and bars, and to visit public buildings, monuments, and recreational facilities. The violence during this period included stonings of cars, homes, and persons, firebombings, shootings, beatings with bats and other weapons, and pushing victims onto subway tracks. Over and above the singling out of black victims, explicit racial motivation often was evident in the perpetrators' use of racial epithets and, in at least one instance, wearing of KKK-style regalia.

Without a civil rights law, the State could respond to such racially motivated acts of violence as apartment firebombings or car stonings only by undertaking criminal prosecution or urging Federal involvement. The State could not specifically address racially motivated instances of "interference with rights." As the Boston Globe characterized the situation editorially, there was a "statutory vacuum at the State level" that sent State efforts to protect citizens' civil rights on a "detour through the Federal courts."<sup>5</sup>

With the Massachusetts Civil Rights Act, as the Massachusetts Advisory Committee noted when the law was enacted, "the impediment to allowing our police, district attorneys, and Attorney General to act in cases of civil rights violations is removed."<sup>6</sup>

State civil rights bills had been filed in the legislature in 1976,<sup>7</sup> 1977,<sup>8</sup> and 1978,<sup>9</sup> but had died in committee. House Bill No. 3135 filed by the Attorney General and enacted in 1979 reflected redrafting (discussed in the next chapter) by the Attorney General's Office with the aid of the Civil Liberties Union of Massachusetts.<sup>10</sup> The measure was sponsored by Attorney General Francis X. Bellotti, by Senators John King, Robert McCarthy, Alan Sisitsky, and Joseph Timilty, and by Representatives Doris Bunte, William Galvin, Mark Lawton, John Murphy, and Alfred Saggese.<sup>11</sup> It progressed through the legislature without amendment, receiving a particularly powerful boost from Boston Police Commissioner Joseph Jordan, and it was supported as well by other key Boston leaders,

law enforcement agencies, and many statewide organizations.<sup>12</sup> Passage of the bill probably was aided by the fact that a sense of crisis prevailed in Boston, which had just been shaken by the shooting of a black high school football player, Darryl Williams, during a scrimmage in Charlestown.

Thus, the law passed in 1979 was shaped over several years and enacted after it gradually had acquired quite formidable support. There were many hopes and expectations regarding its implementation. However, as of May 1981, when it had been in effect for more than a year, there reportedly had been only two convictions of violations of the law, and the Boston Globe reported that many attorneys and agency officials whom it had interviewed were "unfamiliar with the statute and its workings."<sup>13</sup>

That would indeed have been slender experience on which to evaluate the effectiveness of the Massachusetts Civil Rights Act. While it would be gratifying to report that use of the law was low because violence had subsided, regrettably that was not the case. In addition to continuing violence against blacks, Boston has experienced in recent years numerous incidents of violence against immigrants from Southeast Asia.<sup>14</sup> Furthermore, eastern Massachusetts during 1982 was the site of a bombing and an arson of Jewish places of worship, among other anti-Semitic acts.<sup>15</sup>

Plainly, the simple act of passing a civil rights law did not bring violence to an end. However, application of the law in these incidents means that, as the law now progresses through its fourth year, a substantial record of its use exists. Whether the law, if effectively implemented, can achieve its goals in coming years perhaps can be discerned by reviewing its use to date.

The Advisory Committee's examination of that record focuses on the roles of the Commonwealth's Attorney General and district attorneys in making the law effective.

---

#### Notes to Chapter I

1. See, e.g., 18 U.S.C.A. ss. 241, 242 (West 1969).
2. See, e.g., 18 U.S.C.A. s. 245 (West 1969); 42 U.S.C.A. s. 3631 (West 1977).
3. See, e.g., 42 U.S.C.A. ss. 1981, 1982 (West 1981).
4. U.S. Commission on Civil Rights, Who Is Guarding the Guardians? (October 1981).
5. Boston Globe, November 1979.

6. Brown Letter to Governor King.
7. H.913, 169th Mass. Gen. Ct., 2d Sess. (1976).
8. H.3584 and H.3589, 170th Mass. Gen. Ct., 1st Sess. (1977).
9. H.628, 170th Mass. Gen. Ct., 2d Sess. (1978).
10. Massachusetts Department of the Attorney General, Civil Rights and Civil Liberties Division, Annual Report, July 1, 1979-June 30, 1980, p. 3 (hereafter cited as Civil Rights Division Annual Report, 1979-80).
11. Civil Liberties Union of Massachusetts, "Fact Sheet -- H. 3135," n.d.
12. Lonnie Isabel, "Mass. Rights Bill Described as Important Tool," Boston Globe, Nov. 8, 1979; "Civil Rights Bill Passed with Help of Former Foe," Quincy Patriot Ledger, Nov. 7, 1979.
13. Fletcher Roberts, "'Needed' Law Unused," Boston Globe, May 31, 1981.
14. See, e.g., Boston Globe, Nov. 22, 1982; May 6, 1983; May 12, 1983.
15. Leonard Zakim, Executive Director, New England Regional Office, Anti-Defamation League of B'nai B'rith, memorandum to members of the Greater Boston Civil Rights Coalition, Jan. 17, 1983.

## II. PROVISIONS OF THE MASSACHUSETTS CIVIL RIGHTS ACT

The three key elements of the Massachusetts Civil Rights Act are that, in situations where a person's civil rights are violated, it (1) enables the Attorney General to pursue injunctive relief,<sup>1</sup> (2) provides victims a private cause of action for injunctive relief and damages against violators,<sup>2</sup> and (3) establishes criminal penalties.<sup>3</sup> (Because this report focuses on prosecutorial activities, the private cause of action will not be discussed in depth.)

The civil rights law can be utilized where an identifiable person or persons interferes or attempts to interfere with another person's exercise or enjoyment of his or her rights. A criminal charge can be brought when such interference is carried out by "force or threat of force," while injunctions can be secured in situations involving "threats, intimidation, or coercion." (Precise meanings have evolved for these terms in State and Federal law, but are not directly relevant to this analysis.)

The rights protected are those secured by the Massachusetts and Federal laws and constitutions.<sup>4</sup> Although no specific list of rights appears in the Act, the law protects the exercise of such constitutional and statutory rights as: the right to look for and obtain housing; live in any neighborhood; attend school; use public transportation; seek and perform work free of discrimination; have access to public buildings, offices and property; participate in court proceedings; hold, attend, publicize, or speak at a meeting, assembly, or demonstration; attend and participate in religious services of one's choice; not have excessive force used by the police.<sup>5</sup>

The Act does not refer to the race of the victim or perpetrator or to racial motivation as an element of an offense, nor does it include any statement that it is intended as a remedy for racially motivated crimes. The Attorney General's office states that "the Act is designed to protect and promote the safety, welfare and freedom of all the people of Massachusetts, regardless of race, religion, national origin, sex, age, or handicap."<sup>6</sup> However, as explained in the previous chapter, there is a strong link between acts of bigotry and intimidation of all members of the victim's group. This link brings racially (and religiously) motivated crimes squarely within the realm of the State Civil Rights Act.

On behalf of the public, the Attorney General may sue to obtain an injunction to prevent an individual who has interfered with another person's rights from doing so again.<sup>7</sup> Such injunctions may also be used against a person who has retaliated for another person's exercising of his or her rights, or to prevent planned or threatened acts (if the Attorney General is aware of these) when no prior interference has occurred.

In addition to seeking civil court orders, the Attorney General may bring criminal charges against an individual who has used force or threat of force to violate another person's civil rights. A district attorney also may bring such charges, and will become involved as well when a criminal complaint issues from a district court after a police officer or private person has applied for such a complaint.<sup>8</sup>

A person who is convicted of violating the criminal provisions of the State Civil Rights Act without causing bodily injury to the victim can be incarcerated for up to a year, fined up to a \$1,000, or both. If the violation has caused bodily injury, the crime is treated as a felony, and the perpetrator may be imprisoned for 10 years, fined up to \$10,000, or both.<sup>9</sup>

### Comparable Federal Criminal Statutes

The Massachusetts Civil Rights Act both echoes and differs from the Federal statutes mentioned in Chapter I. The most instructive points of comparison for the purposes of this study concern Federal criminal statutes originally enacted as part of the Civil Rights Act of 1866,<sup>10</sup> the Civil Rights Act of 1870,<sup>11</sup> and the Civil Rights Act of 1968.<sup>12</sup> These laws are commonly referred to as section 242, section 241, and section 245, respectively, of Title 18 of the United States Code. The points of comparison between these Federal statutes and the Massachusetts Civil Rights Act illustrate the need for and potential of the State law's criminal provisions in the effort to combat racially and religiously motivated acts of violence.

In section 242, enacted as part of the Civil Rights Act of 1866 to effectuate the 13th Amendment, Congress made it punishable by fine or imprisonment to act "under color of law" to deprive another of his or her constitutional or legal rights.<sup>13</sup> Those who act in some official government capacity act "under color of law." In section 241, enacted as part of the Civil Rights Act of 1870, Congress made it a criminal offense to "conspire" to injure or intimidate citizens exercising their rights.<sup>14</sup>

The U.S. Commission on Civil Rights has discussed the virtues and defects of these two Federal statutes on several occasions,<sup>15</sup> and the Commission's comments on Federal law provide a perspective for looking at the Commonwealth's civil rights law.

