

Allegations of Police Misconduct
In the Context of Nonviolent
Public Demonstrations

Briefing Before the
United States Commission on Civil Rights
Washington, D.C., September 15, 1989

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Pursuant to public notice, the U.S. Commission on Civil Rights convened at 9:09 a.m. on September 15, 1989, at 1121 Vermont Avenue, N.W., Room 512, in Washington, D.C., Chairman William B. Allen presiding.

Commissioners present were Vice Chairman Murray Friedman, Commissioner Sherwin T.S. Chan, and Commissioner Esther G. Buckley. Commission staff who participated in the briefing were Melvin L. Jenkins, Acting Staff Director, William J. Howard, General Counsel, and Jeffrey P. O'Connell, Assistant General Counsel.

Proceedings

CHAIRMAN ALLEN. Good morning, colleagues. We are going to go ahead and begin our briefing session, and we will open the meeting at a later time. The briefing is well organized as you know from the outline that we have before us. We want to be as near on time as possible in order to succeed in getting through all the material.

I will say good morning to those of you who are here assembled as guests and observers and explain that the proceeding at this point is that the Commission will be hearing the briefing informally, though we will make a record of it in the process. We do not have a quorum of Commissioners present at this instant and, therefore, cannot formally open the meeting as such. We can, however, go ahead with our briefing presentations.

I'd like to call on the Acting Staff Director, Melvin Jenkins.

MR. JENKINS. At their July 28 meeting, the Commissioners made a request of the Office of the Staff Director to provide them with additional information for their next meeting concerning the administration of justice and

nonviolent social protest. In response to that, I asked the Office of General Counsel under the guidance of General Counsel William J. Howard to pull together a briefing session for the Commissioners this morning. Bill and his staff have done a commendable job in pulling together a list of participants for this session. The briefing is scheduled to last approximately an hour and a half this morning. I will turn to the General Counsel now to give us a brief overview so we can move into the briefing session.

MR. HOWARD. Thank you, Mr. Acting Staff Director. As you know, the Commissioners have been provided with a memorandum from the Office of General Counsel setting forth some of the complaints that we have received from persons across the country dealing with allegations of police misconduct in the context of public, nonviolent demonstrations. That memorandum discusses not only complaints we have received but also appropriate legal standards and remedies. At this point I will turn to Assistant General Counsel Jeffrey O'Connell, who has organized the briefing, to begin the proceedings.

MR. O'CONNELL. The first thing I will note is that we have had a continuing flood of complaints and letters of concern in connection with issues involving nonviolent demonstrations. I do not have all of the complaints with me, but I do have a packet of some that we have received. With respect to complaints themselves, we have received over 100 complaints in the form of the normal complaint that we might receive and in the form of affidavits, and it seems that we have a legitimate reason for having this briefing to obtain more information.

MR. O'CONNELL. Today we will have three panels. The first panel will be a representa-

tive from the Department of Justice, Linda K. Davis. Ms. Davis is the Chief of the Criminal Section of the Civil Rights Division. Linda?

CHAIRMAN ALLEN. Welcome, Ms. Davis.

Statement of Linda Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice

Ms. DAVIS. Thank you. Good morning. My name is Linda Davis, and I am the Chief of the Criminal Section of the Civil Rights Division of the Justice Department, and I have been employed in various capacities in that Section for almost 13 years.

I am pleased to provide a briefing to the Commission regarding the statutory provisions which the Justice Department relies upon to prosecute police misconduct. I shall also attempt to describe certain basic principles that guide our prosecution decisions. I must, however, caution at the outset that I will not be able to make any comments regarding the specifics of any incident, particularly of any open or pending investigation. Neither am I able to discuss the propriety of particular methods or techniques used by police in the arrest, transportation, and confinement of public demonstrators.

The Federal criminal civil rights statutes most often employed in the area of police misconduct are §§ 241 and 242 of Title 18 of the United States Code. These statutes make it a crime for anyone, acting under color of law, willfully to deprive any inhabitant of the United States of a right secured or protected by the Constitution or laws of the United States. The statutes date from the post-Civil War era. The rights protected, as amplified by court decision in the ensuing years, have been held to include the right to be free from unwarranted assaults or excessive force.

The primary difference between the two statutes in prosecutions involving police misconduct is that § 241 prohibits conspiracies to abuse individuals. Section 242 prohibits even nonconspiratorial conduct and thus can be used when an officer acts alone, or when several officers act in concert but without an agreed upon plan.

There used to be another difference between the two statutes in that § 241 was limited to the protection of citizens, while § 242 prohibited misconduct against all inhabitants of the United States territory. However, in November 1988, in an amendment proposed by the Department of Justice, § 241 was expanded to apply not just to

citizens but to all inhabitants of the United States.

Thus, at the present time the elements of the two statutes, excluding the issue of conspiracy, are basically the same. The Government must establish that an individual acting under color of law or clothed in the authority of the state mistreated an inhabitant of the United States or its territories, that the mistreatment was willful and specifically intended by the officer, and that the mistreatment constituted a deprivation of a Federal constitutional or statutory right. The first two of these elements, inhabitancy of the victim and color of law of the defendant, are rarely in dispute.

The greatest difficulty in proving violations of the statutes is establishing that the officer specifically intended to engage in the conduct that violates Federal constitutional or statutory rights. The requirement that we must prove specific intent was imposed in 1945 by the Supreme Court's opinion in *Screws v. United States*. To prove specific intent, we must have evidence of an officer's evil purpose or bad motive. We cannot criminally prosecute incidents that result from an officer's accident, mistake, or inadvertence. Moreover, we must be satisfied that we can prove the element of specific intent beyond a reasonable doubt.

Some examples of cases prosecuted and declined may be useful here. In the past several years, we have prosecuted two separate but remarkably similar cases in different locales. *United States v. Calhoun* was prosecuted in the Southern District of West Virginia and *United States v. Messerlian* was prosecuted in New Jersey. In both cases, the victim had been handcuffed and secured in the rear seat of a patrol car. In both cases, the victim became unruly, in one case making threats against the officer and the officer's family, and in the other by kicking out a window of the patrol car. In each case, the officer was understandably and justifiably angry. However, we alleged that each officer's response, which was to enter the patrol car and repeatedly hit the victim in the head with a flashlight, constituted unreasonable and unnecessary force under the circumstances. I should also note that in each case the victim died as a result of head injuries from the flashlight blows. In both cases the defendants were convicted and sentenced to ten years' imprisonment.

But sometimes even the most tragic police-civilian encounters cannot be prosecuted because the officer's specific intent to use excessive force cannot be established. Some time back, we were presented with a case where the victim, who turned out to be an alcoholic and mentally ill, was walking down the middle of a street at night. A patrol car stopped. The driver of the patrol car stepped outside and called the victim over to him. As the victim approached this officer, he reached in his back pocket and pulled out a black object saying, "I have something for you." The officer drew his .44 revolver and fired. The officer's partner, who had remained inside the patrol car, thought her partner was being fired upon and also fired at the victim. The first officer thought the victim was returning his fire, and he fired several more rounds. The victim died from multiple gunshot wounds, and one round struck the object he had sought to show the officers, which turned out to be a Bible. This incident involved a tragic mistake on the officers' part. But because it was a mistake, it was not prosecutable as a criminal civil rights offense.

At the outset of the Criminal Section's consideration of a case, our prosecution decisions are strongly influenced by how adequate we perceive the response to be of local authorities in dealing with the misconduct of subject officers. Local action can include administrative proceedings by the law enforcement agency as well as state prosecutions. What might fall short of adequate local action will depend obviously on the facts of each particular case. A slap-on-the-wrist suspension of a few days for a brutal beating could well be considered insufficient to vindicate the Federal interest under the criminal civil rights laws. At the other extreme, where it appears that the local law enforcement agency, acting in good faith, is moving swiftly and decisively to punish misconduct we generally defer to that process and do not seek to impose duplicative Federal measures.

Experience has taught us that quick and commensurate discipline imposed on police officers by their supervisors is generally a more effective deterrent to misconduct than Federal prosecution. However, there are sometimes circumstances where not only administrative action but also local prosecution is determined to be inadequate. In these instances, we can and will pursue a second Federal prosecution. Such dual prosecutions are, however, not approved in the absence of

compelling circumstances, and the Assistant Attorney General for the Civil Rights Division must authorize each one personally.

In addition to the evidence establishing the officer's willfulness or specific intent, another factor that influences our decision to prosecute is the severity of the victim's injuries. Serious injury is not, however, essential to a Federal prosecution, and we have prosecuted cases where no injury occurred—for example, where law enforcement officers engaged in an extended or prolonged threat to kill someone.

Like all good prosecutors everywhere, our prosecutorial decisions are necessarily guided by the evidentiary strength of our case. It is, therefore, significant how much independent corroboration we have of the victim's claim. As a general matter, criminal civil rights prosecutions for police misconduct are among the most difficult under Federal law. Emotions invariably run high, and community sentiment tends to credit the law enforcement representative. We do not prosecute police officers on the strength of the victim's statement alone. Corroboration of the victim's statement may consist of physical evidence, but more likely than not it will be provided by the testimony of other witnesses. The testimony of all witnesses is not equal, however, and we will usually place greater weight on corroboration provided by the testimony of a fellow officer than on testimony provided by the victim's mother or the victim's friends.

We are very careful in choosing cases for Federal prosecution, but we do not shrink from pursuing a case where the facts require such action. Unquestionably, police misconduct cannot be left unaddressed by police and state officials, and, should that occur, it is a proper matter of Federal concern. The job is, to be sure, largely a thankless one that comes in for a lot of criticism. But it is a wonderful job, and I am fortunate to have as my colleagues an outstanding group of attorneys, paralegals, and clerical workers, each of whom is deeply committed to our cases, and who work long and hard hours, sometimes under difficult and stressful conditions.

I have been asked to say a few words about civil actions under 42 U.S.C. § 1983, and the Civil Rights of Institutionalized Persons Act, as matters that are of interest to the Commission.

Civil suits under § 1983 seeking money damages can be brought against police officers in Federal courts by alleged victims of police abuse and generally require proof of

the same elements as a criminal case under § 242. A substantial difference between the two statutes is that § 1983 does not require the same proof of specific intent as does § 242. In addition, in a § 1983 suit, the victim of the police abuse must only prove his or her case by a preponderance of the evidence. In criminal prosecutions, the Government must prove its case beyond a reasonable doubt. However, only private parties can bring lawsuits under § 1983. The Department of Justice is not authorized to do so.

The Civil Rights of Institutionalized Persons Act, otherwise known as CRIPA, is enforced by the Special Litigation Section of the Civil Rights Division and not by the Criminal Section. Hence, my knowledge of it is limited. I can, however, advise the Commission that a lawsuit can be filed under CRIPA only when an investigation has revealed that egregious and flagrant conditions exist in a covered institution. As a matter of resource allocation, CRIPA has been generally used by the Civil Rights Division only against larger jail facilities.

I was also asked to provide various statistics to the Commission. I have done so where the information was available. Thus, I have provided a chart to each Commissioner that summarizes the number of complaints of all types, including police misconduct and racial violence, which are received by the Criminal Section each fiscal year. We do not have readily available the means to identify the nature of each complaint. However, a second chart is provided that does identify, out of all of our cases that proceed to grand jury and trial, the number that are law enforcement cases. I have provided a chart summarizing information regarding complaints in cases involving Federal law enforcement officers. We do not keep records about which allegations of police misconduct also include claims of racial discrimination, but I have included a chart listing the number of racial violence cases filed by the Section over the last several years.

