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UNITED STATES OF AMERICA
COMMISSION ON CIVIL RIGHTS

In the Matter of:

MARCH 10, 1988
MEETING OF THE MASSACHUSETTS ADVISORY COMMITTEE

Thursday
March 10, 1988

Conference Room 1900 A
JFK Federal Building
Boston, Massachusetts

The above-entitled matter was convened pursuant to
Notice at 2:40 p.m.

BEFORE: PHILIP PERLMUTTER
Advisory Committee Chairman

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P R O C E E D I N G S

[2:40 p.m.]

1
2
3 TINO CALABIN: We hope that one or
4 more of our guests will assist in learning at least
5 three things. What we're looking for are some answers
6 to these questions:

7 What conviction record has been under
8 the Act in more recent years;

9 How the Act may differ from any more
10 enacted laws; aimed at stemming bias-related incidents;
11 and,

12 How the Act may be superior to these
13 other laws in force in the Commonwealth or to their
14 counterpart laws elsewhere, outside of the Commonwelath.

15 Again, we welcome you here.

16 In talking with some you, knowing
17 who would be here, it occurred to me that we might
18 appropriately begin with Peter Finn, who is the
19 Senior Analyst of ABT Associates.

20 Mr. Finn has done a national survey
21 of the kinds of laws and legal strategies being
22 employed to combat violence and prejudice. And
23 perhaps he can tell us about what he has seen around
24 the country in that regard.

25 Mr. Finn.

1 PETER FINN: Thank you.

2 As I mentioned before, I work for
3 ABT Associates, which is a social science research
4 firm in Cambridge. We were commissioned by the
5 U. S. Department of Justice, specifically, the National
6 Institute of Justice, to do an exploratory survey
7 of what law enforcement agencies and prosecutor
8 offices are doing to combat hate violence and what
9 problems they are encountering in doing so.

10 And if you're interested, I have
11 copies of the report here. And I should stress
12 that the opinions in the report and anything I say
13 here are my own and those of my co-author and not
14 necessarily those of the National Institute of Justice
15 or the U. S. Department of Justice.

16 We interviewed 40 respondents by
17 telephone, most of them representatives of the criminal
18 justice system, some also representatives of constituency
19 organizations and other organizations like the National
20 Institute Against Prejudice & Violence that have
21 a more general interest in hate violence, bias
22 crime.

23 We also did a letter to review, and
24 in the reviews of statutes, we did not look at very
25 many statutes themselves. We didn't conduct an actual

1 statutory review.

2 Before giving you a very brief overview
3 of the states' statutes really available around
4 the country to combat bias crime and what law enforcement
5 departments and prosecutor offices are doing, I
6 want to give you the definition that we use in our
7 report for bias crime because there are differences
8 in definitions and at least you'll know what my
9 definition is; and, that is, an action or words
10 intended to intimidate or injure an individual because
11 of his or her religion, race, ethnicity or sexual
12 orientation.

13 And it's interesting, in the California
14 statute it's standard, that definition, to include
15 disability, age and sex, as well, but to my knowledge
16 no other statutes have that expansion in definition.

17 In terms of statutes, there are two
18 issues very related to them:

19 One, which I'm not going to touch
20 on, other than to mention, is whether there ought
21 to be special statutes targeted toward bias crime;
22 and that some people that a crime is a crime is
23 a crime, and whether someone is mugged because of
24 their racial or ethnic background or because the
25 mugger simply wants money to keep a drug habit doesn't

1 matter. The battery is a battery is a battery.

2 That's an issue that we can discuss
3 but I'm not going to address here.

4 The second issue is whether the existing
5 statutes are sufficient to target bias crime, to
6 deal with it effectively.

7 There are basically three kinds of
8 statutes throughout the country. I'm not going
9 to talk about the fourth one because there are other
10 people here more equipped to do that and that's
11 the Massachusetts Civil Rights Act, which, as far
12 as I know, is unique to Massachusetts.

13 There are three general types of statutes
14 that most states have to deal with bias crime.

15 The first is that a number of states
16 have statutes that prohibits specific -- make criminal
17 offenses out of specific acts of hate violence.

18 For example, 21 states have statutes
19 that disallow the formation of paramilitary organizations.
20 21 states have statutes that make it an offense
21 to desecrate or damage religious property or a
22 cemetery. Six states have statutes that make
23 it an offense to engage in cross burning.

24 The second kind of statute is that
25 most states have statutes that prescribe acts that are

1 already criminal offenses, but specifically prohibit
2 them when they're motivated by bias. And the common
3 offenses here are assault, assault and battery,
4 intimidation, destruction or defacement of property
5 and threats.

6 The third kind of statute is an attempt
7 to impose heightened penalties on an offense when
8 the offense is motivated by bias. And this is typically
9 done by upgrading the status of the act, the offense
10 category of the act when it's motivated by bias.

11 For example, the State of Oregon,
12 in the State of Oregon, if an individual commits
13 what normally would be a misdemeanor offense of
14 malicious mischief in the third degree, if he was
15 motivated by bias, the person can be charged with
16 intimidation in the second degree; and, of course,
17 the corresponding increase in the potential penalty.

18 What's missing from these statutes
19 is three things;

20 One, efforts to have data collection
21 mandated;

22 Second, attempts to deal with the
23 problem of juveniles; and,

24 Third, the problem of enforcing these
25 statutes that exist.

1 Touch briefly on the data collection
2 aspect..

3 It's extremely important to have
4 data on the number of bias crimes that are being
5 committed, where they are being committed, who the
6 perpetrators are, who the victims are, similar kinds
7 of variables for two reasons.

8 One is because most people in society,
9 and probably most people in the criminal justice
10 system, don't believe that bias crime is a serious
11 problem. Data are needed to document that, in fact,
12 it's a widespread and very serious problem.

13 The data are also needed, because
14 if you're a target, if law enforcement and prosecutor
15 offices are to target bias crime, they need more
16 specific information about who is committing the
17 crimes, again, who the victims are, where they're
18 being done.

19 There are only a few states that
20 have mandatory data collection statutes: Maryland and
21 Pennsylvania are two of them. Maryland has had
22 its since 1981, Pennsylvania since 1986.

23 Connecticut has a statute that will
24 go into effect July 1st of this year. And New
25 Jersey is in the process of developing a statute.

1 What these statutes do is they mandate
2 the State Police, at least in Maryland and Pennsylvania,
3 to collect data from local law enforcement agencies
4 of the kind that I just mentioned.

5 In Maryland the State Police turn
6 over the data on a monthly basis to the Maryland
7 Human Relations Commission which, in turn, analyzes
8 and disseminates the information.

9 More of these kind of statutes, I
10 think, are needed.

11 The second issue I mentioned is juveniles.

12 The problem here is that probably
13 a majority of the hate violence offenses are committed
14 by youth, probably male youth, between the ages
15 of thirteen and twenty-four.

16 For example, the New York Police
17 Department, in it's Bias Incident Investigating
18 Unit, found that in the last seven years 70 percent
19 of all the arrests that it was involved in for bias
20 crime involved youth under the age of twenty.

21 The issue here is that many people
22 in law enforcement and prosecutor offices and also
23 judges are reluctant to punish juvenile offenders,
24 young offenders, severely or sternly enough to deter
25 the behavior from occurring again.

1 There are a number of reasons for
2 this. One is that some times people are reluctant
3 to saddle young kids with a criminal record at an
4 early age. There's also the belief among some people
5 that these kids don't really know what they're doing
6 if they paint a swastika on a synagogue or they
7 beat someone up on the street because of their
8 ethnic/religious/racial background or a sexual orientation.

9 The Massachusetts Civil Rights Act
10 of 1979 has a nice way of dealing with juveniles
11 and I'll let the subsequent speakers identify how
12 that works. But what's needed are similar acts
13 in other jurisdictions that would facilitate dealing
14 with juveniles.

15 Similarly, with enforcement, the
16 Civil Rights Act of 1979 facilitates that for police,
17 as well; and, again, I won't go into that, but if
18 other states had statutes of that nature, law enforcement
19 would be eased, as well, and I think Sergeant Bill
20 Johnston can talk about that part, as well.

21 In terms of actual units, activities,
22 by law enforcement agencies and prosecutor offices,
23 there's what in the report we call a small ground
24 swell among police departments, sheriff's departments,
25 to establish either special units, as the Boston Police

1 Department did many years ago, the Community Disorders
2 Unit, for dealing with bias crime, targeting special
3 resources and offices to the problem

4 Some times an individual in a law
5 enforcement agency is given special responsibility
6 to handle these problems.

7 As your know, New York City has,
8 as I mentioned a Bias Incident Investigating Unit.
9 Nassau County, Baltimore County are other law enforcement
10 agencies that have special units.

11 There's less attention in an organized,
12 systematic fashion that we found, at least, in prosecutor
13 offices given toward dealing with bias crime.

14 The locations where we found this
15 was most frequent were Massachusetts and New York.

16 The Queens County District Attorney's
17 Office, for example, in New York City has an anti-bias
18 bureau consisting of four assistants who do nothing
19 but handle hate violence cases.

20 Norfolk County and Suffolk County,
21 both of which are represented here, devote special
22 resources to these crimes, as does the Attorney
23 General's Office in Massachusetts.

24 So with that brief overview of the
25 national picture, and if you're interested in more

1 details, the report is here.

2 I would let the other speakers provide
3 specific examples from them.

4 PETER PERLMUTTER: Thank you, Peter.

5 I think, rather than take questions
6 that are very abbreviated but yet to me a very important
7 topic, let's hear from all of our speakers and then
8 we'll open it up to the floor.

9 And Doug Schwarz, who is the Assistant
10 Attorney General, Civil Rights Division, why don't
11 you...

12 DOUGLAS T. SCHWARZ: Thank you.

13 On behalf of the Attorney General, Jim
14 Shannon, and on behalf of Virginia Lee, who is
15 the Chief of the Civil Rights Division, I just wanted
16 to thank you for the invitation to participate in
17 this forum.

18 I would like to discuss two aspects
19 of Civil Rights enforcement.

20 One, is to talk generally about the
21 civil enforcement portions of the Massachusetts
22 Civil Rights Act. I will talk about both the substance
23 of the statute itself and then the record, our record
24 of enforcement of the statute, leaving to the other
25 experts who are here, discussion of the criminal

1 enforcement of the Civil Rights laws in Massachusetts.

2 The Civil Rights Act is unique in
3 that it allows our office, with the help of the
4 local police departments or citizen complaints, to
5 go into a situation -- to go from a situation into
6 court relatively quickly and after meeting a relatively
7 low evidentiary standard; that is, compared to what
8 needs to be met in a criminal case, to obtain injunctive
9 relief, restricting the behavior of a defendant
10 and protecting the victims of crimes of racial violence
11 or other crimes of ethnic intimidation or other
12 violations of the Civil Rights Act.