In 1981, Commissioner Mary Frances Berry testified before the House Judiciary Committee Subcommittee on Criminal Justice and explained that "sections 241 and 242 were in fact enacted to stem the rising tide of racially motivated violence that arose in the Reconstruction Era...the very problem with which the Nation is presently faced."<sup>16</sup> Thus, the rationale behind the Federal criminal civil rights laws passed by Congress after the Civil War broadly resembles that behind the Commonwealth's law. However, sections 241 and 242, Berry asserted, "...particularly suffer from



substantive and procedural defects that could impede the prosecution efforts of the Department of Justice."<sup>17</sup> As will be seen in a later section of this chapter, many of the issues and problems in Federal civil rights law were considered and addressed in the Commonwealth's effort to develop its civil rights law.

Section 241's defects include:

First, the statute applies only to conspiracies. By definition a conspiracy requires more than one person, thereby precluding prosecution under this statute of a private individual acting alone. Secondly, section 241 protects only U.S. citizens. If the civil rights of an alien or foreign visitor are violated, prosecution would not be permitted under the statute. Although violence has throughout the last hundred years been perpetrated on the apparent basis of race, recent immigrants and newly-arrived refugees have also been subject to repeated acts of violence.<sup>18</sup>

The Massachusetts Civil Rights Act avoids both of these limitations, covering individual as well as conspiratorial actions taken against "persons" rather than only "citizens."<sup>19</sup> The latter provision makes the State law a potentially -- and apparently uniquely -- useful instrument for combatting the growing problem of harassment of and assaults on Southeast Asian immigrants.

Regarding section 242, Berry first explained that the "under color of law" requirement is broader than might appear:

The Supreme Court in United States v. Price held that in reaching private parties the requirement of acting "under color of law" is met if it can be shown that such private individuals willfully participated in a joint activity with State officials to deprive the victim of guaranteed rights.<sup>20</sup>

Despite this broad interpretation, section 242 is often irrelevant to efforts to prosecute racially motivated offenders, given the purely private nature of many racially motivated acts of violence such as those that have plagued the Commonwealth. One indication of the thrust of section 242 is that the "largest number" of prosecutions brought by the Criminal Section of the Civil Rights Division of the U.S. Department of Justice involve police misconduct.<sup>21</sup> The Massachusetts Civil Rights Act, however, covers offenses "whether or not under color of law," thereby empowering law enforcement authorities to address a much broader range of offenses.<sup>22</sup>

The U.S. Commission on Civil Rights has expressed concern also that, unless the victim dies, the maximum penalty under section 242 is \$1000 and a year in prison.<sup>23</sup> The penalty problem largely is

obviated in the Massachusetts Civil Rights Act, which penalizes crimes resulting in bodily injury with up to 10 years in prison and up to \$10,000 fine.<sup>24</sup>

Commissioner Berry told the Subcommittee on Criminal Justice that removal of the requirement of conspiracy would improve section 241, as would elimination of the requirement that the victim be a citizen. She also called for increasing the penalty under section 242.<sup>25</sup> Such changes have not been made.

Some of the deficiencies of section 241 and 242 do not appear in the third Federal criminal civil rights statute mentioned previously, section 245.<sup>26</sup> This law, enacted a century after the other two as part of the Civil Rights Act of 1968, applies to denials of civil rights "whether or not" the perpetrator acts "under color of law." In addition, this measure requires no proof of conspiracy and there is coverage of victims who are not citizens. As Berry summarized, "...prosecution could be instituted against a single individual, acting alone, who interferes with the protected rights of any person."<sup>27</sup> Section 245 was the basis for a prosecution during the 1970s of a white man -- a private citizen -- for assaulting a black in a school desegregation-related incident in South Boston.<sup>28</sup>

Section 245, Berry recounted:

...was enacted during the period of history when civil rights workers were met with violence in the South. The legislation was designed to make Federal prosecutions more effective by including more specific language than that found in Sections 241 and 242. Section 245 specifies a list of activities afforded Federal protection. The statute also provides a second list of protected activities, but interference with these activities is proscribed only if the interference is motivated because of the victim's race, color, religion, and national origin.<sup>29</sup>

Specificity has given section 245 the advantage, as Berry told the Subcommittee on Criminal Justice, of avoiding the challenges of vagueness that occasionally have been raised against sections 241 and 242.<sup>30</sup> However, the specificity of section 245 may also have the effect of excluding some rights from coverage by the statute. In contrast, the Massachusetts Act does not enumerate specific rights but applies to all "rights secured by the constitution or laws of the United States, or rights secured by the laws or constitution of the Commonwealth."<sup>31</sup>

Linking the State Civil Rights Act to statutory and constitutional rights generally rather than to a specific enumeration of rights has another effect. To the degree that the Commonwealth's constitution and laws extend more rights to more

groups than the Federal Constitution and laws, State law enforcement officials may be able to intervene in more types of situations than their Federal counterparts, and more types of victims may be able to obtain relief under the State Civil Rights Act than is the case with Federal statutes. For example, arguments that the Massachusetts Declaration of Rights may provide "greater safeguards" than the U.S. Constitution to criminal defendants (among other groups) were discussed in a recent law review article by Associate Justice Herbert P. Wilkins of the Massachusetts Supreme Judicial Court. One of the points of comparison Wilkins described was the establishment of a "higher standard for protection of criminal defendants" in a State case contesting prosecutors' peremptory challenges to black potential jurors than was applied by the U.S. Supreme Court in a case involving "a similar challenge based on fourteenth amendment equal protection grounds."<sup>32</sup>

While it is not the purpose here to present a definitive comparison of the statements of rights under Massachusetts and Federal laws, one crucial, conspicuous gap in "federally protected rights" became apparent in recent efforts to prosecute under section 245 for the attempted murder of civil rights leader Vernon Jordan.<sup>33</sup> There evidently being no federally protected right to freedom from attempted murder, the prosecution faced the formidable, perhaps even ludicrous, task of establishing the defendant's intent to deny Jordan his right to stay at a hotel of his choosing, which right is secured under section 245.<sup>34</sup>

This gap in the body of federally protected rights was explicitly described to Congress in 1980 by Drew S. Days, III, who at the time headed the Justice Department's Civil Rights Division:

[If] the black man who was shot and killed in the coldest of blood was not engaged in any activity that is federally protected....it is my considered judgment that this type of violence can take place in the United States without running afoul of Federal statute....<sup>35</sup>

In addition to differences in the number and interpretation of rights protected, the applicability of the Massachusetts and Federal civil rights laws may vary according to other differences in the bodies of law underlying them. For example, Robert Sherman, an attorney directing the Project to Combat Racial Violence of the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, asserts that:

The term "willfully" in section 37 [the criminal provision of the Massachusetts Civil Rights Act] should be interpreted to require some intentionality beyond general criminal intent, but not necessarily the degree of specific intent required by Federal civil rights statutes, which must be construed in accordance with the principles of federalism.<sup>36</sup>

The Federal requirement of showing "specific intent" was described by Commissioner Berry to the House Judiciary Subcommittee as "an impediment to prosecution," under section 242.<sup>37</sup> In Sherman's view, this impediment may be absent from Massachusetts law.

The difficulty of prosecution of private individuals under the Federal civil rights statutes is perhaps more convincingly demonstrated not by abstract analysis but by the fact that so few such Federal civil rights prosecutions occur. The emphasis on police misconduct in prosecutions under section 242 already has been noted. Moreover, section 245, whatever its virtues, has been utilized only in a "low number of prosecutions" and has produced little case law, Berry reported.<sup>38</sup> One obstacle to prosecution under section 245 is that, before prosecution can commence, the Attorney General or Deputy Attorney General of the United States must certify in writing that such action is in the public interest.<sup>39</sup> The Massachusetts Civil Rights Act has no analogous requirement, thus permitting local district attorneys to commence prosecutions at their own initiative.

The U.S. Department of Justice has undertaken no criminal prosecutions of private individuals in Massachusetts on Federal civil rights charges since the Massachusetts Civil Rights Act went into effect. The most recent such prosecution, U.S. v. Gauthier (described under "Berkshire County" in Chapter IV) occurred in 1979, before the State Act went into effect. Some may argue that the existence of the State law has made Federal prosecution redundant, but as reported earlier, there were relatively few State prosecutions in the first year and a half following enactment of the State law, despite the occurrence of numerous racially motivated crimes. A response from law enforcement authorities at any level of government would have been welcomed. However, Federal prosecution did not emerge as a response to these incidents, and this conforms with the national pattern of very few Federal prosecutions of private individuals for civil rights offenses. The foregoing analysis suggests that this pattern owes at least in part to the limitations of Federal civil rights law.