We do not have, readily available, information about the geographic breakdown of police abuse complaints. A geographic breakdown of complaints could be provided to the Commission, but we would need significantly more time to prepare it. I can, however, advise the Commission that since 1981, the Criminal Section has prosecuted cases in almost all of the 50 states.

I am now pleased to answer any questions the Commission may have, subject to the exclusions I noted at the beginning of my remarks.

CHAIRMAN ALLEN. Thank you, Ms. Davis. I want to turn first to our staff for their questions. Mr. O'Connell?

MR. O'CONNELL. With respect to the two cases that you cited, *Calhoun* and the New Jersey case. Under what statutory provision were they prosecuted?

MS. DAVIS. Under 242.

MR. O'CONNELL. What are the punishments that are applicable under both 241 and 242?

MS. DAVIS. 241 is generally a ten-year felony. If death results from the conspiracy, there can be punishment up to life imprisonment. 242, until November 18, 1988, there was a significant and very, in my mind, unwise disparity in the punishment available. It used to be that if death resulted from the acts of the officer, punishment could be up to life imprisonment. However, if anything other than death occurred, it was a misdemeanor, subject only to one year's imprisonment.

We frequently encountered situations where there were extremely serious injuries. People were rendered virtually helpless for the rest of their lives, and yet the officer was only accountable for one year's imprisonment. Again, in the same amendment that amended 241, the Justice Department proposed that 242 be amended so that if injuries result from the officer's conduct, a possible ten-year sentence can be imposed. That was enacted in November of 1988.

MR. O'CONNELL. For the record, if someone has a complaint that he would like to have investigated, what's the proper procedure to follow?

MS. DAVIS. Well, there are several proper procedures. Someone can go to the local FBI office, and since they are not only in the major cities and there are frequently regional offices, they can—perhaps that's the best place to go and make a complaint. They can write to us. They can go to the U.S. Attorney's office in the jurisdiction in which they live.

CHAIRMAN ALLEN. Mr. Howard?

MR. HOWARD. Yes, Ms. Davis, you discussed at some length the requirement in §§ 241 and 242 that it be shown that the officer had a specific intent to deprive a citizen or inhabitant of Federal or constitutional rights. I wonder if you could talk with us some more

about that. You mentioned that the officer must have an evil intent. Does that mean that the officer must know of the existing Federal statutory right or constitutional right and intend to violate it?

MS. DAVIS. The officer does not have to be a constitutional scholar. He does not need to know about the existence of the Supreme Court's opinion in *Screws v. United States*. However, the officer has to know that the force he is using, at the time he is using it, is excessive, is unnecessary, and he must nonetheless intend to use it.

MR. HOWARD. What does "excessive" mean in terms of the case law?

MS. DAVIS. That depends upon the factual analysis of each particular case, and what is excessive in one case—in one instance—may not be excessive in another. That depends upon the situation that the officer is confronted with.

MR. HOWARD. I have a sense, based on the memorandum that Mr. O'Connell prepared, that the standards at the state level, or the definitions of what constitutes excessive force, are fairly uniform. That is, that the officer may apply only so much force as is necessary to subdue the individual. Other factors come into play: whether the individual is resisting; whether the individual is armed; whether there is a danger that evidence is being destroyed, but I wonder if you could comment on the uniformity, or the absence of uniformity, of a definition of reasonable force at the state level and whether there is a difference in the definition at the federal level?

MS. DAVIS. I am not aware that there are particular definitions, even at the state level. Excessive force, in our experience—and we have reviewed thousands and thousands of investigative files—is not something about which absolute statements can be made. It has to be analyzed in each instance in light of the facts of the particular incident, and particularly what the officer knows at the time he is using the force.

MR. HOWARD. I agree with you. I think there is an absence of a definition and I misspoke. What I should have referred to is the presence of criteria or factors that the officer would rely upon in determining what force would be appropriate.

MS. DAVIS. Well, some of the cases have spelled out the kind of factors that can be looked to, and it is generally things like the amount of resistance that the officer is being met with; other circumstances of potential

danger to the officer that may exist in the particular incident, certainly any concern that the person resisting may be armed or otherwise present a danger to the officer, things of that nature. They have been spelled out in some of the cases, particularly the § 1983 cases.

MR. HOWARD. With respect to the focus of this briefing, which is police conduct in the context of public, nonviolent demonstrations, I understand that you cannot comment on pending matters, but could you speak to us of some of the complaints that you have cited here over the past several years, the numbers or the percentages of complaints that may have involved public demonstrations? Do you receive those?

MS. DAVIS. I am sorry, I do not have that information available. We do not keep our complaints with that information a part of them.

MR. HOWARD. Are you aware of any cases that the Department of Justice may have brought against officers in the context of public demonstrations?

MS. DAVIS. Well, certainly, some time ago during the 1968 demonstration at the Democratic Convention in Chicago, Illinois, there were a number of prosecutions brought against police officers, and I was not at the Section then. Unfortunately, we lost every one of them, but I don't know.

There was, of course, the Kent State case where National Guardsmen were indicted for their shooting into a crowd of students, where some students were killed. That case did not even get to the jury because the judge decided that we did not have specific evidence of specific intent on the Guardsmen's part.

MR. HOWARD. Very interesting.

CHAIRMAN ALLEN. Yes, sir, Mr. Jenkins?

MR. JENKINS. In instances where state charges have been filed against a police officer, on what basis will the Federal Government pursue charges concerning violations of possible civil rights of an individual?

MS. DAVIS. It may depend on the result of the state prosecution. If it ends up in a conviction of the officer and some appropriate sentence is imposed—and again, that's going to depend upon the egregiousness of the underlying conduct—then we may well be satisfied with that and say, well, all right, the state has taken an appropriate action here. We will not take any more Federal action.

However, if for some reason, there is a problem in the state prosecution, or the

sentence is not, in our judgment, sufficient—and we try not to be arrogant as we assess that—but we do look at the underlying conduct again and see how serious was this misconduct. If we do not believe that the sentence was sufficiently lengthy, we will go again.

CHAIRMAN ALLEN. Do Commissioners have questions? Mr. Chan.

COMMISSIONER CHAN. Let's go back to how an officer gauged what is excessive force. Through his training, he must learn what is excessive to a person, what is not, and is this used as a standard to judge an officer?

MS. DAVIS. Very good question. Frequently in our prosecutions, we call a witness from the particular state that was, in fact, the training officer for the officer, and we will look at the kind of training and instruction that the officer received at that time and use that as evidence that the officer was taught certain things and he knowingly violated them. That can be useful in establishing specific intent.

COMMISSIONER CHAN. Thank you.

CHAIRMAN ALLEN. Vice Chairman Friedman.

VICE CHAIRMAN FRIEDMAN. In your written materials and in your testimony here, you basically dealt with the factual situations, both in terms of the past and what the situation looks like now and described various procedures. I wonder if you have any recommendations based on your most recent experience that might be passed along to this Commission by way of responding or urging ways of responding to the situation, which apparently seems to be increasing rather significantly with regard to this matter.

MS. DAVIS. With respect to Operation Rescue?

VICE CHAIRMAN FRIEDMAN. With regard to the generalities of official harassment.

MS. DAVIS. We are very pleased with the amendment to § 242 that was obtained in November, and we are also very pleased with the Sentencing Act—the new Federal Sentencing Act—in the sense that we are seeing significantly greater sentences imposed in our cases. I expect that will continue, and I think that will serve as an even greater deterrent in the future. I think the fact that we have a greater penalty available under § 242, while we have not seen the impact of that yet, that we will in the future see lengthier sentences. Again, I do believe that in the area of police misconduct in particular that a Federal prosecution can be an effective deterrent. I would hope that the new power be-

hind our statutes from both the Sentencing Act and the § 242 amendment will help provide a deterrence.

The only other thing I can suggest is that people be advised to send complaints, in circumstances where they arise, to us and we will look at them. Going back to my own experience, I began as a lawyer in the District of Columbia at the Public Defender Service and never knew that there was a Federal office that prosecuted police misconduct complaints.

I would hope that people are advised of our existence and told to communicate with us.

COMMISSIONER CHAN. In short, you are satisfied with the techniques and procedures that are presently in place.

MS. DAVIS. Satisfied, as a good bureaucrat, how can I ever say I am satisfied with the resources I have or anything. But I am very pleased, as I said, with the statutory amendments, and I am very pleased with the staff I have right now.

CHAIRMAN ALLEN. Commissioner Buckley.

COMMISSIONER BUCKLEY. You say that there is a place for them to file. If they are away from the Washington, D.C., area, where do they file?

MS. DAVIS. They go to the local FBI office or the U.S. attorney's office. We frequently also get complaints through members of Congress. They can write to their member of Congress or Senator or write to us.

COMMISSIONER BUCKLEY. I just got a call this week asking me where to go to file a complaint. It was difficult to tell her what she could do and still remain with some protection so that a lot of people did not know what she was doing.

CHAIRMAN ALLEN. I have one question, Ms. Davis, regarding a current matter. Not wishing you to comment on the details of any pending investigation or litigation, I would ask you to confirm whether the report is correct that the Justice Department is investigating incidents that transpired at Virginia Beach and, if you can confirm that, if you can share with us the process whereby that investigation was undertaken.

MS. DAVIS. I can confirm that an investigation is proceeding as to the incidents in Virginia Beach based on specific complaints of brutality that have been made to us. I am unable to say anything further than that.

CHAIRMAN ALLEN. You can't talk about the process?

Ms. DAVIS. Not at this time, no. Generally, as a general matter, the complaints had to be received. I presume many of them came to the FBI. Some of them may have come to us directly, and we are requesting investigation in response to them.

MR. O'CONNELL. Can you tell us what the statutory basis would be for the investigation in Virginia Beach?

Ms. DAVIS. §§ 242 and 241.

CHAIRMAN ALLEN. Thank you very much for sharing your time with us this morning.

MR. JENKINS. Just for the record, the U.S. Commission on Civil Rights has a toll-free complaint line. If there are individuals who want to file complaints, they can reach us through a toll-free telephone number. In addition to that, we do have a complaint unit within headquarters that handles complaints on a referral basis.

CHAIRMAN ALLEN. And the number is?

MR. JENKINS. I would have to call on Mary Mathews to give me the number.

CHAIRMAN ALLEN. Someone will have that for us, and we will make it known to you. Mr. O'Connell.

MR. O'CONNELL. For our next panel, we will have three panelists. We will let them get seated in a moment. The first panelist is Chief Robert McCue. Chief McCue is the police chief for the police force in West Hartford, Connecticut. He has been in police work for over 30 years. He also has some unique experience because of demonstrations that occurred in West Hartford in which he had supervisory control.

If the other panelists could also be seated, Dr. Sherman and Chief High. For the record, while we are having the second panel get started, with the cooperation of the Metropolitan Police Department, I have the authorization to bring in an Oriental martial arts weapon commonly known as nunchuks. This weapon has been used as a device against passive demonstrators in California, and specifically by the LAPD, the Los Angeles Police Department. Based upon accounts that I have seen in the newspaper, they also will continue to use this in the immediate future.

The method in which this is used is to persuade people through pain not to go limp, and go along, therefore, into the police vans when arrested. The method of application is—can I have someone's arm?

MR. JENKINS. Sure.

MR. O'CONNELL. By going at the wrist or at the forearm like this [demonstrating], and twisting. I did not bother twisting very hard because I can promise you it hurts.