13 As I start to go down that list,
14 it brings up another aspect of the Massachusetts
15 Civil Rights Act which is, I think, significant;
16 and, that is, I was listening to Peter's definition
17 of what a bias crime is. And under the Civil Rights
18 Act -- the Civil Rights Act is basically fairly
19 broad, particularly in the civil enforcement side
20 of it, in that it protects what it calls rights
21 secured by the Constitution or laws of the Commonwealth
22 or of the United States.

23 In other words, the rights that are
24 protected are tied in to rights provided by other
25 laws, so that when we make a complaint, we not only

1 cite the Civil Rights Act, but then we refer to
2 other laws which the Civil Rights Act gives us the
3 ability to protect.

4 So that I think the most interesting
5 example of that would be the right to not be the
6 victim of violence based on sexual orientation.

7 And we recently obtained an injunction
8 in a case involving just that sort of violence,
9 based on an evolving body of law which is moving
10 toward protecting that right.

11 I think, again, to focus on the civil
12 enforcement side of things, which is unique in Massachusetts,
13 it's key because it can be quick. The injunction
14 can be prepared rapidly and a judge can be informed
15 of a situation and sign an order so that it can
16 actually be used -- and Bill will talk at greater
17 length about this from much more experience than
18 I have, but can actually be used to calm down potentially
19 explosive situations before they reach the explosive
20 stage.

21 Now, I say it can be quick. It still
22 needs adequate resources. There have to be adequate
23 resources devoted to its enforcement in order for
24 that speed to be achieved and for the potential
25 of the statute to be achieved.

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Again, it relatively quickly, it can affect the future behavior of perpetrators or defendants by giving the police department an enhanced right of arrest.

This injunction that we obtained says at the bottom of it that violation of this injunction is a criminal offense, and we have procedures for disseminating the injunction to the appropriate law enforcement officials rapidly so that they can be informed of it and they realize that if they see this perpetrator violating the clear provisions of the injunction, they can pick that person up.

The other thing it can do is -- and I recently saw this happen -- it can get defendants into contact with the criminal justice system. In other words, not only with the criminal justice system, but with the court, in front of a judge much easier than may often be possible in the criminal justice system for reasons that I think we are all aware. Witnesses back off for various reasons and for some interesting reasons, particularly when we're dealing, for instance, with refugee populations who are afraid to come forward or may not understand why it's important to come forward.

Because of the speed with which we can

1 get into court and the lower standard of burden
2 of proof, we can usually get at least a preliminary
3 injunction, based on affidavits, rather than live
4 testimony. It's easier to marshal the evidence
5 and to get before a judge.

6 And I recently was involved in a
7 case involving six young defendants where the victim
8 was afraid to come forward to testify in a criminal
9 trial, and so the criminal prosecution was lost,
10 but we did get the young men into court before a
11 judge who could, at least, have one shot at trying
12 to impress upon the seriousness with which the Commonwealth
13 viewed their offense.

14 Perhaps I should move on to just
15 a brief statistical summary.

16 Again, this is the civil enforcement
17 side that the Attorney General, Civil Rights Division,
18 gets involved in. What we don't have and which
19 maybe someone else is compiling, but our office
20 isn't, is statewide data on criminal convictions,
21 and I may just be unaware. That may exist. Or
22 maybe it's something that we ought to make sure
23 we acquire.

24 As was mentioned, I think, in the
25 year 1982, our office obtained injunctions in two

1 cases. And I'll just go through the numbers here.

2 Those cases involved nine defendants.

3 In 1983, again, two cases involving
4 four defendants.

5 In 1984, there were eleven injunctions
6 obtained involving 53 different defendants.

7 PETER PERLMUTTER: Would that be
8 because you'd be seeing more activity or more violence?

9 DOUGLAS T. SCHWARZ: I think that
10 that's a very good question.

11 I think that my sense is that we
12 can't, from these numbers, we can't draw a conclusion.
13 We certainly can't draw a conclusion about there
14 having been more violence. That's not to say that
15 there wasn't, but these numbers don't bear that
16 out. These numbers might just as well be explained
17 by more activity in our office.

18 In 1985, seven injunctions were obtained
19 involving a total of 30 defendants.

20 In 1986, eight injunctions involving
21 thirteen defendants.

22 In 1987, sixteen injunctions involving
23 at least 42 defendants.

24 And in 1988, thus far, we've obtained
25 four injunctions involving a total of thirteen defendants.

1 Those injunctions, geographically,
2 are concentrated in Boston. Boston is clearly
3 the area of the Commonwealth in which we've been
4 able to use the Act most effectively, largely, again,
5 due to the Boston Police Department and the District
6 Attorney's Office cooperation and, also, possibly,
7 again, not being a statistician, know enough about
8 statistics to know that we can't draw any certain
9 conclusions, but that it may also be because there
10 simply is more racially motivated contact in Boston.

11 I would be happy to answer any questions
12 and I would like to say that our office is certainly
13 open to and would, in fact, like to participate
14 in any further work that the Committee might ask
15 us to.

16 Thank you.

17 PETER PERLMUTTER: Thank you, very
18 much.

19 As I say, before we get into questions
20 and because of the length of the presentations,
21 Mr. Newman Flanagan, the District Attorney of Suffolk
22 County, one I welcome.

23 NEWMAN FLANAGAN: Thank you.

24 Let me, first of all, answer a question
25 you asked about whether there's been more business.

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1 PETER PERLMUTTER: I said more violence.

2 NEWMAN FLANAGAN: More business for
3 us, that's what we mean.

4 I think it's fair to say that the
5 increase has been the implementation of new statutes
6 in the Commonwealth of Massachusetts which I think
7 have gone through the crawling stages and into the
8 walking stages, et cetera.

9 I don't intend to take much time
10 and, unfortunatly, I will not be here for the entire
11 meeting, but I will have members of the staff.

12 But the gentleman on my right, here,
13 is the key to the Civil Rights problem as it faces
14 the City of Boston.

15 Fortunately the City had the foresight to
16 look at what was coming down the road some years
17 ago and back even before the statute in '79 was passed,
18 they had in place a Community Disorders Unit.
19 And the individual who was in charge of that, in
20 my opinion, was a giant in planting the seed of
21 the whole scenario as it relates to law enforcement
22 and the Civil Rights prosecution is now the Commissioner
23 of the City of Boston Police Department. And when
24 he left, it's in good hands with the Detective-Sergeant
25 on my right, here.

1 And I think that one of the big things
2 that we point with pride to is that the Attorney
3 General's Office -- I don't want to say under the
4 late Frank Bellotti -- under the former Attorney
5 General, Frank Bellotti, and the present Attorney
6 General, as the key to opening up communications,
7 talking with local police departments, with the
8 local prosecutors and the Attorney General's Office,
9 and it's probably as nice a team as you can have
10 in this business and get the success which I think
11 we've had primarily in the City of Boston.

12 The lines of communication open up
13 as soon as the tragic, factual situation comes forward,
14 and many times through the local police department,
15 the anticipation of what is going to develop in
16 a certain area.

17 And so thanks to the efforts of the
18 Attorney General's Office, as well as the Community
19 Disorders Unit of the City of Boston, I think that
20 we can point with pride to the Commonwealth of
21 Massachusetts and Suffolk County and with the Attorney
22 General to how the Community Disorders Unit and the
23 Civil Rights problems have been faced with in the
24 City of Boston.

25 I have here a Civil Rights pamphlet

1 that was a resource handbook for the citizens of
2 Suffolk county. We disseminated that at a major
3 Civil Rights conference in the City, here, that
4 had approximately 450 people at last year. And
5 it was the first real big effort to address a problem
6 that's been cancerous in our society for too long.

7 And so I saw fit at the time that
8 the statute was passed to put key people in key
9 spots to address a situation which many people
10 shunt aside and felt that it was important enough
11 so that I put my First Assistant as the linchpin
12 on it, and the Chief Administrator with
13 the District Courts, who at that time was Mike Joyce,

14 And so they worked constantly with
15 the Attorney General's Office, with the local police,
16 with the Justice Department, with the Commission
17 itself, and sat down - and if I had a nickel for
18 every time there's been a meeting to spell out and
19 do dialogue, I think I'd be a millionaire.

20 There's been a tremendous amount
21 of work and effort being done here.

22 And this may be a pat on the back
23 for everyone. Somebody says: How many incidents
24 do we have?

25 Well, we know one is too many.

1 But the point of the matter is that
2 I think it's being addressed very professionally,
3 with an open line of communications. The difficulty
4 I see is if there is a shutdown of communications
5 from all of the networking, both from the community,
6 from the departments, from the prosecution standpoint
7 and from all other agencies.

8 And so with those few words, I'm
9 delighted to have the opportunity to be here.

10 And I want to turn it over, now,
11 and have my First Assistant, Paul Leary, who has
12 been in on it since the inception, to try and give
13 you a brief outline. And he will then have Mike
14 Joyce say a few words.

15 Paul.

16 PAUL K. LEARY: Thanks, Newman.

17 PETER PERLMUTTER: Could we get copies
18 of that, because we'd like to send it out to the
19 -- extra copies, we'll be able to get.

20 NEWMAN FLANAGAN: I've got a couple.

21 PETER PERLMUTTER: Oh, good.

22 PAUL K. LEARY: Thank you, again,
23 for having us here.

24 And just to probably enlarge a little
25 bit on what Mr. Flanagan has stated by way of introduction,

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1 in 1980, when the statute was implemented, and it's
2 just about eight years now. We had an anniversary
3 date, this month. I think it was on Valentine's
4 Day, February 14th in 1980, that a statute that
5 should have brought people back closer together
6 with love, because of the, I guess, connotation
7 of Valentine's Day. Obviously, it hasn't had any
8 love for those who have violated the Civil Rights
9 Statute in Suffolk County.

10 Statisticwise, those that Doug has
11 addressed, as far as the civil enjoinder, almost
12 in all cases, not in all, because some of them it
13 was not appropriate, but in many of the cases that
14 Doug has alluded to, there has been a corollary
15 criminal, either complaint or indictments, against
16 the same individuals in which the Attorney General
17 by virtue of the selective injunctive relief has
18 gained, we have correspondingly sought criminal
19 complaints and criminal indictments against.

20 Over the years it has increased.
21 We have prosecuted both -- in many cases, and Mike
22 Joyce will address the District Court, but in the
23 Superior Court -- first of all, let me go back and
24 state what we had to do with the inception of this
25 particular statute.

1 We had to put in place some form
2 of communciation because with 60 to 70 thousand
3 cases going through our District Court every
4 year and another 2,000 cases going through our Superior
5 Court in Suffolk County, it would be very easy for
6 cases to fall through the cracks. I mean, it happens
7 every day that cases that should be addressed in
8 a serious manner, for one reason or another, because
9 of the volume and the lack of resources that we
10 have, some cases aren't given the full attention
11 that they should be.