Although Federal prosecutions of private individuals in Massachusetts on civil rights charges appear to be minimal, this should not be taken to mean that Federal law enforcement agencies have been entirely passive with regard to racial violence. For example, the U.S. Attorney was a key participant in a February 1981 conference on law enforcement and racial violence convened in Boston by the Anti-Defamation League of B'nai B'rith and 13 other agencies and organizations. The U.S. Attorney's office also joined with the State Attorney General and the Suffolk County District Attorney during the summer of 1982 in an effort to coordinate their responses to major racial incidents. Boston Police Lt. Francis Roache, whose Community Disorders Unit served a clearinghouse role in this effort, asserts that in combatting racially and religiously motivated crime, "We've got to keep everybody involved, including the Federal government."<sup>40</sup>

## Injunctive Relief

In addition to creating a criminal charge that the State Attorney General and district attorneys may bring, the Massachusetts law authorizes a specific law enforcement official, the Attorney General, to seek injunctions and other equitable relief against violators.<sup>41</sup> Attorney J. Harold Flannery, on behalf of the Civil Liberties Union of Massachusetts, told the legislative committee considering the State civil rights bill<sup>42</sup> in 1979 that the proposal for such empowerment reflected lessons learned in Federal efforts to protect civil rights:

In the 1950s, after decades of unsatisfactory experiences with Reconstruction-era criminal statutes, particularly in the deep South, the Congress authorized the Attorney General to seek injunctions against forcible interference with the exercise of specified rights. Injunctions have been obtained against named wrongdoers and persons acting with them, and the injunctions have rarely been violated. The principal benefits of the flexibility of the civil equity process have been that law enforcement authorities are able to take effective preventive measures quickly against threats to rights. Arrests, indictments, trials and convictions culminate long after crimes have occurred. But where injunctions can be secured against reasonably anticipated misconduct, persons can be protected in their exercise of rights, and violators can often be prevented from their misdeeds rather than being punished only afterwards.<sup>43</sup>

Rather than enjoining interference with "specified rights," the Massachusetts Civil Rights Act applies to Federal and State constitutional and statutory rights, thus providing much broader coverage.

In contrast to the time it takes for criminal prosecutions, injunctions under the Massachusetts Civil Rights Act can be obtained in a very short time, sometimes in a day. In an urgent situation, a court may issue a temporary restraining order upon the filing of a complaint by the Attorney General. More likely, the judge will schedule a hearing on the matter to allow both the Attorney General and the defendants to present their sides. The entire process can be completed within a few days of the complaint.

## Evolution of the Massachusetts Civil Rights Act

Such an expansion of the power of the Attorney General was in fact the earliest goal of the proponents of a Massachusetts Civil Rights Act. Indeed, a survey of the various civil rights bills filed in the Massachusetts Legislature in the period 1976-79 reiterates many of the points of the foregoing discussion of Federal statutes.

House Bill No. 913 filed in 1976 was "An Act Empowering the Attorney General to Protect the Civil Rights of Citizens of the Commonwealth."<sup>44</sup> It would have authorized the Attorney General to seek injunctive relief or damages for victims who had suffered deprivation of their legal or constitutional rights, but only in incidents in which the perpetrator acted "under color of law." Thus, this unsuccessful proposal included one of the limiting features for which section 242 has been criticized; moreover, it lacked entirely the criminal provision and private cause of action eventually included in the bill that passed in 1979.<sup>45</sup>

Although the 1976 bill did not cover offenders who were private individuals, sentiment to include private offenders was strong from the outset. An early draft of the bill had included conspiracy language comparable to that in Federal statutes,<sup>46</sup> and in contemplating a civil rights bill to submit in 1977, Assistant Attorney General Robert H. Bohn, Jr., asserted that the bill ought to "give the Attorney General authority to institute civil action to redress injury caused by private parties as well as government officials."<sup>47</sup>

In 1977, two bills were submitted to the legislature.<sup>48</sup> House Bill No. 3589 was the same as House Bill No. 913 of 1976. However, House Bill No. 3584 would not only have authorized the Attorney General to bring civil suits against those conspiring to deprive persons of their rights, but also against any person who because of race, color, religion, or national origin interfered with the exercise of a specific list of rights. The mention of race, it will be noted, was not to protect a specific group but to address a specific motive. While House Bill No. 3584 overcame the "under color of law" and "conspiracy" limitations -- as section 245 did in comparison to sections 241 and 242 in Federal law -- its enumeration of rights raised another problem mentioned in the discussion earlier of section 245. As J. Harold Flannery described House Bill No. 3584:

...the advantages of enumerating the rights to be protected may be outweighed by the disadvantages; for example, to identify voting as a protected right would be unnecessary if it is not actually in jeopardy, yet to do so might permit a court to read out of the law some other right which is in jeopardy but not protected because it is not specifically mentioned.<sup>49</sup>

In 1978, House Bill No. 3584 was resubmitted as House Bill No. 628 but again failed to pass.<sup>50</sup> However, in a draft bill prepared in 1978 but not submitted, Flannery introduced a provision for a private cause of action for victims, while retaining the proposal to empower the Attorney General to bring suit for injunctive or other equitable relief.<sup>51</sup> These two provisions -- augmented by a criminal provision advocated by the Attorney General -- appear nearly unchanged in the Act passed in 1979.

Thus, many of the issues raised and proposals made for civil rights legislation in the Commonwealth from 1976 through 1979 recapitulate innovations at the Federal level over the previous century.

### Summary

The Massachusetts Civil Rights Act incorporates into a single measure the somewhat narrower and slightly differing approaches found in the criminal provisions of diverse Federal civil rights laws. Although the State Civil Rights Act and the Federal laws protect many of the same rights, the Massachusetts Civil Rights Act protects rights secured by the Massachusetts constitution and laws as well as those secured by the Federal Constitution and laws, an aggregate of rights that may be greater than that protected by Federal law.

On the whole, the State law perhaps is more comprehensive than the Federal laws and may represent a more powerful instrument at the disposal of law enforcement authorities. The U.S. Commission on Civil Rights has stated the position that "...Federal laws, with some modification, are adequate to prosecute perpetrators of racially motivated violence."<sup>52</sup> Some of those requisite modifications are in fact elements of the Massachusetts Civil Rights Act.

---

### Notes to Chapter II

1. MASS. GEN. LAWS ANN. ch. 12, s. 11H (West 1982).
2. Id., s. 11I.
3. MASS. GEN. LAWS ANN. ch. 265, s. 37 (West 1982).
4. MASS. GEN. LAWS ANN. ch. 12, s. 11H-I and ch. 265, s. 37 (West 1982).
5. Massachusetts Department of the Attorney General, "Massachusetts Civil Rights Act" (brochure), January 1982 (hereafter cited as Attorney General's brochure).
6. Ibid.
7. MASS. GEN. LAWS ANN. ch. 12, s. 11H.
8. Attorney General's brochure.
9. MASS. GEN. LAWS ANN. ch. 265, s. 37 (West 1982).
10. Act of April 9, 1866, 14 Stat. 27, now codified in part as 18 U.S.C.A. s. 242 (West 1969).

11. Act of May 31, 1870, 16 Stat. 141, now codified in part as 18 U.S.C.A. s. 241 (West 1969).
12. Pub. L. 90-284, Title I, s. 101(a), 82 Stat. 73, now codified as 18 U.S.C.A. s. 245 (West 1969).
13. 18 U.S.C.A. s. 242 (West 1969).
14. 18 U.S.C.A. s. 241 (West 1969).
15. See, e.g., U.S. Commission on Civil Rights, Law Enforcement: A Report on Equal Protection in the South (1965) and Who is Guarding the Guardians? (1981).
16. Mary Frances Berry, Commissioner, U.S. Commission on Civil Rights, testimony, U.S. Congress, House Judiciary Subcommittee on Criminal Justice, June 3, 1981, p. 6 (hereafter cited as Berry Testimony).
17. Ibid.
18. Ibid., p. 10.
19. MASS. GEN. LAWS ANN. ch. 12, s. 11H-I and ch. 265, s. 37 (West 1982).
20. Berry Testimony, p. 12.
21. Washington Council of Lawyers, "Reagan Civil Rights: The First Twenty Months" (n.d.), p. 130.
22. MASS. GEN. LAWS ANN. ch. 12, s. 11H (West 1982), MASS. GEN. LAWS ANN., ch. 265, s. 37 (West 1982).
23. Berry Testimony, p. 12.
24. MASS. GEN. LAWS ANN. ch. 265, s. 37 (West 1982).
25. Berry Testimony, pp. 14-15.
26. 18 U.S.C.A. s. 245 (West 1969).
27. Berry Testimony, p. 13.
28. United States v. Griffin, 525 F.2d 710 (1st Cir. 1975), cert. denied, 424 U.S. 945 (1976).
29. Berry Testimony, p. 13.
30. Ibid., p. 14.
31. MASS. GEN. LAWS ANN. ch. 12, s. 11H-I ch. 265, s. 37 (West 1982).



32. Wilkins, "Judicial Treatment of the Massachusetts Declaration of Rights in Relation to Cognate Provisions of the United States Constitution," 14 Suffolk U.L. Rev. 887 (1980), citing Commonwealth v. Soares, 79 Mass. Adv. Sh. 593, 387 N.E. 2d 499 (1979) and Swain v. Alabama, 380 U.S. 202 (1965). Federally and State-protected rights as specifically related to the Massachusetts Civil Rights Act are discussed in Sager, "Rights Protected by the Massachusetts Civil Rights Act Against Interference on Account of Race or Color," 17 Suffolk U.L. Rev. 53 (1983).
33. United States v. Franklin, No. F. Cr. 82-16, N.D.Ind. 1982.
34. 18 U.S.C.A. s. 245(b)(2)(F) (West 1969).
35. U.S. Congress, House, Committee on the Judiciary, Subcommittee on Crime, Increasing Violence Against Minorities, 96th Cong., 2nd sess. (1980), pp. 92-93 (testimony of Drew S. Days, III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice).
36. Robert P. Sherman, "The Massachusetts Civil Rights Act, G.L. c. 265, Section 37: Analysis and Commentary," (draft), May 12, 1983, p. 10.
37. Berry Testimony, p. 12.
38. Ibid., p. 14.
39. 18 U.S.C.A. s. 245(a)(1) (West 1969).
40. Lt. Francis Roache, Community Disorders Unit, Boston Police Department, telephone interview, May 24, 1983 (hereafter cited as Roache Interview).
41. MASS. GEN. LAWS ANN. ch. 12, s. 11H (West 1982).
42. H.3135, 171st Mass. Gen. Ct., 1st Sess. (1979).
43. J. Harold Flannery, Civil Liberties Union of Massachusetts, testimony on House Bill No. 3135, submitted to Committee on the Judiciary, Massachusetts General Court, March 8, 1979.
44. H.913, 169th Mass. Gen. Ct., 2d sess. (1976).
45. Testimony submitted by the Civil Liberties Union of Massachusetts on House Bill No. 913 offered as illustrations of the law's potential use "rioting" by police and eavesdropping by a school official on students' private conversations. Ernest Winsor, Civil Liberties Union of Massachusetts, Testimony on House Bill No. 913, submitted to Committee on the Judiciary, Massachusetts General Court, April 5, 1976. In view of the

crucial role of police support in passage of the 1979 bill, it seems plausible that one cause of the failure of the 1976 bill to pass may have been that potential police support for the race-related benefits of the bill was neutralized by police concern that its thrust was police misconduct.