[Laughter.]

MR. O'CONNELL. Chief McCue, if you're ready?

CHAIRMAN ALLEN. Let Mr. Howard have just a moment, first.

MR. HOWARD. I think it would be helpful too if you could discuss some of the other techniques that are being used which have prompted this briefing. If you could just mention briefly the pain compliance techniques.

MR. O'CONNELL. Some of the issues that have arisen have been largely abuse and what we refer to as pain compliance techniques. One way in which a person who refuses, once arrested, to go into a police van or the like can be taken care of is by being carried away, or by being put into a gurney or a stretcher, or even by dragging him, if necessary. Other techniques that have been employed, however, have been pain holds, such as methods in which the hand or wrist are being twisted, pressure against joints, various other techniques which, as I have been told, produce considerable amounts of pain.

There is a lot of inquiry whether these techniques against passive demonstrators amount to unnecessary punishment.

For purposes of pain compliance techniques and arrest procedures, that is probably adequate right now with one exception. Of necessity, the police have used, with mass demonstrations, plastic handcuffs. Metal handcuffs, the conventional handcuffs, are simply not adequate for a mass demonstration. The plastic handcuffs suffer from some deficiencies, which I hope we can bring out later, and can end up being applied too tightly, even producing nerve damage and cutting off the blood supply to the hands. As I say, I think we will bring this out a little more as the panelists continue.

CHAIRMAN ALLEN. Good morning, Chief McCue, and welcome. We are glad to have you with us.

Statement of Robert McCue, Chief of Police, West Hartford, Connecticut

MR. McCUE. Good morning. First, I would like to introduce Marjorie Wilder, who is the corporation counsel of the Town of West Hartford, and who is here to assist me in any queries about law or whatever.

CHAIRMAN ALLEN. Welcome, Ms. Wilder.

Ms. WILDER. Thank you.

MR. McCUE. Since I knew that we were going to be discussing plastic handcuffs, I brought you some samples. I would suggest, though, if you do not have strong scissors or pliers, do not put them on because I did not bring them either.

I also, much to the dismay of the pilot on the airline, brought a pair of handcuffs which you can look at, but I cannot afford to give them to you.

[Laughter.]

I also have copies of what I intend to say, as well as a fact sheet that I will give out later. The reason I do not give them out now is because I was in charge of training for a number of years, and I find that if you give out the handouts at the beginning of the session, nobody listens to you, and they read your statement rather than listen.

I wish to thank the members of this Commission for the invitation to participate in this briefing on the role of the administration of justice as it applies to nonviolent, public demonstrations.

To give some background, I am the chief of police in West Hartford, a town with a population of 61,000 people. My department has 125 sworn officers. I have been chief for almost two years. I was the assistant chief for 14 years prior to that.

To limit the possibility of a misunderstanding of what I say, I would like to start by giving you my understanding of some of the terms that were used in your invitation to me. The term used in the invitation which should be clarified first is "nonviolent, public demonstrations." Nonviolent, public demonstration is the right of every citizen under the First Amendment of the United States Constitution. This type of demonstration is not new to West Hartford. During my career, we have had demonstrations from groups ranging from the Ku Klux Klan to the civil rights marches of the 1960s. In the past four years, we have had people exercising this right in the form of almost daily strikers picketing in front of one of our factories. Almost every weekend for the past four years, we have proponents or people representing and demonstrating for the pro-life and pro-choice sides of the abortion issue.

I believe that the police have a responsibility to assist citizens in the exercising of these rights. It is the policy of our department to do so. There has never been an

arrest in our town for protesting. As a consequence, my remarks about police procedures involving the arrest of such protesters are hypothetical.

Another term I wish to clarify is "pain compliance techniques." I believe this term runs the range of beating an arrestee into submission with a club, which I do not condone, to the use of come-along and take-down holds, which I do support in appropriate cases. Come-along and take-down holds are taught in every police academy with which I am familiar. Take-down holds are used to put a person who is resisting arrest under control. A come-along is used once a person is under control but resisting your effort to move him. It is a hold where pressure is applied in the direction in which you want the arrestee to go. It is applied so the arrestee controls the amount of pressure applied by his resistance to it. The benefit of using this hold is that it seldom causes even minor injury, and the pain ceases as soon as the resistance to it ceases.

There are two types of resistance to arrest. Passive resistance is where the arrestee goes limp, and uses body weight as the resisting force. Active resistance runs the range from fighting the arresting officer, to holding onto something or somebody, to acting in a manner which requires the arresting officer to use force to put the wrists together to apply handcuffs. Obviously, the risk of injury to both arrestee and the officer is greater with active resistance to the arrest.

"Officer discretion." While an officer has some discretion as to whether to arrest or warn based on his evaluation of the situation, he has no discretion as to how an arrest is made, how to search an arrestee, and how to transport the arrestee to the lock-up. Constitutional law, state statutes, and department policies severely limit the discretion that officers have in performing their duties. To illustrate this, I will read from our police department order A-11, which reads in part:

All arrested persons, regardless of sex, will be handcuffed before being transported to headquarters. The search of a female by a male officer must be restricted to their outer garments, handbag, hair, et cetera. In every case where a strip search becomes necessary, all criteria for such search as mandated by Section 54.331 must be met prior to the search.

This section referred to in this order is a State of Connecticut statute that governs strip searches. Subsection C of that section reads: "All strip searches shall be performed by a person of the same sex as the arrestee, and on premises where the search cannot be observed by persons not physically conducting the search or not absolutely necessary to conduct the search."

As I said, I will leave you copies of that order and the statute. The subject of removing name tags and badges; it is a policy of our Department that all officers who will be required to physically move arrestees will remove their badges, name tags, and other items which are not essential to the operation, to lessen the possibility of these items causing injuries to the arrestees.

All of our persons remain identifiable as West Hartford police officers by cloth patches on the sleeves of their police uniforms. These are on each shoulder. There has never been a question, as far as I know, or a question raised, that the people who were engaged in the operation were not West Hartford police officers.

"The proper use of plastic handcuffs." The proper use of handcuffs is necessary whether they are metal, plastic or any other material. If misused, there is a greater potential for injury with the metal handcuffs than with the plastic. If you will note, the plastic handcuffs are more than double the width of the thinnest side of the metal handcuffs. So if misused and tightened, the metal handcuff would cause a potential of much greater injury than would plastic. The advantage of plastic, also, is that they are more economical and, in mass situations, mass arrest situations, they are more convenient. The advantage of a metal cuff over a plastic one is that there is a double locking device that you can use to eliminate the possibility of the cuffs being accidentally tightened after they are applied, either by accident or by the arrestee.

The following procedure is used on each person taken into custody by the West Hartford Police Department, regardless of the nature of the crime. This is after the person is under control. Number one, the person is handcuffed. Two, there is a preliminary search for weapons, et cetera. No one is stripped-searched except where absolutely necessary and where the circumstances are within the limits established by Connecticut state law. We request the arrestee to walk. If he complies, he walks to the transport

vehicle. If he does not comply, we explain to the arrestee that we intend to use a come-along hold that will cause pressure and probable pain if there is resistance. If he still refuses, a come-along hold is used, only as much pressure as required to accomplish the task.

West Hartford police officers are a highly trained, well educated, and extremely professional group of individuals. Connecticut law requires that, in addition to recruit training, all officers must receive 40 hours of in-service training every three years. In my Department, we have a regulation that triples this requirement, and we require that every officer receive 40 hours of in-service training each year.

This training is considered outstanding in the state of Connecticut, as evidenced by the fact that other Connecticut municipalities, including Farmington, Avon, Simsbury, East Hartford, Rocky Hill, Bloomfield and Newington, have also utilized the services of our training program and frequently participate in our training classes.

In closing, let me state that I have, during my 36 years as a police officer, attended numerous schools and training sessions that range from the Connecticut State Police Recruit Training Academy and, way back in 1954, to the FBI National Academy here in Washington. I have never heard of training that consists of using stretchers for one class of prisoner and come-along holds for others based on the motivation of the crime. I believe this would clearly be a violation of the equal treatment under the law, guarantees of the Constitution of the United States, as well as the State of Connecticut.

At the scene of disturbances, such as those that occurred at the Summit Women's Center in West Hartford on April 1 and June 17 of this year, the only people who did not have any choices as to their actions were the police officers who are mandated by Connecticut general statute 7108 to prevent or suppress injuries to persons and damage to private property by persons engaging in disturbing the peace.

As I said, I will give you copies of this and also a fact sheet that we have generated on the Operation Rescue attacks in our town, and I will be happy to answer any questions.

CHAIRMAN ALLEN. All right. Questions from the staff?

MR. O'CONNELL. Chief McCue—

CHAIRMAN ALLEN. Can we pause for just a second? We want to bring a telephone wire by. While we are pausing, I realize that we are becoming increasingly familiar in this small room, and would like to request headquarters staff to accommodate our guests, if they will, by permitting them to have seats, if we have run out of the ability otherwise to accommodate all of us here. Thank you.

MR. O'CONNELL. Chief McCue, I do have a few questions. One concern of mine is when you would consider the use of force to be inappropriate against nonviolent demonstrators, nonviolent demonstrators in the sense in which we have defined them. I suppose the concern that I have is that we really have not established any bright line in being able to identify what should be prohibited when a person is not actively resisting arrest.

MR. McCUE. Again, we won't belabor the definition. We do not use any force at all on anyone who is not under arrest for a criminal charge. The force that we use that our people are trained in are to use that much pressure and force that is necessary to effect the arrest and take the person into custody. We also have considerations of putting an end to the criminal activity. So those are the criteria. As far as how I safeguard against excessive force, brutality, et cetera, I think I alluded to in the fact that I insist and our Department insists on highly trained people.

In addition to that, when we were threatened with Operation Rescue type activities, I selected 11 two-man teams that would be responsible for moving people. They received additional many hours of training on how to properly apply these holds and properly move people. Now, I think it might be interesting to note that on the June 17 attack, those 11 teams moved in excess of or close to 20 tons of people several times and it resulted in, I believe, no documented injuries. However, I suspect that one person may have received a fractured wrist. None of my officers were injured.

MR. O'CONNELL. Excuse me for going back to the same question again, but I understand that there is a little difficulty in trying to define what the exact limits are for the appropriate use of force in these circumstances. But I am trying to see if we can draw some outer boundaries here. The reason I am doing this is because we recognize that you, as a police administrator, have tremendous ability in terms of setting policy for the Department, just like any other police chief. I

need a sense of the boundaries that the police should be operating under.

MR. McCUE. I'll try another way. I did not invent the come-along hold. As a matter of fact, that was one of the things I was taught way back in 1954. That hold, the come-along hold is used after a person is under control and refusing to comply with or resisting the arrest. I don't think that—I think we're getting on very dangerous ground when we are expecting the officers or even the top administrators to go into the motives of why a person is doing what they are doing as far as our response to their resistance to the arrest.

I think that is where you get into curbside justice, I think it is referred to, and you circumvent the Judicial and Legislative side of the government. All I want my officers to think of at the time that they are taking somebody into custody is the resistance to the arrest. I don't want them concerned with abortions, nuclear freezes, saving the whales or whatever, because I think clearly their duty is to put an end to the criminal activity and take somebody into custody. And we will not use any more force than is necessary to do that and we are precluded from using any more force than is necessary by our own policies, state law, and Constitution.