12 This is something that we felt any
13 case that came in where the Community Disorders Unit
14 had brought to the attention of the prosecutor in
15 the District Court or at the Superior Court level
16 had to be given serious consideration. It was a
17 new statute. It had never been challenged in any
18 way, as far as any of our Appeals Courts are concerned.
19 And we knew eventually, some time, there was going
20 to be a challenge to that, so that we move, at least,
21 through the legal process, very carefully, as far
22 as making sure that we had the elements, making
23 sure that we had the proof that was necessary and
24 making sure that we had the good convictions.

25 As we progressed through it, we had

1 set up a policy within our office with the Attorney
2 General and with the U. S. Attorney.

3 The Task Force that was first set
4 up back in 1980 had on it as its head, the U. S.
5 Attorney, the Attorney General, and the District
6 Attorney.

7 Obviously, because of the time that
8 it was going to take to be involved in these, those
9 individuals designated their First Assistants, so
10 it ended up being the First Assistant U. S. Attorney,
11 the First Assistante Attorney General and myself
12 who sat on the Task Force.

13 Now, what did the Task Force do --
14 and Mike Joyce from the District Court -- what did
15 we do in those years?

16 Well, first of all, we had to set
17 up a line of communication with the people that
18 were out in the street investigating of one's civil
19 rights. And that was the Community Disorders Unit.
20 It was already in place. At that time it was Lieutenant
21 Mickey Roche.

22 So that knowing that we had something
23 in place that was doing a special investigation
24 in specialized cases, we set up a unit. Every supervisor
25 in our District Court was trained, as far as to look

1 for the elements in dealing with a case that came
2 into the District Court.

3 There was a line of communication
4 that went directly to the supervisor, the Chief
5 Administrator of the District Courts, and we have
6 nine in Suffolk County.

7 As that went through to the supervisor
8 in the District Court, it also went to the Attorney
9 General and to my desk and down to the U. S. Attorney
10 at that time.

11 The U. S. Attorney, and I don't know
12 if there's any representative from the U. S. Attorney's
13 Office here, but they have been very active in serving
14 on our Task Force over the past few years.

15 As a result, cases that would come
16 in would be addressed by the Administrator of the
17 District Court, along with the supervisor in the
18 District Court where case was to be brought.

19 If it was of a nature that it should
20 have been a direct indictment through the Grand
21 Jury, then it was brought up to the Superior Court,
22 it was evaluated at that level and we have three
23 prosecutors in the Superior Court who are, we consider,
24 so-called experts in the prosecution of Civil Rights
25 violations: Phyllis Broker, Jim Hamrock and Jim

1 Larkin.

2 Jim Hamrock, by the way, and I notice
3 with interest last week, on the Violence Against
4 Asians, there was a program on last week. I'm sure
5 that an awful lot of you have seen it. A two-part
6 program in dealing with certain cases. One of them
7 was the Cambodian family in Revere of which our
8 office had the successful prosecution down there
9 and, also, that case went to the Appeals Court,
10 and we're very happy to say that the Appeals Court
11 came down and affirmed the verdict and the issues
12 of law that went up were met with in our favor.
13 So we feel that was really the first case -- although,
14 Charlie, I don't know if you had one out of Norfolk
15 that did go.

16 But we had -- waiting for that to
17 come down, at least from the Appeals Court. It
18 hasn't gone to the SJC and we haven't had a case,
19 at least out of our office, that has gone to the
20 SJC.

21 But the Task Force sat, and the hours
22 that we put in, the days and the months that we
23 put in. For example, for the move in of the minority
24 families in Charlestown. That was a sitdown between
25 law enforcement and the MBTA Police, the Community

1 Disorders, the Metropolitan District Commission
2 Police, the Fire Department, the School Department,
3 the Housing Authority Police. We sat down and we
4 did the so-called missionary work. We had people
5 going out into the community to talk to the rabbis,
6 to talk to the ministers, to talk to the Catholic
7 priests that were there to let the message go out
8 that if there was somebody that was going to violate
9 one's civil rights, it was going to be met swiftly
10 and it was going to be met harshly.

11 That, we did in those certain areas.

12 We had a successful move in the Charlestown
13 Housing Project. I only hope that the move in in
14 the South Boston Projects will be as successful
15 as that. If they are, then we have come a long
16 way and we have succeeded in sending out a message
17 that it's going to be dealt with harshly.

18 The statistics as far as the office
19 is concerned, in broadbase, in the Superior Court,
20 we've had in excess of 20 cases prosecuted out of
21 the Hyde Park, the West Roxbury, Charlestown, Revere,
22 Chelsea, South End, Back Bay, in those areas that
23 have been prosecuted in a very successful manner.

24 There are -- I don't know the numbers,
25 but there are those serving prison sentences in Walpole

1 State Prison, or MCI-Cedar Junction. They're serving
2 time in the House of Correction in Deer Island and
3 there are many that are on suspended sentences with
4 strict probation hanging over them.

5 In the District Court -- and I'm
6 going to end my presentation, now, because I could
7 go on too long, probably, and I'll turn it over
8 to Mike Joyce just to show a little bit about the
9 coordinated effort that is done at that level.
10 That's where the level really is of the most importance.
11 That's where Bill Johnston and his unit, out of
12 Community Disorders, have the direct input with
13 the prosecutors in the Roxbury, Dorchester, West
14 Roxbury Courts. That's where they have to come
15 in and say these are the facts we have, we believe
16 it's a Civil Rights violation, what do you think
17 about it when it's reviewed by a prosecutor in there?

18 I don't think in too many times there's
19 been too much dispute. Once in a while we've had
20 some infighting as to whether they had all the elements
21 or whether it should be prosecuted under one statute
22 or another statute, but that has been resolved,
23 and then we have gone on from there.

24 So with those few words, I want to
25 say that at one point in time, four years ago, Mickey

1 Roche went to a meeting, and I don't know if Bill
2 was with him, but they went down to Washington and
3 there were people, like yourselves, sitting around
4 from major cities that were experiencing problems
5 as we were in our city.

6 And Mickey Roche came back and said,
7 "My God, we're light years ahead of any of the other
8 cities that are experiencing these problems."

9 They don't have anything in place.
10 The U. S. Attorney doesn't talk to the Attorney
11 General. The Attorney General doesn't talk to the
12 District Attorney. And we have in place a coordinated
13 effort that has been, at least, with the cases that
14 we have tried, with the cases that have been investigated
15 and brought to us, I believe, has been very, very
16 successful.

17 So with that, I'll turn it over to
18 Mike Joyce, who is the former Administrator.

19 I brought along the new Administrator
20 of the District Court, who is Jerry Malone. He has
21 only been in place for a month, but he is a person
22 who is out of the criminal justice system in Massachusetts
23 involved very much in the training of police officers
24 and prosecutors. He's certainly going to be able
25 to pick up on the training aspects and the teaching of

1 new Assistant DAs coming into the office how to
2 handle those cases that are brought to them in this
3 area of Civil Rights violations.

4 PETER PERLMUTTER: Thank you very
5 much.

6 MICHAEL JOYCE: I wish Paul would
7 make some comment of the reason Jerry is taking
8 my place. It's not because of the ineffective job
9 I've done.

10 [Laughter.]

11 PAUL K. LEARY: If you'd give me
12 one minute, I would say that Mr. Joyce has been
13 promoted to the Economic, White Collar Crime Unit,
14 where now the people committing the white collar
15 crimes instead of civil rights violations have some
16 fear.

17 [Laughter.]

18 MICHAEL JOYCE: When this law became
19 effective in 1980, there was no precedent for the
20 law. There was no one that we could look to, either
21 in the Police Departments, Attorney General's Offices,
22 District Attorney's Offices, any place in the country
23 as to how this particular law was going to be implemented.

24 A quick reading of the law at that
25 time indicated to us that this particular statute

1 could be charged in every single case where there
2 was an assault, where there was a robbery, where
3 there was a battery, because that was also a violation
4 of someone's civil rights.

5 We knew that if we did that, of course,
6 in every case that the law would lose all effectiveness
7 at that point. So we tried to set up a criteria,
8 and this was primarily with the Police Department,
9 Bill and Commissioner Roche and myself and Mr. Leary,
10 how are we going to set up a policy that was going
11 to be consistent throughout Suffolk County?

12 And to make a long story short, there
13 was an awful lot of dry runs before we came up with
14 a policy that we felt that we could promulgate to
15 the police and to other Assistant District Attorneys?

16 The most important thing that we
17 were trying to accomplish was if someone in Suffolk
18 County violated someone else's civil rights, they
19 were going to be punished, and it was going to be
20 quick and it was going to be hard.

21 So, obviously, we were going to have
22 to be very selective and we were going to have to
23 also be very successful.

24 We didn't want to bring these particular
25 crimes unless we were going to win them.

1 Now, the first thing we had to do
2 was educate the police. The police were the first
3 group of people that were going to face a crime
4 in the street.

5 Every time a racial slur was used
6 in a crime, was that a civil rights case? Or if
7 police officers interpreted that as being a civil
8 rights case?

9 We quickly rejected that.

10 We finally set up the policy that
11 no criminal complaint could be brought in Suffolk
12 County unless it was run through the Community Disorders
13 Unit and then again run through our particular department
14 to see if it was something consistent.

15 We wanted to bring only those cases
16 where a particular person was attacked because of
17 their race or their creed or their sexual preference.
18 And that was the primary reason for doing it.

19 And the reason we had to do it that
20 way is because, although arrests can be made, the
21 important thing is there has to be a successful
22 prosecution.

23 And, of course, what we're trying
24 to do is get into someone's mind: Did they commit
25 a particular act because of racial motivation, as an

1 example.

2 It's very, very difficult to prove
3 that.

4 So we had to have an Act. We usually
5 had to have words, some times we didn't have to
6 have words.

7 We got some resistance from the police,
8 and I understand why. Not the police officials,
9 but from the police officers in the street. Police
10 officers never had to run a particular complaint
11 through their supervisor, but now we were asking
12 them to do that.

13 We had to explain to them why we
14 were doing it. We didn't want to infer to them
15 that all of a sudden on these types of cases that
16 they were stupid, that they were ignorant.

17 So we had training sessions. We
18 went out to the Police Academy. We dealt with
19 new recruits and we dealt with older, experienced
20 police officers, just trying to explain what we
21 were attempting to do.

22 We also had to train Assistant District
23 Attorneys.

24 The number of cases, the number of
25 incidents, I know that Bill has some of the statistics,

1 the number of incidents in Suffolk County has gone
2 down dramatically; is that correct?

3 WILLIAM JOHNSTON: Yes.

4 MICHAEL JOYCE: And we'd like to
5 believe that we have played a large part in that;
6 that because of the cooperation that we have, with
7 ourselves, the Attorney General's Office and the
8 United States Attorney's Office, that this is one
9 of the reasons.