46. Ernest Winsor, Massachusetts Law Reform Institute, letter to Robert H. Bohn, Jr., Chief, Civil Rights and Liberties Division, Massachusetts Department of the Attorney General, Nov. 18, 1976.
47. Robert H. Bohn, Jr., Chief, Civil Rights and Liberties Division, Massachusetts Department of the Attorney General, memorandum to Francis X. Bellotti, Attorney General, Commonwealth of Massachusetts, Nov. 26, 1976.
48. H.3584 and H.3589, 170th Mass. Gen. Ct., 1st Sess. (1977).
49. J. Harold Flannery, letter to Joan Tuttle, Civil Liberties Union of Massachusetts, March 11, 1977.
50. H.628, 170th Mass. Gen. Ct. 2d Sess. (1978).
51. J. Harold Flannery, letter to Joan Tuttle, Massachusetts Civil Liberties Union, March 11, 1977, attachment (draft bill).
52. U.S. Commission on Civil Rights, Intimidation and Violence: Racial and Religious Bigotry in America (January 1983), p. 24.

### III. PROSECUTIONS BY THE MASSACHUSETTS ATTORNEY GENERAL

The Attorney General, an elected official, is the Commonwealth's chief legal officer and law enforcement agent. The Attorney General's office includes a Civil Rights and Liberties Division, which:

...initiates judicial and administrative proceedings to protect civil rights in a wide variety of substantive areas in the name of the Attorney General, in cases affecting the public interest; on behalf of agencies and departments of the Commonwealth, to enforce statutes and regulations guaranteeing individual rights; and to enforce the provisions of the Massachusetts Civil Rights Act.<sup>1</sup>

The staff also investigates citizens' complaints of violations of civil rights, and performs various advisory and informational roles concerning civil rights-related legislation, State government civil rights responsibilities, and civil rights issues of public interest.<sup>2</sup> This role may include drafting legislation, as was done in the case of the Massachusetts Civil Rights Act.

In addition to these roles, the Division can act less formally to respond to crises, as in August 1980 when it organized a meeting of community leaders and law enforcement representatives to reduce tensions associated with the release of a grand jury decision exonerating a Boston police officer in the death of a black youth, Levi Hart.<sup>3</sup>

At the time the State Civil Rights Act went into effect in 1980, the Civil Rights Division was staffed by a chief and five assistant attorneys general. In 1982, it consisted of the chief and four assistant attorneys general.<sup>4</sup>

Since the enactment of the Massachusetts Civil Rights Act, the Civil Rights Division has prepared a manual containing court interpretations of the law and detailing elements of offenses for training law enforcement personnel in utilization of the Act. It also has conducted training sessions or meetings with representatives of several city police departments.<sup>5</sup> However, the Attorney General's slowness in preparing material<sup>6</sup> explaining the Act to the lay person brought criticism from the Greater Boston Civil Rights Coalition.

In fact, the first major meeting of law enforcement officials at which the utilization of the State Civil Rights Act was treated was organized by the Anti-Defamation League of B'nai B'rith and 13 other Greater Boston agencies and organizations. On February 3, 1981, law enforcement officials from local, State, and Federal agencies, including State Attorney General Bellotti, participated in a

conference on "Law Enforcement Aspects of Racial and Religious Harassment, Vandalism, and Assault."

The Civil Rights Division's most recent training effort was a workshop on May 12, 1983, for assistant district attorneys. Among the topics the session covered were identification of protected rights, jury instructions in criminal cases under the State Civil Rights Act, and the types of incidents that might involve violations of the Act.<sup>7</sup> Lt. Francis Roache of the Community Disorders Unit of the Boston Police Department characterized this session as a "major step forward" and was impressed by the high level of enthusiasm and energy among the participants.<sup>8</sup>

Among the incidents investigated for possible prosecution by the Attorney General around the time the law went into effect were incidents of racial violence in Boston in the Stony Brook neighborhood and the Fairmont Housing Project in Hyde Park, in the Bowdoin area of Dorchester, and in the Faneuil Street Housing Project in Brighton, as well as incidents in the towns of Arlington and Somerville.<sup>9</sup>

However, in the first 15 months the law was in force (i.e., through June 1981), there were only two convictions under it. The two convictions stemmed from harassment and injury of a teenaged black girl at a bus stop by white youths, and death threats against the head of a black student group at Harvard by a Hispanic woman. The sentence in the former incident (Commonwealth v. Murray) was a 60-day suspended jail term with a year's probation; in the second case (Commonwealth v. Chavez), the sentence was two years' probation. In a third incident (Commonwealth v. Whooten, Keyes, and a Juvenile) involving the beating by three white youths of a black newsboy on his rounds, probable cause was found against one defendant, but the victim no longer wished to prosecute because the youths' behavior had improved; two continuances resulted, and in the third case the grand jury failed to return an indictment (no bill).<sup>10</sup> While this low number of criminal prosecutions was a disappointment to many who had advocated the Act, it was perhaps more disturbing that no injunctions were issued under the civil rights law during the initial 15 months it was in effect.

By the end of 1982, however, utilization of the law by the Attorney General's office had increased. All told, by that date the Attorney General had prosecuted 12 criminal defendants on civil rights charges arising from five incidents. In addition, criminal contempt charges had been brought against two other defendants. (The contempt charges came from violations of injunctions, described below.) By "prosecution," the State Attorney General means cases in which "formal criminal process issued." These totals do not include joint prosecutions, and they treat related events in a brief period of time as a single incident. Also omitted are cases in which the complaint was withdrawn when an agreement was reached with the defendant.<sup>11</sup>

The Attorney General's office had mixed success with these cases. Of the 12 criminal defendants prosecuted, four were convicted, five were acquitted, two were continued without findings, and one was nolle prosequi (dismissed by the prosecutor after indictment) at the request of the victim. Of the two criminal contempt defendants, one was convicted and the other had the charges dismissed. In addition to the Civil Rights Act convictions, the prosecutions of the defendants in these incidents yielded a conviction on other criminal charges.<sup>12</sup>

In addition to the criminal prosecutions, the State Attorney General by the end of 1982 had twice sought injunctions; the cases involved a total of 11 civil defendants. These civil actions addressed patterns of harassment comprising numerous incidents. Nine of the 11 civil defendants were enjoined, while the complaints against two were dismissed. Of the nine enjoined, two eventually were prosecuted for criminal contempt, as noted above, following violations of the injunctions.<sup>13</sup>

The very first injunction obtained by the Attorney General permanently enjoined seven white men in the Ross Field area of Hyde Park in Boston from harassing black families in the neighborhood. The Attorney General first entered this situation with a request for a temporary restraining order against 10 men, and this order was issued on July 9, 1982.<sup>14</sup> The court may have been persuaded to act so quickly because the Community Disorders Unit of the Boston Police Department already had been investigating the situation for a year; in fact, three of the men had been arrested for assault and civil rights violations not long before the Attorney General requested the injunction. The hearing on the injunction was scheduled for only 10 days later, July 19.<sup>15</sup>

A permanent injunction was issued against the seven men prohibiting them from congregating and from entering the victims' property. This 1982 case, Commonwealth v. Gilligan et al.,<sup>16</sup> "has done more to bring the State Civil Rights Act to the attention of the public than anything else since the Act was passed," asserts Robert P. Sherman, Director of the Project to Combat Racial Violence of the Lawyers' Committee for Civil Rights Under Law.<sup>17</sup>

A key development in the case, and one largely responsible for its dramatic effect, was that when one of the defendants violated the order the Attorney General successfully brought criminal contempt charges,<sup>18</sup> resulting in a 60-day jail sentence.