MS. WILDER. Perhaps it would help in answering your question if the Chief described some of the circumstances that he was faced with on June 17. Would that help?

MR. O'CONNELL. That's fine.

MR. McCUE. First of all, I didn't come here to defend our actions in the Operation Rescue, and I didn't know how far down that road you wished to go.

MR. O'CONNELL. [After consultation]. I think it may be appropriate, then, not to try and deal specifically with the allegations related to West Hartford.

MR. McCUE. No, I am not going to go into that. I think it will give the Commission a view of what goes into my decision to use whatever methods we did. In and around a three-story, privately owned office building, there were 40 offices of dentists, lawyers, whatever. One of the suites was a women's clinic, which also performs abortions as well as other medical procedures.

Over 150 people were arrested inside the clinic. They forced their way into the clinic, barricaded themselves in various offices of the clinic, defaced medical equipment with maple syrup and raw eggs. Twenty people

were arrested after throwing themselves in front of or under the bus used to transport prisoners. Three were arrested after entering and jamming the only three elevators servicing the entire office building. Five were arrested 15 minutes after a five minute warning to leave the private area of the parking lot or face arrest. The others were arrested in stairways and corridors where they were blocking access after having been given orders to leave.

Most arrestees refused to walk. Some prisoners actively resisted the arrest. Almost all arrestees refused to provide any identification and refused to give their names.

Many arrestees smeared their hands and arms with maple syrup and raw eggs. Many arrestees had splintered their hands and arms. Leaders counseled participants not to cooperate with the police. A transcript of one radio communication that we intercepted from one of the leaders who was barricaded inside the clinic to another leader who was down in the parking lot, and I'll quote, "I see people sitting on the bus. This is unacceptable behavior. If they are not strapped to a seat, they are to lay in the aisle."

Each prisoner refused to walk to the holding facility or the bench in the court when he or she were arraigned and refused to walk to vans for transport to state correctional institutions. While this was going on, there were approximately 300 people—who I consider on my definition of what you are looking into and that is the nonviolent, public demonstration—300 of them were out on the sidewalk demonstrating without incident, except for one arrest that we made—one pro-choice demonstrator was arrested for attacking one of the pro-life demonstrators.

I had 60 police officers at the scene. All officers were identified as West Hartford police officers. I went into the 11 two-man teams. All arrestees were handcuffed per our orders. No one was strip-searched in this Operation Rescue at any time by any of our personnel. All arrestees were requested to walk. I went into that and all that complied walked to the bus. I went into the explanation that we give them.

The attack on the building on the 17th commenced by Operation Rescue began at 8 a.m., and the last arrestee was removed at approximately 7:30 p.m. Most of my officers were on duty that day a minimum of 16 hours.

The impact on the shopping center is the building effectively was shut down. All business ceased, particularly in the upper floors of that building. This included a pediatric dentist, lawyers, other doctors. On the 17th, no patients were seen at the women's center. On the April 1st one, they did remain open. I had two paramedics on duty at the scene. I also had an ambulance at the scene all the time. I also had the paramedics at headquarters at the holding area.

CHAIRMAN ALLEN. Thank you, Chief. Mr. Howard.

MR. HOWARD. I would like to refer back to your statement where you talked about name tags and removal of identification. You said, and I quote, "It is the policy of our department that all officers who will be required to physically move arrestees will remove their badges, name tags and any other items that are not essential to the operation to lessen the possibility of these items causing injury to those arrested. All of our personnel remain identifiable as West Hartford police officers by the cloth patches on the sleeves of the uniforms."

You showed us a sample of the cloth patch and, yes, it does identify the officer as a West Hartford policeman, but it does not identify the name of the officer. My questions are these. I will try to keep it short. If a police officer engages in misconduct and it is not possible for the arrestee to identify the officer by name, how does he bring a charge of misconduct to the Department of Justice's attention? How would he bring a § 1983 action? Let me note that we have allegations that persons at West Hartford asked officers what their names were and the officers refused to tell them.

My final question concerns your rationale for instructing your officers to remove name tags and other items, *viz.*, that they may be injured. Have there been instances in which persons have been injured by name tags?

MR. McCUE. I think common sense would dictate that if you have items with sharp objects such as badges and name tags and you are wrestling with people, they may be injured. No. 1. No. 2, and it may come as a shock to you, there is no law that I am aware of that requires an officer to wear a badge or a name tag. As far as our defense of a civil suit, we had all kinds of press coverage up there. We took videotapes that are available to anyone.

Officers are instructed to give their names when requested. Unfortunately, many of these requests took place when four or five officers were trying to subdue someone to put handcuffs on. I accept full responsibility for the use of come-along holds, and I think that is what most of the flack is. So I do not think there is any problem with anyone bringing charges of brutality to the Justice Department, the FBI, or whatever, because in my town, the whole question is, and probably for this Commission is, is the come-along hold brutal for people who are under arrest.

These people were not arrested for demonstrations, as I was saying. They were arrested for crimes ranging from burglary, to interfering with an officer, to criminal mischief. These are criminal charges, and I will not be put in a position of curbside justice.

MR. HOWARD. If there is a concern that officers' badges could stick somebody or injure somebody—and I will note for the record that the Department of Justice has indicated publicly that they are investigating allegations that officers removed identifying badges—then why not put their names on cloth badges? Again, if there are allegations of misconduct, the citizen is unable to file a complaint if he doesn't know who the arresting officer was. I have looked at the videotapes, and it is oftentimes difficult to pick out an officer's face and the demonstrators may have the same problem.

MR. McCUE. The arresting officer is on the police report. As far as cloth badges is concerned, that's a budgetary item. I think I have the same problem you do in Washington. I have budgetary problems as to whether I'm going to issue officers, now, uniforms with their names on it. I think that the name tag issue is an emotional one brought about by Operation Rescue to gain support for their activity.

There has been no problem with anyone putting complaints of brutality or whatever on the West Hartford police with the Justice Department, the FBI, or the State's Attorney's office.

MR. HOWARD. We have allegations that name tags were removed both in West Hartford and in Pittsburgh.

MR. McCUE. You don't even have to argue about that. It was done. I have not the only department that has that policy and I'm telling you why we did it. Now that's up to you to believe whether that's the reason or not, and that will be debated, I'm sure,

through the Justice Department, the FBI and this Commission.

CHAIRMAN ALLEN. Thank you. We are running short on time but Commissioners, do you have specific questions?

COMMISSIONER CHAN. Yes, I always have one. What instrument or method is being used by the police community, and what instrument is outlawed by the police at the present time?

MR. McCUE. Police, referring to my department?

COMMISSIONER CHAN. Yes.

MR. McCUE. My department, the only equipment that an officer is allowed to carry on the street is what we tell him he can: nightsticks, handcuffs, weapons. That's about it. The reason for that is that we are responsible for training our officers with each and every bit of equipment that they carry.

COMMISSIONER CHAN. What instrument or methods the officer was told which is outlawed by the police community? For instance, the neck hold.

MR. McCUE. Oh, the holds. Again, we teach them how to apply properly come-along holds, takedown holds, and those are the ones they use. They're not authorized to use any other ones.

COMMISSIONER CHAN. Do you use that type of instrument [pointing to the nunchuks]?

MR. McCUE. No, sir. The only thing I know about that kind of instrument is what I see in B or C movies. I'm not at all—I'm not competent even to comment on that.

COMMISSIONER CHAN. Thank you.

CHAIRMAN ALLEN. I thank you, Chief, for taking the time to be with us this morning. Mr. O'Connell. Mr. High, next.

MR. O'CONNELL. Yes, Chief High. Chief High is the assistant chief of police for the D.C. Metropolitan Police. He commands the police field operations bureau and also commands the criminal investigation division as well as the youth division. Chief High?

**Statement of Melvin High, Assistant Chief of Police,
Metropolitan Police Department, District of Columbia**

MR. HIGH. Good morning.

I am Assistant Chief Melvin High of the Metropolitan Police Department of the District of Columbia, and I have with me this morning Deputy Chief Thomas Carroll, who commands our Special Operations Division. They are responsible for managing most of the demonstrations that occur in Washington and, also, things like Presidential escort and security and diplomatic security when those things are necessary. Also, from my immediate staff is Inspector Widawski.

CHAIRMAN ALLEN. Welcome, gentlemen.

MR. HIGH. As head of the Field Operations Bureau of the Metropolitan Police Department, I am responsible for all patrol operations of the Department, which involves the deployment and direction of over 70 percent of the 4,055 authorized sworn members of the force. These responsibilities include the monitoring of all public gatherings, demonstrations, and other special events in the District of Columbia. The Metropolitan Police Department is uniquely experienced in the handling of demonstrations. As the capital city of the United States of America, our streets have been the focal point since 1802 for citizens of the Nation in petitioning their Government for every sort of grievance.

Over the years, our Department has developed a heightened sensitivity to the constitutional and basic human rights of individuals and groups to congregate and demonstrate in support of a wide variety of social, economic, and political viewpoints. Over these same years, our city government has developed a strong orientation sympathetic to civil liberties, which has provided us with guidance from our mayor and our city council.

With regard to the particular issues with which the Commission is concerned at this briefing, I will offer the following comments, and I will be happy to provide more details at a later time. As to the arrest, transportation, and confinement of nonviolent demonstrators, the Department has written procedures and provides specific training to its personnel for such situation. For mass demonstrations, we have collected our experience into a handbook, and there are some additions to this that I will provide to you. This handbook and the additions are nearly 150 pages of directions to our members in the handling of demonstrations. Other directives cover procedures involving one or more

citizens in situations that may arise in connection with the demonstration.

As a matter of policy, our Department attempts to identify and meet with the organizers of a demonstration in order to agree on the parameters of the demonstration and to accommodate specific needs or resolve anticipated problems. Groups are encouraged to assist in maintaining order and decorum within their ranks by issuing their own guidelines and by designating one marshal for every 20 demonstrators.

When a group actually plans for the symbolic arrest of certain of its members, the Department will assist in scheduling the time and place for the arrest to occur and will assist in developing an orderly and dignified scenario to be followed. I must caution that no arrests are made except on the basis of probable cause that a crime has been committed.

In a nonviolent demonstration, the crimes most often committed are misdemeanors, such as blocking a public thoroughfare, breach of an established police line, or trespassing upon private or governmental property. In these situations, our police officers are trained to use the least amount of force necessary in effecting an arrest. The Department does not employ pain-inducing techniques of any sort in effecting arrests in non-violent situations.

Our officers are instructed to bodily pick up and remove passive violators. Plastic handcuffs are used in a manner as not to cause pain or extreme discomfort. Officers are required to wear badges and name tags on their outer clothing at all times. Female detainees are transported in separate vehicles from male detainees, with a female officer present. Strip searches are not conducted on persons arrested for nonviolent civil disobedience-type offenses. Officers are strictly prohibited from any conduct which could be interpreted as sexual harassment of members of the public or arrestees.

As to the problems which our Department has experienced in connection with demonstrations, I would suspect that most of our problems arise when a group has failed to share with us its schedule and activity agenda or has failed to communicate adequately with its participants as to the parameters of permissible conduct in the course of its demonstration. These problems can be avoided by close cooperation with our police specialists prior to the event.

Another problem occurs when an unscheduled counter-demonstration or an aggressive reaction develops from among bystanders. Sometimes these can be anticipated, and we can take appropriate precautions. These confrontations, however, have the potential for changing a peaceful nonviolent demonstration into the policeman's nightmare, a riot, and, of course, that changes the mix in terms of our response to that situation.