10 I do not believe for one moment that
11 the attitudes of the people in Suffolk County have
12 changed that dramatically over the past six or seven
13 years. I do believe that there has been a decrease
14 because of fear that we are prosecuting; that these
15 cases, if there is a conviction, that we will ask
16 for incarceration; and usually incarceration much
17 greater than the main crime, whether it was a robbery
18 or whether it was an assault and battery.

19 As Paul mentioned, we have an Assistant
20 District Attorney in each of the nine District Courts
21 in Suffolk County trained to work with Police Departments
22 to identify and then to prosecute these cases.

23 Thank you.

24 PETER PERLMUTTER: I think those
25 statistics are very dramatic and that there's certainly

1 something beyond just mere happenstance. So I think
2 you may be a little overly modest, but let's hear
3 from the Police Department.

4 WILLIAM JOHNSTON: It's a pleasure
5 to be here representing the Boston Police Department
6 and Mickey Roche.

7 I came on the Unit in 1980 and you
8 were talking about the law there and the increase
9 in injunctions. And I believe I want to echo what
10 District Attorney Paul Leary said: No one really
11 knew what to do with the law and it was a testing
12 process.

13 To be honest with you, it was really
14 a lot of fun. It was a learning state for all
15 of us. And you talk about sitting down, we wanted
16 to have the best case.

17 And through the efforts of Mike Joyce
18 and Paul Leary and the Attorney General's Office,
19 it actually made me a better police officer and
20 a better investigator.

21 I'd like to talk about how important
22 I think the law is to me as a police officer out
23 in the street.

24 When we first came here in 1980,
25 the law wasn't there. And it was probably the most

1 frustrating period of my time as a police officer,
2 going back time and time again, to interview these
3 people, to investigate what was being considered
4 vandalism or was being considered a simple assault.

5 One of the officers in my unit --
6 you know, after the second or third time of vandalism,
7 I think it becomes terrorism, but we had no mechanism
8 to deal with it. And I think the law has really
9 helped in that case. Maybe they identify the people
10 for what they are. I think the word "bias" is a
11 little too mild. These are hate crimes.

12 And I think by working with the District
13 Attorney's Office and Attorney General's Office,
14 it really made a difference in this City. You're
15 looking at those statistics there, but statistics
16 really mean very little to me. I don't think numbers
17 are a true barometer of the racial climate in any
18 city in the country.

19 What we like to look at is the number
20 of repeat incidents. Is there one person or one
21 location that people go by and they're going to
22 be assaulted time and time again? And I think that's
23 your barometer.

24 Not only have the numbers gone down
25 in the City of Boston, but also the repeat incidents

1 have gone down.

2 As the officers out in the street,
3 again, the frustration without the Civil Rights
4 law.

5 I just came back from New York City
6 where I had the pleasure of being presented down
7 there, and listening to some of the officers from
8 other states who don't have this law, can't deal
9 with the problem.

10 I think after asking officers to
11 address the Civil Rights problem and not giving
12 them the tools to do it, it just can't be done.

13 I listened to Mr. Finn. One of the
14 problems I have, what I'd like to see, is a law
15 like this in every state.

16 They just did a recent survey within
17 my department, Professor Jack McDevit from Northeastern,
18 and there was some pretty interesting things that
19 popped up there.

20 He looked at it from 1983 to 1987,
21 452 cases. And it showed that it's no longer --
22 well, some of them believe that it's kids against
23 kids. It shows that 40 percent of our victims are
24 over thirty years old, victims are over thirty years
25 old.

1 It also showed that in over 70 percent
2 of the cases there were multiple perpetrators.

3 It also showed that ---

4 PETER PERLMUTTER: What do you mean
5 by that? Gangs?

6 WILLIAM JOHNSTON: Gangs. It was
7 two to three people attacking a ---excuse me?

8 FEMALE VOICE: What was the percentage?

9 WILLIAM JOHNSTON: 60 percent, I
10 think.

11 It also showed that he has reason
12 you should really get ahold of it.

13 Well, one of the things that they
14 saw, and I'm not sure of these, but I know it was
15 really high, was the number of cases where there
16 were assaults where they required hospitalization.
17 And I'm almost positive, in looking at it, it was
18 7 percent on regular assaults and well over 30 percent
19 on assaults.

20 So there is a difference when you're
21 attacked because of your difference, whether it
22 be the color of your skin or your religious beliefs
23 or your sexual orientation.

24 The problem I have when I hear about
25 people wanting the reporting law is this -- and it

1 showed up in our statistics -- that out of 452 cases
2 the officer out in the street only identified 19
3 cases as those involving Civil Rights.

4 Other police departments throughout
5 the country are using those kind of statistics,
6 where the officer responding to the call would be
7 the one that would decide whether it's a Civil Rights
8 incident.

9 So if we were doing that, I would be
10 sitting here right now saying, like the Federal
11 Express said, there's no problem in Boston, all
12 we had was 19 incidents since 1983.

13 One of the things that would scare
14 me is the Boston Police Officer and living in Boston
15 would be, I could see the media's approach would
16 be the -- which would be the simplistic one, Boston,
17 again, leads nation in Civil Rights violations.
18 California -- the State of California has 44, the
19 City of Boston has 152.

20 And so I think there has to be a
21 law there and I think there have to be people out
22 there to identify them.

23 What does the law mean to the people
24 what it means to me as a police officer?

25 The two parts law, the civil and the

1 criminal, I think to have one without the other,
2 you know, it's only have the piece of cake; and,
3 of course, as a police officer, I want the whole
4 thing.

5 Before we could identify the perpetrators
6 and we could bring them into court, we could prosecute
7 them. But there were always those ten or fifteen
8 that were left outside that couldn't be brought
9 into court because we didn't quite have enough evidence.

10 Through the civil portion of the
11 law we can now identify them. And it's sort of
12 an amazing thing that's happened with the civil,
13 once given the injunction, there was often those
14 kids that were on the fence that might jump either
15 way. They now had an excuse for not getting involved.
16 I can't get involved because I have this injunction.

17 I had family members, mothers and
18 fathers, thanking me for this injunction because
19 they wanted to keep them away from that crowd that
20 was out there.

21 And it's quieted down. They know
22 that the price of hate is extremely high, not only
23 here in Boston, but in Massachusetts.

24 Things we've done in our unit which
25 I think are unique and I'm really proud of.

1 One of the things we saw in 1980
2 was the Asian problem. We could see the rise in
3 the population but we didn't see them showing up
4 in the statistics. Although other departments may
5 be upset of the fact that all of a sudden you have
6 a 3 percent population, but they turned out in 1986
7 to be almost 30 percent of our cases. And I really
8 believe that was due to our efforts.

9 We actually went out, contacted sponsoring
10 agencies, found out where the people lived and went
11 and knocked on their door. We didn't wait till
12 they came to us. We realized that the biggest barrier
13 facing them was language. They couldn't get
14 into the system because they could not speak the
15 language.

16 There are four interpreters in our
17 units and thank God they're bilingual, but they
18 speak Thai, Vietnamese, Laotian, Chinese, and it
19 goes on. We have three Hispanic speaking officers.
20 And that's, I really believe, why they have come
21 in. We went to those. English was the second
22 language. We brought the refugee population into
23 the Police Headquarters to show what happens when
24 you call 911.

25 You know, that it goes upstairs and

1 the call is sent out.

2 The District Attorney's Office brought
3 the refugee community into the courthouse and showing
4 Lower Court, Grand Jury, you know, Superior Court,
5 and this is what's happened. Through the years
6 there's been a vast increase on people willing to
7 come to us to address their problems.

8 And you need that, because if the
9 people out there are not willing to come to the
10 police and law enforcement to address the problem,
11 eventually they have to go to the streets. So you
12 have to have that law there.

13 And at that point, I'll stop.

14 PETER PERLMUTTER: Thank you.

15 This is fascinating. I think we
16 may have a debate between some of the participants,
17 but let's first open it up to at least members here.

18 Charles Hely.

19 CHARLES J. HELY: Thanks.

20 Jim Lang is with me and he had planned
21 to make a presentation. I worked a little bit longer
22 than Jim, so I'll lead off and maybe he can elaborate
23 a couple of things.

24 PETER PERLMUTTER: Okay.

25 CHARLES J. HELY: I won't overlap what

1 my brothers have said because one of the great things
2 about Massachusetts Civil Rights laws is it's gotten
3 some of the people in the different counties together,
4 the Attorney General's Office together. Newman
5 Flanagan mentioned that.

6 I've learned a lot from this man
7 right here, even though he has no obligation to
8 teach me. I go to meetings where he is and I learn
9 a lot. And I hope that it's mutual.

10 I represent a suburban county, Norfolk
11 County. When we started working on this law in
12 1980, I had the 1980 census figures in my hands
13 and I looked at them for the first time and I realized
14 that I was in essentially an all white county.
15 The black population of Norfolk County in 1980 was
16 .9 percent ---

17 PETER PERLMUTTER: Give me some of
18 the cities in Norfolk. I can't picture.

19 CHARLES J. HELY: Brookline.

20 PETER PERLMUTTER: Okay.

21 CHARLES J. HELY: Quincy. Are the
22 only things that come close to being cities.

23 PETER PERLMUTTER: Okay.

24 CHARLES J. HELY: And they're small
25 cities at that and they have many suburban characteristics.

1 The rest is Foxboro, Stoughton, Braintree,
2 Weymouth, going over to Newton and Wellesley on
3 the western side and going down to the Rhode Island
4 border on the south.

5 We have a problem. We have, nevertheless,
6 comparable incidents. Representing the population,
7 we have a comparable number of Civil Rights offenses.
8 It's not peculiar to Boston, and I've been explaining
9 this to our Police Department for a long time, because
10 we try to overcome as community leaders, town officials,
11 whether they be police or selectmen and say, well,
12 we don't have Civil Rights offense problems, we don't
13 have any minorities is what the next line is. They
14 don't have to say it, I know it and they know it.
15 And so they aren't worried about this as a problem.

16 And the reality, in terms of a law
17 enforcement problem is that the Civil Rights offenses
18 occur, the minority person stands out when he's
19 driving through town or when he's visiting a relative
20 or a friend or when he's newly moved in or she's
21 newly moved in. They stand out right away and they're
22 perceived right away as an outsider. They're perceived
23 right away as a minority person, a black is perceived
24 as from Boston, and they're perceived as associated
25 with crime. And they're associated with somebody

1 who is going to take something away from me. He's
2 going to change my neighborhood. He's going to
3 take some job or some right to some low income housing
4 away from me, thinking, trying to think the way
5 the defendants I've prosecuted think. These are
6 some of the issues I see cropping up.

7 And I have our statistics, and I'll
8 give them to you if you ask me for them. But they
9 sort of parallel the Boston statistics on a smaller
10 size because we have a much smaller population.
11 But it's equally a problem, equally represented
12 a problem.

13 What we see as our problem, apart
14 from our law enforcement and prosecuting the cases
15 we have, is overcoming this closed door society
16 and overcoming this wall of segregation between
17 the city line and the more affluent suburbs.