This incident was also noteworthy for cooperation between the Attorney General's office and private attorneys representing the victims. The victims and the Ross Field Neighborhood Betterment Association were represented by the Project to Combat Racial Violence, which prepared an amicus curiae brief supporting the Attorney General's request for an injunction and assisted in the investigation leading to the criminal contempt conviction.<sup>19</sup>

Cooperation in prosecutions more commonly and formally involves the Attorney General with county district attorneys:

The attorney general must supervise, consult with, and advise the district attorneys in matters relating to their duties, and they must aid the attorney general whenever possible. By statute the attorney general has the power to take over from any district attorney the prosecution of any case, but in practice he conducts criminal cases only in matters of statewide concern in close cooperation with the district attorney of the district involved.<sup>20</sup>

Joint prosecutions of civil rights charges outnumber independent prosecutions of such charges by the Attorney General.<sup>21</sup> In the period July 1981-June 1982, for example, the Civil Rights Division cooperated with police and district attorneys to attempt to develop civil rights prosecutions in Cambridge, Chelsea, Hull, Milton, Needham, Somerville, Wayland, Weymouth, and Westwood.<sup>22</sup>

The Weymouth prosecution (Commonwealth v. Williams et al.) was noteworthy because the resulting sentences were the most severe imposed under the Massachusetts Civil Rights Act up to that time. Three white youths were convicted on civil rights charges for throwing rocks through the window of an apartment occupied by a black family in a Weymouth housing project. They were sentenced to the one-year maximum the law provides for incidents where there is no bodily injury, although for two of the three defendants the sentence was partially suspended.<sup>23</sup>

These prosecution and injunction statistics do not capture the entire experience of the Attorney General's office in enforcing the State Civil Rights Act. The Civil Rights Division has investigated many incidents in which no complaint issued.<sup>24</sup> Also, in several instances victims who had applied for complaints subsequently worked out agreements with the accused perpetrators and withdrew the applications for complaints.<sup>25</sup>

Outcomes that end interference with the victim's rights must be reckoned as benefits of the Act even if they leave no record in law enforcement statistics. Accessibility to victims and monitoring of possibly racial incidents are necessary complements to the dramatic injunctions, prosecutions, and incarcerations that demonstrate that violations of the Massachusetts Civil Rights Act are serious matters. They add a necessary dimension of breadth to the State's civil rights enforcement effort.

---

### Notes to Chapter III

1. Civil Rights Division Annual Report, 1981-82, p. 1.

2. Ibid.
3. Civil Rights Division Annual Report, 1980-81, p. 22.
4. Civil Rights Division Annual Reports, 1979-80, p. 2; 1980-81, p. 1; 1981-82, pp. 1-2.
5. Civil Rights Division Annual Report 1979-80, pp. 1, 18-19.
6. Attorney General's Brochure.
7. Anthony P. Sager, Assistant Attorney General, Civil Rights Division, Massachusetts Department of the Attorney General, letter to Larry Riedman, Field Representative, New England Regional Office, U.S. Commission on Civil Rights, May 13, 1983, attachments (workshop materials).
8. Roache Interview.
9. Civil Rights Division Annual Report, 1979-80, p. 19.
10. Civil Rights Division Annual Report 1980-81, pp. 6-7.
11. Joan Entmacher, Assistant Attorney General and Chief, Civil Rights Division, Massachusetts Department of the Attorney General, letter to Bradford E. Brown, Chair, Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, Dec. 22, 1982 (hereafter cited as Entmacher Letter).
12. Ibid.
13. Ibid.
14. Boston Globe, July 10, 1982.
15. Ibid.
16. Superior Court Department of the Trial Court No. 55930.
17. Robert P. Sherman, Director, Project to Combat Racial Violence of the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, unpublished report, 1983, p. 6 (hereafter cited as Racial Violence Project Report).
18. Commonwealth v. Gaine, Superior Court Department of the Trial Court No. 040940.
19. Racial Violence Project Report, p. 3.
20. League of Women Voters of Massachusetts, Massachusetts State Government, 2nd ed. (Cambridge, Mass.: Harvard University Press, 1973).

21. Joan Entmacher, Assistant Attorney General and Chief, Civil Rights and Liberties Division, Massachusetts Department of the Attorney General, telephone interview, May 19, 1983 (hereafter cited as Entmacher Interview).
22. Civil Rights Division Annual Report, 1981-82, p. 2.
23. Ibid.
24. Entmacher Interview.
25. Entmacher Letter.



#### IV. PROSECUTIONS BY DISTRICT ATTORNEYS

The State's 11 district attorneys, who like the Attorney General are elected officials, are responsible within their districts for representing the Commonwealth in criminal cases and for investigating possible violations of the laws and prosecuting when appropriate. Most investigations actually are carried out by local police, often under the district attorney's supervision. The police role in developing prosecutions under the State Civil Rights Act is briefly described in the profile of Suffolk County.

What follows is a general picture of the frequency and variety of usage of the Massachusetts Civil Rights Act by district attorneys. It is not intended to serve as a comprehensive inventory of activity across the Commonwealth or as a basis for comparisons between jurisdictions. Not every district attorney responded to the Advisory Committee's request. Moreover, different districts reported activities covering different spans of time, making attempts to compare one district to another problematic. The population figures cited are from the 1980 U.S. Census.

##### Berkshire County

Extending the full length of the State's western border, Berkshire County (145,110) is one of the State's smaller counties in terms of population. The minority population is only about 3,000 individuals, or about two percent. Pittsfield (51,974) is the only city, with many of the other communities being small towns.

Despite the rural, overwhelmingly white character of the district, there occurred in 1979 an incident which illustrated the potential usefulness of a State civil rights law. A white person's persistent telephoned and mailed threats to the only black resident of the neighborhood led the district attorney to file attempted extortion charges and also refer the matter to Federal authorities. The defendant eventually was convicted of Federal civil rights violations, at which point the State criminal charges were dropped. This prosecution, U.S. v. Gauthier, was one of the handful of civil rights cases brought against private individuals in recent years by the Civil Rights Division of the U.S. Department of Justice.

The district attorney later observed that "the circumstances giving rise to the indictment most likely would have given rise to an indictment for a civil rights violation had the statute been in effect at the time of the offense." Since the law went into effect, the district attorney's office has received no claims alleging civil rights violations.<sup>1</sup>

##### Cape and Islands District

In this district of small resort communities in Barnstable

(161,945), Dukes (8,942), and Nantucket (5,087) Counties, minorities account for about four percent of the population, which grew very rapidly during the 1970s and continues to grow. Racial tensions have existed in several communities in recent years in association with Indian land claims.

There have been no prosecutions under the State civil rights law in this jurisdiction.<sup>2</sup>

#### Essex County

Essex County (633,632) includes the northeastern Massachusetts resort area of Cape Ann and the industrial cities of Lawrence (63,175), Lynn (78,471), Peabody (45,976), Salem (38,220), Beverly (37,655), and Haverhill (46,865). The minority population is about four percent, with Hispanics the most populous group and growing. Lawrence's Hispanic population is more than 10,000.

There have been no prosecutions under the State Civil Rights Act.<sup>3</sup>

#### Hampden County

In south central Massachusetts, Hampden County (443,018) includes the cities of Springfield (152,319), Chicopee (55,112), Holyoke (44,678), and Westfield (36,465). The county's population is about 15 percent minority, with Springfield having 25,219 black and 10,498 Hispanic residents.

The district attorney has not prosecuted any cases under the State Civil Rights Act.<sup>4</sup>

#### Middlesex County

Middlesex County (1,317,034) extends from the Charles River to the New Hampshire border. It is the State's most populous. The largest cities, Cambridge and Lowell, each have more than 90,000 residents, while Medford, Newton, Somerville, Waltham, Framingham, and Malden all are larger than 50,000. The county has 25,358 black residents (10,418 in Cambridge) and 23,537 Hispanics.

Racially motivated incidents in the district in the past several years have ranged from KKK markings on the lockers of black Cambridge police officers, to death threats against the leader of a black student group at Harvard University, to the burning of an apartment building in East Cambridge with a single black household, to a cross-burning on the lawn of a black family in Wayland.

The first criminal prosecution under the State Civil Rights Act, Commonwealth v. Chavez, occurred in Middlesex County, with the Attorney General assisting the district attorney in the successful effort.<sup>5</sup>

As of November 1982, the district attorney's office had undertaken 17 prosecutions, with four others pending. The charges grew out of eight incidents. Thirteen convictions ensued, and all the individuals convicted were charged with other crimes in addition to the civil rights violations. The remaining four defendants were found not guilty.<sup>6</sup>

More recently, in the case of Commonwealth v. Hogan, a Nazi was convicted of throwing a grenade at a synagogue door in Malden. He received a 4- to 10-year sentence for the bombing charge, although he was found guilty as well of breaking and entering and civil rights violations.<sup>7</sup>

### Norfolk County

Norfolk County (606,587) includes the South Shore city of Quincy (84,743) and the large towns of Brookline (55,062), Norwood (29,711), Braintree (36,337), and Weymouth (55,601). The minority population is only about two percent.

The district has experienced sporadic violence associated with bigotry and hatred. For example, harassment by white youths of a black family that had moved into an all-white Weymouth housing project made headlines in February 1982 (and led to the prosecution by the Attorney General described in Chapter III), and in March anti-Semitic arson damaged a temple in Milton.

Two incidents late in the summer of 1982 in Quincy led to the prosecution of three individuals by the district attorney under the State Civil Rights Act, resulting in two convictions and commitments to the house of correction. One defendant was found not guilty.<sup>8</sup>

These prosecutions were for arson and civil rights violations for two firebombings of a black woman's apartment in a public housing project.<sup>9</sup> In addition to the Civil Rights Act convictions, the district attorney obtained seven convictions of defendants on related counts.<sup>10</sup> The district attorney's office worked with the Racial Violence Project of the Lawyers' Committee for Civil Rights Under Law on this case, Commonwealth v. Poor and Tilton.