As I stressed at the beginning of this briefing, our Department is no stranger to the rights of peaceful demonstrators. We try to assist them in every way possible to exercise those rights. We can do this most effectively when we can work together with group leaders before a demonstration has begun and can maintain a cooperative relationship throughout the event.

I believe that the Metropolitan Police Department has compiled an excellent record in attempting to ensure the constitutional rights of every citizen in the District of Columbia, whether resident or visitor.

I thank you for this opportunity, and I'll be glad to answer any questions you may have.

CHAIRMAN ALLEN. Thank you, Chief High. Mr. O'Connell?

MR. O'CONNELL. Chief High, one of the things that I'd like to ask you has to do with the use of plastic cuffs. Now we understand, of course, that they are necessary in some instances. We also understand from the testimony of Chief McCue that one of the problems that they have is they don't have a double lock, which means, as I understand it, that plastic handcuffs may tighten further. How might plastic handcuffs tighten further once they've been applied?

MR. HIGH. Well, they could be tightened in any number of ways. Most often, they're tightened when the arrestee begins to move their wrists, and that causes the process to tighten. One of the instructions that's given, if the opportunity is present to do so, is to inform the arrestee of that situation, that they will tighten if the person continues to move about. So, they are cautioned to remain still.

MR. O'CONNELL. If force might be applied, such as in a pain-compliance technique which ends up pulling the wrists apart, would that be adequate to tighten the plastic handcuffs?

MR. HIGH. That would be speculation on my part. I couldn't answer that.

MR. O'CONNELL. Could you give me some detail with respect to the procedures for strip search and body-cavity searches?

MR. HIGH. Our procedures require that there has to be probable cause to indicate that there is a weapon or contraband concealed in the body cavities of an individual or in places that are not accessible through a customary search, and when those conditions exist, that officer or that member is required to go through a certain command level to get authorization to conduct the strip search or the body-cavity search, and then that search is conducted by a person of the same sex in a secluded location.

MR. O'CONNELL. If someone does not get that permission or if someone from an opposite sex actually conducts it, what discipline could be expected?

MR. HIGH. It could go as far as removal from the force.

Again, as the Chief has also said, what you have to look at in those situations are the circumstances. There might be exigent circumstances that require that the regulated procedures be altered, but I would say under normal circumstance, where there is sufficient persons available, when the situation allows, our requirement is that a person of the same sex conducts that search in a secluded space, based only on probable cause or belief that contraband or a weapon exists in search situations.

MR. O'CONNELL. For the record, I made that statement simply because a number of complaints have alleged that there have been strip searches made by persons of the opposite sex.

CHAIRMAN ALLEN. Thank you. Commissioner Chan.

COMMISSIONER CHAN. Chief High, you have stated that the officers in the District do not remove their badges.

MR. HIGH. That's correct.

COMMISSIONER CHAN. Why? Are they not concerned with the safety of the people being arrested? Because I just heard from Mr. McCue that their officers remove their badges to prevent this.

MR. HIGH. Well, we aren't concerned about that as a safety issue.

COMMISSIONER CHAN. The safety of the officer or the safety of the participants?

MR. HIGH. Of the participants or the officer. We aren't concerned about that. It has not been an issue for us in the past, based on the demonstrations that we have

been involved with over the years. It has not been a safety issue for us, and our point of view, philosophically, is that the things that we do, we want each of our individuals to be known for those things.

COMMISSIONER CHAN. Thank you.

CHAIRMAN ALLEN. I thank you very much, Chief High. Mr. O'Connell?

MR. O'CONNELL. The next panelist will be Dr. Lawrence Sherman. Dr. Sherman is the President of the Crime Control Institute, and he's also Professor of Criminology at the University of Maryland. Dr. Sherman received his Ph.D. from Yale University in 1976, and as a matter of fact, Dr. Sherman is no stranger here, because he participated in a consultation that we held on police practices back in 1978. Dr. Sherman?

Statement of Lawrence Sherman, Professor of Criminology, University of Maryland

MR. SHERMAN. Thank you. I've also had some training experience, and I find if you don't pass out the handout at the beginning, then nobody ever reads it. So, I'm going to take that road this morning.

If I may, let me put these issues in some recent historical context. As I was growing up, my first memory of the police as an issue was watching the Birmingham Police Department employ a technique we haven't discussed this morning, which is fire hoses and cattle prods and dogs, and these were all used in Birmingham, Alabama, under the direction of Commissioner Bull Connor, against compatriots of Martin Luther King, Jr., in a very righteous cause, although I agree we should not be concerned with the substance of the cause.

I point to those techniques to indicate, number one, how far we've come and, number two, how much we've forgotten, especially, I'm afraid, the younger generation of police officers who weren't even born when those things were happening.

We're in a very paradoxical situation today in which we went through a bad time, especially in certain cities, in the 1960s, which drew national attention. The south was not the only portion of the country which was the cause for some grave scandal and outrage over how the police were dealing with non-violent demonstrators. Certainly, the Walker Commission report on the 1968 Democratic convention, describing it as a police riot, indicates that those things could happen up north, as well. But as I entered police re-

search in the New York City Police Department in 1970, I was aware of a very intensive effort to get beyond those bad days, to train officers through simulation techniques at Army bases, where they would actually deal with a mock riot, a mock demonstration, a very successful effort to bring police into a very professional and competent way of responding to all kinds of mass demonstrations.

Believe me, when you begin a demonstration that may be nonviolent, there's no certainty that it's going to stay that way. So the way even the question is framed today is not exactly the way it's seen from the standpoint of people who have to deal with those problems.

Well, the irony is that practice makes perfect, and as social conditions in this country changed, there was less opportunity for practice. The D.C. police have had the unfortunate distinction of having more practice, perhaps, than anybody else in the country at dealing with one mass demonstration after another. But in many parts of the country, the frequency of mass demonstrations declined to the point where not only was the training reduced in frequency, but the hands-on training of actual practice reduced in frequency.

So, as we entered the 1980s, many police departments fell out of practice in sort of the emotional and psychological readiness for coping with these problems. That was compounded by, first, the retirement of a generation of police commanders who were familiar with these kinds of operations, and now we're facing the retirement of a whole generation of police officers who came back from Vietnam and went into police departments on 20- and 25-year retirement plans. We are seeing, at the moment, the most massive personnel change in policing since the late 1960's and early '70s, when we had great increases in the number of police and the World War II generation was retiring at that time.

At the same time, with the war on drugs, we're seeing massive increases in the authorized strength of many police departments. Prince George's County, right next door, is trying to double their police department at the same time that they're filling vacancies from retirements. All of this is drastically lowering the average age of police officers on the street who are dealing with these situations, and it's also changing, again, their generational experience. These are people

who were not alive, in some cases, when Martin Luther King was killed. They have, unfortunately, very little empathy for the history of police abuses against nonviolent demonstrators, not to mention the general racial history of this country, where there are racial issues at stake. Unfortunately, I think that absence of memory has created more of a callousness, what is perceived as insensitivity, just in language, let alone any of the physical things we have talked about, a lack of caring, and that's coming out just in the past year in an extraordinary amount of racial tension between police and the communities they serve in city after city all over the country.

I have no quantitative evidence that there has been increasing allegations of police abuse, but certainly from Virginia Beach, to the Miami situation in January, even Minneapolis, which has been a community strongly dedicated to preservation of civil rights, is now wrestling with major concerns over these issues.

I would like to suggest for the Commission, since it is in a national policy advisory role, consideration of at least one practical solution to having a generation of very young police officers who, in addition to their lack of memory, also suffer from testosterone poisoning, which is to say that young males throughout history all over the world have been responsible for most of the violence committed in the world. The research conducted by my graduate students has indicated that the age-25 break is about the best predictor of the volume of use-of-force complaints that will be filed against an officer, as well as the officer's likelihood to use his weapon—that is, to shoot a gun.

Many police departments focus their recruitment on young men coming right out of school—increasingly on young women, but we still have over 90 percent males on the force—and I would like to urge, as I have been urging police around the country—urge the Commission to consider a recommendation that would focus on hiring people in their late 30s and 40s, which, first of all, gives you a much larger recruiting pool, because that brings you into the boom birth years, the baby boom. It also gives you people who have a lot more opportunity in life experience, through child raising, through different kinds of jobs, to deal with the stress of being insulted, being spit upon, having people do things like smearing themselves

with maple syrup. When you're 20 years old, that can be pretty upsetting. By the time you're 40, I think you can take it more with a grain of salt or a grain of maple syrup or something. All of that, I think, could make a tremendous difference, not in terms of specific rules and regulations and laws and policies and procedures, but just in the general climate of the confrontation between demonstrators and the public and the police.

I think we can start with looking at some more basic underlying solutions before getting to some of the recent things that I do want to mention, just briefly, and it's, again, an indication of practice making perfect.

The New York City Police Department, which I know very well, at one time had extensive training and had lost that. Last summer, in Tompkins Park, a group of officers who had very little experience with such things and very little supervision at the time, confronted a demonstration that was not, by any means, completely nonviolent, but there were many observers who got confused with the demonstrators, and they were videotaping documentation of clear abuses.

As a result of that event, the New York City Police Department has adopted several techniques which I think are worthy of consideration around the country. The first is to institutionalize the use of videotaping so that whenever there is a demonstration, the police are fully aware that there's a very great likelihood that what they do will be on camera. I grant that it's often difficult to identify a particular officer in the confusion of a melee, but I would think that there's certain fairness, as well, in having a videotaping in that I think it can help to exculpate officers who have been accused, as well as to clarify exactly what happened.

A second technique that has been used in New York, and I might say successfully with a more recent Tompkins Square protest that was completed without much mishap—a second technique is to have a much tighter ratio of supervisors to officers so that—five to one, for example, allows much greater opportunity for a supervisor to observe whether one of the officers is getting a little too shell-shocked, a little too emotionally upset in the process, and to bring that officer into compliance or, perhaps, excuse the officer from the event so that everything will stay cool.

The third technique is to station undercover plainclothes officers in the midst of the demonstrators so if anybody is tempted to

start throwing bottles or rocks at police officers, that person can be arrested by the plainclothes officers, removed from the scene immediately, and thereby discourage the likelihood of increasing the bottle throwing.

So, I've been impressed with those three recent techniques, but my hunch is that all of them are, perhaps, less necessary, and I admit my bias in being just about 40 myself—I think that all of them are less necessary with 40-year-old officers than with 21- or 22-year-old officers.

Thank you.

CHAIRMAN ALLEN. Very good. Thank you, Dr. Sherman. Mr. O'Connell?

MR. O'CONNELL. Just one question. You talked about the increase in police misconduct that can result from the problems we have with drugs. Could our drug problem and the dangers associated with it also contribute to the problems that we see in improperly handling nonviolent demonstrators?

MR. SHERMAN. The number of police officers killed in this country has been generally declining since the early '70s. The Crime Control Institute just reported that a record number of police officers were killed in drug enforcement last year. The numbers are still, gratifyingly, quite low. In relation to over a million drug arrests, there were only 18 officers killed. Nonetheless, it is an increasing number.