18 It's not fair that they have this
19 higher number of cases and that they're able --
20 that we have essentially no minorities and the cases
21 that crop up are just as bad.

22 And so we see a responsibility to
23 work with local government leaders, school officials,
24 selectmen, church groups, activist groups, and try
25 to help the towns make their towns more open where

1 minority people are not just tolerated and not just
2 safe. It's my job to make them safe, I think.
3 But I think it's all of our jobs to make them feel
4 welcome and feel like we value different cultures
5 and we value different skin colors and we value
6 different national backgrounds and we value what
7 the Asian community can contribute and we value
8 hearing different languages spoken and we value
9 black people because they're a major force in a
10 major thing in the United States and we somehow
11 missed out our historical patterns of housing segregation
12 in the Boston suburbs. And we'd like to overcome
13 that.

14 It's a much tougher job than prosecuting
15 these cases. Given my choice in terms of what's
16 easiest, I'd rather prosecute one of these cases.
17 It's fun and it's what I'm trained to do.

18 The job of educating people and getting
19 community support for affirmative action, hiring
20 city employees and town employees for affirmative
21 marketing in the housing sector who are actually
22 developing affordable housing, that's a much tougher
23 job and it's a job that I nevertheless think is
24 part of our responsibility as governmental leaders.

25 So that's where some of our energies

1 have been going, in addition to Civil Rights crime
2 prosecution.

3 Like Bill and Mike and Newman Flanagan,
4 were fortunate to have the laws that we do. They
5 give the prosecution a lot of clout. They call
6 immediate attention to the incidents, which I think
7 is very, very healthy.

8 Being charged with a Civil Rights
9 crime, even if your sentence isn't worse, the stigma
10 of a Civil Rights crime amongst the offender community,
11 I have found to be much greater. They're much more
12 afraid of it. They're much more likely to admit
13 an assault and battery, dangerous weapon and plead
14 guilty and very quick to deny any racial motivation.
15 And that normally helps our investigations very
16 well, because their effort to deny the crime, they
17 wind up admitting a lot of things, being on the
18 scene and having whacked a person.

19 That kind of stigma and that kind
20 of media attention I think is very healthy to let
21 the rest of the community know that this is not
22 history, it's not something confined to the South,
23 it's not something confined to the City, it's something
24 that all of us share in America and all of us have
25 a responsibility for growing out of and working

1 to reach out to make our communities less segregated.

2 PETER PERLMUTTER: Your Assistant,
3 did you want to add -- James Lang, right?

4 JAMES F. LANG: Well, I'll just say
5 a few words.

6 Mr. Calabin asked that we try and
7 give a little bit of a prosecutor's prospective
8 on the effectiveness of the Civil Rights Act, perhaps
9 compared to some of the legislation in Massachusetts.

10 As Mr. Joyce indicated, the statute
11 itself is very broad and we see that as one of it's
12 major advantages.

13 Primarily, as compared to the Racial &
14 Ethnic Intimidation Act, which is -- I don't know
15 how many lawyers we have, but it's somewhat related.

16 The Racial & Ethnic Intimidation
17 Act provides criminal sanctions for one who commits
18 an assault and battery upon a person or injures
19 the personal or real property of a person because
20 of their race, religion, color or national origin.

21 The Civil Rights Act isn't limited
22 like that. It doesn't enumerate a class of protected
23 people.

24 As a result, we're free to go forward
25 under the Civil Rights Act and prosecute people for

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1 a much wider range of offenses that we perceive
2 to be Civil Rights offenses.

3 Examples would be violence committed
4 against people because of physical or mental handicaps,
5 violence against someone perhaps because they're
6 engaged in freedom of association or expression
7 of religion, violence against an individual engaged
8 in lawful labor activities, such as picketing.

9 Our office perceives all those to
10 be Civil Rights violations. They would not come
11 within many of the statutes in other states and
12 our own statute on Racial & Ethnic Intimidation
13 Act, because of that specific enumeration.

14 Another advantage of our own Civil
15 Rights Act is that there's no motive requirement.
16 We don't have to prove that somebody acted out of
17 racial or religious animus or the like.

18 As a matter of course, we only prosecute
19 under that statute, as Mr. Joyce indicated, when
20 there is some sort of motivation along those lines.
21 And, as a matter of course, when we take a case
22 to trial, we introduce that evidence, but we don't
23 have to show beyond a reasonable doubt that there
24 was such motivation because it's not an element
25 of the crime and that's very advantageous to us.

1 The way I see it, there's very few
2 limitations to the Civil Rights Act. The one limitation
3 that we do run up against in practice and causes
4 us to look to some of these other statutes is that
5 the Civil Rights Act states that no person, whether
6 or not acting under color of law, shall, quote, by force
7 or threat of force, willfully injure, intimidate,
8 et cetera.

9 That limiting language, force or
10 threat of force, some times causes problems for us. And
11 we've run up against a couple of situations in practice
12 where we find that it's difficult to go forward
13 under the Civil Rights Act.

14 An example would be a situation,
15 perhaps, where there's one minority family in the
16 neighborhood and they start getting some damage
17 to their house.

18 Now, there's no specific racial statements
19 made by the perpetrator; however, from some statements
20 they've made previously, perhaps, we feel confident
21 that we can prove a racial motive.

22 There's no threat or force involved
23 here and there's no actual force. What we have
24 is destruction of property.

25 This is one of those cases where we

1 have some difficulties under the Civil Rights Act
2 that we might fall back on to this other statute
3 as discussed, which does create the criminal sanctions
4 for someone who, for any of those impermissible
5 reasons, damages the personal property of another.

6 Another situation where we might
7 also look to another statute, and we've had two
8 of these cases recently, is a situation where someone,
9 perhaps a minority is going down the street, about
10 to enter a convenience store, and we had a case
11 like this, I believe it was in Braintree recently.

12 An individual pulls up in a car,
13 sees the minority person, stops their car and starts
14 screaming racial slurs at this person. No threats,
15 just racial slurs.

16 The humiliation, the degradation
17 is the same, whether there's threatening words or
18 not. And we perceive that to be a Civil Rights
19 violation.

20 However, because the absence of a
21 threat of force and there's no property damage involved,
22 we can't use the Civil Rights Statute. You can't
23 use that other statute I just mentioned.

24 What we have successfully used is
25 the statute providing that there shall be no discrimination

1 in public accommodations.

2 Now, historically, this was a statute
3 that was aimed at shopkeepers, keepers of establishments
4 who were discriminating against minorities. And
5 it's fallen, probably fallen into some disuse since
6 those sorts of incidents have been on the decline
7 in recent years.

8 We found, however, that because that
9 statute has to be construed to include sidewalks
10 as a public accommodation and streets as a public
11 accommodation that we can use that statute to go
12 after this kind of situation where someone is accosted
13 on the street and they are screamed at simply because
14 of their color or their religion.

15 And we had a conviction recently
16 in Dedham District Court for just such an incident
17 under that statute.

18 PETER PERLMUTTER: What was the result
19 of the conviction? Was it a fine?

20 JAMES F. LANG: The result of that
21 conviction, I believe, was a suspended sentence.
22 That individual had a fairly lengthy record and
23 I think he got a suspended sentence. I don't believe
24 he was incarcerated as a result.

25 CHARLES J. HELY: Hurt a little boy.

1 JAMES F. LANG: It was a little boy.

2 CHARLES J. HELY: Who was the victim.

3 PETER PERLMUTTER: I was just wondering
4 what happens in a case...

5 JAMES F. LANG: It was a little black
6 boy. His mother was very cooperative with us and
7 the judge in Dedham District Court was willing to
8 perceive that statute, the Public Accommodation
9 Statute, as susceptible for bringing this kind of
10 case under him.

11 There's one other statute I should
12 mention because it's very, very useful and it is
13 somewhat akin to the Civil Rights Act. And that's
14 the statute that basically prescribes any defacement,
15 marring or malicious destruction of churches, synagogues
16 and the like.

17 Like the Civil Rights Act, we can
18 go forward under that statute without showing any
19 kind of motive related to religious bigotry. If
20 someone throws a stone through a window of a church
21 or a synagogue, we don't have to show anything else
22 other than that damage was willfully caused. We
23 don't have to show why they caused it. We can
24 get a conviction under that statute.

25 Mr. Hely recently had a very significant

1 case in Westwood. I'm sure you all heard of the
2 Temple fire there. He was the prosecutor on that
3 case.

4 That kind of case could have been
5 difficult for us to attempt to show beyond a reasonable
6 doubt that this young man who torched the synagogue
7 was acting out of religious bigotry. He made no
8 statements, there was no graffiti left inside the
9 Temple.

10 Because there's no motive element,
11 however, in this statute, we were able to go forward
12 and simply link him to that arson and convict him
13 of a Civil Rights offense and, by so doing, incur
14 the rightful condemnation of the community upon
15 what is, in fact, a Civil Rights violation.

16 So that's a statute that has been
17 very effective and I think would be very effective
18 in other jurisdictions, as well.

19 Beyond that, I think that's basically
20 an overview of the statutes that we have used.
21 We both feel that the Civil Rights Act is really
22 quite effective.

23 The only way I could see possibly
24 improving it is perhaps [inaudible] the language
25 slightly, where it talks about the force or threat

1 of force to perhaps include intimidation and coercion
2 as the civil injunction language does, in fact,
3 include.

4 PETER PERLMUTTER: Well, again, let
5 me collectively thank you and open up the floor
6 to members of the Commission.

7 DORIS B. ARRINGTON: I have a question
8 for Mr. Finn.

9 When you started giving your report,
10 you kind of put a disclaimer on it and said it was,
11 I guess, opinions of you and your co-author.

12 What did the National Institute of
13 Justice think of your report and did they have any
14 differing views on it or...

15 PETER FINN: I'm going to pass the
16 buck there and I'll give you the name of someone
17 in the Institute that you can contact for his opinion.

18 His name is Jonathan Budd, B-u-d-d,
19 and I will give you his telephone number after the
20 meeting if you'd like. He was the monitor of the
21 project.

22 It's Area Code 272-6040. You can
23 see I talked with him a lot.

24 DORIS B. ARRINGTON: And that's all?
25 You have no comment?

1 PETER PERLMUTTER: I think, for the
2 record, you got some of this down and maybe indicate
3 you came in a little late and indicate who you are.

4 ANDRE' F. RYERSON: I'm sorry.

5 PETER PERLMUTTER: That's okay.

6 ANDRE' F. RYERSON: I'm Andre' Ryerson
7 from Amherst.

8 In order to get public support for
9 these kinds of law and prosecution under them, certainly
10 the public seems interested in how you distinguish
11 between a crime of violence or intimidation that
12 does not have a racial or ethnic component -- and
13 I'll address this to Mr. Joyce or Mr. Johnston.

14 In my mind I can imagine ones where
15 you do not need an [inaudible] in order for the
16 inference to be fairly free.