The district attorney has assigned two assistant district attorneys to primary responsibility in the civil rights area and to develop appropriate expertise to conduct civil rights prosecutions. The office is acting to develop a capacity "to respond promptly at the investigation stage even before any charge is brought." The office also is planning to examine housing discrimination.<sup>11</sup> Robert Sherman, director of the Racial Violence Project, has characterized Norfolk County as having "an aggressive approach to racially motivated crime."<sup>12</sup>

## Northwestern District

The district includes Franklin (14,317) and Hampshire (138,813) Counties.

Except for the island counties of Dukes and Nantucket, Franklin County in north central Massachusetts is the State's least populous. Minorities account for less than one percent of the population. There is no town of more than 20,000 population.

Hampshire County lies immediately south of Franklin County and includes the city of Northampton (29,286) and the large town of Amherst (33,229). The minority population is only about three percent.

The only prosecution under the State Civil Rights Act, Commonwealth v. Patrick, involved civil rights and other charges against a police official, and in January 1983 resulted in a continuance for a year.<sup>13</sup>

## Plymouth County

Plymouth County (405,437) lies along the western shore of Cape Cod Bay. Its largest communities are the cities of Brockton (95,172) and Plymouth (35,913). The county's minority population is only about five percent, although about 5,000 blacks reside in Brockton.

In late 1981, the town of Hull experienced an outbreak of anti-Semitic vandalism, which led to charges against juveniles. No civil rights violations were charged. There have been no incidents leading to complaints or prosecutions under the State Civil Rights Act.<sup>14</sup>

## Suffolk County

In addition to Boston (562,994), Suffolk County (650,142) includes the cities of Chelsea (25,431) and Revere (42,423) and the town of Winthrop (19,294). The county has the largest minority population in the State, with 126,229 blacks and 36,068 Hispanics living in Boston.

The record of racially motivated incidents in the district, including fatal attacks, is lengthy and notorious. In 1982, the Community Disorders Unit of the Boston Police Department was investigating possible racial incidents at the rate of four cases per week.<sup>15</sup>

As in Middlesex County, the first conviction in Suffolk County under the State Civil Rights Act, in April 1981 in the Commonwealth v. Murray case described in Chapter III, was prosecuted by the Attorney General.<sup>16</sup>

The district attorney's office does not maintain statistics on prosecutions under the State Civil Rights Act, but reported in March 1983 that it had "... obtained convictions for civil rights violations and that several cases alleging civil rights violations are currently pending."<sup>17</sup> For example, the same Hyde Park situation that led to the first injunction issued under the State Civil Rights Act also has entailed criminal prosecutions by the Suffolk County District Attorney. Three of the white men that the Attorney General sought to enjoin are defendants in charges of civil rights violations and other crimes.<sup>18</sup> However, the Racial Violence Project of the Lawyers' Committee for Civil Rights Under Law calculated that as of early 1983 the Suffolk County District Attorney had filed civil rights charges in not more than five cases.<sup>19</sup>

Director Robert Sherman of the Racial Violence Project states that he has cooperated with the district attorney in investigating incidents, preparing witnesses, and developing prosecutorial strategy so as to "develop within the D.A.'s office a sense of the importance of these cases and an understanding of the kind of preparation that is necessary."<sup>20</sup> Sherman characterizes this effort's success as "mixed,"<sup>21</sup> and asserts that cases of racially motivated crimes in which charges -- but no civil rights charges -- were brought are "legion."<sup>22</sup> An example is the Atkinson case, in which manslaughter charges but no civil rights charges were brought against white men who chased a black onto subway tracks, where he was killed by a train.

Suffolk County Assistant District Attorney Michael J. Traft has described that office's orientation to use of the State Civil Rights Act:

We believe it is important to use this law only in situations where the facts demonstrate that denial of civil rights is the primary motivation of the perpetrator and where no crime containing a greater penalty has been charged. Too expansive use of the statute could diminish its effectiveness and could create the possibility of a vagueness attack on the statute.<sup>23</sup>

The manslaughter convictions in the Atkinson case may be viewed as a vindication of the approach of prosecuting the charge with the heaviest penalty. Another example of this approach came when the district attorney in February 1981 obtained an arson conviction of a white youth for firebombing a black family's apartment in the Faneuil Street Housing Project in Brighton.<sup>24</sup>

However, this strategy apparently was not followed in a recent non-racial incident. Seven civil rights charges against police officers resulted from the killing of a civilian and injuries to other civilians in a much-publicized incident at the King Arthur Motel in Chelsea. (As noted in Chapter I, civil rights laws protect

victims without regard of race, and protection of individuals from police misconduct has been a common use of the Federal civil rights laws that prohibit interference with rights "under color of law.") Murder and other very serious charges also were brought.<sup>25</sup> The invocation of the State Civil Rights Act in this serious but non-racial matter provides an ironic counterpoint to the allegations that the Suffolk County district attorney has been reticent in using the Act in cases of racial violence.

In the view of Racial Violence Project Director Sherman, "the Suffolk County D.A.'s office does not have a strong record with respect to prosecuting racially motivated crimes."<sup>26</sup> He concludes that "a great deal more needs to be done to convince the D.A. to specially treat racial violence cases."<sup>27</sup>

The Suffolk County District Attorney's Office closely coordinates its efforts with those of the Boston Police Department's Community Disorders Unit. Lt. Francis Roache, in describing his unit's operations, notes some of the same reservations cited by Assistant District Attorney Traft. In Roache's view, it would be poor use of the State Civil Rights Act to attempt to apply it in every type of racial incident. He believes the law is most properly and effectively used when equal access is at issue, and it should not automatically be invoked simply because racial epithets have been used or a spontaneous racial assault has occurred.<sup>28</sup>

The Community Disorders Unit, according to Roache, has been "laying the groundwork for five years" for the types of investigations needed to prosecute civil rights cases, and this has made its officers aware of the special requirements and problems of such prosecutions. An immediate problem is that it is difficult to establish a civil rights violation at the scene of the crime. Considerable followup work is frequently necessary, and Roache notes that for success, "the victims have to be able to share more things" than in other types of crimes.<sup>29</sup>

Perhaps more crucial than investigations after incidents is careful monitoring of racially tense situations that may lead to racial crimes. Because it is likely that a pattern of harassment or threats reflects an effort to deter or intimidate the victim from, for example, living in a certain area or working in a certain place of employment, police documentation of such behavior may provide the basis for civil rights prosecution. "If there is a pattern, we can do something," says Roache, adding that such documentation is particularly crucial in efforts to obtain injunctions. Characterizing this aspect of his unit's operations, he said, "We write a lot." Roache called the State Civil Rights Act "a great tool for us -- everything we had documented, we could do something with."<sup>30</sup>

In addition to developing evidence, the Community Disorders Unit has played a central role in facilitating the prosecutorial response

to racial crimes in Boston. In the racially tense summer of 1982, Roache recounted:

The Boston Committee held biweekly meetings relative to racial problems in the city of Boston. A special task force committee which consisted of prosecutors from the U.S. Attorney's Office, the Attorney General's Office, and the Suffolk County District Attorney's Office was formed in order to seek and determine the most effective course of action in terms of gathering information, securing evidence, and conducting investigations concerning racially motivated crimes and patterns of incidents which would indicate that persons were being deprived of their federally and State-protected civil rights.

As a result of these meetings, the task force committee designated the Community Disorders Unit as the primary coordinator and facilitator to provide agencies with information on investigations and recommendations concerning appropriate handling of major incidents.<sup>31</sup>

Certainly such a joint effort emerged because responsible law enforcement officials recognized that racial tensions had reached a dangerous level, but the feasibility and utility of the effort owed much to the fact that State or local prosecution of civil rights charges had become serious, practical options in combatting racial crimes.

#### Worcester County

Worcester County (646,352), running from border to border in central Massachusetts, includes the cities of Worcester (161,799), Fitchburg (39,580), and Leominster (34,508). There are about 25,000 minority residents, with Hispanics the largest group. The city of Worcester has nearly 5,000 blacks and almost 7,000 Hispanics.

The most newsworthy civil rights-related incident since the law was enacted concerned the appearance of Ku Klux Klan members appeared on the streets of Southbridge in September 1981, a period when the Klan was active in Connecticut just a few miles to the south. However, there was no violence or interference with rights in association with the incident.

Since the State Civil Rights Act went into effect, the district attorney has neither received a complaint nor undertaken a prosecution under it.<sup>32</sup>

---

#### Notes to Chapter IV

1. Anthony J. Ruberto, District Attorney, Berkshire County, letter

to Larry Riedman, Field Representative, New England Regional Office, U.S. Commission on Civil Rights, March 7, 1983.

2. Philip Rollins, District Attorney, Cape and Islands District, interviewed by Eugenia Fortes, Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, November 1982.
3. Robert Weiner, First Assistant District Attorney, Essex County, telephone interview, May 15, 1983.
4. Matthew J. Ryan, Jr., District Attorney, Hampden County, letter to Bradford E. Brown, Chair, Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, Feb. 14, 1983 (hereafter cited as Matthew Ryan Letter).
5. Civil Rights Division Annual Report 1980-81, p. 6.
6. John J. Droney, District Attorney, Northern District, letter to Bradford E. Brown, Chair, Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, Nov. 8, 1982.
7. Mary Ellen Wilkes, Assistant District Attorney, Middlesex County, telephone interview, May 25, 1983.
8. Charles J. Healy, Assistant District Attorney, Norfolk County, letter to Larry Riedman, New England Regional Office, U.S. Commission on Civil Rights, May 17, 1983 (hereafter cited as Healy Letter).
9. Racial Violence Project Report, pp. 5, 13.
10. Robert W. Banks, First Assistant District Attorney, Norfolk District, letter to Bradford E. Brown, Chair, Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, Nov. 2, 1982.
11. Healy Letter.
12. Racial Violence Project Report, p. 13.
13. Thomas G. Simons, District Attorney, Northwestern District, letter to Bradford E. Brown, Chair, Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, Nov. 8, 1982; and W. Michael Ryan, District Attorney, Northwestern District, letter to Larry Riedman, Field Representative, New England Regional Office, U.S. Commission on Civil Rights, May 18, 1983.
14. Bruce Edmands, Assistant District Attorney, Plymouth County, telephone interview, March 15, 1983.
15. Joan Vennoch, "When a Crime is Something More," Boston Globe, Nov. 22, 1982.