The rising fire power of the drug dealers, I think, is creating much more of a climate of fear, and justifiably so, in law enforcement in the United States today. That cannot help but carry over into how an officer approaches a demonstration. But the point I want to stress, what I think is the greater danger, is that we will rush to fill police positions, committing ourselves in a tenured civil service job for 20 or 30 years to an officer who might have been hired as a borderline case that the managers really didn't want to hire, but they just had to fill the slots. I think we have to be very careful, especially at the level of political leadership. As the Congress approves 1,000 more officers for this very city that I will help to pay for with my taxes, I want to make sure that we are hiring the best officers, who meet the very high standards that have been used in the past, and I think it's incumbent upon the political leadership of this country not to put the police in a bind so that they have to hire more police in the next 2 years than they've

hired in the last 10. That would be a grave danger.

CHAIRMAN ALLEN. We'll remember that you told us that a police officer ought to be old enough to be president. Mr. Howard?

MR. HOWARD. Dr. Sherman, you make a point very strongly, and I'll just quote from a statement that you've given us here, because it really sums up this point. You maintain that "rising cases of police abuse can be linked to growing numbers of younger officers." You recommend to us that we recommend that older officers be hired who have the experience of the demonstrations in the 1960's and the age and wisdom that comes with age.

The problem that I have with this point is that, while I think it is generally a good recommendation, the allegations that we have received oftentimes involve police misconduct carried out under supervision; that is, under the supervision of older officers who experienced the demonstrations of the 1960's.

I wondered if you could comment on that, and, if you are able, if you could comment on the propriety of use of pain-compliance techniques and the use of mace. We have allegations that mace was used against crowds demonstrating in Los Angeles and Sacramento; we have allegations concerning pain-compliance techniques, and concerning strip searches carried out by officers not of the same sex, in a few instances, carried out in front of male prisoners or within view of male prisoners. Could you respond, please?

MR. SHERMAN. Areas of technique that are not covered by law, such as the display of name tags, are clearly value judgments. Historically, in this country, each community has made its own value judgments about those kinds of aspects of police administration. Increasingly, they have been subject to law, and I wouldn't be surprised if we see legislators taking, for example, the name tag issue as something that could be written into local statutes.

But in terms of my main recommendation, I want to make it clear that I'm not speaking of any panacea or, perhaps to use an inappropriate metaphor, magic bullet. No one solution is going to deal with all of these problems. There certainly are supervisors and officers who have attained my own august age who are quite willing to vent the frustration and anger that anyone in a position of authority feels when they're being treated in a highly uncivil manner, and that

would apply to school teachers and doctors and recreation supervisors.

I was coaching soccer yesterday and got quite angry at how rude some of those kids were to me. And it's a very understandable reaction. And age alone is no guarantee. Certainly, there are personality differences; there's training differences; but the culture of a police agency can arguably be influenced by the predominant age; that is, any organization that is dominated by younger men will have a different kind of culture and a different set of values and a different set of peer expectations of how you go into this kind of situation than an organization that has a much higher average age.

I believe that's been established in general organizational research. I can't point to particular documentation of that in policing, but I think it's reasonably based to premise some policy analyses on. And certainly we will have older officers committing some of the abuses. Macing someone who is simply standing still, in my book, has no justification as reasonable force. I speak now as a juror would because, as Ms. Davis pointed out, these are questions of fact. What is reasonable in a circumstance? If we have circumstances where there is no physical threat against a police officer, there should be no application of force greater than that necessary to put someone in a transportation to be booked. Macing, pain compliance, other ways of trying to dominate someone beyond what's necessary to take them into custody, I think, are wholly inappropriate. If I was sitting on a jury, I would say it was excessive and vote in favor of the § 1983 verdict or whatever it would be.

CHAIRMAN ALLEN. Mr. Jenkins.

MR. JENKINS. For the record, I would like to get the reaction from Chief High and Chief McCue to Professor Sherman's principal recommendations concerning the hiring of older officers.

CHAIRMAN ALLEN. You can share the microphone.

MR. HIGH. Well, as someone has said here, I don't necessarily think that age alone is determinant as to one's behavior, but I think it's certainly a factor that should contribute to better behavior. However, I think the key ingredient, whatever the age is, is proper training and indoctrination into the police world, what's expected of one, and then make sure that there is quality guidance and supervision and appropriate standards in place,

and that our officers understand that when they go beyond those parameters, that there are going to be sanctions taken; I think are some of the keys to that.

I think across the country, in terms of where police is today, in terms of the numbers of people that we need in not only my city, but across the country, recruiting is very difficult. I think in terms of the caliber of person that we need generally to confront the situations that face police today, that certain areas in the past, the military is one of those kinds of areas that we look to in terms of getting the people that we need.

Let me also say in terms of policing, policing is a very difficult and strenuous occupation. When you have someone go out and carry the equipment that the police officer carries for an eight hour period and would have to walk a beat, that takes a person in fairly good physical condition and I think that declines also with age.

MR. SHERMAN. Not necessarily.

CHAIRMAN ALLEN. Chief McCue?

MR. MCCUE. First I'd like to say I'd love to have the doctor run for my city council when it applies for more personnel, et cetera, because we are not growing; we're getting smaller. As far as the age, it's interesting, because I am over 30. I can remember fighting vigorously when the move was on to hire 18-year-olds as police officers. At that time, many Federal laws prohibited them from buying ammunition. So I was successful in keeping it up to 21.

I think we have to be careful with statistics. If it is true that there is more violence, shooting, et cetera, with officers between 21 and 25 or 30, I don't doubt that because that's the age at which presently most officers are out on the street. I've been told that age does not necessarily give you wisdom or tolerance. I think that is true. You cannot lower your standards, certainly. Our recruitment requirements and policies are always high. As a matter of fact, I'm running short now, and I will not lower standards at all in order to fill those positions. To apply that in West Hartford, I think our average age of the people up there was probably 25 to 30. I was on the scene and I agree—I would love to have one supervisor for every five people up there and people who are out in the crowd and all that. I would love that, but I don't have it.

I was there. Part of our training, as far as our supervision up there, is just precisely

what the doctor was saying. You watch your officers who are engaged with this. The people that I had were specifically picked—the 11-man team—was particularly picked for their physical agility and their mental attitude. In addition to that, we had supervisors, myself included, for the entire period to tap one of my guys on the shoulder and say, “why don’t you back off; it’s time to cool off a little bit.” Because they were working very hard.

Another thing you do use, which I get blamed for, is humor. I see in some of the articles officers were laughing and all this. That may well be, because the tension breaker that I use with my officers is frequently trying to loosen it up and pull them back. So I agree with the doctor as far as that. You do, in this instance, have to watch your people because they’re working for 16-20 hours and, as I said, we hauled almost 20 tons of people two or three times. It is stressful.

CHAIRMAN ALLEN. Permit me to ask one question. I know we’re running late on time, but we’ll be able to squeeze everything in, I believe. I am concerned that one of the concerns expressed here generally this morning is that we pay attention to what our laws call for and that we pay attention to enforcing them. That I entirely agree with, particularly with respect to the standards of police conduct and training.

I am, however, concerned that we don’t legislate in ways that go beyond legislatures. One of the ways you can legislate outside of the legislature is to witness and accept otherwise questionable practices. For the more you do that, the more they become part of your expected landscape. In that respect, we haven’t directly confronted the one question which Chief McCue has confronted, but in general we haven’t.

Namely, is it appropriate to make a distinction between active and passive resistance? And Chief McCue has been insistent on saying resistance, not passive, not active, but resistance and relegating it to a single standard. What I would ask you generally as a panel is do you think that is preferable in talking about these questions or ought we to try to make a distinction between active and passive resistance?

MR. MCCUE. I think one of the other things you have to consider, and I think I did make a distinction between active and passive—one of the considerations you have is

the locale of where you’re arresting people, how many people you have, what the people are doing.

Now, in D.C., I understand from testimony that most often they can meet with the people and decide who is going to be arrested, how they are going to be arrested and all this, and it’s usually at street level. In my instance, we were three floors up. First of all, we had to take back the elevators. Second of all, until we move those people out of there, the crime continues. Those are some of the things, if this board is going to go into that, that have to be decided.

What are the rights of the people who conduct business, whether it be the abortion clinic or the dentist or whatever? What rights do they have, and is it proper or can you be held civilly responsible if you are to negotiate how long you will allow criminal activity to prevail? We have never refused to meet with any group that wished to come to us.

CHAIRMAN ALLEN. I appreciate that. I’m only interested, at this moment, in asking, if we are making this distinction, how we are drawing it, the distinction between active and passive resistance, and what does it call for in the form of approaches, in the form of police procedures. Chief High?

MR. HIGH. Well, that’s one of those situations where—in dealing with demonstrations, they quite often begin in a peaceful, passive mode. But quite often, because other people have different viewpoints or the views of the particular people in that demonstration aren’t getting the coverage from the press or others or the notoriety that they expect, quite often, in midstream, the tactics and those kinds of things change.

I think one of the things that we have to do is we have to rely on our agencies having our people’s interests in mind when they promulgate their own regulations, when they conduct their training. In that sense, then we have to leave some discretion, because these things are fluid much of the time and they do change. With the number of regulations and laws that police officers are confronted with in street situations, when you create situations that are somewhat gray and that kind of thing, I think you have potential to create problems rather than resolve problems.

I think one of the key things in policing, whether it’s a demonstration or dealing with some other crime issue or what have you, is we do, within some parameters, we have to

allow a police officer some discretion. One of the ways we try and control that discretion is by having the appropriate level of supervision, command-level persons at the scenes of these incidents, where possible, and experience, as the doctor has alluded to.

CHAIRMAN ALLEN. Thank you, sir. Did you want to comment on that, Dr. Sherman?

MR. SHERMAN. Just to say that I think it's difficult to establish a bright line between passive and active resistance, and I would agree with Chief High that there is a great deal of fluidity here, and I would hate to see a set of regulations that are premised on the false idea that you can categorize these things neatly from beginning to end.

CHAIRMAN ALLEN. Okay. Vice Chairman Friedman?

VICE CHAIRMAN FRIEDMAN. Professor Sherman began his remarks by pointing out that there seemed to have been an earlier period of more fruitful police behavior with regard to issues of this kind. I think you lodged it somewhere maybe at the tail-end of the civil rights revolution, although my memory of that period does not suggest that was a golden age. But be that as it may, I'd like to know if the two police officers here with us feel that there is any validity to a rather fundamental change that Professor Sherman has indicated has developed with regard to police enforcement from that earlier, so-called "Golden Age." If so, whether this does not require different kinds of training responses that might be useful.

MR. McCUE. Well, I've had a long history with police. My dad was a policeman before me, so I've been conscious of police work and police problems all my life. I think there has been, already, an intense effort in the area of policing in all facets. I can recall my own history of sensitivity to issues. I think rape was one and civil rights was another one. In my department and, I think, in most departments, the training is completely turned around in the past, in my history.

My history, incidentally—when I first—and I don't want to hold you up. My first weekend on the job of police work, I was given a badge, a beat slip, and a nightstick, and I was an officer of the law, and the guy who drove me to the beat gave me some tips, and many of those were not good either. But that was right about the time, in the early '50s, when the emphasis on training was starting. That very year, they changed our policy, where I went to school for 3 months with the

Connecticut State Police, and it was the beginning then of what is now required training. So, I think the training level in most departments is excellent, and I think that the—it's just a matter—what you people have to decide is are come-alongs brutal or unnecessary when you are trying to take somebody from one position to another. I realize there's more allegations throughout the Nation.

CHAIRMAN ALLEN. Chief High.