17 For instance, a black family moves
18 into a white neighborhood, people gather, chant,
19 a rock is thrown through the window, no racial epithets,
20 but it's clear that there's no other explanation.
21 People do not normally do this when somebody new
22 enters town.

23 But if you have a case of people
24 meeting on the street, you could have it, certainly,
25 an altercation that results from one car bumping

1 into another. Two people get out. One is white,
2 one's black. They start arguing. Then epitaphs
3 are thrown, then blows are thrown.

4 Even there with an epitaph, it seems
5 to me you've got a problem in saying, ah-ha, this
6 is a racially motivated incident. An incident the
7 first cause was a traffic accident. How do you
8 -- I think there's some gray areas or, more simply,
9 the two people, the victim and assailant, are different
10 races or ethnic backgrounds, what do you use besides
11 the fact of that to say that this is a violence
12 related crime?

13 MICHAEL JOYCE: We had just such
14 an incident a number of years ago. I don't know
15 if you remember it. The [inaudible] case.

16 It was a famous case. It was a
17 case that I was sitting home on a Sunday evening
18 watching the 6 o'clock news and then now saw an
19 incident on Charles Street involving blacks, whites
20 and police officers right on live camera. This
21 had already been labeled by the media and subsequently
22 the print media the next day as a racial incident.

23 And what had happened here was that
24 an automobile with a black individual in it was
25 cut off on Tremont Street. I think -- no, Cambridge

1 Street. I'm sorry, you're on Cambridge Street.

2 And our best evidence was that the
3 people in the cutting off, which was a group of
4 white people from Charlestown, which obviously,
5 right off the bat, that conjured up some feelings
6 among people, Charlestown, twenty-two-years old,
7 white. The person cut off was black with his
8 wife and a couple of children in the automobile.

9 The black person chased the white
10 guy. The white car did not stop. The black person
11 pulled off in front of him, pulled him over. There
12 was a clash of automobiles at that point. At that
13 point words were exchanged.

14 Depending on who you believed, one
15 started first, the other started second. But as
16 a matter of course, there were terms used at that
17 point, after there was an initial confrontation.

18 Now, there is a -- this particular
19 incident continued for some period of time afterwards.
20 So finally the television cameras got there.

21 As far as we were concerned at that
22 point, we were already in a corner, all we had to
23 do was to tell people what they didn't want to hear;
24 that this might not be a racial incident.

25 As far as we could determine, as far

1 as we were willing to try to prove in court, that
2 this was the typical automobile incident that happens
3 every day throughout this particular city. And
4 as a matter of anger, certain terms are used. Some
5 times as a matter of anger, some people will say,
6 you fat so and so. That's been used on me now
7 and again. You bald so and so. You black. You
8 Guinea. You Mic. You this, you that.

9 That particular incident, we did
10 not go with the Civil Rights Unit, that case. But
11 there was much chagrin from the media, among the
12 community, the black community, that we now had
13 -- you know, that we were part of the problem ourselves.

14 Our problem over the years has been
15 what the media has already labeled something. And
16 it's very, very difficult for us to say that it
17 isn't so.

18 And don't forget that it is not news
19 unless the media makes it news. They want someone
20 to say that person hit you because of your color.

21 We had just one other incident that
22 I had a black public defender who was walking through
23 -- that's the Office of Public Counsel, now, who
24 was walking through the Boston Common early one
25 evening, around 1 o'clock in the morning. And

1 as so many other people walking through the Boston
2 Common at 1 o'clock in the morning, alone, he was
3 robbed. And as they were taking the money from
4 him, they called him an f-ing nigger.

5 He came up to court the next day
6 and, of course, he wanted the new Civil Rights law,
7 another charge besides the armed robbery charge,
8 brought.

9 And it didn't take long for him to
10 understand that this was one that, at least, we
11 could prove. We could not prove that he was set
12 upon and robbed just because of his color; that
13 a term that was used after the robbery is oftentimes
14 used by people with different color under those
15 circumstances.

16 He understood our particular decision.

17 But to answer your question, we do
18 have great problems. What we try to do over the
19 years is to use these examples. We often refer,
20 when we have discussions as to whether we want to
21 bring a particular complaint, well, how is this
22 consistent with the Prader case? How is this consistent
23 with the South, Boston case?

24 And we try to set up guidelines so
25 that we're able to articulate to police departments

1 and to our own Assistant DAs and oftentimes in the
2 District Court to judges. And it has been a trial
3 by error policy.

4 I hope that answers your question.

5 WILLIAM JOHNSTON: If I could just
6 say one thing as far as the investigation goes?

7 The problem, if you don't properly
8 investigate a Civil Rights crime, if you don't give
9 it the time and the effort -- right? -- then there are
10 going to be outside forces that can determine whether
11 it is or is not.

12 If I say, well, we looked at it for
13 a day and here's this one-page report, and we don't
14 think it's racial, we marry that as a racial incident.

15 One of the things and I think Mike's
16 always is is that, in fact, the person told him,
17 he really helped me, was what was the primary crime?

18 I mean, was it robbery, you know?
19 Or was it a Civil Rights violation? Was he there
20 to hurt somebody because they were different?

21 Another thing, the question Mike's
22 always maybe asked was, could this have happened
23 if everyone was of the same race? You know, is
24 this an incident where everyone is the same, the
25 same outcome, the outcome would have been the same?

1 And I think that helps, too.

2 But I think the investigation should
3 determine. Not the police. Not the DA. And oftentimes
4 not even the victim. The investigation should determine
5 whether, in fact, it's a Civil Rights crime.

6 PETER PERLMUTTER: Tino.

7 TINO CALABIN: Mr. Lang was helpful
8 in contrasting the Massachusetts Civil Rights Act
9 with other more specific legislation, trying to
10 combat violence and prejudice.

11 Others of you have recommended that
12 perhaps jurisdictions outside of the Commonwealth
13 consider the Massachusetts Civil Rights Act as something
14 they could adopt or adapt.

15 But I understand, too, though, that
16 there are some challenges to the Massachusetts Civil
17 Rights Act. Would someone elaborate on those challenges?

18 CHARLES J. HELY: I'd be glad to.

19 We had a big victory as a result
20 of Suffolk County's efforts. The big victory was
21 in the Massachusetts Appeals Court of Commonwealth v.
22 Stevens, and it is an attack on some Cambodians
23 in the Town of Revere. I think Jim Hamrock of the
24 Suffolk DA prosecuted it. And the Appeals Court
25 took the opportunity to construe our State's Civil

1 Rights Act for the first time.

2 We had had one prior conviction that
3 was appealed but it didn't challenge the Act. But
4 this one really challenged the Act. It challenged
5 the claim was unconstitutional and it claimed the
6 evidence insufficient. And it claimed that there
7 was other motives involved.

8 And the Appeals Court had a very
9 sweeping opinion, I think, that many lawyers are
10 familiar with or will be familiar with in the near
11 future, because they made a point of making this
12 a landmark case.

13 They rejected the claim that it was
14 unconstitutional. Although it is vague. And,
15 in fact, it's vague to the advantage of prosecutors,
16 it has been -- similar language in the Federal
17 Civil Rights legislation has been construed by the
18 U. S. Supreme Court a number of times, and our State
19 Appeals Court said that's good enough for us, we
20 are not going to strike down the statute.

21 Secondly, and to me is a very important
22 thing, is that they said that although there had
23 been some claim by the defendant that one of the
24 Cambodian men had insulted him or hurt his car,
25 I can't recall exactly, but there had been a personal

1 conflict between a Cambodian man and the white defendant,
2 one of the white defendants.

3 And although in the course of the
4 attack the white defendants broke into these Cambodians'
5 home about 1 a.m. holding, I think, axe handles
6 and clubs and really beat these people badly, as
7 well as totally destroying their apartment.

8 In the course of that one of the
9 defendants said something, well, I'll get even with
10 you for ratting on me or I'll get even with you
11 for this personal conflict we had before.

12 The Mass. Appeals Court said that
13 we rejected the defendant's claim that there was
14 insufficient evidence. The racial motive does not
15 have to be the predominant motive. As long as there
16 is that evidence there, we uphold the conviction
17 under this Civil Rights Act even if the defendant
18 has evidence that there was some other motive, in
19 addition.

20 So I think as a result of this
21 Commonwealth v. Stevens we're very comfortable now
22 with not only the validity, but that the Courts
23 are behind us. And there's a real strong sense
24 that the judges feel that this is an important piece
25 of legislation and they will do a little bit extra

1 in terms of upholding it, I would say.

2 PETER PERLMUTTER: Susan, did you
3 have a comment?

4 SUSAN J. PRADO: Yes. I had a couple
5 of comments, actually, and a question.

6 Mr. Leary, is it?

7 PAUL K. LEARY: Yes.

8 SUSAN J. PRADO: You mentioned that
9 there was no one here from the U. S. Attorney's
10 Office and I was sorry to note that myself, but
11 I wanted to say, the same conference where Mr. Johnston
12 was, both Mr. Eastman and myself were there.

13 I was very pleased to note, because
14 of the -- I want to say before, that there's so
15 much rhetoric, as you all know, about this whole
16 topic of racial violence, what is causing it or
17 whatever, it makes me -- I'm very pleased to be
18 here and to listen, like I was in New York, to those
19 of you who are out in the front lines and dealing
20 with this in a pragmatic way and are showing what
21 goes on when we have laws and you're out there to
22 enforce them, because what I've seen and what I've
23 heard here today, what I've heard before, is the
24 community bands together, passes the legislation
25 and the legislation is enforced, that the incidents

1 go down, and it's known out there in the community
2 that these crimes are going to be prosecuted, though
3 the rhetoric about seems not to matter to me.

4 What's important is that the laws
5 get passed and they get enforced.

6 In that regard, I wanted to say that
7 I was pleased to hear Morris Steve[phonetic] at
8 this conference in New York from the Southern
9 Poverty Law Center[phonetic] stand up and say that
10 this Justice Department had the best record, he
11 felt. And I thought it was pretty impressive coming
12 from Morris Steve of Southern Poverty Law, the best
13 record of enforcement of any administration for
14 35 years.

15 He said, while he differed philosophically
16 on affirmative action or other issues, or the rhetoric
17 did, that the fact of the matter was that enforcement
18 was the best there had been, I guess, [inaudible];
19 is that what I'm saying? Which was very reassuring
20 to hear.

21 I'm interested in a couple of the
22 issues that were raised.

23 Our Commission recently debated a
24 resolution calling for legislation, federal legislation,
25 to mandate the collection of statistics about hate

1 crimes.

2 And one of the issues was whether
3 or not the legislation should delineate classes,
4 as you mentioned, Mr. Lang, that the -- you found
5 it helpful, in fact, that you weren't restricted
6 by category, which I thought was an important observation,
7 because in our resolution what we in fact did, after
8 some discussion, was delete the categories. There
9 was dispute about the categories among the Commissioners
10 and we simply took them out.