16. Civil Rights Division Annual Report 1980-81, p. 7.
17. Michael J. Traft, Assistant District Attorney, Suffolk County, letter to Bradford E. Brown, Chair, Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights, March 18, 1983 (hereafter cited as Traft Letter).
18. Diane Lewis, "Court Told of Hyde Park Assault," Boston Globe, May 25, 1983.
19. Racial Violence Project Report, p. 13.
20. Ibid., p. 4.
21. Ibid., p. 10.
22. Ibid., p. 13.
23. Traft Letter.
24. Civil Rights Division Annual Report 1980-81, p. 6.
25. Boston Globe, April 4, 1983.
26. Racial Violence Project Report, p. 10.
27. Ibid., p. 11.
28. Roache Interview.
29. Ibid.
30. Ibid.
31. Ibid.
32. Thomas A. Rosiello, Assistant District Attorney, Worcester County, telephone interview, Feb. 4, 1983.

## V. CONCLUSION

The analysis in Chapter II of the deficiencies of Federal civil rights law supports the conclusion that important gaps have been filled by the Massachusetts Civil Rights Act. While many of the same rights are protected by Federal and State law, there is no notable duplication when one looks at the most crucial feature of such protection -- actual enforcement.

With regard to possible duplication of familiar criminal statutes, the long experience with Federal civil rights statutes indicates that such laws have been valuable where local enforcement of other criminal laws has been deficient or biased, or because penalties enacted to deal with actions such as vandalism, threats, or defacement of property may be too limited to address effectively acts based on bigotry. In light of the racial nature of many of the incidents prosecuted under the State Civil Rights Act, the Advisory Committee strongly believes it is not redundant, but offers prosecutors a unique tool with which to address unique problems.

The figures provided to the Massachusetts Advisory Committee by the Attorney General and the 10 responding district attorneys (Berkshire, Cape and Islands, Essex, Hampden, Middle, Norfolk, Northern, Northwestern, Plymouth, and Suffolk) show that the Civil Rights Act has been utilized in a score of incidents, with criminal civil rights charges against more than 30 individuals leading to at least 20 convictions. In many instances, related charges were brought.

Incidents that have led to prosecutions under the Massachusetts Civil Rights Act have included police misconduct during arrest, patterns of harassment (including fire-bombing) of minority-occupied homes, death threats against an officer of a black organization, a cross-burning on the lawn of a black-owned home, a street confrontation involving racial animosity, the bombing of a synagogue, and painting racial epithets on a church with a minority congregation.

The penalties imposed upon those found guilty of violating the State Civil Rights Act have ranged from incarceration for a year, to probation with psychiatric treatment, to "surfines" added to the fines for non-civil rights charges. Criminal contempt charges brought by the Attorney General in one case led to a 60-day jail sentence. At least three offenders have been incarcerated.

The foregoing activity occurred in four districts, for six responding districts reported no incidents or complaints appropriate to use of the State Civil Rights Act.

The figures provided to the Advisory Committee also show that the Act was utilized in seeking two injunctions against 11 civil

defendants, of whom nine were enjoined. Admittedly, a restraining order if it is to be effective entails subsequent monitoring, but such follow-through may greatly enhance the enforcement effort. For example, the orders obtained by the Attorney General were followed by four incidents of alleged violation of the orders, with two criminal contempt charges filed and one conviction obtained.

The State Civil Rights Act also enables law enforcement officials to intervene in racial incidents in ways other than prosecuting or enjoining an offender. For example, in an incident in Weymouth involving harassment of a black child by white children, a hearing was held:

...to determine whether a criminal complaint for a civil rights violation would be issued. The Clerk-Magistrate issued a strong warning to these white children that any future racial harassment would be dealt with severely by the court.<sup>1</sup>

Noting that "harsher penalties were not realistic," Racial Violence Project Director Robert Sherman asserted that the case "demonstrated that the initiation of a criminal action under the Civil Rights Act can alert the court to a potentially serious situation and obtain the court's assistance in preventing further escalation."<sup>2</sup>

Another indirect effect of the Civil Rights Act, according to Joan Entmacher, head of the Attorney General's Civil Rights Division, is that "where there is potential for civil rights involvement, we have gotten enhanced police response. Investigations have been pursued more vigorously." Law enforcement agencies' presence and monitoring with regard to racially tense situations have become more substantial, quite apart from direct interventions such as arrests, prosecutions, and injunctions. Entmacher observes that the responsiveness of victims and defendants in racial incidents also has improved.<sup>3</sup>

Although this study has focused on racially motivated behavior, it is worth remarking that the State Civil Rights Act has been utilized also in instances of police misconduct, with charges brought in the Northwestern District (as described in Chapter IV) and in Middlesex and Suffolk Counties.<sup>4</sup> The Federal civil rights laws proscribing interference with rights "under color of law" have been used frequently to prosecute such police abuses. The existence of a State-level remedy means that in these cases, as in racial incidents, the "detour through the Federal courts" is eliminated.

While the use of the State Civil Rights Act has increased over time, the Racial Violence Project's Robert Sherman, writing in early 1983, nevertheless maintained, "One of the chief concerns of the Project to Combat Racial Violence is the underutilization of the State Civil Rights Act."<sup>5</sup> The prosecutorial activity described in the previous chapters does indicate that use of the law has varied

widely during the period the law has been in force as well as from jurisdiction to jurisdiction.

This may be the case because, although there have been a number of examples of effective use of the Act to protect civil rights, understanding of the availability of this law enforcement tool apparently is not uniform. As reported in Chapter I, in the law's second year in effect, many individuals with law enforcement responsibilities apparently were unfamiliar with it. Even as the law's third year ended, one district attorney replied to the Advisory Committee that his office had had no involvement in civil rights cases and expected none, and that "the office you should contact is the Attorney General's who prosecutes civil rights complaints."<sup>6</sup> A misinterpretation of responsibility such as this one seriously compromises the potential value of the State Civil Rights Act. Moreover, the unfamiliarity of some police departments with the Act impinges on the effectiveness of enforcement, reports Regional Director Martin Walsh of the Community Relations Service of the U.S. Department of Justice.<sup>7</sup>

Materials that shortly will be available may improve this situation. The Racial Violence Project and the Civil Rights Division of the Massachusetts Attorney General's Office have completed an "evaluation and analysis" of the law for distribution to judges and clerks in the district courts.<sup>8</sup>

Despite the difficulties of implementation noted above, the Advisory Committee believes that the Commonwealth's enactment of a civil rights law was an important step, and that its implementation to date is encouraging. A particularly encouraging development, for instance, has been the application of the law in several housing-related cases; this has brought a powerful enforcement tool into an area where even the Federal civil rights laws, regrettably, have been only rarely applied.

Moreover, the Advisory Committee believes the record demonstrates that the Commonwealth acted wisely in making this particular mechanism the keystone of its law enforcement effort to combat racially and religiously motivated crimes. In the past few years, many States and municipalities have struggled to develop legal means to combat racially and religiously motivated harassment, intimidation, vandalism, and violence. In its recent publication, Intimidation and Violence: Racial and Religious Bigotry in America, the U.S. Commission on Civil Rights reported that "during the last two years, legislatures in 13 States have passed a total of 18 bills dealing with the problem of racial and religious terrorism. Many other bills have been introduced and debated."<sup>9</sup> Some of the options adopted by other jurisdictions are laws outlawing wearing of masks or hoods, prohibiting cross-burning or desecration of religious buildings, adding penalties for already-illegal behaviors when racial or religious hatred is the motive, and regulating parades and rallies.<sup>10</sup>

Indeed, bills have been filed in Massachusetts to outlaw paramilitary camps<sup>11</sup> and to redefine religious desecration as a felony.<sup>12</sup> As of this writing, each house of the State legislature has approved "An Act Protecting Certain Persons and Properties From Intimidation and Vandalism Against Them Because of Their Ethnic Background," which would punish assault on a person or damage to property "for the purpose of intimidation because of...race, color, religion, or national origin" with imprisonment of up to 2-1/2 years or a fine equal to triple the damage or \$5,000, whichever is higher. The same measure would punish vandalism of religious buildings, memorials, or burial places (without regard to motive) by a fine equal to \$2,000 or triple the damage, whichever is higher, and also imprisonment of up to 2-1/2 years if the damage is not more than \$5,000 and up to 5 years if it is greater. It also would establish a victim's right to civil suit for a variety of damages, including punitive damages and attorney's fees.<sup>13</sup>

States and communities that have enacted such specific laws typically have done so to address single, narrow problems. For example, many Connecticut communities have shaped ordinances specifically to regulate the public events staged by the Ku Klux Klan.<sup>14</sup> Although such measures may prove to be the best choices for the specific needs of particular communities that have adopted them, they have met challenges in the form of appeals to rights of expression and assembly. Moreover, the Advisory Committee believes that outlawing specific actions of itself is a comparatively limited approach.