MR. HIGH. The only other thing I would add is policing grows like everything else and changes. We certainly try and change and stay abreast of those kinds of things and techniques and technology that help us to do our jobs better. But I think one of the things that has to be kept in mind is that policing in America goes from the part-time police officer in some small community or town to a department the size of New York or Los Angeles, with others in between, and the resources that are available and all of the kinds of things, from the very basic issue of training, are things that go along that continuum. I think those kinds of factors have to be kept in mind when looking at the issue of policing.

CHAIRMAN ALLEN. I want to thank you all. It's been a very interesting presentation. I know we went a little over. I apologize to those of you who come next. I want to say, as the panelists, then, are clearing their things and the next panel is beginning to assemble that we will try to continue to move expeditiously.

For those who might be interested, when we recess this morning, there are some videotapes from Virginia Beach and a composite tape of various Operation Rescue events, which may be available if you want to witness them. They were played earlier this morning and I'm sure we can arrange to play them again, but we'll do that after we recess, however. Mr. O'Connell?

MR. O'CONNELL. As the last panel is assembling, I think it would be appropriate to say that in looking at the cold record, one might get the impression that perhaps we were narrowly focusing on Chief McCue and West Hartford's actions. That would be far from the truth.

Chief McCue, first of all, because of his experience, was kind enough to come down here and to express his views and policies. In fact, we have received complaints from many cities across the country, and those cities include Atlanta, Georgia; Boston, New

Bedford, and Brookline, Massachusetts; Denver, Colorado; Dayton, Ohio; Madison, Wisconsin; New York City; the Pentagon; Washington, D.C.; Pittsburgh, Pennsylvania; Los Angeles, San Diego, Sacramento, and Santa Cruz, California; and, also, the Concord Naval Weapons Station in California; South Bend, Indiana; and of course, West Hartford. Since the time that I prepared this list, there have been some complaints that have come in from at least one or two other jurisdictions. So, we do have a broad base for what we have been doing.

CHAIRMAN ALLEN. By the way, let me just say, if we didn't make it clear, that we are appreciative that Chief McCue could come to join us, because I realize it was not an easy thing to do, and it was a sensitive question, and we do appreciate it, Chief.

MR. O'CONNELL. There is one other element that I would like to just briefly mention. In June of this year, as a result of a settlement, a Federal District Court Judge in the Northern District of California entered a permanent injunction against, among others, the County of Contra Costa, California, and their Sheriff's Department. The injunction reads that the defendants are:

permanently enjoined from using control holds against passive nonviolent demonstrators engaged in demonstrations at the Concord Naval Weapons Station. For purposes of this injunction, passive nonviolent protestors are those who (1) pose no threat to the safety of the arresting officers or to others, (2) do not attempt to flee arresting officers, and (3) do not actively resist arrest.

I would also note that the operative words there are "actively resist."

CHAIRMAN ALLEN. Thank you. That's very helpful to us because, obviously, that's the principle question we're faced with. You may go on now.

MR. O'CONNELL. Our first panelist is Don Jackson, a former Hawthorne, California, police sergeant. Don Jackson, while engaged in a sting operation in California against the Long Beach, California, police was, with the cooperation of NBC, secretly capturing his arrest by officers of the Long Beach police. During that time, Mr. Jackson's head was pushed through a plate glass window. Mr. Jackson has been involved in other sting operations and has been a leader in the concern about racism and excessive force in California police departments. Mr. Jackson?

CHAIRMAN ALLEN. Welcome, Mr. Jackson.

Statement of Don Jackson, Former Police Sergeant, Hawthorne, California

MR. JACKSON. Thank you very much. I want to thank the Commission for inviting me, and I'm honored to be here. I've been asked as well to give some supplement to what's provided in the itinerary as to my training and experience. I've been a police officer nine years. I retired at the rank of sergeant. I have an advanced certificate from the state of California in police practices. I have been a trained officer myself. I was formerly with the Police Practice Committee of the Los Angeles NAACP. I'm currently the vice president of the Santa Monica NAACP. I'm a wrist restraint and control techniques instructor, and I've worked a variety of assignments within law enforcement which I believe give me the background to discuss some of the issues here today.

I have been actively involved as a civil rights activist for the past two years, which has brought some attention to the issues that I have focused upon. More precisely, the issue of racism within law enforcement and police violence and more precisely the unnecessary use of force and violence against individuals who are arrested. In the past two years I have done two sting operations, one against the Los Angeles Police Department and one against the Long Beach Department.

I have videotaped over 300 instances of police contacts with citizens, and I must say I would truly be remiss if I didn't point out that police violence is a common, everyday occurrence that African-Americans face on the streets when contacted by police officers. I certainly can go at a later point to the issue of public demonstrations, but at this point let me say my focus is on the issue of race and how the police conduct themselves when talking and dealing with African-Americans.

Last year, a raid was conducted by the Los Angeles Police Department at a street called Dalton Avenue—it's now known as the Infamous Dalton Incident—where some 88 Los Angeles police officers raided four houses located at that address. The officers now have been charged—some 39 of them—with various acts of misconduct. Nine of them are facing termination. Five of them are now facing criminal investigation, and charges have been filed by the District Attorney's Office.

myself. I simply don't agree with them. I don't think it's necessary, particularly in the case of nonviolent demonstrators who are committed to nonviolence, who are offering no resistance other than weight resistance.

I realize that does present a logistical problem for the police, especially when there are large numbers of peoples involved. But a long time ago I read something like the level of a civilization of a given society can be determined by the way we treat those who break the laws. I don't see why people in an authoritative position, as the police are, to enforce the law should act in a way any other than humane. That should be our criteria. What is the humane way to arrest someone, what is the humane way to incarcerate someone? I think these criteria should always be before us, and apparently this is what you're trying to do here, and this is why I felt very good about coming.

I have friends whose arms have been broken because they refused to come along. I wanted to ask the question to those who believe that this is proper procedure, suppose the person doesn't come along? Suppose the person is able to resist the pain? How far do we go then? Do we go ahead and break the arm, and when you've broken one arm or when you've broken one finger, do you start on another finger?

It seems to me that we then begin to reduce ourselves to a level far beyond humane, and I think we're striving for something much higher. I guess I have the deepest respect for the problem that the police have, and I certainly wouldn't want to have their job, and I know they're presented with some difficult decisions at times.

But with nonviolent demonstrators, I believe that specific training should be given to law enforcement, and an example of that was the Pentagon demonstration of last year, when there were over 7,000 people out there at the Pentagon. For the most part, that was a peaceful demonstration. We could not get over the behavior of the police. We sat there and said, "why aren't they arresting us? Why aren't they pulling us apart? Why aren't they dragging us away?" Apparently they had been through some nonviolent training, and then I heard one of the policemen behind me say—he got a little bit testy with someone who didn't want to move when he said move now. I said, "apparently you missed your nonviolent training class." He said "yes, I did. I don't believe in that."

So it is hard, but I think the emphasis in police training should be on nonviolent methods of treating nonviolent people. To counteract violence with violence is another question.

CHAIRMAN ALLEN. Thank you very much, Mr. Litekey. Do you want to ask questions?

MR. O'CONNELL. I have no questions.

CHAIRMAN ALLEN. Let's go ahead and do the panel to save you time, and then we'll ask questions when you're all done. So continue.

MR. O'CONNELL. Our next panelist is Chet Gallagher. He's a long-time police officer, particularly in Las Vegas. He's also participated in several Operation Rescue demonstrations. Mr. Gallagher has a B.S. in Criminal Justice, and he also is the founder of Pro-Life Police. Mr. Gallagher?

Statement of Chet Gallagher, Police Officer, Las Vegas, Nevada, and Operation Rescue Participant

MR. GALLAGHER. I suppose the first thing that I should say is that I have the distinct privilege of being here and also the distinct privilege of being the second to the last of a very long line of panelists. I appreciate the fact that you have been sitting here for several hours, and so I will not read the long statement that I prepared, because I have been on an airplane all night and I'm not sure who would fall asleep first.

[Laughter.]

But let me clarify something that Mr. O'Connell said. It is true that I have been a police officer for over 20 years, and that I have participated in numerous Operation Rescues, actually in nine separate jurisdictions in this country. I did not participate in them as a police officer. I participated in them as a rescuer. I realize that might very well bring to question my credibility, especially sitting on this panel with a group of very distinct and capable police administrators. However, I have some experiences that I want to share with you briefly, and I hope that I will at least plant a seed in your mind that may bring about some very successful resolution to the problem that we're facing in this country today, and that is a growing and horrible abuse of what I prefer to call pre-due process punishment at various levels in our criminal justice system.

It's not my position here either, by the way, to sell you on the merits of the Pro-Life Movement or Operation Rescue. But it is important that I make a very clear distinction, because there's been a lot of emphasis placed

on the aspect of rescues involving civil disobedience, and, therefore, the rescuers are breaking the law. Subsequently they are arrested, and it places them in a different category, where they have different contact routinely with police officers in this country.

However you feel about the abortion issue in this country, I want to make it very clear to you that I am convinced after 12 months of participation in rescues, that the Operation Rescue movement is a grass roots movement in this country, made up of people from every religious background and every social and ethnic status, who come together prayerfully, passively, and nonviolently, motivated to rescue the lives of innocent children that they believe are going to be slaughtered unless they intervene and prevent that slaughter.

So rather than go through my statement, which I promised you I would not do, I would like to highlight just a few things in terms of my experience. One of the things that concerns me is that there is a growing mood in this country today that allows the police and other members in our criminal justice system to inflict punishment at various levels, denying people due process.

I would hope that everyone of us in this room would agree that, as difficult as the job of a police officer is, and I have been a police officer for 20 years, that we must certainly all be in agreement that it is not the job of the police department in any jurisdiction in this country to punish any offender. It is not their function. It is wrong for a police officer, whether using physical abuse or whether it's another technique of punishing within the system, to punish someone without due process.

You see, I first became involved in a rescue in Atlanta, while I was on vacation and off duty in October of last year. When I returned to Las Vegas, I made my supervisors aware of my participation, and, also, they became aware of the tremendous amount of brutality that had taken place in Atlanta, brutality that I was both a victim of and witnessed many others suffer. So I really believe that my police department which I—and have been for a number of years, almost ten as a matter of fact—been very proud to be a member of that department, realized that it was absolutely inappropriate for that type of brutality to take place against passive demonstrators. Although in Las Vegas we certainly don't have the experience that Chief High has here in Washington, D.C., we do have some particular

things that are unique to our city. Demonstrations are among them, labor disputes, and people trespassing on the Nevada test site, et cetera.

Well, what happened in Atlanta you see, and I don't know that you have this video. I hope that you'll have an opportunity to see some outtakes from that particular video. I remember as I was crawling towards the door of this particular killing center, and there was the on-duty on-scene commander, Major Burnett. Major Burnett was the man that was responsible for all the activities that took place that day at the Hillcrest Clinic—the man that was crawling next to me—we were on all fours moving slowly towards the door with our head down—I was approached by Major Burnett. As he lifted him up from the shoulder to his knees in an upright position, lifted his foot and kicked him in the chest, knocking him to the ground. That was a very frightening scene for me to see it in videotape. I didn't actually see it at the time, and I didn't even realize what had happened until I saw myself off to the right crawling next to this man when this event had taken place.

As a result of my arrest, because of improperly trained Academy students that were deployed that day who had no knowledge of how to properly apply appropriate pain compliance techniques, my hand was injured, my right hand, and I was as a result hospitalized for that while I was in custody. The injury still gives me some difficulty now almost a year later.