11 Then the resolution called for legislation
12 to collect data about hate crimes.

13 The specific question I wanted to
14 ask has to do with a term, and that was part of
15 our discussion as a Commission, that is, the term
16 "sexual orientation."

17 Now, the gay lobby, of course, has
18 approached the Commission on a lot of this issue.
19 And the discussion about this issue is centering,
20 at least among some of your Commissions, on this
21 term, this particular term, "sexual orientation,"
22 because it is felt that this term is too broad.

23 If you want to say -- I mean, you
24 can solve the problem by not delineating any classes,
25 A. But if you are dealing with classes and you want

1 to cite as a class of protected people, homosexuals,
2 then you should say homosexuals.

3 I'm going to try to present this
4 argument as I understand it and, John, you can chime
5 in if I'm wrong.

6 My understanding is one of the criticisms
7 of the term "sexual orientation," there's a danger
8 in that term because that can be construed to mean
9 anything. At least in my mind when this is raised,
10 I think of pedophilia or other forms of child abuse
11 or other forms of crimes of a sexual nature that
12 people engage in that you would not want to protect
13 in that -- I mean, not that you would want them
14 to be beaten up, but to give credence to that form
15 of behavior, which you do when you cite that as
16 a class.

17 And I'm concerned that this term,
18 "sexual orientation," seems to be gaining credence
19 legislatively.

20 How do I make this a question?

21 I wanted to comment -- I wanted to
22 ask you what you -- how you interpret that term
23 and how you see it being used.

24 PETER PERLMUTTER: You take the hard
25 ones, all right?

1 DOUGLAS T. SCHWARZ: Well, I would
2 just briefly -- I mean, maybe we can both address
3 this, say that the term actually -- and actually
4 I think this is -- it's Lang, right?

5 JAMES F. LANG: Yes.

6 DOUGLAS T. SCHWARZ: You alluded
7 to association on rights and free expression rights
8 and I think that that is a more precise -- and that's
9 one of the -- I think one of the beauties of the
10 Massachusetts Civil Rights Act is that it just ties --
11 as I said, and this might be a little bit complex
12 for nonlawyers, but it ties in to already existing
13 constitutional protections, and that's been the
14 progress of the cases. It has been to protect what
15 I loosely referred to as sexual orientation rights
16 under the privacy protections of the Constitution
17 and the associational and expression protections
18 of the Constitution.

19 So that is a point of clarification.

20 Not meant, however, personally ---

21 PETER PERLMUTTER: Say that again.
22 You're saying the Constitution protects sexual
23 orientation? Is that what I heard?

24 DOUGLAS T. SCHWARZ: I'm saying that
25 the protections for gay and lesbian people that --

1 and in particular the case that we brought under
2 the Massachusetts Civil Rights Act, the legal basis
3 for the argument in favor of the preliminary injunction
4 was based in the associational and privacy interests
5 of the Constitution.

6 PETER PERLMUTTER: No, I am raising
7 this as a question.

8 DOUGLAS T. SCHWARZ: Right.

9 PETER PERLMUTTER: I wasn't aware
10 of that on the federal level that it was a clarity
11 about what sexual orientation means under the
12 Constitution.

13 DOUGLAS T. SCHWARZ: Well, this is
14 a highly and hotly disputed topic ---

15 PETER PERLMUTTER: Okay. That's
16 what I wanted to know.

17 DOUGLAS T. SCHWARZ: --- of constitutional
18 law.

19 And the most recent weighing it has
20 come from the Appeals Court in California.

21 And there's a lot of discussion about
22 that to be had.

23 So I guess the only other point I
24 was going to say is not to back away from the fact
25 that it's probably going to be a difficult, somewhat

1 difficult issue to come up with definitions.

2 I think that the term -- I think
3 that the term "sexual orientation," however, at
4 least our office feels completely comfortable with
5 it, with that term.

6 And to the extent that we have to
7 go into a more sophisticated, constitutional analysis
8 to provide a firm basis for that, well, that's what
9 we have to do as lawyers.

10 Maybe you would like to talk about
11 it a little more.

12 CHARLES J. HELY: If I perceive this
13 correctly, that the broader Massachusetts statute
14 is more beneficial because there may be groups that
15 are not discriminated against today that may be
16 discriminated against five years from now that I
17 haven't anticipated.

18 Five years from now it may be unpopular
19 to be a Christian. It may be unpopular to be a
20 married person.

21 Yet our statute, as long as what
22 you're doing is lawful activity, protected by your
23 state and federal laws, as long as it's lawful activity,
24 and you're being interfered with, our broad statute
25

1 protects you.

2 The political reality is, I suspect,
3 that more states are more likely to adopt category,
4 religious bias crimes; racial bias crimes.

5 Although our statute is modeled on
6 the Federal Criminal Statute, I believe it's Title 18,
7 Section 241 and 242, that make it a crime, either
8 under color of law to interfere with someone's protected
9 rights or to conspire, conspiracy to interfere with
10 someone's protected rights.

11 We lifted that language right out
12 and simply dropped the conspiracy and dropped the
13 color of law, and they've been federal crimes since,
14 I believe, the late 1860s.

15 At any rate, if the states that already
16 have or are considering adopting whoever commits
17 an assault and battery because of race, religion,
18 color and national origin, they're also considering
19 sexual orientation.

20 I'm not afraid of that.

21 I spend at least as much time on
22 child sexual abuse cases as I spend on Civil Rights
23 cases. And I don't see a major movement in this
24 country to make child sex legal.

25 And as long as child sex, any sex with

1 a person under sixteen years old, whether or not
2 consensual, is a felony in Massachusetts and I'm
3 sure it's a felony in every other state. As long
4 as that is criminal activity, I don't think -- I
5 don't fear that Courts will interpret the criminal
6 category -- the category of committing an offense
7 because of sexual orientation is sexual preference
8 as including or somehow adding that child sex is
9 now protected.

10 I don't see that.

11 I think it's the gay bash-in crimes
12 that the Suffolk DA's Office has successfully prosecuted,
13 and that I have seen, but we haven't successfully
14 prosecuted, involved extra passion and violence because
15 of the offender's sense of disgust or embarrassment
16 or confusion about sexual identity. They don't
17 really have any relationship to child sex.

18 And whatever the law enforcement
19 officials' views are, that victim is getting an
20 extra measure of his head bashed in because the
21 defendant thinks that there's no right to walk down
22 the street and be a gay person at the same time.

23 I don't think we hurt the Civil Rights
24 cause by including that protection. I think we,
25 in fact ---

1 SUSAN J. PRADO: Why don't you say
2 on the sexuality and the homosexuals? I mean why
3 not just say it straight out instead of the vaguer
4 term?

5 The point you make about child abuse
6 being a felony ----

7 CHARLES J. HELY: Right.

8 SUSAN J. PRADO: It's also included
9 in numerous -- in numerous states, it's still a
10 felony involved.-- a felony? I don't know, it's
11 still a crime ---

12 CHARLES J. HELY: Right.

13 SUSAN J. PRADO: --- to be a homosexual,
14 to practice homosexual sex.

15 CHARLES J. HELY: Well, it's the
16 act, I think is the crime; Tennessee is the famous
17 one that went to the U.S. Supreme Court. It might
18 have been Georgia. But the act is the crime, not
19 the status of being such a person.

20 SUSAN J. PRADO: I understand.

21 CHARLES J. HELY: And I think that
22 there are -- I also -- I don't know this for certain,
23 but I assume that there are a range of sexual preferences,
24 and a range of people that, in terms of their attitudes
25 and their sex partners, vary. Whether they be men

1 and men, men and women and other things.

2 I think that there are -- I don't
3 know. I -- terms of the offenses that we have seen,
4 I don't have any problem with -- because a person
5 is a homosexual. That doesn't bother me.

6 But, again, the other one doesn't
7 seem to be any more offensive or any less offensive.

ape3 8 REGINALD L. JOHNSON: --- to the
9 point that a person does not have to be, quote,
10 homosexual, of course, to have sexual orientation
11 --you know, or that a person decided they want to
12 wear, you know, certain outfits, you know, it can
13 be a male who wanted to wear female's attire.

14 SUSAN J. PRADO: Transsexual.

15 REGINALD L. JOHNSON: Right.

16 And that would cover that person,
17 too. You would not be saying straight-out homosexual.
18 Now, you're limiting it to what it can and cannot
19 cover. Plus, at the same time, you also have to
20 look at terminology. A lot of people come in on
21 disability and handicap. So a lot of times we
22 look at the laws, both federal and state laws, almost
23 in any state. It plays around so much, now, they're
24 coming up with a brand-new terminology because didn't
25 like, you know, disability or handicap, because they

1 said it lined up this one area.

2 I'm making myself...

3 DOUGLAS T. SCHWARZ: Yeah, I think
4 that's a good point. I think ---

5 SUSAN J. PRADO: It's a broad law.

6 DOUGLAS T. SCHWARZ: That's true,
7 too. And it might be important to have -- I don't
8 have the enough sensitivity, probably, to articulate
9 why sexual orientation has become the term of choice.
10 So maybe that would be a good thing to ask someone
11 from that community about.

12 PETER PERLMUTTER: It was to make
13 it more digestible. I mean, it was political definition
14 to give it a universalist kind of acceptance.

15 But I think the interesting thing
16 for me is an immigrant, after 26 years in New York
17 -- I'm really looking at the Sergeant -- there's
18 been an awful lot of change. I don't mind a little
19 abuse. But if you take 20 years ago, 15 years ago,
20 someone had a complaint, I mean, you met with a
21 stonewall of indifference.

22 That affected blacks, it affected
23 me in the Jewish community. You talk to an Irish-Catholic
24 dominated police force who couldn't care less. And
25 I mean, wow, what a world of difference today.

1 So I applaud this kind of attitude.

2 If there are some little excesses,
3 I haven't heard of anyone put away for 20 years
4 because, you know, they beat up a kid or misaccused
5 someone.

6 So I applaud these efforts. Particularly,
7 you know, the police department and that kind of
8 effort.

9 I'm looking at the clock, and a housekeeping
10 thing, I'd like to entertain questions only ten
11 more minutes and then I would ask our Commission
12 to stay here, because we have a little decision
13 to make.

14 So if we have more questions -- go
15 ahead, right ahead on it, but we'll stop at 4:15
16 so that our guests can leave and we can do a little
17 business, too.

18 REGINALD L. JOHNSON: Just one point
19 on disability.

20 I think you mentioned before when
21 you were talking about the statute how it leads
22 in Massachusetts and it doesn't include, let's see,
23 disability, which is funny, because under the Constitution
24 of Massachusetts, you know, we're one of the few,
25 four or five states, that actually have that you

1 cannot discriminate against a qualified handicapped
2 individual, but it goes into services and programs.

3 Why did not they, you know, within
4 the statute, you know, also bring that under Civil
5 Rights law since that is not covered under the federal
6 Civil Rights?