The Massachusetts Civil Rights Act, in contrast, focuses not on a specific action but on an abuse -- interference with another's rights -- that takes many forms. The Commonwealth's law empowers law enforcement authorities to initiate action to end the abuse, or even to enjoin persons to prevent violations. As a response to racially or religiously motivated violence, the Massachusetts Act seems to have many advantages over the types of approaches tried in many other jurisdictions. Of course, these different approaches are not mutually exclusive, but can be combined in numerous effective ways; this view presumably underlies the State House and Senate's recent action on the new measure described above.

In sum, the Massachusetts Civil Rights Act, if fully implemented and appropriately complemented with other measures, will equip the Attorney General and district attorneys with the means to respond quickly and effectively to the types of incidents that are causing anguish, tensions, and frustration not only in Massachusetts communities but around the country.

---

#### Notes To Chapter V

1. Racial Violence Project Report, p. 4.
2. Ibid., p. 6.

3. Entmacher Interview.
4. John J. Droney, District Attorney, Middlesex County, letter to Bradford E. Brown, Chair, Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights, Nov. 3, 1982; and Boston Globe, April 4, 1983.
5. Racial Violence Project Report, p. 6.
6. Matthew Ryan Letter.
7. Martin Walsh, New England Regional Director, Community Relations Service, U.S. Department of Justice, telephone interview, May 17, 1983.
8. Racial Violence Project Report, p. 7.
9. U.S. Commission on Civil Rights, Intimidation and Violence: Racial and Religious Bigotry in America (January 1983), p. 22.
10. In California, Cal. Code of Civil Proc., sec. 527.7 (1982) and Cal. Penal Code, secs. 11410 and 11411; in Connecticut, 1980 Conn. Acts 54 (Reg. Sess.) (codified at Conn. Gen. Stat. Ann secs. 53-57 (West 1982)) and 1982 Conn. Acts 14 (Reg. Sess) and 1981 Conn. Acts 243 (Reg. Sess.); in Florida, Fla. Stat sec. 775.0845 (1981) and Fla. Stat. sec. 876.155 (1981); in Maryland, Md. Ann. Code art. 88B sec. 9-10 (Supp. 1981) and Md. Crim. Law Code Ann. sec. 10(A) (1981); in New Jersey, P.L. 1981 ch. 282 (1981); in New York, 2 McKinney Sess. Laws, ch. 870, sec. 40-C (1981) and 1 McKinney Sess. Laws, ch. 76 sec. 28 (1981); in North Carolina, N.C. Gen. Stat sec. 880 (1981) and Sess. Laws (1981); in Oregon, Or. Rev. Stat. 166.155 sec. 166.165 (Crim. Code) and Or. Rev. Stat. 30.190 & 30.2000 (Civ. Code) (1981); in Pennsylvania, 18 Pa. Cons. Stat. sec. 5515; Act 138 (June 11, 1982); in Rhode Island, 1981 R.I. Pub. Laws 60 (codified at R.I. Gen. Laws sec. 11-53-1, 11-53-2 (1981); in Tennessee, Tenn. Code Ann. sec. 38-2810 (1981); in Washington, Wash. Rev. Code 9A. 36.080 (1981). U.S. Commission on Civil Rights, Intimidation and Violence: Racial and Religious Bigotry in America (January 1983), p. 23.
11. Jewish Advocate, Sept. 10, 1981.
12. Boston Herald American, April 9, 1982.
13. S.232, 173rd Mass. Gen. Ct., 1st Sess. (1983).
14. Connecticut Advisory Committee to the U.S. Commission on Civil Rights, Hate Groups and Acts of Bigotry: Connecticut's Response (1982).

## VI. RECOMMENDATIONS

The Massachusetts Advisory Committee believes that the following recommended actions will improve the effectiveness of the Massachusetts Civil Rights Act and bring it significantly closer to fulfilling its potential.

These recommendations, made through the U.S. Commission on Civil Rights to State and local officials, are submitted in accordance with the provisions of section 703.2 (e) of the Commission's regulations calling upon Advisory Committees to "initiate and forward advice and recommendations to the Commission upon matters which the State Committees have studied."

1. *The Massachusetts Attorney General should establish a procedure for centrally recording all prosecutorial activity under the State Civil Rights Act, including activity by the various district attorneys. Records should include numbers of incidents, defendants, related charges, convictions under the Civil Rights Act or related charges, other dispositions, and the nature of penalties imposed. Information should also be collected on the number of injunctions sought, injunctions issued, and number of individuals enjoined, and of the contempt charges and contempt convictions. The records should distinguish racially or religiously motivated activity from other types of civil rights violations. This information should be reported to the public annually.*
2. *Each district attorney should not only maintain records of Civil Rights Act prosecutions within the reporting framework to be developed by the Attorney General, but also report activity under the Act to the public.*
3. *The Attorney General should continue training efforts to ensure that district attorneys understand the potential of the State Civil Rights Act for combatting racially and religiously motivated crime, and are equipped to utilize it effectively.*
4. *The Attorney General should prepare an assessment of the use of the State Civil Rights Act in housing-related cases, including an evaluation of its effectiveness and potential, and provide this to prosecutors throughout the State and to the U.S. Attorney.*
5. *The Attorney General and district attorneys should act to ensure that police officers, magistrates, court officials, and other individuals likely to receive complaints of racially or religiously motivated crimes are familiar with the recourse offered by the Massachusetts Civil Rights*

Act. A good first step in the effort would be more intensive distribution of the Attorney General's brochure on the Act, particularly to and through police departments.

6. District attorneys in jurisdictions with records of racially motivated violence should consider establishing specific staff or unit assignments in their offices for racially motivated or State Civil Rights Act crimes.
7. Prosecutors at the local, State, and Federal levels should continue their efforts to provide a coordinated response to incidents of racial violence in Boston, as was developed during the summer of 1982.
8. When crimes occur that suggest racial or religious motivation, police departments should initiate monitoring and documentation procedures to lay the groundwork for possible subsequent prosecutions or injunctions under the State Civil Rights Act. Even minor incidents should be recorded with a view to the possible emergence of a pattern of harassment, intimidation, and threats.
9. The U.S. Commission on Civil Rights should distribute this report to States and communities concerned about the problem of racially and religiously motivated crimes, as has been done with the Commission's statement on violence and intimidation. The development of responses to these problems by other jurisdictions may be expedited by lessons learned in developing and implementing the Massachusetts Civil Rights Act.



## APPENDIX

ACTS, 1979. - Chap. 801.

### Chap. 801. AN ACT FOR THE PROTECTION OF THE CIVIL RIGHTS OF PERSONS IN THE COMMONWEALTH.

Be it enacted, etc., as follows:

SECTION 1. Chapter 12 of the General Laws is hereby amended by inserting after section 11G, inserted by section 51 of chapter 353A of the acts of 1977, the following two sections:

Section 11H. Whenever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured. Said civil action shall be brought in the name of the commonwealth and shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person or persons whose conduct complained of reside or have their principal place of business.

Section 11I. Any person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with, or attempted to be interfered with, as described in section 11H, may institute and prosecute in his own name and on his own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section, including the award of compensatory money damages. Any aggrieved person or persons who prevail in an action authorized by this section shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

SECTION 2. Chapter 265 of the General Laws is hereby amended by adding the following section:

Section 37. No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Any person convicted of violating this provision shall be fined not more than one thousand dollars or imprisoned not more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both.

Approved November 16, 1979.



Reports of The  
MASSACHUSETTS ADVISORY COMMITTEE  
To The  
U.S. COMMISSION ON CIVIL RIGHTS

Implementing the Massachusetts Civil Rights Act. 1983. 38 pp.

Minority Teachers in an Era of Retrenchment: Early Lessons in an Ongoing Dilemma. 1982. 60 pp.

Teacher Layoffs, Seniority, and Affirmative Action. 1982. 36 pp.

Affirmative Action at the Massachusetts Bay Transportation Authority. 1981. 40 pp.

Civil Rights Developments in Massachusetts, 1980. 1981. 18 pp.

The Six-District Plan--Integration of the Springfield, Mass., Elementary Schools. 1976. 52 pp.

Route 128-- Boston's Road to Segregation. Joint report with the Massachusetts Commission Against Discrimination. 1975. 107 pp.

Issues of Concern to Puerto Ricans in Boston and Springfield, Mass. 1972. 102 pp.

The Police and the Minority Community in New Bedford, Mass. 1971. 21 pp.

Contract Compliance and Equal Opportunity in the Construction Industry. Transcript of an open meeting in Boston held by the Massachusetts State Advisory Committee, June 25-26, 1969. 459 pp. (not available)

The Voice of the Ghetto: Report on Two Boston Neighborhood Meetings. 1967. 56 pp.

Report on Massachusetts: Housing Discrimination in the Springfield-Holyoke-Chicopee Metropolitan Area. 1966. 77 pp.

Report on Racial Imbalance in the Boston Public Schools. 1965. 85 pp.

Report on Massachusetts: Housing in Boston. 1963. 83 pp.







**U.S. COMMISSION ON CIVIL RIGHTS**  
WASHINGTON, D.C. 20425

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

BULK RATE  
POSTAGE AND FEES PAID  
U.S. COMMISSION ON CIVIL RIGHTS  
PERMIT NO. G73