So I went back to Las Vegas. I was very pleased to participate in rescues there in that community, and as a result saw men in my department use discretion and realize the type of people that they were dealing with, and who these people were in their community. They realized it wasn't necessary for them to apply pain techniques, and so they simply—four officers picked them up and carried them to waiting police vans. They did this for the first four or five rescues. Until something happened last spring. I went to Los Angeles and I participated in the rescue there, both in Long Beach and also in the City of Los Angeles. That was an interesting event because the Long Beach police actually elected not to make any arrests but simply to maintain peace. LAPD on the other hand, a department that I have a great respect and great admiration for by the way, committed some real atrocities that I witnessed. I remember at one point some very large officers

will say, "okay, we need a written directive that governs the discharge of warning shots." It doesn't say whether you fire them or whether you don't. It then says that warning shots are inherently dangerous. This department staffs that out to their various divisions responsible for that activity, and they sit down and prepare their recommendations as to what that policy would be. Where that policy comes back as it does in the overwhelming majority of cases, and says, "thou shalt not fire warning shots," then that is in fact a directive that verifies compliance.

If, on the other hand, it's believed that because of the rural nature of that agency's jurisdiction, a warning shot may be appropriate, or if an officer uses it as a signal because he requires help or he's lost or whatever the case may be, then those requirements or that agency's specific requirements is contained in that directive.

I think that with some 17,000 law enforcement agencies, ranging from one to several thousand officers across this country, it would be very difficult for anyone to try to sit down and say this is the policy for all agencies. But what we are doing is causing them to focus on some 900 areas, and to use their judgment, and to use the judgment of other law enforcement agencies that they are in contact with to determine what is appropriate, and then to use the toughest people in the world, their professional peers, to come in and determine whether or not they have, in fact, developed a reasonable and feasible policy to verify compliance with the standard.

MR. O'CONNELL. Inherent in our discussion, it seems that we're really dealing with policy, and here we're not talking so much about policy at the legislative level or policy at the judicial level, but the range of policy that police administrators have.

Could you just give us some information on how significant you think that policymaking ability is?

MR. MEDEIROS. Well, I think it's essential. It's clear that the policy of the department, especially when you recognize the areas within the jurisdiction that allows for controls and accountability, in effect the policy of that department, not only has to reflect the values of the community but has to reflect the professional values of the law enforcement agency.

I think it's incumbent upon a chief executive officer to have some level of control in

the conduct of the officers that are carrying out the responsibilities of that department. Now clearly the chief cannot be on the street with his officers 24 hours a day. Sometimes it's not even possible to have one-on-one supervision, and I think we've heard examples of even where you have one-on-one supervision, if there isn't some control over the supervisor, then maybe that supervision is not correct.

So, it's more than just having policy. It's enforcing the policy, and it's ensuring that the policy is carried out. Where the policy is violated, or where the policy is not being carried out, then it's incumbent upon that agency to take whatever corrective action is necessary. If it means to examine the policy, to determine if there is a flaw, or if it means to ensure that the supervisors or the commanders are being brought to task for not carrying out the policy, then those are the things that the chief executive has to accomplish.

However, if the policy is not there, if you have no policy at all, then there is no need to worry about all those other areas. So I think it is important to have the policy, recognizing that you still have to leave the discretion to that agency in terms of how they carry out their various responsibilities.

MR. O'CONNELL. With your permission, Mr. Chairman, if I can just direct one question to Mr. Gallagher.

CHAIRMAN ALLEN. All right. Again, the sparest.

MR. O'CONNELL. Okay. Based upon our conversations before in connection with the use of mace, I seem to recall that you had indicated to me one particular instance where there was an inappropriate use of mace. Could you recount that and also tell us exactly what mace does?

MR. GALLAGHER. Yes. I think it follows up exactly what we're talking about in accreditation. One of the things I did for my department was write and assist in the writing of accreditation standards for the traffic section. But there is one particular accreditation standard very much to the point of your question, and to the point of what we discussed here, and that has to do with the use of force. The Las Vegas Metropolitan Police Department manual quotes the accreditation standard 1.3.1 as follows:

The department will accomplish the police mission as efficiently and unobtrusively as possible with

the highest regard for human dignity and the liberty of all persons, with minimal reliance upon the use of the physical force and authority. Any type or kind of force exercised by the use of lethal or nonlethal weapons shall be restricted to self-protection, the protection of others, or to prevent the escape of an offender and only to that degree to accomplish a lawful police task.

What happened in Las Vegas where the department was just passively working and carrying the rescuers away? When they saw what was happening in other departments around the country, it set a clear standard and a message that really frightened me. At the rescue in June in Las Vegas, they used not only pain compliance but mace on passive rescuers.

Mace has one purpose. Mace has one purpose, and that is to make an aggressor completely passive. It is inappropriate to use mace to make a passive, nonviolent demonstrator or rescuer more passive.

[Laughter.]

MR. GALLAGHER. When we see this happening, and it also happened in Sacramento, California—references were made to that—it's necessary that immediate action be taken, and I know of one supervisor that was charged by his department.

Using mace or weapons like those nunchucks and other nonlethal weapons on passive demonstrators is beyond the restrictions that are set forth in this accreditation standard.

CHAIRMAN ALLEN. Thank you sir. Commissioner Ramirez?

COMMISSIONER RAMIREZ. First, I cannot allow this golden opportunity of having Mr. Medeiros inform us go by, without asking a question about something that is very much on my mind. We had a situation in the Washington area during the Labor Day weekend in Virginia Beach, whereby many of us who were watching television on, I believe, it was Sunday evening, saw live coverage of a massive police force descending upon people who appeared to be doing nothing illegal at that moment and acting in, to put it mildly, a very forceful way.

Without judging, because we do not have enough information, what occurred the night before, my question is one, is that snapshot of behavior which we saw on videotape that night in any way reconcilable with your accreditation standards, number one?

Number two, when a police department, or a group in this case of police officers, behave in this way, do you disaccredit them?

MR. MEDEIROS. Well, there are certainly responsibilities on the part of the Commission to investigate or to undertake a review of any apparent or obvious or even questionable violation of standards. However, that review would not be based on, as you have identified, a snapshot of behavior because I think it's clear there were probably many hours of activity that occurred in that particular instance, and although I've been out of the country until just an hour or so ago, I am not personally aware of all of that activity.

I am, however, aware, or at least it has been reported in the media, that an investigation is taking place.

COMMISSIONER RAMIREZ. By your agency?

MR. MEDEIROS. No. I thought it was by the Department of Justice. Our review will, of course, look not only to the agency for their explanation, but also to any other investigations that take place.

COMMISSIONER RAMIREZ. Have you ever discredited anybody?

MR. MEDEIROS. Well, we have only been in operation since October of 1983. As I've indicated to this point, 117 agencies have been accredited. We have sent requests for information to accredited agencies regarding reports, sometimes anonymous reports, that we have received, and we have received satisfactory replies to those reports.

However, there is a process of review, and there is a process of suspension or even revocation of accreditation as well as a process of finding that an agency was acting properly regarding a particular standard that a question may have been raised about.

CHAIRMAN ALLEN. We're going to have to take a break here. We have an appointment with destiny at 12:45 when our colleagues, and they expect us to be here when they show up. Therefore, we can't go on very much longer than we have.

For the Commissioners, we will have opportunity in the afternoon session to discuss what we have heard in this briefing this morning. For those of the public who are with us, I want to emphasize something. I'm aware that there are several of you who would wish to be able to make statements to us, and I need to explain to you that this is not a hearing. It is a briefing.

We are not, therefore, in a position to take your statements today. Insofar as those

statements are further testimony on events that have transpired, I want to reassure you that we either have them in the form of complaints that we have consulted and will continue to consult, or, I'm certain, will have them in the form of complaints you will lodge with us in the future.

I would like to do one thing for the sake of informing our discussion later this afternoon, a technical thing to take 30 seconds from Father Weslin from West Hartford, who might clarify something that we talked about earlier. The come-along technique, without actually getting it specified, and I believe that you were present there. Can you tell us exactly what takes place? Just very quickly?

Statement of Father Weslin, West Hartford, Connecticut

REV. WESLIN. Yes, sir. The come-along technique is used to apply pain to induce you to cooperate, and used extensively and for good purposes. But I think it's crucial for your understanding that you know the difference between the strap-hold technique, which appears very subtly to the onlookers to be nothing but a system used by the police to take you into custody.

But what actually happened at West Hartford, in distinction from what Chief McCue described, was that we were taken out of the door and then brought into a space here, placed on our stomachs, and placed our hands behind our back, rolled over, where a policeman kicked me in the chest, then rolled back. I think that was to induce you to become submissive.

Then he told the policeman on my right, "put your nightstick," which is about that length [motioning], "under the right wrist and over the steel handcuff." Now he said, "I'm going to show you how to take care of this guy," and he told a policeman on the left to place his nightstick under the left wrist and over the cuff on the right wrist. Then he said, "lift."

So, in effect what happens is your wrists go high up into the air, and your body forms an inverted V with your head close to the ground and your feet close to the ground, so that even if you did want to cooperate, there is no possible way. We tried many ways. We were screaming.

We don't like to scream, but in this case, the effect of the two sticks on both sides of the wrist creates a vise that the heavier the weight is of your body, it cuts off the nerve ends and stops the blood flow so that our

hands swelled up and turned black, and the action of the sticks, as they were bouncing us on our heads down to the corridors and into the vans, and then into the courts and up to the cell, was so that it caused excruciating pain.

This was the technique used by Hitler, by the Brown Shirts, in order to induce the pain but not to induce cooperation, because there was no way to come out of this inverted V. The police were dancing us around on the heads with do-se-do techniques and laughing. It wasn't the humor that was mentioned here, to make the job easier. From my standpoint as a Catholic priest, the demonic element entered in here, where there was enjoyment of the pain.

This was the distinction now, which looks very subtle to the audience watching, that it's merely a technique to bring someone in who's being very difficult. But that in fact is not what's happening. Other pain techniques—I've been on 25 arrests now and rescues—never have we experienced pain such as the strap-hold technique. I think that should be distinct from the come-along.

CHAIRMAN ALLEN. Very well. I thank you very much. Here's where we do require the break. I thank all of you who have participated in bringing information to us. Commissioner Destro, welcome. You join us [on a conference call transmission hook-up] at a good moment. I don't know if it's entirely propitious, because we're about to break up. Would you like to make a comment before we do?

COMMISSIONER DESTRO. The only comment I'd like to make is that, apparently due to some technical difficulties, I have been unable to get into the conference room on the telephone. I just wanted to note my appearance for the record at this point.

CHAIRMAN ALLEN. Very well sir, thank you. I don't know if you heard all that I was saying, but you will have occasion to discuss these things in the afternoon. Commissioner Friedman?

VICE CHAIRMAN FRIEDMAN. Yes. This will be brief, because we're breaking. I just wanted to say, because so many of you will be gone by the afternoon, that I've heard enough testimony of what seems to me to be egregious misbehavior, as described by several of you. So I wanted to indicate to you that this afternoon when our discussion will proceed, I will be making a recommendation that this Commission arrange not only to turn over to

the Justice Department the record of this testimony, but I will recommend that we seek a personal meeting with the Justice Department, to explore the specific charges that have been made in specific instances and that, therefore, your comments will be perhaps made more useful in that process.

CHAIRMAN ALLEN. I thank you. If there are no further inquiries, we will stand in recess. We will convene at 12:45 p.m., I want to be emphatic. So please join us.

[Whereupon, at 12:13 p.m., the briefing session was adjourned.]