7 DOUGLAS T. SCHWARZ: I think that
8 -- can I take that?

9 REGINALD L. JOHNSON: Yeah.

10 DOUGLAS T. SCHWARZ: I was not being
11 completely polite by not listening to the first
12 part of the question, but are you saying that the
13 -- I think the Massachusetts Civil Rights Act does,
14 on the basis of federal law and the constitutional
15 amendment, reckonize that you have a right not to
16 be interfered with on the basis of your disability
17 by threats, intimidation or coercion under the civil
18 side and that we would be able to -- I don't know
19 of a case in which we've done it, but I think we'd
20 feel completely comfortable seeking an injunction
21 under the Civil Rights Act for anyone that was interfered
22 with by threats, intimidation or coercion on the
23 basis of their disability because the right not
24 to be discriminated against on that basis is secured
25 in the Commonwealth.

1 REGINALD L. JOHNSON: Right.

2 Well, see, that's what I was talking
3 about in your ---

4 PETER FINN: I referred to the California
5 Statute.

6 REGINALD L. JOHNSON: I know. California
7 had that in there. And you were saying that it
8 was the only ones that had gone that far. And I
9 notice -- you know, basically it's race, you know,
10 sex, sexual preference, and then it stops short
11 of saying, you know, the other point, and I'm probably
12 trying to figure out why they never, you know, put
13 that in, since it's in the federal context under
14 -- you know, and it's also within, you know, their
15 own Constitution for employment issues and other
16 services, but not under -- in writing, not under...

17 WILLIAM JOHNSTON: If I could --
18 Bill Johnston, again, if I could address it?

19 One of the things I like about this
20 law, as far as being a police officer, again, is
21 selling this law. And I have to sell this law to
22 everybody.

23 And the law, like I say, it doesn't
24 have any class or group or anybody. This is persons,
25 you know, out there. It protects me, it protects you,

1 it protects you and it protects everybody.

2 So it's really a great law, finally
3 even dealing with police officers and dealing with
4 the community. We have a law for everybody.

5 It isn't a special law for special
6 people. No group is placed in higher plateau.
7 It protects us all. So it's really a good law.

8 We used the Massachusetts Civil Rights
9 law on handicapped on the TRUT syndrome case.

10 PETER PERLMUTTER: Who?

11 WILLIAM JOHNSTON: TRUT syndrome.

12 PETER PERLMUTTER: We've got some
13 laymen here.

14 WILLIAM JOHNSTON: Well, TRUT syndrome
15 is uncontrollable movement, utterances, right?
16 It's not an acceptable disability. to the people
17 at large.

18 But I think this guy had taken all
19 the steps he could, and it was sort of tough dealing
20 with this, with the guy, even while I'm talking
21 to him, referring to me as a pig and it's him coming
22 out and motions to me like that.

23 But he had made all the -- we had
24 gone to see the manager of the store, told him he
25 had this disease, said it was uncontrollable, but

1 then they still threw him out of the store at that
2 time.

3 So we went to court on that.

4 So that's the kind of -- which I
5 think is a great law. You know, it isn't going,
6 well, he's not black, he's not Jewish, you know.
7 Has his Civil Rights been violated? I don't care
8 what color the perpetrator is, the victim is. I
9 don't care if they're handicapped. Has his Civil
10 Rights been violated?

11 You know, if they've been violated,
12 let's go forward with the law.

13 And one of the things that, as far
14 as -- that hasn't been [inaudible]
15 and I think it was a great case, it was our first
16 sexual orientation case, was one I missed, one that
17 I said, geez, I don't think we've got enough.

18 And it was the District Attorney's
19 Office that called and said, why aren't we getting
20 Civil Rights on this case?

21 And we went forward with it, so...

22 PETER FINN: I'd just like to comment
23 on that in reverse. And that is that it's one of
24 the things we found -- and Sergeant Johnston can
25 address the issue better than I can -- and that is

1 that you have cases that are arrests that are made
2 by the police are not followed up by prosecutors,
3 eventually the police will stop making the arrests.

4 We've seen this with problem of DWI
5 when they get pled down to reckless driving. And
6 it becomes very frustrating. The only worse thing
7 probably is when the complaining witness refuses
8 to testify.

9 But when prosecutors don't follow
10 up, police lose interest.

11 And this follow-up that we've heard
12 about in this room, I would imagine has a significant
13 impact on the motivation of law enforcement officers
14 to make arrests and make charges on the basis of
15 complaints.

16 PETER PERLMUTTER: What also has
17 an effect upon a complaint is that people feel that
18 they can't complain. And I think that's the thing
19 that has always interested me, particularly with
20 people who don't speak English. They're afraid
21 of dealing with the authority. And if they get
22 a feeling that they will be listened to and something
23 will happen, more of them report it.

24 WILLIAM JOHNSTON: If I could say
25 one more thing?

1 Now, sitting watching television.
2 I don't know if anybody saw the "The Eyes And The
3 Prize." My children were watching. And they were
4 talking to me like that was ancient history. Like
5 that was 300 or 400 -- I said, that was yesterday.

6 And while I was watching the show,
7 there was some interesting thoughts that went through
8 my mind. If you wanted to keep that prize, you had
9 to look at a lot of things that begin with the letter
10 "P."

11 And we start out with the police,
12 because they can take that prize like that, take
13 it away.

14 The prosecuting attorneys, they can
15 take that prize like that.

16 The presiding justice, he can take
17 that prize.

18 The politicians, they can take that
19 prize.

20 And the press, if they're not into
21 it, can take that prize away.

22 So, I mean, everyone is talking about
23 what happened, then is ancient history. 1974, what
24 happened in the city, ancient history.

25 It seems like yesterday I was standing

1 on the steps of South Boston High School. And
2 I think it can disappear like that.

3 JOHN EASTMAN: I'll add one more
4 towards the people.

5 Mr. Schwarz, I wanted to ask you,
6 because it was one of the very interesting things
7 I've heard, is the success you've had in curtailing
8 these crimes among young kids with the use of the
9 injunction.

10 I wonder if you can describe some
11 of the types of injunctions. Do you issue an injunction
12 against a kid painting another swastika and have
13 import because of that or what are the various things
14 -- if you could describe some of the scenarios for
15 me?

16 PETER PERLMUTTER: Let me add on
17 to that.

18 Is there any recidivism amongst kids
19 who pull that stuff?

20 DOUGLAS T. SCHWARZ: There doesn't
21 seem to be a lot.

22 Let me -- do you want to take that,
23 Bill, because I think that's ---

24 PETER PERLMUTTER: Let's hear his
25 first, because mine was an add on.

1 WILLIAM JOHNSTON: I think some of
2 the things -- let me give you some examples.

3 We had a black family move into a
4 neighborhood in Dorchester. They weren't all the
5 way in. And so what happened was one of the sons
6 stayed at the apartment while the family remained
7 at their other apartment.

8 A group congregated on the steps
9 and the statements were, which we got through admissions,
10 the niggers and spics are taking over our neighborhood.

11 All right?

12 The guy come down.-- they broke
13 his car window. He come down to see what was happening.
14 He realized he had a bad situation. Ended up being
15 assaulted by two or three, but the others cheered
16 them on.

17 What happened was we made the arrest,
18 the admissions -- to make a long story short, we
19 told them they could no longer go within a hundred
20 feet of that man's home. They couldn't congregate
21 together, right? They could no longer bother any
22 minority within the City of Boston.

23 Two of the kids, although they did
24 nothing more than sit on that guy's steps, we caught
25 them there. They were sent away. The Attorney General

1 said, send both those kids away for ten days.

2 My request, I had asked they be sent away for weekends.

3 So I don't want them to just disappear for awhile.

4 I want everybody in that neighborhood to know that

5 they went away.

6 It worked out. It worked out absolutely
7 great.

8 Another one with the injunction,
9 a guy violated an injunction by going, again, within
10 a hundred feet of the house. He was brought up
11 on the contempt charges. He ended up spending
12 60 days in jail. And that quieted down the whole
13 neighborhood. Even the bigots in the neighborhood
14 that were cheering these kids on, they're going
15 to put the best summer they ever had in their whole
16 life.

17 DOUGLAS T. SCHWARZ: The times that
18 we've had to go actually and proceed for contempt
19 of the injunction, for violation of the injunction,
20 have been relatively few. Maybe ten times, I think,
21 is what I counted up informally today, have contempt
22 actions been filed.

23 You got some flavor of what the injunction
24 reads, like it really does get quite specific, staying
25 a hundred -- well, there are general terms about ..

1 not, again, violating the statute. But then there
2 are specific terms about not communicating with
3 the individual who has been threatened. There are
4 geographic restrictions, keeping the defendants
5 out of particular areas.

6 Obviously, we are conscious that
7 even the perpetrator maintains some liberties and
8 we have to be somewhat concerned about that because
9 we know that a judge is going to be. But because
10 of the care that we've taken, together with the
11 police officers who are in the community and who
12 are sensitive to what the injunction really has
13 to do, we've been able to write them narrowly enough
14 so that we've been able to get judges to approve
15 them.

16 But they may also have clauses in
17 them which forbid congregating with two or more
18 people in a particular part of the city, on a particular
19 street or within a hundred feet of a particular
20 address, which that is a good way to address gang
21 type activities.

22 So that's a sense of it.

23 There are also -- another important
24 clause is a witness intimidation clause, making
25 sure that they do not -- that they know that there

1 are consequences to any attempt to intimidate other
2 people, not necessarily their victim last time,
3 but witness or their victim next time.

4 Another issue is association, associates
5 of the victim. And, in fact, that brings up another
6 issue which I don't know if it's been touched on,
7 but the ability to go after individuals who intimidate,
8 for instance, white people who associate with black
9 people, because ---

10 FEMALE VOICE: I imagine that as
11 the association [inaudible].

12 DOUGLAS T. SCHWARZ: Right. Right.

13 And those involved in a case where
14 that theory was used very successfully.

15 PETER PERLMUTTER: Well, let me thank
16 you all again.

17 We hope to be in touch with you.

18 I think there's one of the topics
19 that we want to get a little deeper into, but I
20 found that these presentations personally, you know,
21 fascinating.

22 Again, I thank you all.

23 [Whereupon, the meeting was concluded.]
24
25

CERTIFICATE OF REPORTER AND TRANSCRIBER

This is to certify that the attached proceedings
 before: PHILIP PERLMUTTER, Chairman

in the Matter of:

MARCH 10, 1988, MEETING OF THE
 MASSACHUSETTS ADVISORY COMMITTEE

Place: Boston, Massachusetts

Date: March 10, 1988

were held as herein appears, and that this is the true,
 accurate and complete transcript prepared from the notes
 and/or recordings taken of the above titled proceeding.

E. Pedersen
 Reporter

3/18/88
 Date

N. Beecroft
 Transcriber

3/18/88
 Date